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# Memorandum

To: Docket 21-OIR-04

From: **Jared Babula, Senior Attorney**  
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Date: May 31, 2023

**Subject: California Environmental Quality Act Compliance**

At the June 16, 2023, California Energy Commission (CEC) business meeting, CEC staff will recommend the CEC readopt through a proposed resolution amendments to the informational requirements for an application. (Cal. Code Regs., tit. 20, Appendix B.)

**I. Readoption of the Regulations is Not a Project.**

For purposes of complying with the California Environmental Quality Act ("CEQA," Pub. Resources Code, § 21000 et seq.), staff recommends the CEC find that the readoption of the Appendix B amendments is not a project under CEQA. The action at issue is readopting regulations that amend the informational requirements in various siting applications submitted to the CEC.

California Code of Regulations, title 14, section 15060 states, in part, that a lead agency must first determine whether an activity is subject to CEQA and that an activity is not subject to CEQA if the activity is not a project as defined in CEQA Guidelines section 15378. Section 15378 states that an activity is a project if it has the potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.

Readoption of the Appendix B amendments is a procedural act, relating to the information requirements of various types of applications. The action to readopt does not result in any direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, but simply confirms a prior action that was previously deemed not subject to CEQA. Therefore, the readoption is also not subject to CEQA.

**II. Even if Readoption of the Appendix B Amendments Was a Project, the Common Sense Exemption Would Apply.**

Adoption of the regulations would also be exempt from CEQA under the common sense exemption. (Cal. Code Regs., tit. 14, § 15061(b)(3).) CEQA only applies to projects that have the potential for causing a significant effect on the environment. A significant effect on the environment is defined as a substantial, or a potentially substantial, adverse change in the environment, and does not include an economic change by itself or beneficial changes to the

environment. (Pub. Resources Code, § 21068; Cal. Code Regs., tit. 14, § 15382.) Because the action concerns the readoption of regulations covering the information requirements of siting applications, and it does not result in any physical changes to the environment, it can be seen with certainty that there is no possibility that the readoption of the Appendix B amendments results in a significant effect on the environment.

### **III. Conclusion.**

As shown, readoption of the Appendix B amendments is not a project under CEQA and thus CEQA does not apply. Even if the readoption is a project and CEQA does apply to the agency action, readoption of Appendix B amendments is consistent with the common sense exemption under section 15061(b)(3) of the CEQA Guidelines. For these reasons, the readoption of Appendix B amendments by the CEC would be exempt from CEQA, and a Notice of Exemption may be filed with the Office of Planning and Research.