

**TITLE 14, DIVISION 6.3. OFFICE OF PLANNING AND RESEARCH
INITIAL STATEMENT OF REASONS**

Chapter 2. Regulations Governing Applicant Fees for Environmental Leadership Project Applications

BACKGROUND AND PROBLEM STATEMENT

In 2021, the Legislature adopted the Jobs and Economic Improvement Through Environmental Leadership Act (hereafter “Act”) (codified at Public Resources Code sections 21178-21189.3), which reenacted the 2011 act of the same name. The Act authorizes the Governor to certify projects that meet specified requirements for judicial streamlining benefits under the California Environmental Quality Act (“CEQA”). Once certified, a project is eligible to utilize procedures developed by the Judicial Council which, to the extent feasible, require that all actions or proceedings brought to challenge that project, including appeals, be resolved within 270 days of the filing the certified record of proceedings with the Court. In order to be eligible for CEQA streamlining, among other requirements, projects must not result in any net additional emission of greenhouse gases and must meet certain specified labor requirements. Additionally, the Act allows affordable housing projects meeting certain requirements to apply for judicial streamlining certification. Under the Act, the Governor’s Office of Land Use and Climate Innovation (“LCI”) reviews applications for judicial streamlining, and recommends to the Governor whether a project meets the requirements for certification.

Public Resources Code section 21184.7 authorizes LCI to charge a fee to applicants seeking certification under the Act for the costs incurred in its implementation of the SB 7 program. The section does not specify what the fee is or how LCI will administrate it. The proposed rule will raise this application fee.

BENEFITS

Benefits of the proposed rule include allowing LCI to recoup a greater percentage of the costs of reviewing applications for judicial streamlining certification under the Act, which will sustain LCI’s ability to implement the Act. Implementation of the Act benefits the public in a number of ways, including streamlining the judicial review of projects that replace old and outmoded facilities, generate thousands of full-time jobs during construction and operation, and implement innovative measures that significantly reduce significant greenhouse gas emission and other impacts. Streamlined projects are also required to mitigate their emissions on-site or locally to the extent feasible, meaning these projects will achieve emissions reductions in their communities. Additionally, the proposed rule will continue to provide a fee exemption for affordable housing project applicants, which will lessen the burdens of applying for judicial streamlining on those types of projects. This exemption will benefit the public by lessening the burden of applying for judicial streamlining under the Act on affordable housing projects, which are an important part of addressing California’s housing shortage.

SPECIFIC PURPOSE, NECESSITY AND RATIONALE FOR ADOPTION

LCI proposes modifying Chapter 2, Section 16100 of Division 6.3 of Title 14 of the California Code of Regulations, as follows.

Section 16100. Fees

The purpose of proposed Section 16100 is to establish the application fee amount for filing an application for streamlining certification pursuant to the Act. The proposed section sets the fee at \$100,000 per application. The proposed application fee is based on the personnel cost of the program divided by an estimated four applications per year. There are six full-time equivalent positions which

support the review and process for recommendation to the Governor for certification. The annual rate of all staff members, including salary, benefits and overhead costs, such as facility and IT costs, is \$1.61 million to enable this program and review applications. Spreading this cost across an estimated four applications per year results in total cost per application of around \$100,000 to recoup twenty five percent of LCI's costs of administering this program.

The proposed section is necessary to provide applicants with the information regarding the application fees they will have to pay when submitting an application under the Act. Additionally, the proposed section's fees will allow LCI to recoup some of its costs of implementing the Act. This will permit LCI to sustainably fund its implementation costs, while not imposing so great an expense as to make applying for certification under the Act infeasible for potential applicants.

TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDIES, REPORTS OR DOCUMENTS

No technical, theoretical and/or empirical studies, reports or documents were relied on in proposing these regulations.

ECONOMIC IMPACT ASSESSMENT/ANALYSIS

Based on the following economic impact analysis, LCI concludes that this regulatory proposal will have the following effects:

- (1) It will not create or eliminate any jobs within the State of California;
- (2) It will not create new, or eliminate existing, businesses within the State of California;
- (3) It will not expand businesses currently doing business within the State of California; and
- (4) It will benefit the health and welfare of California residents and the state's environment by sustaining LCI's implementation of the CEQA judicial streamlining provisions of the Act.

In regards to creating or eliminating jobs in California, LCI does not anticipate that the proposed regulation will have any effect. As discussed above, the proposed rule will impose a one-time fee of one hundred thousand (\$100,000) on projects submitting an application for CEQA judicial streamlining certification under the Act, exempting affordable housing project applicants. While LCI anticipates that applicants may hire staff, such as consultants, to help them prepare their judicial streamlining application, the proposed rule will not impact those jobs, and will merely establish an application fee. Additionally, because the fee only represents less than 1% of a typical project investment of more than \$100 million, LCI does not expect that this will cause the loss of any jobs. Additionally, because compliance with the proposed rule only requires submitting the check to LCI, LCI anticipates the administrative burden imposed by this proposed rule will be minimal, and will not cause the loss of any jobs.

In regards to creating new or eliminating existing businesses within California, LCI does not anticipate that the proposed regulation will have any impacts. The implementation of a fee for applicants applying to this program represents less than 1% of a typical project investment of more than \$100 million. Thus, LCI does not anticipate that it will eliminate any existing businesses. Additionally, the imposition of the fee will not require applicants to contract with outside businesses, and so the proposed rule will create new businesses in California either. While LCI anticipates that applicants may contract with outside businesses, such as consulting businesses, to help them prepare their judicial streamlining application, the proposed rule will not impact those contracts, and will merely establish an application fee. Additionally, because compliance with the proposed rule only requires submitting the check to LCI, LCI

anticipates the administrative burden imposed by this proposed rule will be minimal, and will not cause the loss of any jobs.

LCI does not anticipate that the proposed rule will expand existing businesses in California. As discussed above, the fee imposed by the proposed rule will not require that applicants contract with outside businesses. While LCI anticipates that applicants may contract with outside businesses, such as consulting businesses, to help them prepare their judicial streamlining application, the proposed rule will not impact those contracts, and will merely establish an application fee.

LCI anticipates that the proposed rule will benefit the health and welfare of the public by enabling LCI to recoup some of its costs and be able to continue sustainably implementing the CEQA judicial streamlining program under the Act. Under the proposed rule, LCI will recoup approximately \$3.4 million in costs expended to implement the Act between the effective date of the proposed rule and January 1, 2034, when the Act requires all applications to be certified by the Governor. Continued implementation of the Act will benefit the public and the environment by judicial streamlining the judicial review of projects that replace old and outmoded facilities, generate thousands of full-time jobs during construction and operation, and implement innovative measures that significantly reduce significant greenhouse gas emissions and air quality impacts. Additionally, continued implementation of the Act will enable affordable housing projects to apply for CEQA judicial streamlining, which will ease judicial delays for affordable housing projects in California.

EVIDENCE SUPPORTING FINDING NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS

The proposed rule would impose a one hundred thousand dollar fee (\$100,000) on applicants applying for judicial streamlining certification benefits under the Act to recoup some of LCI's costs of implementing the Act. LCI estimates that it will receive approximately 36 applications between the effective date of the proposed rule and January 1, 2034, when the Act requires all applications submitted under the Act to be certified by the Governor. Thus, the total fees collected by LCI under the proposed rule are estimated to be \$3,200,000 statewide.

The fee set by the proposed rule will not have a significant adverse impact on businesses. As defined in the Act, non-affordable housing applicants must have a minimum investment of one hundred million dollars (\$100,000,000) in California upon completion of construction in order to apply. (Public Resources Code § 21183(a)(1).) This means, assuming that a project applicant has a total investment of one hundred million dollars, the fee imposed on development applicants represents 1% of the applicant's total investment. Additionally, the proposed rule would not modify the existing fee exemption for affordable housing applicants.

ALTERNATIVES DETERMINATION

No reasonable alternative to the regulatory proposal would either be more effective in carrying out the purpose for which the action is proposed or would be less burdensome and equally effective in achieving the purposes of the regulation in a manner that ensures full compliance with the law being implemented or made specific. Set forth below are the alternatives which were considered and the reasons each alternative was rejected:

Recouping All Implementation Costs Alternative

The first alternative considered by LCI is an alternative rule that would seek to recoup all of LCI's costs of implementing the Act, as opposed to only the average costs of reviewing and processing one application. These additional costs include staffing and administrative costs related to preparing guidelines for applicants, application review for affordable housing project applicants, undergoing the rulemaking to institute this proposed rule, hiring staff, and conferring with the Governor's office on non-application specific issues.

The total estimated yearly costs of LCI implementing the Act are approximately \$1.55 million. LCI estimates it will receive four applications annually between the effective date of the proposed rule and January 1, 2034. Thus, in order to recoup all its costs, under this alternative LCI would implement a fee of \$387,500 per application.

Ultimately, LCI rejected this alternative in favor of the proposed rule because of the high cost per application. Environmental leadership development projects have a number of other CEQA-related expenses around the time of application, including the costs of preparing their applications, litigation expenses, and judicial council fees. Alongside these other costs, recouping all of LCI's implementation costs could make the program infeasible for certain, otherwise-qualifying, applicants. This would lessen the benefits to the state from judicial streamlining the judicial review of projects that replace old and outmoded facilities, generate thousands of full-time jobs during construction and operation, and implement innovative measures that significantly reduce significant greenhouse gas emission and other impacts.

No Change Alternative

The second alternative considered by LCI is an alternative that would not change the existing fee amount.

LCI rejected this alternative in favor of the proposed rule because this alternative reduces the ability of LCI to sustain implementation of the judicial streamlining program. Program staff levels have increased by approximately 50 percent (50%) since LCI established an initial fee in January 2023. Additionally, judicial streamlining applicants pursuing certification for renewable energy generation projects may submit an application meeting criteria from the Act, or may choose to apply for judicial streamlining benefits as an infrastructure project described in Public Resources Code 21189.81, subsection (d). Without a fee amount consistent across all legislated eligible project types, LCI worries that applicants may engage in "forum shopping" by choosing to apply under the ELD Program to avail themselves of lower fees, depriving the state of fees to continue to implement the program.

Alternatives Not Considered by LCI

No Fee Alternative

LCI did not consider an alternative that would impose no application fees under the program. Such an alternative was not a reasonable or feasible alternative because LCI would recoup none of its fees from implementing the program. This would not allow LCI to sustainably continue to implement the program.