



THE CITY OF SAN DIEGO

October 12, 2015

Via e-mail

Christopher Calfee, Senior Counsel
Governor's Office of Planning and Research
1400 Tenth Street
Sacramento, CA 95814

Dear Mr. Calfee:

Enclosed are the City of San Diego's comments on the amendments to the CEQA Guidelines proposed by the Governor's Office of Planning and Research (OPR) from the Environmental Working Group of the City of San Diego; this group consists of staff members of various City departments, offices and agencies that are responsible for the implementation of the California Environmental Quality Act (CEQA).

To begin, the City is supportive of the overall direction being made via the proposed changes. However, the City believes that there are some proposals that should be modified or clarified so that implementation of the change is consistent from jurisdiction to jurisdiction. Lastly, there are a few proposals that the City recommends should not be rejected.

The format of our comments is to list the Guideline section and then call out the specific page number where the proposal occurs, followed by whether the City **Supports**, wishes to **Clarify** or **Modify**, or recommends that you **Reject** the proposed change. In most cases there is only a brief statement related to the supported amendments. For those the City believes need to be modified or rejected, the City has included our proposed changes and reasoning for the change or rejection. Any change not specifically discussed the City supports or does not have any concerns.

§ 15064. Determining the Significance of the Environmental Effects Caused by a Project

Page 15: 15064(b)(2) **Clarify/Modify** – Including an explanation in every CEQA document how compliance with a threshold indicates that a project's impacts are less than significant seems repetitious. This section should allow a lead agency that adopts a threshold to include this explanation in the threshold document itself, which could then be referenced in the CEQA document.

§ 15064.7. Thresholds of Significance:

Page 18: 15064.7 (d) **Support** –The City appreciates the built-in flexibility for evaluating an environmental effect based treating environmental standards as thresholds of significance to eliminate redundancy and increase the direct applicability of a local ordinance or regulation, as the City's environmental regulations are more specific to the region than general use CEQA thresholds.

§ 15168. Program EIR

Pages 22 to 24: **Support** – The City Supports the proposed language changes that clarify the uses of a Program EIR.

§ 15152. Tiering

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Page 27: 15152 (h): **Support** – The City Supports the proposed language changes that clarify the use of tiering and possible methods.

§ 15301. Existing Facilities

Page 35-36: **Support** – The City supports the proposed changes to the exemption language in the Class 1 section and section 15301(c).

Appendix G Checklist:

Since the numbering of the Questions will change in the final document we have used the question numbers as they appear in the current document (i.e., deletion of the Agriculture question is Air Quality should now be Question II but remains Question III, and there are two Questions numbered V.)

Page 56: Energy (Question V) **Modify** – The practical application of these two questions would be difficult to achieve. Given its subjective nature, a definition of “wasteful, inefficient, or unnecessary consumption of energy” may need to be defined in the Guidelines. Alternatively, lead agencies could develop their own definition and threshold for this item, but it would likely vary based on the agency. Some agencies may believe the current standards or use of energy are not wasteful or unnecessary and may have a very lenient threshold. This could lead to a poor level of implementation and may not achieve the desired result. The City believes that the Guidelines should delete the use of wasteful and include a definition or examples of what is considered inefficient or unnecessary.

Page 57: Energy **Modify** – Determining what the environmental impact is or determining the significance for this question would also be difficult to achieve. Compliance with the California Green Building Standards could be viewed as incorporating renewable or efficient energy measures. If so, then asking the question in the Guidelines checklist is moot. This question should be combined with the first energy question to provide lead agencies with a variety of options to ensure the energy efficiency of a building is considered during CEQA and whether actions above the standard requirements are needed to make a less-than-significant determination.

Page 58: Hazards & Hazardous Materials, Question VIII (e) **Clarify** – The City wonders why the question regarding aircraft noise moved out of Noise and into this section; it seems better located in the issue area of Noise.

Page 58: Hazards & Hazardous Materials, Question VIII (h) **Clarify** – This essentially consolidates and moves some of flood hazard questions from Hydrology & Water Quality section. Simplification and consolidation are good, but may also be desirable to encourage cross-referencing when different sections address related topics. It also may be helpful to cite, as examples in parentheses, some of the specific types of flooding and inundation hazards that have been called out under Hydrology & Water Quality, but would appear to be deleted (tsunami, seiche, dam or levee failure, etc.) in the update.

Page 59: Hydrology & Water Quality Question IX – **Clarify** - as noted below, there is support of the changes; however OPR should consider that many of these questions may be rendered moot with implementation of the new State Water Resources Control Board requirements for Municipal Separate Storm Sewer System (MS-4) permits.

Page 59: Hydrology & Water Quality, Question IX (a) – **Support** adding “or otherwise substantially degrade surface or ground water quality” to the checklist question (and thereby replacing question [f]).

Page 59: Hydrology & Water Quality, Question IX (c) – **Support** including “or through the addition of impervious surfaces” and other additions to the checklist question (and partially replacing some similar questions proposed for deletion in this section).

Page 63: Open Space, Managed Resource and Working Landscapes (Question XI) **Clarify/Modify** –. This new section does not seem intuitive. While trying to consolidate issue areas, it created additional questions among staff

(e.g., Agriculture and Open Space are two different types of land use so conversion/modification could have very different thresholds of significance). Furthermore, it appears that OPR determined that conversion of *any* agricultural land, whether prime to rangeland (replacing the sub-question as to whether the land is prime farmland or farmland of Statewide Importance) is potentially significant. Lastly, having a definition of what a Working Landscape is would be helpful as well as it would clarify how Paleontological resources, Geological features and Impeding Groundwater recharge would fit within such a category. It is the City's belief that Paleontological and Geological questions should be within their own grouping and the Groundwater recharge question should be part of the Hydrology/Water Quality questions.

On page 65: Question: XIII (c) Population and Housing **Clarify or Reject** – if implemented, will OPR be providing guidance as to a potential threshold of significance for “**substantial imbalance in regional jobs / housing fit**” and if a significant impact is identified, what would be the possible types of mitigation measures that could be proposed? If not, as the question is now presented, the “substantial imbalance in regional jobs/housing fit” would be incredibly difficult to apply during the CEQA process. CEQA requires projects to mitigate their impact on the environment, but does not require projects to mitigate the impacts caused by other projects or solve existing environmental problems occurring in the area. Additional reasons to **Reject** the question are:

One could assume an appropriate measure to mitigate a project that results in an imbalance in regional jobs/housing fit would be to add an employment center to a proposed housing development or add housing to a proposed employment center, whether this is appropriate for the area or allowed in a city's general plan or a regional plan. The project would also be mitigating a region-wide imbalance without a clear nexus. The result would lead to irrelevant general and regional plans, since certain areas will be required by CEQA to provide certain land uses.

The project-by-project CEQA analysis is not the proper vehicle to make land use decisions such as this, and the jobs/housing fit should be addressed at a more general or higher level. The question should be revised to apply only to general plans, specific plans, and regional plans to ensure the jobs/housing fit is properly addressed.

Page 67: Transportation XVI: **Reject** – The transportation checklist changes should be excluded from these revisions since they will be addressed in a different CEQA Guidelines revision. Until the SB 743 revisions are proposed, the status quo should remain.

Page 68: Utilities & Service Systems, XVII: **Support with modification** – The City supports the deleting seemingly duplicative questions in (a) and (c) as these questions are covered under Hydrology & Water Quality. Since “storm water drainage facilities” are included in XVII (b) (which will become the new XVII (a)), the City would also encourage cross-referencing with the Hydrology & Water Quality question IX (c)(iii) where exceeding “the capacity of existing or planned storm water drainage systems” is asked.

Page 68: Utilities & Service Systems, XVII (d): **Clarification needed** – Will OPR provide guidance as to the use of jurisdiction's Urban Water Management Program to address this issue, especially if a project does not require a Water Supply Assessment?

Page 69: Utilities & Service Systems Question XVII (f): **Modify** – *Background:* State law enacted by AB939 in 1989, requires that local governments reduce waste within their borders by 50% by the year 2000, and, with AB341 and AB32 the State legislature has increased the waste diversion goal to 75% and required commercial recycling. In 2014 the State legislature enacted AB1826, which requires organic waste diversion. Currently there is insufficient infrastructure in the City of San Diego to accommodate all of the organic waste diversion that is mandated by AB1826.

Reasoning: Given that the majority of waste local governments must manage is NOT destined for a landfill, it is *essential* that the language in XVII (f) be brought up to date to reflect the fact that even before 1989, solid waste management involved much more than operating a landfill. While there are several ways this

could be achieved; the City of San Diego suggestion would be to change the language as follows:

Would the project:

- f) ~~Be served by a landfill with sufficient permitted capacity to accommodate the project's solid waste disposal needs.~~ **Generate solid waste in excess of State or local standards or in excess of the capacity of local infrastructure, and/or would the project provide solid waste management and waste reduction in accordance with State and local standards?**

New Section 15234. Remand

Page 73: New section on remand: **Support** – This is an important clarification of the application of CEQA litigation on project implementation.

§ 15155. Water Supply Analysis; City or County Consultation with Water Agencies

Page 84: Analysis of water supply: **Support with Clarification** – The City supports the addition of language regarding analysis of water supply to Section 15155. While water and its availability over the course of a project is an important subject and could be discussed within a number of sections it is also important that there is one location to focus the guidance, since Section 15155 already has water as its focus this subject. That being said the discussion needs to include some clarification as to what is included in forecasting versus speculation in discussing water beyond the typical 20-25 year horizon that a UWMP uses. Currently the analysis based on the UWMP and specific WSA prepared for projects is the threshold of significance at what point does a forecast provide the level of evidence to make a significance determination?

§ 15125. Environmental Setting

Page 94: Environmental Setting: **Support** – City supports the proposed language changes to the Environmental Setting guidelines. The proposed language changes balance the needs to have a set point for the establishment of a baseline of analysis while providing the flexibility to permit use a baseline that is not established by the publication of the NOP.

§ 15126.4. Consideration and Discussion of Mitigation Measures proposed to Minimize Significant Effects.

Page 98: 15126.4 – Deferred Mitigation: **Support** – City believes that the proposed change will assist the City in identifying possible mitigation prior to the formalization of regulations without leaving the City open to the challenge that it is deferring mitigation, the most recent example of this is the passage of the MS-4 permit where the methods that can be used for off-site mitigation have not been identified by the enforcement agency.

§ 15087. Public Review of Draft EIR

Page 105: 15087 (c) The notice shall disclose the following 2. – **Support** the change of language on noticing.

§ 15088. Evaluation of and Response to Comments

15088: Pages 106 and 107 – 15088 (b) and (c): **Support** – The City believes that the proposed language will provide guidance as to the acceptance of comments. In addition, the additional language that responses answer “in kind” (e.g., general comment – general response, specific comment – specific response) will prove useful in developing responses for those cases where there is a “data dump” that contains large numbers of general comments.

§ 15004. Time of Preparation

Page 111: Time of Preparation: **Support** – In light of the “Save Tara” decision the proposed language will be

helpful in determining when the CEQA process must be done prior to project approval and how much discussion can be done prior to be considered a project.

§ 15051. Criteria for Identifying the Lead Agency

Page 112: – Lead Agency: **Support** the change of language in identifying the lead agency.

§ 15061. Review for Exemption

Page 114: Common Sense Exemption 15061(b)(3): **Support** – the change of language from general rule to common sense exemption.

§ 15063. Initial Study

Page 117: Preparing an initial study: 15063 new (4) **Support** – the new language provides consistency in the methods that can be used in preparation of environmental documents.

§ 15082. Notice of Preparation and Determination of Scope of EIR

Page 131: Posting Notices with the County Clerk **Clarify** – This section should clarify whether County Clerks may charge a filing fee for an NOP submittal. The California Fish and Game Code allows clerks to charge a fee when accepting the Department of Fish and Wildlife CEQA Environmental Document Filing Fee, but no other code or regulation authorizes clerks to charge a fee for filing other CEQA documents.

§ 15124. Project Description

Page 136: Project Description: **Reject** – The City staff have a variety of concerns regarding: “The statement of objectives should include the underlying purpose of the project **and may discuss the project benefits.**” After discussing the issues associated with formally including a project benefits discussion, it was determined that based on background information provided by OPR staff in support of the change; a court case from 1977 (issue of a “complete” project description). If there has been no other more recent juridical guidance to add such language to the Guideline along with the inclusion of the qualifier **may** the City found there is no compelling need to make this language change. It appears that the lead agency already has the ability to include a project benefits discussion if it wants to – and the City has done so in the past without issue – and by not including the language other potential issues are mute. Therefore it is the City’s opinion that this change not be carried out.

§ 15269. Emergency Projects

Page 141 Emergency Project exemption: The City **Supports** the idea of making changes to the section but **Modify** part (c) Specific actions necessary to prevent or mitigate an emergency. This does not include long-term projects undertaken for the purpose of preventing or mitigating a situation that has a low probability of occurrence in the short-term but this exclusion does not apply (i) if the anticipated period of time to conduct an environmental review of such a long-term project would create a risk to public health, safety or welfare, or (ii) if activities (such as fire or catastrophic risk mitigation or modifications to improve facility integrity) are proposed for existing facilities in response to an emergency at a similar existing facility. It's not clear whether "this exclusion" refers to the phrase "This does not include long-term projects" or the earlier statement that states “The following emergency projects are exempt from the requirements of CEQA.” The City believes that the following wording makes it clear:

Specific actions necessary to prevent or mitigate an emergency, including the following situations: (i) if the anticipated period of time to conduct an environmental review of such a long-term project would create a risk to public health, safety or welfare, or (ii) if activities (such as fire or catastrophic risk mitigation or modifications to improve facility integrity) are proposed for existing facilities in

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response to an emergency at a similar existing facility. This exemption does not include long-term projects undertaken for the purpose of preventing or mitigating a situation that has a low probability of occurrence in the short-term.

The City of San Diego commends OPR in its efforts to update the CEQA Guidelines and appreciates this opportunity to submit our comments.

Sincerely,



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