

To: CEQA.Guidelines@resources.ca.gov

Proposed change to Amendment to 15004 Time of Preparation

Issue: Timing of CEQA for acquisition of property by public agency unclear with proposed deletion of a portion of 15004 (b)(2)(A)

The proposed OPR amendment to 15004 (4) reflects the *Save Tara* case, which deals with the timing of CEQA in relation to the spectrum of pre-approval activities. The proposed amendment deletes a portion of 15004 (b)(2)(A) which specifies that public agencies may designate a preferred site for CEQA review and the option to enter into land acquisition agreements when the agency has conditioned the agency's future use of the site on CEQA compliance. This language is based on the *Stand Tall on Principles v. Shasta Union High School Dist.* case. The University of California and Department of General Services recommend reinstating the proposed deleted language in 15004 (b)(2)(A). The proposed language in 15004 (4) does not specifically address the issue of public agency land acquisition in 15004 (b)(2)(A).

Suggested change: Keep existing language in 15004 (b)(2)(A) (in bold below)

(b) Choosing the precise time for CEQA compliance involves a balancing of competing factors. EIRs and negative declarations should be prepared as early as feasible in the planning process to enable environmental considerations to influence project program and design and yet late enough to provide meaningful information for environmental assessment.

(1) With public projects, at the earliest feasible time, project sponsors shall incorporate environmental considerations into project conceptualization, design, and planning. CEQA compliance should be completed prior to acquisition of a site for a public project.

(2) To implement the above principles, public agencies shall not undertake actions concerning the proposed public project that would have a significant adverse effect or limit the choice of alternatives or mitigation measures, before completion of CEQA compliance. For example, agencies shall not:

(A) Formally make a decision to proceed with the use of a site for facilities which would require CEQA review, regardless of whether the agency has made any final purchase of the site for these facilities, **except that agencies may designate a preferred site for CEQA review and may enter into land acquisition agreements when the agency has conditioned the agency's future use of the site on CEQA compliance.**

(B) Otherwise take any action which gives impetus to a planned or foreseeable project in a manner that forecloses alternatives or mitigation measures that would ordinarily be part of CEQA review of that public project.

(3) With private projects, the Lead Agency shall encourage the project proponent to incorporate environmental considerations into project conceptualization, design, and planning and the earliest feasible time.

(4) While mere interest in, or inclination to support, a project does not constitute approval, a public agency entering into preliminary agreements regarding a project prior to approval shall not, as a practical matter, commit the agency to the project. For example, it shall not grant any vested rights prior to compliance with CEQA. Further, any such agreement should:

(A) Condition the agreement on compliance with CEQA

**(B) Not bind any party, or commit to any definite course of action, prior to CEQA compliance; and
(C) Not restrict the lead agency from considering any feasible mitigation measures and alternatives, including the “no project” alternative.**

(c) The environmental document preparation and review should be coordinated in a timely fashion with the existing planning, review and project approval processes being used by each public agency. These procedures, to the maximum extent feasible are to run concurrently, not consecutively. When the lead agency is a state agency, the environmental document shall be included as part of the regular project report if such a report is used in its existing review and budgetary process.

Thank you for your consideration of this comment. If you have questions or wish to respond, you can contact the following:

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