

August 29, 2013

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

Dear Mr. Calfee,

On behalf of the organizations listed below, we welcome this opportunity to comment on the Office of Planning and Research's CEQA guidelines revision. Our comments are focused on clarifying the guidelines as they relate to analysis and mitigation of agricultural resources.

California is the country's largest agricultural state, producing the majority of the country's vegetables, fruits and nuts and leading in the production of dairy products. Our \$43 billion (2012) agricultural economy is dependent upon a productive agricultural land base. However, inconsistent implementation of CEQA on projects that convert agricultural resources to non-agricultural uses threatens to undermine this land base.

California loses between 30,000 and 50,000 acres of agricultural land per year<sup>1</sup>. Our experience at the local level suggests that for many projects that convert agricultural land to non-agricultural uses that mitigation is either not required or inadequately addresses the loss of agricultural resources. Only nine counties out of the 58 California counties have farmland mitigation policies<sup>2</sup>. Eight cities have farmland mitigation policies. All require 1:1 or higher mitigation ratios. But for many of the remaining counties and cities without farmland mitigation policies it is still the Wild West when it comes to CEQA review and mitigation of agricultural resources. The consequence is permanent loss of agricultural land, a resource we cannot reproduce.

A revision of the CEQA guidelines can provide certainty for landowners and developers alike and clarity on the issues local lead agencies must address when reviewing projects with impacts on agricultural resources and the tools available to them to mitigate for the loss of agricultural resources.

Thank you for your consideration of our preliminary comments detailed below. We look forward to participating in the CEQA Guidelines Update process to ensure that CEQA becomes an even more effective tool to ensure ongoing viability of California agriculture. We welcome the opportunity to meet with you to discuss our recommendations further.

Sincerely,

Jeanne Merrill  
California Climate and Agriculture Network

Rebecca Spector  
Center for Food Safety

David Runsten  
Community Alliance with Family Farmers

Ken Dickerson  
Ecological Farming Association

Brise Tencer  
California Certified Organic Farmers (CCOF)

Dave Henson  
Occidental Arts and Ecology Center

cc: Osha Meserve

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<sup>1</sup> For latest figures on farmland loss, see *2006 - 2008 Farmland Conversion Report* by the Division of Land Resources, Department of Conservation [http://www.conservation.ca.gov/dlrp/fmmp/pubs/2006-2008/Pages/FMMP\\_2006-2008\\_FCR.aspx](http://www.conservation.ca.gov/dlrp/fmmp/pubs/2006-2008/Pages/FMMP_2006-2008_FCR.aspx)

<sup>2</sup> For a list of local farmland mitigation policies, see the appendix in *The Study of Morgan Hill's Proposed Agricultural Ratios*, 2012, Committee for Green Foothills <http://www.greenfoothills.org/projects/MH%20Ag%20Ratios%20Study.pdf>

## CEQA Guidelines Comments – Agricultural Resources:

### 1. Farmland Mitigation

OPR's CEQA guidelines revision should assist lead agencies in identifying and adopting farmland mitigation tools available to them. Recent court rulings have upheld local farmland mitigation policies (e.g. *Building Industry Association of Central California v. County of Stanislaus, et al.* (2010) 190 Cal. App. 4th 582) and conservation easements as an acceptable farmland mitigation tool (e.g. *Masonite Corporation v. County of Mendocino* (2013) 218 Cal. App. 4th 230 (*Masonite*)). One possible revision would be to clarify that conservation easements constitute mitigation for conversion of agricultural lands. For instance, the definition of mitigation under CEQA Guidelines section 15370 could be amended as highlighted below to reflect the conclusion of the recent *Masonite* decision.

#### 15370. Mitigation

“Mitigation” includes:

.....

(e) Compensating for the impact by replacing or providing substitute resources or environments, including protection of such resources with permanent conservation easements.

### 2. Appendix G: Environmental Checklist Form

II. Agricultural Resources: Appendix G checklist questions should better address consistency with local farmland policies and goals as well as cumulative impacts of the proposed project. We recommend adding the following agricultural resource questions to the checklist:

- Conflict with any applicable agricultural land use plan, policy or regulation of an agency with jurisdiction over the project (including, but not limited to the general plan, specific plan, local coastal program or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect, including loss of agricultural land?

The purpose of this question is to ensure consistent implementation of local government policies vis-à-vis agricultural resources. For example, many county governments may include agricultural land use issues in their general plan, but may not adequately review the general plan policies when considering projects with agricultural resource impacts.

- Result in a cumulative net loss in agricultural land in the county or city (including Spheres of Influence) where the project is proposed?

The purpose of this question is to address the cumulative impacts of a project on the agricultural land base of the county or city. For example, will the development push development into adjacent agricultural lands rather than towards in-fill, city/town development?

August 30, 2013

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**RE: Solicitation for Input - SAC201301463**

Mr. Calfee,

This letter responds to a notification of solicitation for input regarding the administrative regulations governing the implementation of the California Environmental Quality Act (CEQA Guidelines). As a commenting agency with the duty to "represent the citizens of the Sacramento district in influencing the decisions of other public and private agencies whose actions may have an adverse impact on air quality within the Sacramento district,"<sup>1</sup> the Sacramento Metropolitan Air Quality Management District assists lead agencies with implementing CEQA and shares the Office of Planning and Research's (OPR) desire for efficient and meaningful environmental review. We offer our comments in that spirit.

For the reasons discussed below, we strongly urge that OPR incorporate the Climate Change Scoping Plan in a manner that will encourage all agencies to use the Plan requirements and objectives to assess the significance of greenhouse gas environmental impacts.

Agency Analysis of Greenhouse Gas Impact Analysis under the current Guidelines is Inconsistent

CEQA requires lead agencies to disclose environmental impacts and determine if those impacts are significant. In topic areas such as noise, traffic, and air quality, lead agencies have uniformly established quantitative and qualitative thresholds of significance to assess the significance of impacts. However, many agencies have not consistently utilized this approach for greenhouse gas (GHG) emissions, despite the addition of Section VII: Greenhouse Gas Emissions to Appendix G. Instead, some agencies, in apparent reliance on CEQA guideline §15145 and Rialto Citizens for

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<sup>1</sup> California Health and Safety Code §40961

Responsible Growth v. City of Rialto,<sup>2</sup> have approved EIRs concluding that GHG impacts need not be analyzed or mitigated because they are too speculative.<sup>3</sup>

For example, the City of Rancho Cordova, a municipal government with an annual budget of \$47 million, regularly makes significance determinations for development projects' GHG impacts,<sup>4</sup> while Caltrans, a state agency with an annual budget of \$14 billion, routinely states that, "after thorough investigation," it is unable to make a significance determination regarding the climate impacts of roadway expansion projects because the impacts are too speculative for evaluation.<sup>5</sup>

These discrepancies can be rectified by updating CEQA guidelines to provide a clear standard for determining significance for GHG emissions. This can be effectively accomplished by incorporating the Climate Change Scoping Plan into the Guidelines. The revised guidelines would then help any lead agency, after thorough evaluation, to make a determination regarding the significance of the GHG emissions from a proposed project.

### California is Committed to Greenhouse Gas Reduction

The State of California has committed, through legislation<sup>6</sup> and executive order<sup>7</sup>, to reduce GHG emissions generated in the State to 1990 levels by the year 2020. The main mechanism for meeting this target is through the Climate Change Scoping Plan<sup>8</sup> (Scoping Plan), which was adopted by the California Air Resources Board on December 12, 2008, as part of Assembly Bill 32, and is currently undergoing its five-year revision. The Scoping Plan recognizes that there needs to be a significant reduction in GHGs to avoid the most severe effects of climate change<sup>9</sup> and lays out a roadmap for compliance. The overall statewide targets set by the legislature and governor are translated into tangible actions and targeted objectives for municipal, regional and state agencies, sharing the responsibility for meeting the reduction goal among the many lead agencies throughout the state. As such, each discretionary action by lead agencies may help or hinder the realization of the Scoping Plan target.

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<sup>2</sup> 208 Cal. App. 4th 899; 146 Cal. Rptr. 3d 12; 2012 Cal. App. LEXIS 920

<sup>3</sup> Section 15145 states that: "If, after thorough investigation, a lead agency finds that a particular impact is too speculative for evaluation, the agency should note its conclusion and terminate discussion of the impact."

<sup>4</sup> Suncreek Specific Plan Project, 2012, SCH #2006072067; American Family Entertainment Center Project, 2012, <http://cityofranhocordova.org/index.aspx?page=681>.

<sup>5</sup> Interstate 5 Bus/Carpool Lanes Project, 2013, SCH #2011042026; State Route 57/State Route 60 Confluence at Grand Avenue Project, 2013, SCH #2009081062; Marin-Sonoma Narrows (MSN) HOV Widening Project, 2009, SCH #2001042115

<sup>6</sup> The Global Warming Solutions Act of 2006 also known as Assembly Bill 32 (AB 32)

<sup>7</sup> Executive Order S-3-05

<sup>8</sup> Health and Safety Code §38550

<sup>9</sup> California Air Resources Board. Climate Change Scoping Plan: A framework for Change. December 2008, page ES-2.

Incorporating the Scoping Plan into the CEQA Guidelines will provide a vehicle for impact analysis and determinations

Incorporation of the Scoping Plan into the Guidelines provides an excellent vehicle for lead agencies to determine if a project would have a significant impact on climate change. This technique has been successfully used by many lead agencies throughout the state and is upheld by a recent Third Appellate District ruling.<sup>10</sup> As AB 32 and its associated Scoping Plan set a statewide emissions reduction standard, all agencies should evaluate projects against this threshold to determine the significance of their environmental impact. Under this concept, the question of whether a project is cumulatively significant would not require speculation, but could simply be resolved by determining whether the project conflicts with the Scoping Plan. In addition, as the Scoping Plan is updated every five years, this would provide the Guidelines with a target that reflects current state progress toward its emissions reduction goals.

This approach is consistent with the existing CEQA Guidelines, which have a long history of deferring to a larger planning process in determining a project's significance,<sup>11</sup> and there is no reason to change a successful precedent that rewards holistic planning. Lead agencies can use the Scoping Plan to determine if their discretionary actions would help or hinder the achievement of their targets or the targets of another agency.

To summarize, revising CEQA guidelines to incorporate the Scoping Plan would provide a clear, consistent standard for agencies to use when determining the significance of GHG impacts. As GHG emissions are a relatively new area of regulation, a clear standard would reduce confusion and help agencies across the state contribute to reaching California's 2020 GHG target.

Thank you for the opportunity to comment on this project. If you have additional questions or require further assistance, please contact Paul Philley, AICP at [pphilley@airquality.org](mailto:pphilley@airquality.org) or (916) 874-4882.

Sincerely,



Larry Greene, Air Pollution Control Officer / Executive Director  
Sacramento Metropolitan Air Quality Management District  
777 12<sup>th</sup> Street, 3<sup>rd</sup> Floor  
Sacramento, CA 95814

<sup>10</sup> *Friends of Oroville v. City of Oroville* (August 19, 2013, C070448) \_\_\_ Cal.App.3rd \_\_\_ [2013 Cal. App. LEXIS 661], citing *Citizens for Responsible Equitable Environmental Development v. City of Chula Vista* (2011) 197 Cal. App. 4<sup>th</sup> 327

<sup>11</sup> CEQA Guidelines Appendix G questions 3a, 4a, 4b, 4f, 7a, 8e, 8g, 10b, 10c, 11b, 12a and 12e.

# Recommendations for Updating the State CEQA Guidelines

American Planning Association, California Chapter; Association of Environmental Professionals; and Enhanced CEQA Action Team

August 30, 2013

The American Planning Association, California Chapter (APACA), Association of Environmental Professionals (AEP), and the Enhanced CEQA Action Team (ECAT) offer the following recommendations to the Governor's Office of Planning and Research regarding revisions to the State CEQA Guidelines. First, several specific amendments are presented. Following those, additional conceptual recommendations are provided for consideration.

## RECOMMENDED, SPECIFIC GUIDELINES AMENDMENTS

The following specific guidelines amendments are recommended. A brief explanation of the reasoning underlying the recommendation is presented under "Comment."

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### § 15107 – Completion of Negative Declaration for Certain Private Projects.

"With private projects involving the issuance of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies, the negative declaration must be completed and approved within 180 days from the date when the lead agency accepted the application as complete. Lead agency procedures may provide that the 180-day time limit may be extended once for a period of not more than 90 days upon consent of both the lead agency and the applicant."

**Comment:** Guidelines Section 15108 allows the flexibility to extend the deadline for completion of an environmental impact report, and similar flexibility, with agreement between the lead agency and applicant, is appropriate for negative declarations and mitigated negative declarations.

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### § 15125 – Environmental Setting.

"(a) An EIR must include a description of the physical environmental conditions in the vicinity of the project, as they exist at the time the notice of preparation is published, or if no notice of preparation is published, at the time environmental analysis is commenced, from both a local and regional perspective. This environmental setting will normally constitute the baseline physical conditions by which a lead agency determines whether an impact is significant. Under appropriate circumstances, a baseline may take account of environmental conditions that will exist in the future when the project begins operations; the lead agency is not strictly limited to those prevailing when environmental review begins. Lead agencies have the discretion to define a baseline that is different from the environmental setting,

provided that this baseline is justified by substantial evidence in the record demonstrating that the use of existing conditions would be either misleading or without informative value to decision-makers and the public. Projected future conditions, supported by reliable projections based on substantial evidence in the record, may be used as the sole baseline for impacts analysis, when their use in place of existing conditions is justified by unusual aspects of the project or the surrounding physical conditions. However, hypothetical future conditions, such as hypothetical conditions that might be allowed under existing permits or plans, are not appropriate for use as the baseline. A lead agency may also use both an existing conditions baseline and a projected future conditions baseline, provided the future-conditions baseline is based on substantial evidence in the record and is not hypothetical. The description of the environmental setting shall be no longer than is necessary to an understanding of the significant effects of the proposed project and its alternatives.”

**Comment:** The proposed revision is intended to clarify the circumstances when a baseline different from the existing conditions is appropriate, and to note that projected future baselines can serve as the sole basis for impact analysis under certain limited circumstances. The proposed revision is based on the recent California Supreme Court decision in *Neighbors for Smart Rail v. Exposition Metro Line Construction Authority, et al.* (2013) 57 Cal.4<sup>th</sup> 439.

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#### 15126.4 – Mitigation Measures

“(a) Mitigation Measures in General.

(1) An EIR shall describe feasible measures which could minimize significant adverse impacts, including where relevant, inefficient and unnecessary consumption of energy.

(A) The discussion of mitigation measures shall distinguish between the measures which are proposed by project proponents to be included in the project and other measures proposed by the lead, responsible or trustee agency or other persons which are not included but the lead agency determines could reasonably be expected to reduce adverse impacts if required as conditions of approving the project. This discussion shall identify mitigation measures for each significant environmental effect identified in the EIR.

(B) Where several measures are available to mitigate an impact, each should be discussed and the basis for selecting a particular measure should be identified.

(C) ~~Formulation~~ Identification of and commitment to adopt of feasible mitigation measures ~~should~~ shall not be deferred until some future time. Deferral of the specific details of a mitigation measure is permissible when it is impractical or infeasible to present the details during the environmental review and the agency commits itself to the mitigation plan or approach, adopts specific performance standards, and lists the potential actions and measures to be considered, analyzed, and potentially incorporated

in the mitigation plan or approach. Once the project reaches the point where activity will have a significant adverse effect on the environment, the mitigation measures must be in place. However, measures may specify Deferral of specific mitigation details is allowed only when all of the following circumstances are met:

(i) The lead agency finds, based on substantial evidence in the record, that it is not practical or feasible to define the mitigation measure details during the project's environmental review pursuant to this division.

(ii) The lead agency commits to the mitigation by identifying a mitigation measure in the environmental document and adopting that measure; or, the lead agency will make the finding pursuant to Section 15091(a)(2) that the identified mitigation measure has been or can and should be adopted by another agency.

(iii) The mitigation includes specific quantitative or qualitative performance standards which ~~that~~ would mitigate the significant effect of the project, ~~and~~

(iv) the mitigation includes a discussion of potential actions and measures that would feasibly achieve the specified performance standards. ~~and which may be accomplished in more than one specified way.~~

(D) Compliance with a regulatory permit process may be identified as a future action in the proper deferral of mitigation details, if compliance is mandatory and compliance would result in the adoption and implementation of mitigating actions that would be reasonably expected, based on substantial evidence in the record, to reduce the significant impact to the specified performance standards.

~~(C)~~(E) Energy conservation measures, as well as other appropriate mitigation measures, shall be discussed when relevant. Examples of energy conservation measures are provided in Appendix F.

~~(D)~~(F) If a mitigation measure would cause one or more significant effects in addition to those that would be caused by the project as proposed, the effects of the mitigation measure shall be discussed but in less detail than the significant effects of the project as proposed. (*Stevens v. City of Glendale* (1981) 125 Cal.App.3d 986.)

(2) Mitigation measures must be fully enforceable through permit conditions, agreements, or other legally binding instruments. In the case of the adoption of a plan, policy, regulation, or other public project, mitigation measures can be incorporated into the plan, policy, regulation, or project design.

**Comment:** The intent of the recommended amendments is to bring the mitigation guidelines up to date with applicable court decisions related to the proper approach to defer the details of mitigation measures, when it is not reasonable or feasible to present those details in an EIR or MND. Concepts

have been drawn from the *Rialto Citizens, Save Panoche, Defend the Bay*, and other relevant court decisions.

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### **§15168(c) – Program EIR (Later Activities Within the Scope of a Program EIR)**

“(c) Use with Later Activities. Subsequent activities in the program must be examined in the light of the program EIR to determine whether an additional environmental document must be prepared.

(1) If a later activity would have effects that were not examined in the program EIR, a new Initial Study would need to be prepared leading to either an EIR or a Negative Declaration.

(2) If the agency finds that pursuant to Section 15162, no new effects could occur or no new mitigation measures would be required, the agency can approve the activity as being within the scope of the project covered by the program EIR, and no new environmental document would be required. Finding that a later activity is within the scope of a program covered in the program EIR shall be based on substantial evidence in the record. Criteria that may be used in making the finding include, but are not limited to, consistency of the later activity with the type of allowable land use, planned density and building intensity, geographic area analyzed for environmental impacts, and description of covered infrastructure, as presented in the project description of the program EIR.

(3) An agency shall incorporate feasible mitigation measures and alternatives developed in the program EIR into subsequent actions in the program.

(4) Where the subsequent activities involve site specific operations, the agency should use a written checklist or similar device to document the evaluation of the site and the activity to determine whether the environmental effects of the operation were covered in the program EIR.

(5) A program EIR will be most helpful in dealing with ~~subsequent~~ later activities if it provides a detailed description of planned activities that would implement the program and deals with the effects of the program as specifically and comprehensively as possible. With a good and detailed project description and analysis of the program, many ~~subsequent~~ later activities could be found to be within the scope of the project described in the program EIR, and no further environmental documents would be required.

**Comment:** Section 15168(c) of the Guidelines describes procedures for use of a Program EIR with “later activities.” In subparts (c)(2) and (c)(5), the Guidelines offer an important avenue for avoidance of redundant environmental documents when a later activity is found to be “within the scope” of the program covered by the Program EIR. Two types of revisions would be very helpful for this provision: (1) explicit statement about the standard of review for finding a project to be “within the scope” and (2) guidance regarding factors to consider in making the finding, based on relevant court decisions, particularly *CREED v. San Diego* (2005). Also, conforming terminology to be “later” activities would help

avoid confusion with “subsequent projects,” which are relevant to Master EIRs. Finally, adding the guidance to prepare a detailed project description is also useful in providing the evidence to support a “within the scope” finding.

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### §15370 - Mitigation

In §15370(e), amend as follows:

“(e) Compensating for the impact by replacing or providing substitute resources or environments, including preservation in perpetuity of existing, offsite resources that would help avoid further losses of the affected resource.

**Comment:** Court decisions (e.g., *Masonite Corporation v. County of Mendocino*) have allowed the use of conservation easements and dedications of land for preservation, under certain conditions. This amendment would update the definition of mitigation in the guidelines to take the decisions into account.

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### §15332 – Infill Development Projects

“Class 32 consists of projects characterized as in-fill development meeting the conditions described in this section.

(a) The project is consistent with the applicable general plan designation and all applicable general plan policies as well as with applicable zoning designation and regulations.

(b) The proposed development occurs ~~within city limits~~ on a project site of no more than five acres substantially surrounded by urban uses.

**Comment:** The existing exemption is limited to incorporated cities, which appears to be based on a policy question about the location of development, rather than land use and environmental factors. From a land use and environmental perspective, a project would be urban infill if it is surrounded by urban uses, regardless of whether it is jurisdictionally within a city or county. If the “within city limits” restriction were removed, this exemption would be more flexible and useful, yet it would not lead to a higher risk of environmental impacts.

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## Appendix G – Fire Hazard Questions

VIII. HAZARDS AND HAZARDOUS MATERIALS. Would the project:

(i) increase the risk of wildfire in an area of state responsibility for fire response or on land classified as a very high fire hazard severity zone?

(j) in an area of state responsibility for fire response or on land classified as a very high fire hazard zone,

(i) expose people to a substantial risk of injury or death from wildfire hazards because of their location, accessibility for response and evacuation, vulnerability to fire, or other factors?

(ii) expose buildings and appurtenant structures to a substantial risk of loss or damage from wildfire hazards because of their location, type of use, vulnerability to fire damage, or other factors?

(iii) expose transmission lines, public utilities, water supply, or other critical infrastructure to a substantial risk of loss or damage from wildfire, or cause a substantial increase in wildfire risk for these facilities?

**Comment:** In SB 1241, §21083.01 was added to CEQA, as noted below:

“(a) On or after January 1, 2013, at the time of the next review of the guidelines prepared and developed to implement this division pursuant to subdivision (f) of Section 21083, the Office of Planning and Research, in cooperation with the Department of Forestry and Fire Protection, shall prepare, develop, and transmit to the Secretary of the Natural Resources Agency recommended proposed changes or amendments to the initial study checklist of the guidelines implementing this division for the inclusion of questions related to fire hazard impacts for projects located on lands classified as state responsibility areas, as defined in Section 4102, and on lands classified as very high fire hazard severity zones, as defined in subdivision (i) of Section 51177 of the Government Code.

(b) Upon receipt and review, the Secretary of the Natural Resources Agency shall certify and adopt the recommended proposed changes or amendments prepared and developed by the Office of Planning and Research pursuant to subdivision (a).”

The questions suggested above would capture the range of potential fire hazards being encountered in state responsibility areas and very high fire hazard zones. They could be added to the existing list of question in Part VIII of the Appendix G checklist.

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## **Appendix G, Section V, Cultural Resources**

Move question (c) in Section V, regarding paleontological resources/unique geological features, to Part VI, Geology and Soils.

“(c) Directly or indirectly destroy a unique paleontological resource or site or unique geologic feature?”

**Comment:** Paleontological resources/unique geological features are more appropriately considered a component of the natural, geologic characteristics of an area, rather than a cultural resource.

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### **Appendix G, Section XVIII(a) – Mandatory Findings of Significance**

Revise Appendix G, Section XVIII(a):

Does the project have the potential to *substantially* degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, *substantially* reduce the number or restrict the range of an ~~endangered~~, rare or ~~endangered~~ ~~threatened species plant or animal~~ or eliminate important examples of the major periods of California history or prehistory?

**Comment:** This change is intended to achieve internal consistency between Appendix G and Guidelines §15065(a)(1), both of which specify Mandatory Findings of Significance. §15065(a)(1) was previously updated, but the checklist was not.

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### **OTHER CONCEPTUAL RECOMMENDATIONS WITHOUT SPECIFIC AMENDMENTS**

**1. Provide guidance to explain application of fair argument and substantial evidence standards**

Case law has defined when fair argument and substantial evidence standards should be applied in circumstances where subsequent activities that are covered by a prior EIR, program EIR, master EIR, or ND/MND are subject to supplemental review. Lead agency CEQA staff often need to either consult with counsel or comb through court decisions to discern the application of these standards. Please prepare revisions that describe whether the fair argument standard or substantial evidence standard is to be applied to the decisions related to the choice of environmental review approach, type of document, and the proper supplemental and subsequent environmental reviews of projects covered by or consistent with previous EIRs.

**2. Update criteria for determining alternatives feasibility**

Court decisions have expanded and elaborated on the factors to be considered when assessing the feasibility of alternatives, including in *CNPS v. City of Santa Cruz* (decided in 2009). Please elaborate the discussion of factors to be reviewed in considering the feasibility of alternatives in Section 15126.6 to update the section so it is current regarding court decisions. Topics could include:

- evidence needed to support a conclusion of actual infeasibility of an alternative based on cost or economics,
- role of policy inconsistency in the feasibility determination,
- evidence needed to determine feasibility of an alternative location, and

- the difference between “potential feasibility” sufficient for deciding to include an alternative for detailed analysis in an EIR and “actual feasibility” when making findings regarding alternatives under Public Resource Code §21083(a)(3).

**3. Checklists for Supplemental Reviews - §§15162 through 15164, §15168, and §15183**

An environmental checklist should be developed with content tailored to help answer questions required for determining the type of CEQA document necessary for supplemental reviews after earlier EIRs. This would help facilitate the proper selection of CEQA review approach and efficient and effective use of prior documentation and application of prior mitigation measures to protect the environment.

A candidate, draft checklist is attached as Appendix A to these comments for potential use in complying with §§15162 through 15164, where the same project addressed in a certified EIR is being considered for later approvals. Other checklists could be developed for use with §15168, later activities within the scope of Program EIRs, and §15183, projects consistent with a Community Plan or Zoning

**American Planning Association, California Chapter  
Association of Environmental Professionals  
Enhanced CEQA Action Team**

The American Planning Association, California Chapter (APACA); Association of Environmental Professionals (AEP), and Enhanced CEQA Action Team (ECAT) are pleased to submit the attached recommendations for revisions to the State CEQA Guidelines, in response to your solicitation for input.

We are recommending these guidelines updates and revisions to help enhance CEQA's efficiency and effectiveness in achieving its original purposes, based on thoughtful consideration by CEQA practitioners who work with the law on a daily basis. APACA, AEP, and ECAT offer our input based on the insights of highly experienced environmental professionals, local-government planners, and environmental attorneys who represent this practitioner's viewpoint. We believe that CEQA is an important and constructive element of California public agency decision-making that should continue to help ensure disclosure of environmental information, public involvement in the environmental review and decision-making process, and protection of the State's important environmental qualities.

Two items are attached in both pdf and MSWord files – recommendations for revisions and an example checklist for supplemental reviews as an appendix to the recommendations. We have sought to be sure our recommendations are underpinned by the statute, case law, or both.

Please let us know if you have any questions. We would be happy to discuss these recommendations with you at any time.

Thank you for reaching out to solicit recommendations as you consider the potential guidelines revisions to be included in the administrative regulatory review process.

Sincerely

Curtis E. Alling, AICP  
Co-Chair, Enhanced CEQA Action Team  
**On Behalf of APACA, AEP, and ECAT**

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

Thank you for the opportunity to provide suggestions for improving the administration of the CEQA process.

My proposal responds to the goal of making the environmental review process more efficient and meaningful and addresses the following category:

**2. Process Improvements.** Suggestions in this category might address the use of technology to generate and distribute environmental documents, clarifying noticing requirements, document submissions, etc.

**Proposal:**

The Guidelines should be amended to require lead agencies to submit to the State Clearinghouse electronic copies of Negative Declarations and Mitigated Negative Declarations, including their initial studies, as well as Draft and Final Environmental Impact Reports, including appendices.

The intention would be to make these documents available on the Internet.

Implementation of this revision should be delayed, if necessary, while OPR releases a Request for Proposals to solicit proposals for organizing the documents, making them searchable and then placing them on the Internet at no cost to the public. Once initiated, OPR's only responsibility would be to transfer the documents received from lead agencies to the entity selected to carry out the project

One company that may be interested in this project is Google Publishing. The company has expressed its commitment to publish all knowledge and make it available to the public. The tremendous amount of important information in CEQA documents clearly has a great public benefit. And, as public documents, there should not be copyright issues.

**Legal justification for proposal:**

1. Section 21003 contains the following: The Legislature further finds and declares that it is the policy of the state that:

**(d) Information developed in individual environmental impact reports be incorporated into a data base which can be used to reduce delay and duplication in preparation of subsequent environmental impact reports.**

**(e) Information developed in environmental impact reports and negative declarations be incorporated into a data base which may be used to make subsequent or supplemental environmental determinations.**

These subsections clearly state the Legislature's intent to create a database of information collected by lead agencies, as part of the CEQA process, to be made available for future use.

2. Section 21082.1 contains the following: **(c)** The lead agency shall do all of the following:

**(4) Submit a sufficient number of copies of the draft environmental impact report, proposed negative declaration, or proposed mitigated negative declaration, and a copy of the report or declaration in an electronic form as required by the guidelines adopted pursuant to Section 21083, to the State Clearinghouse for review and comment by state agencies, if any of the following apply:**

**(A) A state agency is any of the following:**

**(i) The lead agency.**

**(ii) A responsible agency.**

**(iii) A trustee agency.**

**(B) A state agency otherwise has jurisdiction by law with respect to the project.**

**(C) The proposed project is of sufficient statewide, regional, or areawide environmental significance as determined pursuant to the guidelines certified and adopted pursuant to Section 21083.**

The current law, then, already requires the electronic submission of critical CEQA documents by State agencies and other lead agencies for projects of statewide, regional or areawide significance. There are important reasons not only for incorporating this requirement into the Guidelines but, also, expanding it to all lead agencies. This expansion is not prohibited by the law.

3. Section 21159.9 includes the following: The Office of Planning and Research shall implement, utilizing existing resources, a public assistance and information program, to ensure efficient and effective implementation of this division, to do all of the following:

**(b) Establish and maintain a database to assist in the preparation of environmental documents.**

Clearly, the establishment of a database that contains the full documents and not simply their notices, is consistent with this provision and, if implemented, would provide substantial assistance to lead agencies in preparing environmental documents. And, with the current technological advances and a public private partnership, it should be feasible to implement this provision utilizing existing resources.

**Benefits of the proposal:**

At the present time, Guidelines Section 15095 simply requires lead agencies to retain copies of final EIRs “for a reasonable period of time.” There is no requirement to retain initial studies or negative declarations. Thousands of environmental documents costing millions of dollars are no longer available either to policy makers, practitioners, technical staff, scholars, or the public. Consultant firms probably keep the environmental documents they prepare and individual lead agencies retain them as well for varying periods of times. Local and university libraries also retain a limited number of documents. However, there is no central repository and there is no way to electronically search or compare the documents.

Some of the potential benefits of the proposal are the following:

1. As intended in Section 21003 of the Act, the availability of critical environmental documents on the Internet will reduce delay and duplication. Lead agency staff and consultants will be able review documents prepared by other jurisdictions on topics relevant to a particular project. For example, a noise study prepared by Caltrans for a freeway project in southern California could provide relevant information for a local road widening project in the Bay Area.
2. Lead agencies could learn about impact analysis approaches and mitigation measures implemented in by other agencies that could be useful in their community. Lead agency staff would also be more knowledgeable in evaluating administrative draft documents prepared for them, with the ability to compare them to work done by other agencies.
3. State policy makers, for the first time, could receive systematic information on the implementation of CEQA throughout the State. Meaningful random sample studies could be conducted on CEQA documents that would have some methodological credibility. There could be information generated on how the law actually operates and not simply what various participants may think about it. CEQA has had a profound effect on the land development process in California but there is essentially no information about the quality of the critical CEQA documents and how well they are prepared by different lead agencies.
4. Academic interest in examining various issues related to environmental assessment – i.e the quality of environmental documents, the role of public participation, the changes in documents over time, the impact of court cases on environmental analysis, the accuracy of impact predictions – could develop. At this time there is no way to systematically and comprehensively analyze these issues yet they have relevance not only for the CEQA process but for environmental assessment elsewhere as well.
5. There is an international literature examining issues related to environmental assessment and CEQA is generally recognized as a leader in the area. Yet references to the CEQA system are, of necessity, ad hoc and, often, overly simplistic. The California system is one of the oldest in the world and, especially due to the

numerous court decisions, its approach to the many environmental assessment issues and problems is among the most sophisticated and effective. Providing access to critical CEQA documents in a searchable format will permit decision makers and practitioners in other countries to learn from our successes as well as our limitations.

6. Access to CEQA documents would benefit members of the public as, for example, they would be able to see how similar projects and topics were analyzed in other areas and by other agencies.

7. The development community would benefit, for example, from the availability of environmental documents that successfully negotiated the CEQA process.

In conclusion, the lack of a repository for critical CEQA documents has been an unfortunate failure in the State's environmental assessment system. A tremendous amount of important environmental analysis has been lost and can never be recovered. As we continue to understand the political importance of CEQA, we need to also recognize the importance of the major documents produced under the law and assure their preservation.

Finally, I've been concerned about this problem for a long time and have been recalcitrant for not raising it sooner. Since 1995, I have taught a course entitled Environmental Assessment, which focuses on CEQA, at the University of California, Santa Cruz (UCSC). I have also taught a course for a number of years at the Monterey Institute of International Studies (MIIS) entitled International Environmental Assessment. In addition, I've worked for the Santa Cruz County Third District Supervisor since 1975.

Thank you for your consideration.

Sincerely,  
Andrew Schiffrin



**SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT**

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2013

August 30, 2013

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**VIA EMAIL AND U.S. MAIL**

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

Re: Governor's Office of Planning & Research (OPR)  
Solicitation for Input on the Guidelines Implementing the  
California Environmental Quality Act (CEQA)

Dear Mr. Calfee:

The San Francisco Bay Area Rapid Transit District ("BART") is pleased to respond your Office's Solicitation for Input. Our comments respond in particular to your invitation for "improvements to the CEQA Guidelines that ... reflect California's adopted policy priorities, including addressing climate change and promoting of infill development." We urge you to consider revisions that streamline the delivery of transit projects and transit-oriented developments (TODs) because more transit and TODs are critical to addressing climate change and promoting infill development.

BART is a rapid transit district providing service in San Francisco, Alameda, Contra Costa, and San Mateo counties. BART owns and operates forty-four (44) transit stations. The vast majority of BART transit stations anchor and serve urban neighborhoods and are located in Transit Priority Project<sup>1</sup> areas. Four (4) new stations in eastern Contra Costa County and Alameda County are currently planned or under

<sup>1</sup> See *Plan Bay Area: Strategy for a Sustainable Region*, March 2013 Draft, developed by the Association for Bay Area Governments (ABAG) and the Metropolitan Transportation Commission (MTC), p. 33, for a map of all Transit Priority Project Areas. Implementing Plan Bay Area, which incorporates the first S.B. 375 sustainable communities strategy for the Bay Area, is an important element of the regional strategy for addressing climate change through transit-oriented land use planning and "smart growth."



construction. New BART extensions and other BART improvement projects benefit the environment, by helping to shift commuters from thousands<sup>2</sup> of cars to BART's fleet of 669 electric-powered railcars. BART's projects are subject to the requirements of CEQA review.

Since the 1980s, BART has also pursued transit-oriented development (TOD) to promote public transit use and to enhance the quality of the neighborhood and environment around its transit stations. Under BART leadership, close to a dozen TODs have been developed or are under development near BART stations, including hundreds of residential units and retail/commercial/public space. All of these developments incorporated rigorous design principles, including enhancing community plaza and open space to create attractive, desirable neighborhoods. These TOD projects also are subject to CEQA review, in some cases undertaken by BART as the lead agency (e.g., at the West Dublin/Pleasanton station), in others by the local municipality as the lead agency and with BART acting as a responsible agency (e.g., at the Fruitvale and MacArthur stations).

We believe that this experience affords valuable and hard-won lessons on which CEQA provisions have helped or hindered transit projects and TODs. Our recommendations are also consistent with the Metropolitan Transportation Commission and the Association for Bay Area Governments (ABAG) call to "speed up much-needed transportation projects by updating the 43-year-old CEQA to provide for more timely review of projects."<sup>3</sup>

Based on this experience, we urge OPR to consider the following revisions or clarifications to the CEQA Guidelines:

**1. For transit projects specifically, codify the holding of the *Ballona Wetlands* case that, for CEQA purposes, environmental impacts are limited to impacts of a project on the environment, not impacts of the environment on a project's future residents and users.**

We request that OPR consider fine-tuning CEQA Guidelines Section 15126.2 and the correlating Appendix G checklist to clarify that the significant environmental effects of a proposed project do not include impacts of existing environmental conditions on the project.

Currently, Guidelines Section 15126.2(a) provides that an EIR "shall also analyze any significant environmental effects the project might cause by bringing development and people into the area affected." However, to the extent that this provision is read to include impacts of existing environmental conditions on the new project and its residents, rather than impacts of the new project on the existing environment, it is inconsistent with *Ballona Wetlands Trust v. City of Los Angeles* (2011) 201 Cal.App.4<sup>th</sup> 455, 473-474 and similar cases.

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<sup>2</sup> BART's weekday ridership (measured by trips) can range anywhere from 300,000 to close to 400,000 per day.

<sup>3</sup> *Plan Bay Area: Strategy for a Sustainable Region*, March 2013 Draft, MTC/ABAG, p. 129-130

We ask that OPR clarify the Guidelines to provide that Environmental Impact Reports (EIRs) for transit and transit-oriented development projects should not be required to “analyze any significant environmental effects the project might cause by bringing development and people into the area affected.” Or, in the alternative, the provision should be fine-tuned to exclude projects which advance transit and TOD projects: “To the extent consistent with other state goals such as goals to encourage transit projects and transit-oriented development, the EIR shall also...”

We understand the policy reasons for considering such impacts, to ensure that vulnerable populations do not disproportionately bear adverse environmental or health effects of the state’s other goals. BART’s own Environmental Justice Policy<sup>4</sup> describes our commitment to such policy priorities. We believe, however, that developing a thoughtful exception for transit projects would not undermine these goals and would instead ensure that TOD projects do not disproportionately<sup>5</sup> bear the costs of this requirement, when compared to other development projects.

This issue is particularly important for BART in the context of the Bay Area Air Quality Management District (BAAQMD)’s air quality thresholds. Generally, we commend BAAQMD for its efforts in providing certainty and guidance for the Bay Area. We are very concerned, however, with the BAAQMD Guidelines’ suggestion that local governments establish overlay zones to limit or preclude development adjacent to existing and planned sources of Toxic Air Contaminants (TAC) and Particulate Matter with a diameter less than 2.5 microns (PM2.5). For example, agencies traditionally have interpreted item III(d) in the CEQA Guidelines Appendix G checklist to refer to *existing* residents living in the vicinity of a new project site, who would be exposed to emissions from the new project. However, BAAQMD’s definition of “receptors” as *new* residents and users of the new project is inconsistent with this interpretation and existing law as discussed in *Ballona Wetlands*.<sup>6</sup> Accordingly, we ask that OPR clarify that Appendix G, item III(d) does not apply to effects of the existing environment on a new project and its residents.

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<sup>4</sup> BART’s Board of Directors adopted an Environmental Justice Policy in 2012.

<sup>5</sup> MTC/ABAG’s *Plan Bay Area: Strategy for a Sustainable Region* (March 2013 Draft) reports that 59% of projects tied up in CEQA litigation are infill development projects and close to 20% of challenged projects are mixed-use. (p. 130) These numbers raise the question as to whether infill projects are already more scrutinized under CEQA than greenfield projects.

<sup>6</sup> In its recent decision upholding the BAAQMD CEQA Guidelines, the First District Court of Appeal noted that there is evidence that the thresholds could burden TOD projects and promote sprawl development, but declined to address the issue, leaving it for future litigation when the thresholds are applied to a specific project. *California Building Industries Association v. Bay Area Air Quality Management District*, Cases A135335 & A136212, August 13, 2013.

We request this revision because such a requirement could discourage or even preclude already-costly TOD projects. In its place, we urge the OPR to consider our proposed clarifications.

We make this request based on the following experiences:

**Transit-Oriented Development.** When BART was built, decisions were made to place many stations within the medians of freeways to improve accessibility for commuters and reduce costs. For example, BART's newest infill station (West Dublin/Pleasanton) is located in the median of a freeway. The requirement to study the impacts of the environment on the project would impose substantial costs on the TOD projects near these stations. In BART's Walnut Creek Transit Village, the project was required to undertake mitigation to install a MERV-11 filter system to remove particulate matter from the nearby interstate. In addition, the project was required to ensure long-term maintenance of the filters, involving wholesale replacement every two to three months.<sup>7</sup>

Such requirements do not streamline CEQA for TOD projects. They impose additional costs on already-costly projects. Since TODs, by definition, must be located within walking distance (1/2 mile) of a transit station, such Guidelines could de facto discourage any further TODs near any of the BART stations near or on freeways.

The unintended consequence of the current Section 15126.2 and its BAAQMD Guidelines counterpart would be to disincentivize new development in the neighborhood immediately surrounding these stations. We submit that such a consequence does not seem to be intended by the state's goals of encouraging sustainable communities and reducing greenhouse gas emissions.

**2. Clarify that administrative draft EIRs and Negative Declarations are not part of the record for litigation and may be shared among agencies.**

BART often undertakes its projects with other public agencies, including host municipalities or other transit agencies. To ensure that other public projects integrate with transit uses, BART has needed to comment on other lead agencies' administrative draft EIRs or Negative Declarations, where BART is acting as responsible agency.

Where possible, BART has executed joint defense agreements with agencies which provide that shared administrative drafts remain confidential. Cases like the recent *Citizens for Ceres v. Superior Court of Stanislaus County* could call into question the viability and enforceability of such agreements in the future because the *Ceres* holding concerned communications between a lead agency and a private developer, which the court found were not privileged. However, the *Ceres* decision also noted that, under the statute, only "drafts of

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<sup>7</sup> BART Walnut Creek Transit Village DEIR, page 4.2-56.

any environmental document, or portions thereof, that have been released for public review” are part of the litigation record (Pub. Res. Code § 21167.6(e)(10)). It would not be inconsistent with the statute or with *Ceres* for OPR to adopt a Guideline clarifying that administrative drafts can be shared confidentially between two agencies without becoming part of the record.

Sharing of administrative drafts with transit agencies is critical to ensuring that other public agencies are developing projects that support, and do not undermine, existing transit. We submit three examples below of how BART transit projects could be affected by such a clarification.

**Ridership Development Plans (RDPs).** Municipalities typically are the primary vehicle for establishing land use patterns that encourage transit use. Prior to the development of a new BART station or extension project, municipalities must amend their General Plan or develop a Specific Plan to ensure that land use surrounding a transit station will support future increases in ridership at the station.<sup>8</sup> (BART refers to these changes as RDPs.) General Plan revisions and Specific Plans are subject to CEQA review. A city could envision allocating land for office TOD to surround the station, land for additional parking, or planning for multimodal access such as bike paths or dedicated bus lanes. As a transit agency, BART’s role is to review and comment on such plans to ensure that they are truly transit-supportive, achievable, and realistic. For example, a municipality may initially wish for office/retail TODs in an area where residential TODs must precede in order for the office/retail project to thrive. Or, a city may plan for more surface parking than necessary, where BART’s experience has found that regulating existing on-street parking could reduce the number of new parking spaces.

BART’s commenting at the public draft EIR stage may substantially increase the city’s costs in being able to respond to BART’s comments, as recirculation requirements may be triggered by substantial changes. We submit that including transit agency expertise, at such a late juncture, discourages transit-supportive planning and development. Or, put another way, allowing for the sharing of administrative drafts with transit agencies could significantly facilitate transit-friendly development projects.

**Extension Projects.** In the case of BART’s current extension project to Santa Clara County, a comprehensive agreement between BART and the Santa Clara Valley Transportation Authority (VTA) anticipated that the transit agencies would share environmental documents. In the agreement, VTA agreed, in its capacity as lead agency, to consult with BART regarding the scope and content of the environmental documents, including soliciting BART comments on the administrative draft EIRs/EISs. That the documents in question might not be considered confidential presented a significant obstacle to the agencies, and slowed, if not

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<sup>8</sup> BART’s Board of Directors adopted a policy requiring local municipalities to adopt such amendments as a prerequisite to BART’s agreement to locate and develop a station in that municipality.

undercut, BART's ability to offer helpful substantive comments on matters related to its unique expertise.

The same concern regarding confidentiality presents itself when BART collaborates with municipalities to develop an extension project. For example, BART has collaborated with the City of Livermore over the last several years in the development of an extension to Livermore. As part of the program-level EIR, requests by the City to receive copies of the administrative draft environmental document were stymied by BART's concerns that inadvertent release of preliminary documents or comments could make their way into the administrative record.

**TODs.** Finally, with TOD projects, sharing of administrative drafts by a municipality with a transit agency is critical to ensuring that TODs are truly transit-oriented. As an example, DEIRs reviewing TOD impacts are often based on trip generation estimates that are inaccurate for BART ridership. These estimates, based on the Institute of Transportation Engineers' (ITE) trip generation rates<sup>9</sup>, do not account for proximity to transit. The estimates are often based on county-wide assumptions and do not have the capacity to predict ridership at the localized level needed for BART projects.<sup>10</sup> So, BART has found that its comments on administrative draft EIRs prevent and correct substantial errors in trip/rider generation estimates. The accuracy of these estimates is critical to the accurate evaluation of transportation impacts (and any corresponding mitigation measures) in the DEIR.

Accordingly, to significantly facilitate transit-supportive development, we request that OPR consider clarifying that administrative draft EIRs and Negative Declarations are not part of the record for litigation and may be shared between agencies, particularly transit agencies and local governments.

### **3. Establish a categorical exemption for approvals of minor transit projects that generate greenhouse gas (GHG) reductions.**

Aside from developing new transit stations/extension projects and supporting transit-oriented development projects, BART also undertakes projects to renovate or improve its older, urban core stations.

As an example, BART regularly works to expand multimodal access to its stations, which means increasing opportunities for non-automobile travel to the station (bicycle, bus,

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<sup>9</sup> The ITE rates are not as accurate for the Bay Area or for BART purposes because the model is based on nationwide sample points that are mostly suburban and do not take proximity to transit into account. In some cases, transit agencies have found that ITE assumptions overestimate trip generation by 50%. (See the National Academy of Science Transit Cooperative Research Program (TCRP) Report 128 – Effects of TOD on Housing, Parking & Travel).

<sup>10</sup> See also the National Academy of Science TCRP Report No. 102 – Transit-Oriented Development in the United States.

pedestrian, car sharing, etc.). Expanding multimodal access often involves redesigning 20+ to 30+ year-old stations which were originally conceived for automobile commuters or for less dense urban downtowns. For certain urban core stations with parking lots, BART is considering converting selected, existing parking spaces to pedestrian pathways, bicycle storage facilities, safe and well-lit bus shelters, or multimodal traffic control areas. For other urban core stations without parking lots, BART is considering enhancing non-automobile access by expanding the number of covered bus shelters near the station entrances, improving pedestrian-oriented lighting, and expanding bicycle storage. Such projects would generate greenhouse gas reductions because they provide more space for non-GHG travel modes, reduce space for GHG travel modes, or enhance the comfort, safety, and attractiveness of non-GHG travel modes.

These projects are typically smaller, less than the \$60 to \$100 million that a new BART station would cost. Two of BART's proposed, intermodal projects are estimated to cost between \$6 to \$9 million. Yet, CEQA review costs and, more importantly, delays could limit BART's ability to develop such minor projects.

Because these projects are supportive of state-wide goals to reduce greenhouse gas emissions and because they encourage better development in the urban core, we urge OPR to consider revising the Guidelines to include a categorical exemption for transit improvement projects that reduce GHG emissions. Like other categorically exempt projects, they would be subject to the exceptions in CEQA Guidelines 15300.2 in the event of cumulative impacts or significant impacts due to unusual circumstances, thus avoiding the risk that achieving the GHG reduction benefits might have adverse side-effects.

#### **4. Facilitate the delivery of surface rail transit (streetcars, DMUs, etc.) through CEQA streamlining.**

We would also ask OPR to consider ways in which CEQA could help facilitate Diesel Multiple Unit (DMU) rail transit projects. DMU transit projects, like BART's extension to eastern Contra Costa County scheduled to open in a few years from now, are cost effective, affordable transit projects. BART heavy rail extension projects can cost more than one billion dollars to develop. In contrast, DMU extension projects cost a few hundred million dollars<sup>11</sup>. If more DMU projects could be developed, more transit stations could also be developed. While these diesel-powered railcars do emit limited amounts of GHG, they have a substantial net benefit in reducing overall GHG by taking more cars off the road.

In particular, a categorical exemption could cover surface DMU and streetcar extensions within existing rights of way. Surface transit projects utilizing only land already dedicated to

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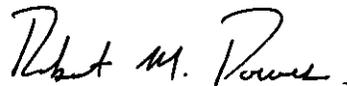
<sup>11</sup> Different from rail extension projects, infill station projects provide another example of the contrast in costs. An infill station for a DMU project can cost anywhere from \$45 million dollars; an infill station for a heavy rail project can cost anywhere from \$100 million dollars.

transportation purposes generally would be expected to have negligible environmental impacts. This would be consistent with other statutory (CEQA 21080(b)(11), (CEQA Guidelines 15275(a), increased service on rail lines already in use) and categorical (CEQA Guidelines 15304(h), bicycle lanes on existing rights of way) exemptions, which recognize the limited environmental footprint of projects within existing right of way. Again, where significant impacts might result due to unusual circumstances, the categorical exemption would not apply.

In drafting the language of this exemption, we invite OPR to consider language developed by the Federal Transit Administration because it has drafted NEPA categorical exclusions specifically to facilitate the delivery of transit projects.<sup>12</sup> Like CEQA categorical exemptions, NEPA categorical exclusions represent classes of activities that, based on past experience with similar actions, do not usually have significant environmental impacts. We recommend that OPR draw on the expertise of FTA in identifying classes of transit projects whose lack of impacts, together with their environmental benefits, justify expedited project delivery without need for the cost and delay of CEQA review.

In conclusion, we respectfully request that OPR consider our recommended revisions and welcome the opportunity to discuss further any of these recommendations.

Sincerely,



Robert Powers,  
Assistant General Manager  
Planning and Development

encl.

cc: G. Crunican  
V. Menotti  
J. Ordway  
J. Layton  
D. Dean  
N. Carlin  
M. Wu-Morri  
N. Lowenthal  
P. McCoy Smith

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<sup>12</sup> For convenience, the most transit-relevant NEPA categorical exclusions are attached to this letter for consideration.

**ATTACHMENT 1**  
**FTA Categorical Exclusions**  
**(Code of Federal Regulations, Title 23)**

Section 771.118(c)

- (1) Acquisition, installation, operation, evaluation, replacement, and improvement of discrete utilities and similar appurtenances (existing and new) within or adjacent to existing transportation right-of-way, such as: utility poles, underground wiring, cables, and information systems; and power substations and utility transfer stations.

Section 771.118(c)

- (2) Acquisition, construction, maintenance, rehabilitation, and improvement or limited expansion of stand-alone recreation, pedestrian, or bicycle facilities, such as: a multiuse pathway, lane, trail, or pedestrian bridge; and transit plaza amenities.

Section 771.118(c)

- (3) Activities designed to mitigate environmental harm that cause no harm themselves or to maintain and enhance environmental quality and site aesthetics, and employ construction best management practices, such as: noise mitigation activities; rehabilitation of public transportation buildings, structures, or facilities; retrofitting for energy or other resource conservation; and landscaping or re-vegetation.

Section 771.118(c)

- (4) Planning and administrative activities which do not involve or lead directly to construction, such as: training, technical assistance and research; promulgation of rules, regulations, directives, or program guidance; approval of project concepts; engineering; and operating assistance to transit authorities to continue existing service or increase service to meet routine demand.

Section 771.118(c)

- (5) Activities, including repairs, replacements, and rehabilitations, designed to promote transportation safety, security, accessibility and effective communication within or adjacent to existing right-of-way, such as: the deployment of Intelligent Transportation Systems and components; installation and improvement of safety and communications equipment, including hazard elimination and mitigation; installation of passenger amenities and traffic signals; and retrofitting existing transportation vehicles, facilities or structures, or upgrading to current standards.

Section 771.118(c)

- (6) Acquisition or transfer of an interest in real property that is not within or adjacent to recognized environmentally sensitive areas (e.g., wetlands, non-urban parks, wildlife management areas) and does not result in a substantial change in the functional use of the

property or in substantial displacements, such as: acquisition for scenic easements or historic sites for the purpose of preserving the site. This CE extends only to acquisitions and transfers that will not limit the evaluation of alternatives for future FTA-assisted projects that make use of the acquired or transferred property.

Section 771.118(c)

- (7) Acquisition, installation, rehabilitation, replacement, and maintenance of vehicles or equipment, within or accommodated by existing facilities, that does not result in a change in functional use of the facilities, such as: equipment to be located within existing facilities and with no substantial off-site impacts; and vehicles, including buses, rail cars, trolley cars, ferry boats and people movers that can be accommodated by existing facilities or by new facilities that qualify for a categorical exclusion.

Section 771.118(c)

- (8) Maintenance, rehabilitation, and reconstruction of facilities that occupy substantially the same geographic footprint and do not result in a change in functional use, such as: improvements to bridges, tunnels, storage yards, buildings, stations, and terminals; construction of platform extensions, passing track, and retaining walls; and improvements to tracks and railbeds.

Section 771.118(c)

- (9) Assembly or construction of facilities that is consistent with existing land use and zoning requirements (including floodplain regulations) and uses primarily land disturbed for transportation use, such as: buildings and associated structures; bus transfer stations or intermodal centers; busways and streetcar lines or other transit investments within areas of the right-of-way occupied by the physical footprint of the existing facility or otherwise maintained or used for transportation operations; and parking facilities.

Section 771.118(c)

- (10) Development of facilities for transit and non-transit purposes, located on, above, or adjacent to existing transit facilities, that are not part of a larger transportation project and do not substantially enlarge such facilities, such as: police facilities, daycare facilities, public service facilities, amenities, and commercial, retail, and residential development.

Section 771.118(c)

- (11) The following actions for transportation facilities damaged by an incident resulting in an emergency declared by the Governor of the State and concurred in by the Secretary, or a disaster or emergency declared by the President pursuant to the Robert T. Stafford Act (42 U.S.C. 5121):

- (i) Emergency repairs under 49 U.S.C. 5324;

- (ii) The repair, reconstruction, restoration, retrofitting, or replacement of any road, highway, bridge, tunnel, or transit facility (such as a ferry dock or bus transfer station), including ancillary transportation facilities (such as pedestrian/bicycle paths and bike lanes), that is in operation or under construction when damaged and the action: (A) Occurs within the existing right-of-way

and in a manner that substantially conforms to the preexisting design, function, and location as the original (which may include upgrades to meet existing codes and standards as well as upgrades warranted to address conditions that have changed since the original construction); and (B) Is commenced within a 2-year period beginning on the date of the declaration.

Section 771.118(d)

- (3) Acquisition of land for hardship or protective purposes. Hardship and protective buying will be permitted only for a particular parcel or a limited number of parcels. These types of land acquisition qualify for a CE only where the acquisition will not limit the evaluation of alternatives, including shifts in alignment for planned construction projects, which may be required in the NEPA process. No project development on such land may proceed until the NEPA process has been completed.

(i) Hardship acquisition is early acquisition of property by the applicant at the property owner's request to alleviate particular hardship to the owner, in contrast to others, because of an inability to sell his property. This is justified when the property owner can document on the basis of health, safety or financial reasons that remaining in the property poses an undue hardship compared to others.

(ii) Protective acquisition is done to prevent imminent development of a parcel which may be needed for a proposed transportation corridor or site. Documentation must clearly demonstrate that development of the land would preclude future transportation use and that such development is imminent. Advance acquisition is not permitted for the sole purpose of reducing the cost of property for a proposed project.

Section 771.118(d)

- (4) Acquisition of right-of-way. No project development on the acquired right-of-way may proceed until the NEPA process for such project development, including the consideration of alternatives, has been completed.

Section 771.118(d)

- (5) Construction of bicycle facilities within existing transportation right-of-way.

Section 771.118(d)

- (6) Facility modernization through construction or replacement of existing components.

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*Alameda County Public Works Agency*

August 30, 2013

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

Re: CEQA Guidelines Input

Dear Mr. Calfee,

The Office of Planning and Research has requested input on proposed CEQA Guidelines revisions, and we appreciate this opportunity to comment.

The Bay Planning Coalition has for thirty years advocated for the balanced regulation and use of Bay-Delta resources, working through a broad coalition to enhance the quality of life in the San Francisco Bay Region. We appreciate that Governor Brown's administration has long recognized the importance to California's economy of improving CEQA so that it is not used as a tool to hinder sustainable economic growth and job creation, while remaining faithful to its original environmental protection principles.

We support the amendment of the CEQA Guidelines to conform to CEQA case law regarding CEQA's fundamental scope—most recently expressed in *Ballona Wetlands v. City of Los Angeles*.

Four published decisions have established that provisions of Section 15126.2 and Appendix G of the CEQA Guidelines that purport to require analysis of the impacts of the existing environment on a proposed project and its occupants are in conflict with CEQA. See *Ballona Wetlands Land Trust v. City of Los Angeles*, 201 Cal.App.4th 455, 473 (2011); *South Orange County Wastewater Authority v. City of Dana Point*, 196 Cal.App.4th 1604, 1614–1618 (2011); *City of Long Beach v. Los Angeles Unified School District*, 176 Cal. App. 4th 889, 905 (2009); *Baird v. County of Contra Costa*, 32 Cal.App.4th 1464, 1468 (1995). More particularly, the decisions establish the following:

1. The purpose of CEQA is to protect the existing environment from proposed projects, not to protect proposed projects from the existing environment.

2. The Guidelines may not expand CEQA's substantive requirement that agencies analyze risks to the environment to require that agencies analyze risks to the project.

3. Section 15126.2(a) is consistent with CEQA only to the extent that the impacts described in that section constitute impacts on the environment caused by the development as distinct from impacts on the project caused by the environment. Accordingly:

(a) The statement in Section 15126.2(a) that the “EIR shall also analyze any significant environmental effects the project might cause by bringing development and people into the area affected” is in direct conflict with CEQA. Identifying the effects on the project and its users of locating the project in a particular environmental setting is not mandated by CEQA and is inconsistent with CEQA’s legislative purpose.

(b) The examples given in Section 15126.2(a) of the Guidelines are not examples of environmental effects caused by a project, but instead are examples of effects on the project caused by the environment.

4. To the extent that questions in Appendix G of the Guidelines refer to the effects of preexisting environmental hazards on users of the project and structures in the project, they do not relate to environmental impacts under CEQA and improperly add substantive requirements beyond those contained in CEQA.

The current wording of the Guidelines is contributing to continuing confusion on the part of public agencies and project proponents over the purpose and extent of the impact analysis required by CEQA. The resulting social and economic costs have been borne by all segments of California's economy.

As the court pointed out in *SOCWA*, other laws address health and safety concerns and environmental risks and hazards to persons and structures in new projects. In the 40 years following the enactment of CEQA, Congress and the California Legislature have each adopted or amended scores of laws relating to these issues that operate independently of CEQA. Since CEQA was enacted, myriad federal and state public health, safety, and environmental protection statutes have been enacted, including laws and policies that require consideration of the environment’s impact on proposed projects, such as the federal Noise Control Act of 1972, the Alquist-Priolo Earthquake Fault Zoning Act, along with the Clean Air Act, Clean Water Act, Endangered Species Act, GHG emissions reduction standards, SB 375 and more. It is not the province of the Guidelines to impose environmental review requirements relating to such impacts that are neither authorized under CEQA nor

necessary to accomplish its purposes.

Codifying the “Ballona rule” is a simple administrative action yet it represents a very important step. Codifying the Ballona rule would significantly move the needle toward achieving our shared goals of modernizing CEQA and maintaining its intent and integrity.

We support the modernization and streamlining of the CEQA Guidelines, for the benefit of our region and our state’s continuing economic vitality, progress, and exceptional quality of life.

Sincerely,

A handwritten signature in blue ink, appearing to read "JAC", with a horizontal line extending to the right.

John A. Coleman  
Executive Director

*NOTE: The views expressed in this letter do not necessarily represent  
the opinions of all Bay Planning Coalition members*

August 29, 2013

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

**RE: Comments on California Environmental Quality Act Guidelines**

Dear Mr. Calfee:

On behalf of the California Airports Council (CAC), we would like to submit our comments regarding the California Environmental Quality Act (CEQA) guideline revisions. We respect and value the efforts of the Governor's Office of Planning and Research and the Natural Resources Agency to improve implementation of California's environmental laws and we would like to provide input that we believe will protect CEQA guidelines while eliminating inconsistencies.

The CAC is comprised of the 33 commercial airports within California which collectively serve over 172 million passengers per year, more than any other single state. It is also home to Los Angeles International and San Francisco International, two of the nation's ten largest airports.

**CAC CEQA Guidelines Comments**

The CEQA process has been susceptible to sizeable influxes of documents, also known as "document dumping", which require exhaustive periods of evaluation and sorting to determine their relevance. We suggest Section 15088 (Evaluation of and Responses to Comments) include a new subdivision requiring interested parties to identify the relevance and purpose of any attachments presented in comment letters. This would reduce general workload when large quantities of unsorted and extraneous documents are received.

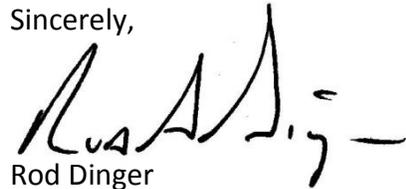
We also believe revisions should be made to Section 15125 (Environmental Setting). This recommendation is advised due to the recent California Supreme Court verdict in favor of Smart Rail. As you are aware, controversy arose over Smart Rail's decision to use future projections in lieu of current environmental settings. The California Supreme Court ruled that the environmental impact report (EIR) submitted by Expo Construction Authority for Smart Rail can use future projections of environmental impacts considering the material provided did not "deprive the agency or the public of substantial relevant information". This decision has set a precedent for future operations, therefore we advise modification of Section 15125 (a) to allow EIRs to rely entirely on future conditions when existing conditions prove to be uninformative or misleading to the overall impact of the project.

In the request for Guideline comments, specific input was asked for the requirement of periodic updates to address new information regarding greenhouse gas emissions (SB 97, Chapter 185 Statutes of 2007). Neither the California Air Resources Board nor any other local air district has developed scientifically defensible standards to assess the significance of the airport sector at this time. Due to substantial ambiguity regarding this subject, we suggest lead agencies maintain discretion of significant airport-related projects.

Finally, we would like to acknowledge substantive improvements that can be made to the implementation of guidelines. The role of regulatory standards in a CEQA analysis is critical for overall efficiency. As a method to simplify examination and eliminate duplicative material, we highly suggest the use of regulatory standards. When evaluating environmental significance, lead agencies should be authorized to refer to the regulatory standards of agencies with expertise.

We appreciate your efforts to review and improve CEQA Guidelines, as well as your consideration of stakeholder input in the process. Please call or email CAC staff Sarah Johnson at 916.553.4999 or [sjohnson@calairportscouncil.org](mailto:sjohnson@calairportscouncil.org), with any questions, comments, or concerns.

Sincerely,

A handwritten signature in black ink, appearing to read "Rod Dinger", with a horizontal line extending to the right.

Rod Dinger  
President



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Roseville

August 30, 2013

**VIA EMAIL:** [CEQA.Guidelines@ceres.ca.gov](mailto:CEQA.Guidelines@ceres.ca.gov).

### CEQA Guidelines Update

Christopher Calfee, Senior Counsel  
Governor's Office of Planning and Research  
1400 Tenth Street  
Sacramento, CA 95815

Re: Solicitation for Input

Dear Mr. Calfee:

California homebuilders, as represented by the California Building Industry Association (CBIA), are grateful to you for providing us this opportunity to comment on the update of the CEQA Guidelines.

Based upon input from some of the state's leading CEQA practitioners, we offer the following recommendations:

- **Provide Guidance on Streamlined Environmental Review Process.** CEQA provides that if a project is consistent with the development density established by a general plan or zoning ordinance that was subject to an EIR, no further environmental review is generally needed unless there are impacts that are to the peculiar to the project or project site. *See, e.g.*, Pub. Res. Code § 21083.3 and CEQA Guidelines § 15183. While CEQA mandates use of this process, many agencies hesitate to employ it due to their own inexperience with the process and the lack of certainty and guidance in regard to its implementation. To encourage agencies to use CEQA Guidelines § 15183, it would be helpful if this guideline were amended to clarify that: (1) the substantial evidence standard of review applies to the use of this streamlining process, which has been judicially recognized as an exemption;<sup>1</sup> (2) a qualifying project remains exempt from CEQA except for those impacts for which a focused negative declaration or focused EIR is done; and (3) new CEQA findings (including, as applicable, a statement of overriding considerations) need only be made at the project level for any impacts addressed in such negative declaration or EIR.

### Eliminate Unnecessary Discussion of Consistency with Planning Documents.

CEQA Guidelines § 15125(d) requires that the environmental setting portion of an EIR contain a discussion of "any inconsistencies between the proposed project and applicable general plans, specific plans and regional plans." Section X of Appendix G to the CEQA Guidelines similarly asks whether a project would "conflict with any applicable land use plan, policy or regulation . . . adopted for the purpose of avoiding or mitigating an environmental impact." These provisions inappropriately and

<sup>1</sup> *See, e.g., Gentry v. City of Murrieta*, 36 Cal.App.4<sup>th</sup> 1359, 1406 (1995).

confusingly require a discussion of consistency with broad public policies in a document that is supposed to be focused on physical environmental impacts. It is often wrongly applied in practice (i.e., EIRs discuss both consistencies and inconsistencies with planning documents) and difficult to implement in the case of a project proposing an amendment to a plan. These provisions are also unnecessary since almost all land use projects require a finding of consistency with an agency's general plan. Such policy findings should legitimately be made by the elected decision-makers and/or their appointed representatives and not by agency staff or environmental consultants. Where planning policies were in fact adopted to address environmental issues, such as noise standards or desired traffic levels of service, those policies are routinely applied as thresholds of significance under the pertinent environmental topic area in the EIR. It can be confusing and duplicative to address the same issues within the setting section, the land use section and the topical (e.g., traffic or noise) section of an EIR. As such, CEQA Guidelines § 15064.7 and/or § 15126.2 could be revised to encourage or direct agencies to consider plan policies adopted for the purpose of avoiding or mitigating significant environmental impacts when developing thresholds of significance.

- **Promote Re-Use of Existing Buildings and Previously Developed Sites.** Disregarding reality, CEQA often treats vacant structures and formerly developed parcels as if they have never been occupied or put to any productive use. This means that costly, time-consuming, unproductive and unnecessary studies must be done before vacant buildings or unoccupied built sites may be reused or redeveloped. This is partly the result of the language of the existing facilities exemption (CEQA Guidelines § 15301) that restricts application of the exemption to facilities where there is negligible or no expansion of use “beyond that existing at the time of the lead agency’s determination.” That phrase was inserted into the Guidelines in response to the court’s decision in *Bloom v. McGurk*, 26 Cal.Ap.4<sup>th</sup> 1307 (1994). In that case, the court ruled that the existing facilities exemption applied to renewal of permits for a medical waste treatment facility even though the facility had never undergone CEQA review. The court reasoned that the term “existing facility” means a facility existing as of the time of the agency’s determination, rather than a facility existing at the time CEQA was enacted. Since the *Bloom* court was describing what qualifies as an “existing facility” and not limiting the application of the existing facilities exemption, the exemption did not need to be changed for it to be consistent with the *Bloom* decision. The exemption should be revised to read the way it read prior to *Bloom* and apply so long as there is negligible or no expansion of use “beyond that previously existing.” If necessary, a reasonable time restriction could be imposed on the cessation of the prior use, such as five years. Further, to level the playing field in the long term and make preexisting facilities and formerly developed sites count against the CEQA baseline, the definition of existing setting (or “baseline”) set forth in CEQA Guidelines § 15125 should be revised so that credit is always provided for prior use of a site or fully permitted use of a site (again, perhaps subject to a reasonable time limitation on cessation of prior uses, such as no more than 5 years after any prior use has ceased).

- **Encourage Infill Development.** The current infill exemption (CEQA Guidelines § 15332) is cumbersome, time-consuming and expensive to employ, especially when compared to other categorical exemptions. As such, it is infrequently relied on by agencies or developers. To encourage infill development, the exemption should be revised to be more ministerial and less subjective in nature. If, for example, the project is (1) consistent with the general plan and zoning ordinance, (2) has no value as wetlands or wildlife habitat, (3) will not adversely affect a historic resource and (4) is located on a site that is

substantially surrounded by urban uses, the proposal should be deemed exempt from CEQA. At minimum, the current provisions restricting the infill exemption to sites located within city limits and requiring proof that a project will not result in certain specified environmental impacts should be eliminated. The restriction to city limits unwisely forecloses application of the exemption to the many urbanized unincorporated areas of the State, and the provision requiring a showing of no impacts is anathema to an exemption and is unnecessary in light of the significant effects exception (CEQA Guidelines § 15300.2(c)) that applies to all categorical exemptions.

- **NEPA:** The statute provides clear authority for the use of a NEPA document (e.g., an EIS) “whenever possible” in the CEQA process. (Pub. Resources Code §§ 21083.5, 21083.7.) The Guidelines could be improved and expanded to make fuller use of this authority by clarifying the process and the standards for utilizing an EIS for CEQA compliance purposes. (Guidelines §§ 15221-15229.)
- **Project Definition:** Since (and before) the California Supreme Court’s decision in *Save Tara*, there have been numerous intermediate appellate court decisions attempting to find the dividing line between pre-project commitments that require CEQA compliance and those that don’t. While some of these cases appear to provide coverage for pre-project approvals where there is no binding commitment and plenty of reserved authority, the overall legal question as it applies to particular decisions remains unclear and has fostered uncertainty. The Guidelines—perhaps in a new section—could provide a discussion and clearer parameters for which pre-project approvals require prior CEQA review and those that don’t. (Guidelines §§ 15004, 15352, 15378.)
- **Appendix J:** Appendix J should be given a new and more accurate title. Currently it reads “Examples of Tiering EIRs” but it then goes on to describe a variety of different types of EIR and special situations relating to EIRs, most or none of which are the same as tiering, which is one particular approach to preparing a series of EIRs.
- **Tiering:** For the same reasons OPR should consider clarifying Guideline 15152(h). The types of EIRs that are listed are used in various ways to streamline environmental review, not just for tiering, as is shown in Appendix J. We suggest that Guideline 15152(h) be rewritten to explain the following: Tiering is just one method that is available under CEQA to simplify the environmental review process and avoid redundant analysis. An overview of the various methods that may be employed to accomplish these purposes in various situations is provided in Appendix J.
- **Incorporation by Reference:** OPR should revise Guideline 15087(c)(5) regarding the public review notice for EIRs to specify that the notice must indicate where the EIR and all documents “incorporated by reference” in the EIR may be reviewed. The Guidelines currently refer to “referenced” documents but elsewhere in the Guidelines, the two basic provisions governing referrals to other documents are citation and incorporation by reference. It makes sense to provide documents that are incorporated by reference in the same place as the EIR, given that such documents are considered to be set forth in full in the EIR. It does not make sense to provide all cited documents, as this includes a wide variety

Christopher Calfee, Senior Counsel  
August 30, 2013

of basic references, books, maps and monographs, some of which are difficult to obtain. For example, many EIR archeology or cultural resources sections cite entire books by Kroeber.

Thank you very much for considering these recommendations. Please don't hesitate to contact us if you would like to discuss these ideas further.

Sincerely,

A handwritten signature in black ink, appearing to read "Nick Cammarota". The signature is fluid and cursive, with the first name "Nick" being more prominent and the last name "Cammarota" following in a similar style.

Nick Cammarota  
General Counsel



## California Council for Environmental and Economic Balance

100 Spear Street, Suite 805, San Francisco, California 94105  
415-512-7890 phone, 415-512-7897 fax, [www.cceeb.org](http://www.cceeb.org)

August 30, 2013

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

### **Re: Response to OPR Solicitation of Suggested Revisions to the CEQA Guidelines**

Dear Mr. Calfee:

The California Council for Environmental and Economic Balance ("CCEEB") is a coalition of business, labor, and public leaders that works together to advance strategies to achieve a sound economy and a healthy environment. Founded in 1973, CCEEB is a non-profit and non-partisan organization.

CCEEB appreciates the opportunity to respond to the solicitation by the Governor's Office of Planning and Research ("OPR") for suggested improvements to the State Guidelines for implementation of the California Environmental Quality Act ("CEQA"). We are pleased to offer the following suggestions, with supporting rationale, for amendments to the CEQA Guidelines. In doing so, we are mindful of the need for any changes to the Guidelines to remain consistent with the statute and case law. Nevertheless, we believe that substantial improvements to the CEQA process within those bounds are possible and that these revisions would improve the workings of CEQA, both substantively and procedurally. We hope that our suggestions will help further the objectives of CEQA and make the environmental review process more efficient and meaningful as requested in OPR's July 1, 2013 Solicitation for Input notice.

This letter is organized in accordance with the categories requested in OPR's solicitation notice.

#### **I. Process Improvements to Make the Environmental Review Process More Efficient and Meaningful**

##### **1. Require Sharing of Administrative Draft Documents at the Applicant's Request**

Suggested Revision:

Add new CEQA Guidelines §15156, Cooperation with Applicant:

At the applicant’s request, the lead agency shall share drafts of any environmental document, or portions thereof, with the applicant and shall consider information provided by the applicant regarding such drafts. Such drafts include, but are not limited to, drafts of the initial study, proposed Negative Declaration, and draft and final EIR including responses to comments. Drafts shared with the applicant are not considered to have been released for public review for purposes of the record of proceedings.

Rationale:

The current practice with regard to sharing administrative drafts of Negative Declarations and Environmental Impact Reports ("EIRs") (including responses to comments, as part of Final EIRs) with the project applicant varies throughout the state. Nothing in CEQA, the existing CEQA Guidelines or case law prohibits this practice and many lead agencies do routinely share administrative draft environmental documents with applicants. However, other lead agencies do not share administrative drafts. In these cases, the applicants first see environmental documents when they are released for public review, and it is not uncommon for applicants—who, after all, are the best source of information on the specifics of their own projects—to discover inaccuracies and incomplete information that must be corrected. Requiring lead agencies to share administrative drafts with applicants, and consider information provided by the applicants, would result in more accurate and complete documents, avoid confusion in the public review process, and avoid delay to fix errors and respond to comments that would have been unnecessary had the applicants been given the opportunity to review the drafts and offer corrections. This change would make the CEQA review process more efficient, through the early correction of flaws and omissions that otherwise could require extensive revisions and responses to comments, potentially triggering recirculation. Accordingly, lead agencies should uniformly be required to share administrative drafts with the project applicant, if the applicant so requests.

Some agencies that refuse to share administrative drafts have expressed concern that doing so would subject them to Public Record Act requests, or result in inclusion of the drafts in the record for judicial review. For this reason, we propose that drafts should be shared only at the applicant’s request. In addition, however, including drafts shared only with the applicant in the record for litigation purposes would be inconsistent with the statute, which expressly provides that only “drafts of any environmental document, or portions thereof, that have been released for public review” are part of the record. CEQA (Pub. Res. Code) § 21167.6(e)(10). We therefore suggest including in the proposed Guideline the statement that these drafts are not considered to have been released for public review for purposes of the record of proceedings.

**2. Close the Record to Written Comments at the End of the Written Comment Period**



Suggested Revision:

Add new subsection (c) to CEQA Guidelines §15203, Adequate Time for Review and Comment:

The lead agency may refuse to accept, and is not required to consider, any written comments on a draft EIR or negative declaration that are received after the noticed deadline for its prescribed written comment period. This subsection does not preclude oral comments from being provided prior to the close of the public hearing on the project before the issuance of the notice of determination.

Rationale:

CEQA § 21177 provides that an action challenging an EIR or Negative Declaration may be based on any “alleged grounds for noncompliance with this division [which] were presented to the public agency orally or in writing by any person during the public comment period provided by this division or prior to the close of the public hearing on the project before the issuance of the notice of determination.” This gives rise to the “data dumping” problem, in which project opponents submit last-minute comments during or just before the final hearing, with voluminous declarations, technical studies and other information attached. A lead agency faced with data dumping has only two choices: delay the final hearing to allow time to sift through and respond to the new material (with the prospect of another round of data dumping at the deferred hearing) or risk proceeding with unknown and un rebutted issues added to the record for litigation.

The opportunity to raise issues until the close of the hearing is a feature of CEQA which cannot be altered by the Guidelines. However, nothing in CEQA or the Guidelines deprives the lead agency of discretion to specify when *written* comments may be received. Rather, agencies are directed to adopt their own implementing procedures consistent with CEQA and the CEQA Guidelines, including procedures for obtaining comments from the public. CEQA Guidelines § 15022(a)(5), (6). For example, in 2010, the State Water Resources Control Board (“SWRCB”) revised its CEQA review procedures to include the following (23 Cal. Code Regs. § 3779):

(b) The board shall prescribe a written comment period on the adequacy of the Draft [CEQA document]. The written comment period shall be for a period of not less than 45 days. . . . The board may refuse to accept written comments received after the noticed deadline. The board is not required to consider any written comment that is received after the deadline.

(c) Oral Comments: The board shall conduct a public hearing for the receipt of oral comments either during or after the written comment period. . . . The board is not required to consider any oral comment that is received after the public hearing.

Thus, the SWRCB limits written comments to the written comment period while allowing oral comments at the public hearing, consistent with CEQA § 21177. The SWRCB regulation was not challenged and we have found no case that precludes its approach. Accordingly, we suggest that the CEQA Guidelines be clarified to alert other agencies to their discretion to utilize this option, which could help to substantially address the data dumping problem.



### 3. Clarify the Process for Identifying the Lead Agency by Agreement Among Agencies

#### Suggested Revision:

Revise CEQA Guidelines §15051 as follows (added text underlined, deleted text struck out):

Where two or more public agencies will be involved with a project, the determination of which agency will be the lead agency shall be governed by the following criteria:

(a) If the project will be carried out by a public agency, that agency shall be the lead agency even if the project would be located within the jurisdiction of another public agency.

(b) If the project is to be carried out by a nongovernmental person or entity, the lead agency shall be the public agency with the greatest responsibility for supervising or approving the project as a whole.

(1) The lead agency will normally be the agency with general governmental powers, such as a city or county, rather than an agency with a single or limited purpose such as an air pollution control district or a district which will provide a public service or public utility to the project.

(2) Where a city prezones an area, the city will be the appropriate lead agency for any subsequent annexation of the area and should prepare the appropriate environmental document at the time of the rezoning. The local agency formation commission shall act as a responsible agency.

(c) Where more than one public agency equally meet the criteria in subdivision (b), the agency which will act first on the project in question will normally~~shall~~ be the lead agency.

(d) Where the provisions of subdivisions (a), (b), and (c) leave two or more public agencies with a substantial claim to be the lead agency, the public agencies may by agreement designate an agency as the lead agency. An agreement may also provide for cooperative efforts by two or more agencies by contract, joint exercise of powers, or similar devices.

#### Rationale:

As currently written, CEQA Guidelines § 15051 provides a set of criteria for identifying the lead agency, but there is some uncertainty as to what occurs if two or more agencies can qualify. If there are two agencies that “equally meet the criteria”, the first agency must be the lead. However, if two agencies have a “substantial claim” to be the lead agency, they may designate one as lead by agreement. One of the ways that two agencies may have a “substantial claim” to lead status is by equally meeting the criteria in (b), in which case the first to act *shall* be the lead under (c). This creates a logical conundrum: if the first agency to act must be the lead agency,



then two agencies cannot both claim to be lead, unless they simultaneously schedule their project hearings and take final action at exactly the same time. Absent simultaneous actions, this section has the practical effect of requiring the first agency to act to be the lead agency.

That outcome is not dictated by the statute and seems inconsistent with effective and flexible coordination of CEQA review among multiple agencies. Moreover, the structure of current Guidelines § 15051 clearly was not intended for criterion (c) to trump all others, or for subsection (d) to be reduced to a nullity by the mandatory language in (c). Therefore we suggest that, in parallel with subsection (b)(1) (the lead agency will normally be the agency with general governmental powers), subsection (c) be revised to provide that the lead agency will normally be the first to act. Recognizing that “normally” does not mean “always”, agencies should have the discretion to agree that, under the circumstances, it makes more sense for the lead to be the agency with greater oversight responsibility, expertise on the type of project and potential environmental impacts, and resources for carrying out CEQA review efficiently and effectively, even if it is not the first to act. This revision would provide greater flexibility and a more rational allocation of responsibilities among the agencies.

## **II. Substantive Improvements to Make the Environmental Review Process More Efficient and Meaningful**

### **4. Clarify that Applicants May Identify, and Agencies Shall Consider, Project Benefits**

#### Suggested Revision:

Add new subsection (g) to CEQA Guidelines §15204, Focus of Review:

A project applicant may present to the lead agency, orally or in writing, information on the environmental, economic, legal, social, and technological, or other benefits of the project, including region-wide or statewide environmental benefits, and including, but not limited to, measures that will mitigate greenhouse gas emissions resulting from the project or measures that will significantly reduce traffic, improve air quality, replace higher emitting energy sources, or provide other significant environmental or public health benefits. The benefits of the project shall be taken into consideration in any statement of overriding considerations prepared pursuant to Section 15093.

#### Rationale:

This suggestion is derived from a provision in SB 731 (Steinberg & Hill), which would amend CEQA section 21080 to add an opportunity for the applicant to present project benefits to the lead agency, but only for renewable energy projects. The inclusion of that provision in the bill has raised questions regarding the ability to do so for other categories of projects. However, nothing in CEQA, the Guidelines or case law currently prevents an applicant from identifying, or a lead agency from considering, *any* project’s environmental and public health benefits. Regardless of whether SB 731 is adopted, we suggest that the Guidelines clarify the availability of this opportunity, to help ensure that the lead agency makes its decision based on all relevant information and that the public is fully informed. Moreover, a lead agency is required to



consider project benefits in a specific context, when adopting a statement of overriding considerations. CEQA Guidelines section 15093 “requires the decision-making agency to balance the *economic, legal, social, and technological, or other benefits, including region-wide or statewide environmental benefits*, of a proposed project against the unavoidable environmental risks when determining whether to approve the project” (emphasis added). Again, this requirement applies to all categories of projects. It would not make sense to interpret a narrow provision in SB 731, providing the opportunity to submit such information only for renewable energy projects, to preclude such submittals in other cases to assist the lead agency in preparing and supporting a statement of overriding considerations. Therefore we suggest amending the Guidelines to clarify that a project applicant may present information on all of the potential grounds for overriding consideration findings as specified in Guidelines section 15093.

## 5. Clarify the Appendix G Significance Threshold for Biological Resource Impacts

### Suggested Revision:

Revise CEQA Guidelines Appendix G, Section IV(a) to conform to CEQA Guidelines § 15065(a)(1), as follows (added text underlined, deleted text struck out):

- a) ~~Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service?~~Cause, either directly or through habitat modifications, any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Wildlife or U.S. Fish and Wildlife Service to: drop below self-sustaining levels; have a community or population eliminated; or have a substantial reduction in the species’ number or range?”

### Rationale:

CEQA Guidelines § 15065(a)(1) states that a project may have a significant effect on the environment where a project “has the potential to substantially degrade the quality of the environment; substantially reduce the habitat of a fish or wildlife species; cause a fish or wildlife population to drop below self-sustaining levels; threaten to eliminate a plant or animal community; [or] substantially reduce the number or restrict the range of an endangered, rare or threatened species . . . .” This Guideline reflects the intent of CEQA to “[p]revent the elimination of fish and wildlife species due to man’s activities, insure that fish and wildlife populations do not drop below self-perpetuating levels, and preserve for future generations representations of all plant and animal communities . . . .” CEQA § 21001(c). We believe that these provisions state the appropriate standards of significance for biological resource impacts and that Appendix G, Section IV should be revised to be consistent with these standards.

Currently, Appendix G provides for a determination of significance if a project would have “a substantial adverse effect . . . on any [special status] species . . . .” From this language, it is not



clear what level of impact constitutes a “substantial adverse effect.” In particular, the current language leaves open the argument that the taking of a single individual, regardless of any impact to the health of its species or population, may constitute a “substantial adverse effect.” This is inconsistent with the statute and Guidelines provisions cited above, which suggest that the biological significance of impacts to special status species generally depends on the overall effects on populations of a species, rather than its individual members. As such, we propose the foregoing revision to make Appendix G, Section IV, subdivision (a) more closely aligned with the intent of CEQA and the Guidelines’ mandatory findings of significance.

## **6. Make Available a Database of EIRs and Negative Declarations for Adopted Projects**

### Suggested Revision:

Add new subsection (h) to CEQA Guidelines §15023, Office of Planning and Research ("OPR"), as follows (added text underlined, deleted text struck out):

OPR shall establish and maintain a database for the collection, storage, retrieval, and dissemination of notices of exemption, notices of preparation, notices of determination, and notices of completion provided to the office. OPR shall also collect and post in this database all certified EIRs and adopted Negative Declarations for approved projects which are provided to OPR in searchable electronic form by the applicant or lead agency. ~~This database of notice information~~ shall be available through the Internet.

### Rationale:

This revision would require OPR to post online certified EIRs and adopted Negative Declarations which are submitted to OPR by the applicant or lead agency. The availability of these documents in a searchable database would allow other agencies, project applicants and members of the public to review environmental documents for previously approved projects and use these documents as models for CEQA review of pending projects. OPR already maintains a database of EIR notices and notices of CEQA exemption as provided by CEQA Guidelines §15023(h). Providing the full documents in searchable electronic form suitable for online posting would ensure that OPR’s cost and effort of adding them to the database are minimized. This would reduce duplicative effort and streamline the CEQA process, saving time and costs, by taking advantage of work already performed for projects which are similar or raise similar environmental issues. Moreover, such a database would fulfill the legislative intent stated in CEQA § 21003(d), which declares that it is the policy of the state that: “Information developed in individual environmental impact reports be incorporated into a data base which can be used to reduce delay and duplication in preparation of subsequent environmental impact reports.”

## **7. Add Two Questions to the Utilities and Service Systems Section of Appendix G**

### Suggested Revision:

Because answers to the questions posed on the Appendix G Initial Study (“IS”) checklist identify environmental issues that public agencies should address in environmental documents required



by the California Environmental Quality Act (Public Resources Code section 21000 et seq.) court decisions interpreting the statute and practical planning considerations, add the following two questions to the “Utilities and Service Systems” section of Appendix G (“Environmental Checklist Form”).

1. Does the project require relocation of existing electric or gas transmission facilities, the removal and/or relocation of which could cause significant environmental effects?
2. Is the project a community plan update, general plan amendment, new master or specific plan, or large scale development or large scale project that will require the construction of new major electrical or natural gas facilities such as electric transmission lines, electric substations, natural gas transmission pipelines or compressor stations the construction of which could cause significant environmental effects?

Rationale:

Early on in their environmental review of the proposed project, lead agencies have not *uniformly* identified and collaborated with the impacted utility about the practical considerations of the need for, and potential significant impacts on the environment from the construction of new, or expansion or relocation of existing power lines, substations and compressor stations that will be required by the project. Although Appendix G is a commonly used series of questions that are organized by resource topics (e.g. water, solid waste) and Appendix F to the CEQA Guidelines is narrower in scope than Appendix G in that it is focused on the resource topics of conservation and the demands a proposed project will put on the supply of energy that lead agencies utilize only when an EIR must be prepared, neither appendix provides vital information on the proposed project’s requirements for electricity and natural gas infrastructure and the potential significant impacts on the environment from the construction of new, or expansion or relocation of existing, power lines, substations and natural gas compressor stations, transmission lines, valve stations and related facilities and appurtenances for the operation and maintenance of those electric and natural gas facilities.

Information on the proposed project’s energy delivery infrastructure and its potential to be deemed significantly impactful on the environment is no less important than existing Appendix G checklist questions on the demands the proposed project will have on the water, wastewater, stormwater, and solid waste infrastructure. The absence of questions in Appendix G the answers to which elicit this aforementioned information has clearly resulted in environmental review processes which are less efficient and meaningful for the project proponent, affected utility, and responsible lead agencies. Specifically, processes are less efficient by at least two years in cases where the California Public Utility (“CPUC”) must issue permits for the projects operating in Investor Owner Utilities service territories because its scope exceeds the threshold established by CPUC’s General Order 131D the purpose of which is to ensure compliance with CEQA. And processes are less meaningful because the proposed project’s energy delivery infrastructure is not being factored into the State’s mandates for renewable energy, distributed generation and sustainable communities and not factored into the region’s planning for these purposes.



All levels of the public and private sectors are experiencing the costs in terms of money and time in complying with CEQA. CCEEB submits the addition and utilization of the above-referenced questions is entirely consistent with the statute and would serve to accomplish your stated goal of improving the CEQA Guidelines to make “the environmental review process more efficient and meaningful”.

Furthermore, CEQA specifies that environmental impacts should be considered as early as possible in the project review process and a consideration of all project elements that have a potential for adverse environmental impacts must be considered in environmental review, even if subsequent review or permitting authority rests with other agencies. These two questions will promote the full disclosure of potential environmental impacts associated with a project while providing a means to utilize appropriate CEQA exemptions in CPUC GO 131-D as well as existing CEQA provisions for tiering and incorporation by reference. This will aid in streamlining and adding efficiencies to the CEQA review process. This is because the CPUC will still retain its permit and review authority with the ability to review project utility impacts early in the process by providing review and input before project approvals by local or regional agencies. This will save time and money by avoiding unnecessary subsequent environmental review by the CPUC and potential costly project revisions and delays.

### **III. Substantive Improvements to Reflect State Policy Priorities, including Climate Change**

#### **8. Add a Coordination Process for Renewable Energy Projects**

##### Suggested Revision:

Add new CEQA Guidelines §15191, Coordination on Renewable Energy Projects:

- (a) For renewable energy projects subject to both CEQA and NEPA, the lead agency under CEQA may enter into a Memorandum of Understanding with the federal lead agency to follow the expedited time limits imposed in Sections 15100 through 15109, except as specified in Section 15110(c).
- (b) For renewable energy projects subject to CEQA and NEPA, the lead agency under CEQA, including the California Public Utilities Commission if applicable, may enter into a Memorandum of Understanding with the federal lead agency to ensure that the NEPA document for the project complies with the provisions of these guidelines and adheres to the requirements of Section 15221.
- (c) For purposes of this section, “renewable energy project” has the same meaning as “eligible renewable energy resource” in the California Renewables Portfolio Standard Program (Article 16 (commencing with Section 399.11) of Chapter 2.3 of Part 1 of Division 1 of the Public Utilities Code).



Rationale:

Consistent with CEQA Guidelines §§ 15100(b) and 15220 *et seq*, public agencies should carry out their responsibilities under CEQA within a reasonable period of time and, for federally-funded or approved projects also subject to the National Environmental Policy Act (“NEPA”), in coordination with the NEPA process to the extent possible. This is especially true with regard to renewable energy projects. These projects not only provide environmental benefits by reducing GHG emissions, but also help the state meet its Renewables Portfolio Standard which requires 33% of total retail sales of electricity in California to come from eligible renewable energy sources by 2020. Because renewable energy projects are so important to California, their implementation should not be held up by protracted environmental review. For these reasons, it is important that renewable energy projects which are subject to both CEQA and NEPA should proceed within the timeframes provided for in CEQA. Accordingly, we suggest that the CEQA Guidelines encourage the CEQA lead agency to enter into an MOU with the federal lead agency for coordination of project requirements and timelines.

**IV. Substantive Improvements to Reflect Cases Interpreting CEQA**

**9. Codify Case Law Clarifying Application of the Categorical Exemption for Emergency Projects**

Suggested Revision:

Revise CEQA Guidelines § 15269(b) and (c) as follows (added text underlined):

(b) Emergency repairs to publicly or privately owned service facilities necessary to maintain service essential to the public health, safety or welfare. Emergency repairs include those that require a reasonable amount of planning. (*CalBeach Advocates v. City of Solana Beach* (2002) 103 Cal.App.4<sup>th</sup> 529.)

(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.

Rationale:

CEQA Guidelines § 15269 reflects the statutory exemption for emergency projects found in CEQA Code § 21080(b)(2)-(4) as well as more specific exemptions found elsewhere in CEQA and the Health and Safety Code. In its current form, Guidelines § 15269(b) and (c) could be interpreted to prevent the use of the exemption when an emergency repair or prevention project requires significant planning. This interpretation would conflict with the holding in *CalBeach Advocates v. City of Solana Beach* (2002) 103 Cal.App.4<sup>th</sup> 529. The *CalBeach* opinion



recognizes that “[i]n order to design a project to prevent an emergency, the designer must anticipate the emergency.” In addition, CEQA Guidelines § 15269(c) is vague regarding what is considered a “long-term” project and how imminent an emergency must be in order to fall within the statutory exemption. We request that the Guidelines be revised as indicated above, in order to clarify that the period of time required to conduct environmental review (often over a year for large projects) should not be allowed to create a risk to public health, safety or welfare.

#### **10. Codify Case Law on the Treatment of Existing Activities as Part of the Baseline**

##### Suggested Revision:

Add new subsection (f) to CEQA Guidelines § 15125:

For renewals and extensions of authorizations for an existing facility, structure or activity, the existing facility, structure or activity is considered part of the physical environmental conditions in the vicinity of the project, as they exist at the time the notice of preparation is published, or if no notice of preparation is published, at the time environmental analysis is commenced. The continued presence and effects of such existing facilities, structures or activities, without change, shall not be considered to cause any potentially significant environmental impact or contribute to any potentially significant cumulative impact.

##### Rationale:

This revision is intended to codify the holding of *Citizens for East Shore Parks v. California State Lands Commission* (2011) 202 Cal.App.4th 549. In *Citizens for East Shore Parks*, the First Appellate District held that the State Lands Commission, in preparing an EIR for renewal of a facility lease, correctly included the current presence and effects of the facility as part of the CEQA “baseline.” The court concluded that the baseline for analysis of impacts under CEQA must represent conditions that actually exist at the project site, including the existing facility. In reaching that result, the court discussed other cases upholding baselines reflecting current conditions, including unauthorized conditions, because to do otherwise would contravene the language and prospective intent of CEQA. See *Fat v. County of Sacramento* (2002) 97 Cal.App.4th 1270; *Riverwatch v. County of San Diego* (1999) 76 Cal.App.4th 1428. This revision also is consistent with CEQA Guidelines § 15125(a) which provides that “[a]n EIR must include a description of the physical environmental conditions in the vicinity of the project, as they exist at the time the notice of preparation is published...”

#### **V. Technical, Non-Substantive Updates**

#### **11. Conform CEQA Guidelines Article 6, Negative Declaration Process, to CEQA Guidelines § 15084, Preparing the Draft EIR**

##### Suggested Revision:

Add new CEQA Guidelines § 15070.1 as follows:



## 15070.1 Preparing a Negative or Mitigated Negative Declaration

- (a) The proposed negative declaration shall be prepared directly by or under contract to the lead agency.
- (b) The lead agency may require the project applicant to supply data and information to assist the lead agency in preparing the proposed negative declaration. The requested information should include an identification of other public agencies which will have jurisdiction by law over the project.
- (c) Any person, including the applicant, may submit information or comments to the lead agency to assist in the preparation of the proposed negative declaration. The submittal may be presented in any format, including the form of a proposed negative declaration and initial study. The lead agency should consult or share information with the project applicant to confirm that the proposed negative declaration and initial study accurately reflect the proposed project. The lead agency must consider all information and comments received. The information or comments may be included in the proposed negative declaration in whole or in part.
- (d) The lead agency may choose one of the following arrangements or a combination of them for preparing a proposed negative declaration, mitigated negative declaration or initial study.
  - (1) Preparing the proposed negative declaration or initial study directly with its own staff.
  - (2) Contracting with another entity, public or private, to prepare the proposed negative declaration or initial study.
  - (3) Accepting a proposed negative declaration or initial study prepared by the applicant, a consultant retained by the applicant, or any other person.
  - (4) Executing a third party contract or Memorandum of Understanding with the applicant to govern the preparation of a proposed negative declaration or initial study by an independent contractor.
  - (5) Using a previously prepared negative declaration or initial study.
- (e) Before using a proposed negative declaration or initial study prepared by another person, the lead agency shall subject it to the agency's own review and analysis. The proposed negative declaration or initial study which is sent out for public review must reflect the independent judgment of the lead agency. The lead agency is responsible for the adequacy and objectivity of the proposed negative declaration and initial study.



Rationale:

CEQA Guidelines § 15084 provides useful guidance to lead agencies on the options for preparing documents, but that guidance applies only to EIRs. However, the underlying statutory section, CEQA § 21082.1, governs both Negative Declarations and EIRs. We suggest adding a new CEQA Guidelines § 15070.1 to clarify that the same options are available for preparing Negative Declarations.

**12. Conform Appendix G, Section XVIII(a) to CEQA Guidelines §15065(a)**

Suggested Revision:

Revise Appendix G, Section XVIII(a), as follows (added text underlined):

Does the project have the potential to substantially degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, substantially reduce the number or restrict the range of a rare or endangered plant or animal or eliminate important examples of the major periods of California history or prehistory?

Rationale:

This is a non-substantive change to Appendix G which serves to make the Appendix consistent with the language in the existing Guidelines. CEQA Guidelines §15065(a)(1) specifies that the lead agency shall make Mandatory Findings of Significance if, among other circumstances, the project has the potential to (emphases added):

*substantially* degrade the quality of the environment; substantially reduce the habitat of a fish or wildlife species; cause a fish or wildlife population to drop below self-sustaining levels; threaten to eliminate a plant or animal community; *substantially* reduce the number or restrict the range of an endangered, rare or threatened species. . . .

The suggested revision would make the language in the Appendix G section on Mandatory Findings of Significance identical to the corresponding language in the Guidelines.

In conclusion, CCEEB supports OPR's intent to improve the CEQA Guidelines and provide an environmental review process that is more efficient, effective and meaningful for agencies, applicants and the public. We appreciate the time and effort required to develop revisions to the CEQA Guidelines and are pleased to have the opportunity to work with OPR on these issues. If you have any comments or questions concerning the suggested revisions detailed above, please contact me or Ms. Kendra Daijogo of The Gualco Group, Inc. at (916) 441-1392.



Thank you for your consideration of our comments.

Sincerely,



GERALD D. SECUNDY  
President

cc: Honorable Edmund G. Brown, Jr.  
Honorable Ken Alex  
Ms. Nancy McFadden  
Mr. Cliff Rechtschaffen  
Ms. Martha Guzman-Aceves  
CCEEB Board of Directors  
Mr. William J. Quinn  
Ms. Janet Whittick  
Mr. Norman Carlin  
Mr. Jackson R. Gualco  
Ms. Kendra Daijogo  
Mr. Mark Theisen



**Michael J. O'Neill, REFP**  
**Consultant/Environmental Coordinator**  
**School Facilities and Transportation Services Division**  
**California Department of Education**

## **Potential CEQA Guideline Issues Needing Changes**

### 1) 15314 Class 14 - Minor Additions to Schools

Class 14 consists of minor additions to existing schools within existing school grounds where the addition does not increase original student capacity by more than 25% or ten classrooms, whichever is less. The addition of portable classrooms is included in this exemption.

*Many school districts acting as Lead agency have difficulty interpreting what is meant by "original student capacity" or how to interpret a maximum 25% increase if the addition does not include classrooms. This situation is also needlessly complicated by some recent court cases (Neighbors for Smart Rail v. Exposition Metro) on "baseline" meaning the current situation and consistency with cumulative impacts exception 15300.2 (can or should districts add 10 classrooms each year ad infinitum as exempt?) Under current Education Code 17268c, state funded school projects that are minor additions that are categorically exempt from CEQA are also exempt for review by the Dept. of Toxic Substances Control (DTSC). Perhaps it can be made clear that measuring impacts against "baseline" only applies to EIRs or Negative declarations and does not overrule the categorical language.*

### 2) 15302a Class 2 Replacement or Reconstruction- 50% increase for Schools meeting Seismic safety

Replacement or Reconstruction of existing schools (where the new structure will be located on the same site and substantially the same purpose) to provide earthquake resistant structures which do not increase capacity more than 50%

*Since all construction on public school sites (with the exception of some charters) must meet the Field Act with plans approved by the Division of State Architect, all new construction on a public school site will automatically provide earthquake resistant structures. The exemption language should match the intent that the structures being replaced or reconstructed have significant seismic safety issues as certified by an engineer. Several school districts have utilized this class exemption to demolish existing schools that do not have issues with seismic safety and increase the demolished school's capacity by 50% (and also be exempted from review by DTSC). This seems in conflict with class 14 limits of 10 classrooms/25% increase in original capacity.*

### 3) 15300.2 Exceptions for all classes b) cumulative Impacts

Categorical exemption is inapplicable when the cumulative impact of successive projects of the same type in the same place, over time is significant.

*This section needs clarification for purposes of Class 14, e.g., once 10 classrooms has been added to an existing site, future classroom additions should not be exempt.*



# CALIFORNIA

## ◀ INVASIVE SPECIES

### ADVISORY COMMITTEE

August 16, 2013

Christopher Calfee, Senior Counsel  
Governor's Office of Planning and Research  
1400 Tenth Street Sacramento, CA 95814  
via email to [CEQA.Guidelines@ceres.ca.gov](mailto:CEQA.Guidelines@ceres.ca.gov)

RE: adding invasive species to CEQA guidelines

Dear Mr. Calfee:

Established on February 10, 2009, the Invasive Species Council of California (ISCC) is an inter-agency council that helps to coordinate and ensure complementary, cost-efficient, environmentally sound and effective state activities regarding invasive species. It is chaired by the Secretary of the California Department of Food and Agriculture and vice-chaired by the Secretary of the California Natural Resources Agency, with additional members including the Secretaries of the California Environmental Protection Agency; California Business, Transportation and Housing Agency; California Health and Human Services Agency; and California Emergency Management Agency.

The ISCC has appointed a California Invasive Species Advisory Committee (CISAC) consisting of 24 stakeholders, with representation from local governments, federal agencies, environmental organizations, academic and science institutions, and affected industry sectors. Among the CISAC's first tasks was the creation and prioritization of an invasive species action plan for California. Entitled *Stopping the Spread: a Strategic Framework for Protecting California from Invasive Species*, this plan was formally adopted by the ISCC in August 2011.

We are writing now to inform the OPR that item 10 in the Prevention and Exclusion section of the *Framework* recommends the addition of invasive species prevention to CEQA compliance guidelines:

*"PE-10. Include invasive species prevention in California Environmental Quality Act (CEQA) compliance.*

Some projects that require review under CEQA have the potential to spread invasive species into wildland or agricultural areas. Consideration of this potential effect should become a routine part of the CEQA review process by adding it to the Environmental Checklist Form in Appendix G of the CEQA Guidelines."



More information about the ISCC and CISAC, including a complete copy of the *Framework*, is available at [iscc.ca.gov](http://iscc.ca.gov). Please do not hesitate to contact us if we can be of assistance.

Sincerely,

A handwritten signature in black ink that reads "Victoria Brandon". The script is cursive and fluid.

Victoria Brandon  
Chair, California Invasive Species Advisory Committee

A handwritten signature in black ink that reads "Robert G. Atkins". The script is cursive and somewhat stylized.

Robert G. Atkins  
Vice-Chair, California Invasive Species Advisory Committee

**DEPARTMENT OF  
CITY PLANNING**

200 N. SPRING STREET, ROOM 525  
LOS ANGELES, CA 90012-4801

**AND**

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**CITY PLANNING COMMISSION**

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ROBERT LESSIN  
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VACANT  
VACANT  
VACANT

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COMMISSION EXECUTIVE ASSISTANT II  
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# CITY OF LOS ANGELES

CALIFORNIA



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INFORMATION  
[www.planning.lacity.org](http://www.planning.lacity.org)

August 30, 2013

Christopher Calfee, Senior Counsel  
Governor's Office of Planning and Research  
1400 Tenth Street  
Sacramento, CA 95814  
VIA E-MAIL: [CEQA.Guidelines@ceres.ca.gov](mailto:CEQA.Guidelines@ceres.ca.gov)

RE: Comment Letter on OPR Solicitation for Input on CEQA Guidelines

Dear Mr. Calfee:

On behalf of the City of Los Angeles Department of City Planning, we appreciate the opportunity to provide input into the Office of Planning and Research's (OPR) planned revisions to the Guidelines Implementing the California Environmental Quality Act. We support any change that will bring clarity to individual project applicants, lead agencies, and decision makers. We embrace the guidelines being updated to include new technologies which would help increase participation and access to the CEQA process.

While the City of Los Angeles Department of City Planning is aware this update is currently limited to the CEQA Guidelines and not statutory changes, the substantive changes needed to improve and update CEQA will require legislative actions to update the statute. Our suggestions to both the CEQA Guidelines and the Statute are listed below.

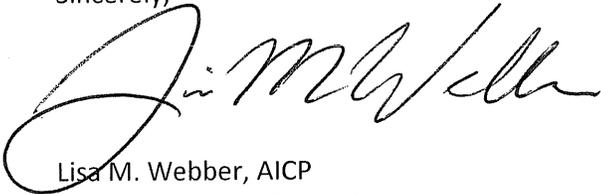
- Please add to section 15087 (b)(5) and (g) of the CEQA Guidelines, where it discusses making copies of the EIR available for public review, that these can be digital and/or CD copies.
- It would be beneficial if both "infill" and "urban" were added to the definition section of CEQA. Currently, what constitutes an infill project is vague in both the existing site condition and local and regional location. If infill were to be better defined, infill projects could be processed much more easily. It would also be beneficial if "new information" were defined to not include speculative, argumentative, inaccurate information to be determined by the lead agency, or information that does not pertain to the environmental impacts of the project.

- Currently, illegal uses that are already in place are considered to be part of the existing environmental baseline. Since their impacts are already part of the baseline, we may not require them to implement the same mitigation measures that we would have required, had they applied before the use was there. By amending the definition of baseline to include only uses that were legally in place at the time of application, we can require these illegal uses to at least mitigate for the impacts that they create. If the definition cannot be amended, perhaps the guidelines could include ways to alter the baseline in the record to what is currently allowed as a use on the site, or what has been approved, to catch illegal or unapproved operations.
- Historically, EIRs were always appealable to Los Angeles City Council. An amendment to CEQA made all environmental clearances appealable to Los Angeles City Council. This, in turn, negated the amendments to the Los Angeles City Charter, which specifically restricted appeals to a single level of appeal. We recommend that CEQA Guidelines Section 21151 (c) be amended to read as follows:
  - (c) If a non-elected decision-making body of a local lead agency certifies an environmental impact report, ~~approves a negative declaration or mitigated negative declaration, or determines that a project is not subject to this division,~~ that certification, ~~approval, or determination~~ may be appealed to the agency's elected decision-making body, if any.
- In reviewing CEQA, the standard for determining if a significant impact exists usually is stated that, if there is "Substantial Evidence" in light of the whole of the record that a potentially significant impact exists, then you must prepare an EIR. The courts have weakened this standard to require only that if substantial evidence exists that a "Fair Argument" can be made, that a potentially significant impact exists, you must prepare an EIR. This has led to projects preparing EIRs out of an excess of caution. Not because a potentially significant impact actually existed, but because a Fair argument could be made one did. We recommend that the CEQA guidelines be amended in such a way as to specifically exclude the "Fair Argument" standard when determining if a potentially significant impact exists. This would place a greater burden of proof on those calling for an EIR for a project. It would also reduce the discretion of the courts, by requiring that Substantial Evidence that a potentially significant impact actually exists before an EIR could be required.
- This is not specifically a CEQA issue, but it is related: At this point in time, any "project" that does not receive a CE must either: pay a Fish and Game fee (approximately \$2000) or request an exemption from DFG. Since most applicants don't find out about this fee until they go to file their NOD, they usually just pay it to avoid further delays. The fact that DFG does not have any offices in Los Angeles County adds to the applicant's burden. It would be helpful if DFG could create a list of projects that are/should be exempt from their fees. In the City of LA, there are a number of actions that require an ND or MND, but do not involve any actual construction. Absent an exemption from DFG, these applicants are required to pay the DFG fee.

Christopher Calfee  
Governor's Office of Planning and Research  
August 30, 2013  
Page 3

Should you have any questions or need additional information regarding our comments, please contact City Planner Karen Hoo at (213)978-1331 or [Karen.Hoo@lacity.org](mailto:Karen.Hoo@lacity.org) or Assistant Planner Diana Kitching at (213)978-1342 or [Diana.Kitching@lacity.org](mailto:Diana.Kitching@lacity.org). We appreciate the opportunity to comment on potential updates to the CEQA Guidelines and potential legislative changes.

Sincerely,

A handwritten signature in black ink, appearing to read "Lisa M. Webber". The signature is fluid and cursive, with a large initial "L" and "W".

Lisa M. Webber, AICP  
Deputy Director of Planning  
City of Los Angeles  
200 N. Spring Street, Suite 525  
Los Angeles, CA 90012



# City of Santa Barbara

## Community Development Department

[www.SantaBarbaraCA.gov](http://www.SantaBarbaraCA.gov)

August 28, 2013

**Director's Office**  
Tel: 805.564.5502  
Fax: 805.564.5506

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

Via electronic mail to [CEQA.Guidelines@ceres.ca.gov](mailto:CEQA.Guidelines@ceres.ca.gov)

**Building & Safety**  
Tel: 805.564.5485  
Fax: 805.564.5476

Re: City of Santa Barbara Comments on CEQA Guidelines Update

**Housing &  
Redevelopment**  
Tel: 805.564.5461  
Fax: 805.564.5477

Dear Mr. Calfee,

In response to your communication of July 1, 2013 soliciting input to the planned CEQA Guidelines update process, following are suggestions for improvements to the CEQA Guidelines for consideration by the Governor's Office of Planning and Research and Natural Resources Agency.

**Planning**  
Tel: 805.564.5470  
Fax: 805.897.1904

Each of these suggested changes would clarify procedural and analytical applications of CEQA and help to appropriately streamline the process and improve defensibility. For any of these items that require legislative action amending the Statute as well as Guidelines, we understand that OPR would need to work with the Legislature to bring about appropriate changes.

**Rental Housing  
Mediation Task Force**  
Tel: 805.564.5420  
Fax: 805.564.5477

1. Time Limitation: Remove arbitrary time limitations on use of environmental documents for subsequent tiering procedures.

There are several provisions in the statute and guidelines that put various time limitations on using environmental documents in subsequent tiering procedures [e.g., Statute 21094 (2) (D); Guideline 15179, etc.]. These time limitations are arbitrary, unnecessary, and conflict with stated objectives for streamlining CEQA processes.

They are arbitrary because analysis in EIRs does not become outdated in any such specified time frame. They are unnecessary because CEQA has other general provisions requiring that EIRs used in tiering processes for subsequent approvals be considered for adequacy for the subsequent use.

There are many instances in which programmatic EIRs may remain valid for longer time periods. As an example, the City of Santa Barbara is a largely built-out city with only incremental additional growth occurring over time, and cumulative impacts do not typically change substantially over a three- or five-year period.

The City recently spent substantial funds on a citywide program EIR for its General Plan update that provides a 20-year cumulative impact analysis. This planning process followed stated objectives of CEQA and the Guidelines for providing policy and cumulative analysis and incorporating environmental mitigation into policy and land use plans, to allow for later streamlining of CEQA analysis. Before EIR certification occurred, additional arbitrary time limits on use of this programmatic General Plan EIR had been added to CEQA.

2. Regulatory Requirements: Clarify consideration of existing State regulatory requirements as well as local development policies and standards for assuming pre-mitigation of impacts.

Guidelines Section 15183 provides for no further environmental document when site-specific effects are adequately addressed with existing development standards. This should be clarified to include existing State or Federal regulatory provisions as well as local development standards.

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93102-1990

3. Tiering: Clarify procedures for various statutory exemption and tiering processes for in-fill development.

Provide clarification on procedures (i.e., analysis required to document project qualification; noticing; findings; NOEs and NODs) for the various Guidelines sections and options providing exemptions and tiering processes for in-fill development, including Guidelines 15183.

4. Baseline: Provide additional guidance on use of projected future baseline conditions rather than existing conditions for identification of some environmental impacts.

Guidelines Sections 15064 (Determining the Significance of Environmental Effects Caused by a Project), and 15152 (Environmental Setting) should be clarified to address the use of an existing conditions baseline and also use of a future baseline in evaluating some environmental impacts, consistent with the recent CA Supreme Court ruling in *Neighbors for Smart Rail v. LA county*.

Note that some of the salient Guidelines language (e.g., "The environmental setting will normally constitute...") is only located in the EIR contents section, although it is also needed and used for Initial Studies and Negative Declarations.

For traffic analysis, comparing the project traffic impact to existing conditions does not provide an accurate or useful characterization of the long-term traffic impact of the project. The recent Guidelines changes to the Appendix G sample traffic questions appeared to recognize this, but the other Guidelines sections on impact analysis should be amended to provide more direct guidance.

5. Exception to Exemption: Delete exception to categorical exemptions for sites on the Cortese list.

There are extensive hazardous materials regulations that require contaminated sites to be remediated prior to redevelopment. Nevertheless Guidelines 15300.2 disallows use of a Categorical Exemption for projects with sites on the Cortese list.

Projects with minor contamination such as a leaking underground tank with a remediation plan approved by the County (local enforcement agency) that may otherwise qualify for a Categorical Exemption may be required to go to the time and expense of an Initial Study and Negative Declaration process because the site is on the Cortese list. The IS/ND process does not provide additional information or value, as the mitigation has already been established and required by the regulatory agency, and a local public hearing on the permit already provides for public scrutiny.

6. Environmental Hazards Affecting Projects: Provide guidance clarifying that CEQA impact analysis includes evaluation of potential effects of the environment on the project.

Text should be added to the Guidelines directly addressing and clarifying that environmental impacts evaluated under CEQA include both potential effects of a project on the physical environment and also potential effects of existing environmental conditions and hazards on new project populations and development.

Examples of such environmental hazards include fault rupture; flooding; landslides and unstable slopes; wildfire hazard; cliff or soil erosion; liquefaction; noise; air pollution; contaminated soil or groundwater; hazardous and flammable materials use; or pipeline, transmission line, well, aircraft, or train safety hazards.

Christopher Calfee  
City of Santa Barbara Comments on CEQA Guidelines  
August 28, 2013  
Page 3 of 3

Thank you for the opportunity to comment. If you have questions about this matter, please contact me or Environmental Analyst Barbara Shelton of this office at the following contact numbers:  
[bweiss@santabarbaraca.gov](mailto:bweiss@santabarbaraca.gov) ; [bshelton@santabarbaraca.gov](mailto:bshelton@santabarbaraca.gov); telephone (805) 564-5470.

A handwritten signature in cursive script that reads "Bettie Weiss".

Bettie Weiss  
City Planner

c. Paul Casey, Community Development Director

September 6, 2013

**VIA ELECTRONIC MAIL**<sup>1</sup>

[CEQA.Guidelines@ceres.ca.gov](mailto:CEQA.Guidelines@ceres.ca.gov)  
c/o Christopher Calfee, Senior Counsel  
Governor's Office of Planning and Research  
1400 Tenth Street  
Sacramento, CA 95814

**Re: CBE Input and Comments on Revisions to the California Environmental Quality Act (CEQA).**

Dear Mr. Calfee:

Thank you for the opportunity to provide input and comments on the Governor's Office of Planning and Research (OPR)'s updates and revisions to the CEQA Guidelines. CBE is a social justice organization with a focus on environmental health and justice. We organize in working-class communities of color because those communities suffer the most from environmental pollution and toxics, and suffer from very high rates of asthma and other respiratory illnesses, heart problems, cancer, low birthrate, and miscarriages. As such, we have focused our input on some of the issues we have faced in advocating for the communities in which CBE organizes and in which our members reside.

**Clarify and Limit the Number of Years after Which an EIR Can No Longer Be Considered an Accurate Environmental Document**

Older EIRs run the risk of containing environmental analyses that would be considered insufficient by contemporary standards as well as approaches to mitigation that are outdated or that lack the benefit of contemporary technologies. A 10-year cut-off, for instance, accepts that local jurisdictions need time to update their planning documents while also ensuring that EIRs are still relatively contemporary in their consideration of environmental impacts and available mitigations.

**Revise Guidelines Sections 15125, 15064 and 15130 to Better Address Environmental Setting and Cumulative Impacts**

*Revisions to Section 15125*

CEQA's requirement that agencies consider the current environmental setting in the EIR review process is critical to environmental justice communities. As explained above, the communities in which CBE organizes and in which its members reside are particularly burdened by the impacts of toxics and other forms of pollution, including the resulting health

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<sup>1</sup> These comments are submitted by electronic mail only to [CEQA.Guidelines@ceres.ca.gov](mailto:CEQA.Guidelines@ceres.ca.gov), per the instructions and solicitation for input provided by the Governor's Office of Planning and Research, at [http://opr.ca.gov/docs/OPR\\_SOI07012013.pdf](http://opr.ca.gov/docs/OPR_SOI07012013.pdf). An email was sent to [CEQA.Guidelines@ceres.ca.gov](mailto:CEQA.Guidelines@ceres.ca.gov) on Aug. 30, 2013 stating the general points that these comments would address and informing the Office of Planning and Research that these detailed comments would be submitted in the following week.

# Memorandum

Via U.S. Postal Mail and Electronically To: [CEQA.Guidelines@ceres.ca.gov](mailto:CEQA.Guidelines@ceres.ca.gov)

Date: August 30, 2013

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

From: Department of Water Resources

Subject: Solicitation for Input  
Guidelines Implementing the California Environmental Quality Act (CEQA Guidelines)

Thank you for the opportunity to provide input into the Governor's Office of Planning and Research as well as the California Natural Resources Agency's efforts to comprehensively review the CEQA Guidelines. The Department of Water Resources (DWR) appreciates the amount of work necessary to undertake a comprehensive review of the CEQA Guidelines and is pleased to provide suggestions for improvements to the CEQA Guidelines as follows:

## 1. Findings for Alternatives (CEQA Guidelines §15091, subd. (b).)

DWR suggests the CEQA Guidelines be amended to bring this CEQA Guideline into conformity with case law decisions.

Public Resources Code, Section 21002 provides that "it is the policy of the state that public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant effects of such projects. . . ."

Public Resources Code, Section 21081 implements that policy by requiring written findings at the end of the CEQA process explaining how the agency has responded to the significant effects identified in an environmental impact report. Since adoption of CEQA Guidelines, Section 15091, the Court of Appeal decision *Laurel Hills Homeowners Association v. City Council* ("Laurel Hills") (1978) 83 Cal. App.3d 515, ruled that if the public agency used mitigation measures alone to reduce all the significant effects to a level of less than significant, then the agency did not need to make findings about alternatives. The rationale of the *Laurel Hills* decision was upheld by the California Supreme Court in *Laurel Heights Improvement Association of San Francisco, Inc. v. Regents of the University of California* (1988) 47 Cal.3d 376.

In bringing the CEQA Guideline into conformity with those decisions, DWR suggests adding subdivision (b) to Section 15091 of the CEQA Guidelines to read as follows:

(b) Addressing alternatives in findings.

(1) Findings may state that an alternative has been chosen to lessen or avoid one or more significant effects on the environment.

(2) If the agency finds that mitigation measures will reduce a significant effect to a level of less than significant, the agency need make no findings about alternatives with regard to that significant effect.

(3) If the agency finds that despite adoption of mitigation measures, the project would still have a significant effect on the environment, the agency must make findings about alternatives. In that situation, the agency findings must either adopt an alternative or explain why none of the alternatives in the Final EIR are feasible to lessen or avoid the significant effect.

The remainder of Section 15091 should be changed as follows:

Existing subdivision (b) becomes (c).

Existing subdivision (c) becomes (d).

Existing subdivision (d) becomes (e).

Existing subdivision (e) becomes (f).

Existing subdivision (f) becomes (g).

## **2. City or County Consultation with Water Agencies (CEQA Guidelines § 15155.)**

DWR suggests adding new sections to provide guidance for adequacy of water supply assessments based on the decision in *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4<sup>th</sup> 412.

The Legislature has required the preparation of water supply assessments for large development projects as defined in Water Code section 10912 and in Public Resources Code section 21151.9. CEQA requires those assessments to be included in EIRs, negative declarations, and mitigated negative declarations prepared on those projects.

For a period of more than ten years after those enactments, every water supply assessment reviewed in a District Court of Appeal decision was found to be inadequate. In the case of *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho*

*Cordova* (2007) 40 Cal.4th 412, the California Supreme Court provided principles for adequacy of water supply analysis under CEQA.

DWR suggests adding new subdivisions (f), (g) and (h) as follows:

(f) Principles for adequacy of water supply assessment under CEQA:

(1) The environmental document shall present sufficient information to permit evaluation of the pros and cons of supplying the amount of water that the project will need.

(2) The analysis shall not be limited to the water supply for the first stage or the first few years of the project. Through tiering, some details of later phases of long-term, linked, or complex projects may be deferred to those later phases, but the need for analysis cannot be satisfied by simply stating that information will be provided in the future.

(3) The discussion shall include a reasoned analysis of the circumstances affecting the likelihood of the water's availability.

(4) Where, despite a full discussion, it is impossible to confidently determine that anticipated future water sources will be available, the analysis shall include some discussion of possible replacement sources or alternatives to use of the anticipated water, and of the environmental consequences of those contingencies.

(5) When an environmental document makes a sincere and reasoned attempt to analyze the water sources the project is likely to use, but acknowledges the remaining uncertainty, a measure for curtailing development if the intended sources fail to materialize may play a role in the impact analysis.

(6) The ultimate question about water supply under CEQA is whether it adequately addresses the reasonably foreseeable impacts of supplying water to the project, not whether the environmental document establishes a likely source of water.

(g) The principles in this section shall also apply to a written verification of the availability of adequate water supplies for a proposed subdivision prepared pursuant to Government Code section 66473.7.

(h) Detailed guidance on preparing water supply assessments and verifications can be found in Guidebook for Implementation of Senate Bill 610 and Senate Bill 221 of 2001 (October 8, 2003) prepared by the California Department of Water Resources.

### **3. Providing Notice to Public Libraries (CEQA Guidelines, § 15087, subd. (g).)**

DWR suggests adding language to this section of the CEQA Guidelines to clarify that electronic copies are acceptable. DWR suggests adding the following clarifying language to subdivision (g) of section 15087 of the CEQA Guidelines:

(g) to make copies of EIRs available to the public, lead agencies should furnish copies of draft EIRs (either in hard copy or electronic format) to public library systems serving the area involved. . . .

In the alternative, a new CEQA Guideline could be added at Section 15008 as follows:

Except where the Act requires otherwise, any time CEQA requires or recommends documents be made available to other agencies or the public, those documents may be made available in hard copy or in electronic format.

### **4. Written Proposed Responses to Responsible Agencies (CEQA Guidelines, § 15088, subd. (b).)**

Like DWR's suggestion at number 3 above, DWR also suggests adding language to this section of the CEQA Guidelines to clarify that lead agencies may provide a written proposed response in either hard copy or electronic format. DWR suggests adding the following clarifying language to subdivision (b) of section 15088 of the CEQA Guidelines:

The lead agency shall provide a written proposed response (either in hard copy of electronic format) to a public agency on comments made by that public agency at least 10 days prior to certifying an environmental impact report.

Alternatively, the above proposal to add new section 15008 to the CEQA Guidelines may also be considered.

## **5. Discretionary Projects Definition (CEQA Guidelines, § 15357)**

DWR suggests amending this section of the CEQA Guidelines to make this section of the CEQA Guidelines consistent with the interpretation of the term “discretionary project” by California courts. Since CEQA Guidelines, Section 15357 was last amended, California courts have issued rulings interpreting the term “discretionary project.” A key decision was *Friends of Westwood, Inc. v. City of Los Angeles* (1987) 191 Cal. App.3d 259, 266, which stated “the touchstone is whether the approval process involved allows the government to shape the project in any way which could respond to any of the concerns which might be identified in an environmental impact report.” The California Supreme Court mentioned this interpretation with approval in *Mountain Lion Foundation v. Fish & Game Commission* (1997) 16 Cal.4th 105, 177. Recent District Court of Appeal decisions following this interpretation include *San Diego Navy Broadway Complex Coalition v. City of San Diego* (2010) 185 Cal.App.4th 924 and *Friends of Juana Briones House v. City of Palo Alto* (2010) 190 Cal.App.4th 286.

DWR suggests amending Section 15357 as follows:

“Discretionary project” means a project which requires the exercise of judgment or deliberation when the public agency or body decides to approve or disapprove a particular activity, as distinguished from situations where the public agency or body merely has to determine whether there has been conformity with applicable statutes, ordinances, or regulations. The key question is whether the approval process involved allows the public agency to shape the project in any way that could respond to any of the concerns which might be identified in an environmental impact report. A timber harvesting plan submitted to the State forester for approval under the requirements of the Z'berg-Nejedly Forest Practice Act of 1973 (Pub. Res. Code sections 4511 et seq.) constitutes a discretionary project within the meaning of the California Environmental Quality Act, Section 21065(c).

## **6. Review for Exemption (CEQA Guidelines, § 15061, subd. (b)(3).)**

DWR suggests amending the term “general rule” as it is used in subdivision (b)(3) of Section 15061 of the CEQA Guidelines. When the California Supreme Court upheld this exemption in the Guidelines in its *Muzzy Ranch Co. v. Solano County Airport Land Use Commission* (2007) 41 Cal.4<sup>th</sup> 372 decision, the California Supreme Court used the term “common sense exception” for this provision rather than the term “general rule” as used in the text of the Guidelines. While the phrase “common sense exception” has become customary in usage by practitioners, it may confuse others who see or hear references to the term but cannot find it in the text of the Guidelines. This proposed

amendment would change the term to match the language used in the Supreme Court opinion.

DWR suggests amending Section 15061, subd. (b)(3) as follows:

- (3) The activity is covered by the common sense exception ~~general rule~~ that CEQA applies only to projects, which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.

Thank you again for the opportunity to provide input to the CEQA Guidelines revisions. If you have any questions regarding the foregoing, or if DWR can be of further assistance to you, please contact Mary U. Akens, Attorney III, at (916) 653-1037.



Cathy Crothers  
Chief Counsel

cc: Liane Randolph, Deputy Secretary and General Counsel  
California Natural Resources Agency  
1416 9<sup>th</sup> Street, Suite 1311  
Sacramento, California 95814

Heather Baugh, Assistant General Counsel  
California Natural Resources Agency  
1416 9<sup>th</sup> Street, Suite 1311  
Sacramento, California 95814

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Christopher Calfee, Senior Counsel  
Governor's Office of Planning and Research  
1400 Tenth Street  
Sacramento, CA 95814  
CEQA.Guidelines@ceres.ca.gov

August 29, 2013

**Response to OPR Solicitation for Input: Revisions to the Guidelines Implementing CEQA**

Dear Mr. Calfee:

These comments are timely submitted on behalf of Carmen Lucas, Kwaaymii Laguna Band of Indians (San Diego). They are informed by her over twenty years as a Native American Monitor, Consultant and Educator. It is her hope that these top priorities for improving the CEQA Guidelines will assist OPR in its scoping for comprehensive review of the Guidelines.

While resources of concern to Tribal Peoples are included within the current CEQA statute, Guidelines and technical guidance,<sup>1</sup> such resources are often not well addressed in the environmental documentation produced pursuant to CEQA. This has resulted in disputes and such resources not being timely or meaningfully considered in decision making.

The following revisions to the Guidelines would provide for **process improvements** in implementing the current CEQA statute:

1. Tribal cultural expertise and tribal interpretations should be specifically referenced in the Guidelines to ensure that more than just archaeological scientific value is considered in the CEQA documents regarding the identification, significance determinations and culturally-appropriate treatment of these kinds of cultural resources.

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<sup>1</sup> See, for example, Public Resources Code section 21084.1; CEQA Guidelines sections 15064.5, 15126.4(b)(3); and California Office of Historic Preservation Technical Assistance Series 6 and 7.

2. Resource identification efforts, technical reports and significance determinations must be completed prior to a decision being made on the project so that decision makers, tribes and the public<sup>2</sup> can be fully informed. Too often these important studies and analyses have been deferred until after project approval, when avoidance and redesign can be more difficult and costly, thereby resulting in significant impacts and conflicts that could have otherwise been prevented.

The following revisions would provide **substantive improvements** in implementing the current CEQA statute:

1. Tribal Cultural Resources, including Traditional Cultural Properties (TCPs) and Cultural Landscapes, should be mentioned as specific types of historic resources in the Guidelines including the Appendix G sample questions. This would better respect tribes, who often feel their voice is excluded from the CEQA framework as presently practiced, and help ensure that these kinds of historic properties will be properly considered within the CEQA process at both the project and cumulative levels.

2. The Cultural Resource and Paleontological Resource/Geologic Features section in Appendix G should be separated. While archaeological, paleontological and geologic resources often may be found below ground, the professional qualifications to identify the three kinds of resources and to respond to the respective Appendix G sample questions, are very different. Separation into their own distinct sections would ensure the complete, fair and respectful consideration of these environmental resources.

The following items offer **practical planning considerations**, perhaps too detailed or technical in nature for the statute, that should be considered for inclusion in the Guidelines or technical guidance regarding cultural resources:

1. Noninvasive tools, such as geoarchaeology, ground penetrating radar and historic human remains detection canines, should be part of the standard cultural resources survey and identification toolkit. Being less invasive, they may be more culturally-appropriate than excavation, as well as more cost effective. CEQA documentation should take full advantage of such advances in technology.

2. Qualified Native American monitors must be part of initial cultural resource surveys. This participation is critical for the early identification of ceremonial sites, sacred places and some forms of burials, particularly cremations. Archaeologists are not qualified to fully identify or understand the cultural significance of these types of historic resources.

In conclusion, Ms. Lucas feels that given the nature of these concerns, combined with Governor Brown's Executive Order B-10-11 (Tribal Consultation), that OPR should make a special effort to consult with tribes throughout the state on the upcoming comprehensive revisions to the Guidelines.

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<sup>2</sup> While recognizing the need for confidentiality pursuant to CEQA Guidelines section 15120(d) and the California Public Records Act sections 6254.10 and 6254(r), among other authority.

Thank you for considering these views. We would be pleased to discuss any of these suggestions and their rationale and legal basis in more detail with OPR staff. Please place my office on the list for future notices and actions on the Guidelines update.

Very truly yours,



Courtney Ann Coyle

Attorney at Law

cc:

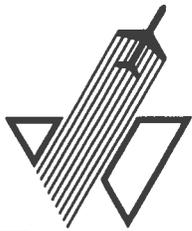
Heather Baugh, Natural Resources Agency

Dave Singelton, Native American Heritage Commission

Susan Stratton, California SHPO

Interested Parties

Client File



**JOHN WAYNE  
AIRPORT**

Orange County, California

**Alan L. Murphy**  
Airport Director

August 30, 2013

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

Dear Mr. Calfee,

John Wayne Airport, Orange County (JWA) appreciates this opportunity to provide comments on your review and possible revision of the Guidelines Implementing the California Environmental Quality Act (CEQA). JWA is owned and operated by the County of Orange. It serves approximately nine million annual passengers and is home to over three hundred based general aviation aircraft.

The following comments are provided for OPR's consideration.

**CEQA Guidelines Section 15082 (Notice of Preparation and Determination of Scope of EIR):** Subdivision (a) should be revised to make clear that the State Clearinghouse/OPR is responsible for distributing NOPs to potentially interested state responsible and trustee agencies. This would bring the NOP process into alignment and consistency with the NOA process for Draft EIRs, as Section 15087(f) directs lead agencies to "use the State Clearinghouse to distribute draft EIRs to state agencies for review" and preclude project opponents from arguing that noticing/distribution procedures were not properly followed. More specifically, the following change should be made (new text shown in *italics*):

"Immediately after deciding that an environmental impact report is required for a project, the lead agency shall send to the Office of Planning and Research and each responsible and trustee agency a notice of preparation stating that an environmental impact report will be prepared. *The lead agency, however, shall rely on the Office of Planning and Research to distribute the notice of preparation to state agencies, including state responsible and trustee agencies, for review.*"

**CEQA Guidelines Section 15088 (Evaluation of and Responses to Comments):** In order to minimize "document dumps," Section 15088 should make clear that comment letters submitted by any commenter must identify the relevance and purpose of any attachments thereto. This should allow commenters to ensure appropriate attention is given to matters of significance to them and help minimize the need to exhaustively evaluate attachments to determine their relevance.

3160 Airway Avenue

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949.252.5178 fax

www.ocair.com



Mr. Christopher Calfee  
August 30, 2013  
Page 2

We propose the following text for a new subdivision (a)(1):

“When evaluating and responding to comment letters, lead agencies need only respond to articulated comments on environmental issues associated with the proposed project. There is no requirement that lead agencies respond to unspecified or untailored comments that do not correlate any given environmental issue to a proposed project. Therefore, to the extent that a comment letter attaches documents or materials not specifically related to a proposed project, the commenter must explain the relationship between the attached materials and environmental impacts arising from a proposed project in order to trigger the lead agency’s responsibility to respond.”

**CEQA Guidelines Section 15125 (Environmental Setting):** The second sentence in subdivision (a) should be revised in light of the California Supreme Court’s recent *Smart Rail* decision as follows (new text shown in *italics*):

“This environmental setting will normally constitute the baseline physical conditions by which a Lead Agency determines whether an impact is significant; *however, an agency may omit the existing conditions baseline from the significance analysis entirely and rely exclusively on a future conditions analysis if inclusion of the existing conditions analysis would be uninformative or misleading.*”

**Mandatory Updates (SB 97)** OPR specifically sought input on SB 97’s requirement to periodically update the State CEQA Guidelines’ provisions concerning “new information regarding greenhouse gas emissions.” It is important to note that no scientifically defensible standards to assess the significance of the airport sector have been identified by the California Air Resources Board or any other California air district at this time. As a result, the manner in which to assess the significance of airport-related projects (on a whole) remains murky and subject to lead agency discretion.

**Substantive Improvements** OPR also specifically sought input on “the role of regulatory standards in a CEQA analysis.” JWA strongly supports the use of regulatory standards to assess environmental significance in order to streamline analysis and eliminate the potential for duplicative and/or inconsistent standards. For example, to the extent a project complies with NPDES permits and standards, water quality concerns may be less than significant. Similarly, to the extent that a project’s buildings comply with the latest iteration of Title 24, energy concerns may be less than significant. In short, to the extent possible, lead agencies should be encouraged and authorized to look to the regulatory standards of agencies with expertise in a given environmental resource category when evaluating significance.

Finally, JWA believes that serious consideration should be given to the adoption of a State CEQA Guideline that squarely addresses the standards by which the exhaustion doctrine is satisfied. The guideline should require that comments be exact and sufficiently specific in order to demonstrate adequate exhaustion.

Mr. Christopher Calfee  
August 30, 2013  
Page 3

Thank you again for the opportunity to provide comments on proposed revisions to the CEQA Guidelines. Please do not hesitate to contact me at [amurphy@ocair.com](mailto:amurphy@ocair.com) or 949.252.5183 with any questions about these comments.

Sincerely,



Alan L. Murphy  
Airport Director

cc: County Executive Officer  
Chief Operating Officer

## Joyce Dillard

ARTICLE 2 GENERAL RESPONSIBILITIES should be addressed as those are abused.

The responsibility falls to “each public agency,” but that agency may not be the one who executes or mitigates the project.

We have found that approval processes bypass the need for honesty and consistency of responsibility in the Public Agency preparing documentation,

FOR INSTANCE, in the CITY OF LOS ANGELES:

*General Plan Amendment to the Bicycle Plan, Chapter 9 of the Transportation Element of the General Plan* was adopted by the LOS ANGELES CITY COUNCIL on March 1, 2011. Under the Mitigated Negative Declaration ENV-2009-2650-MND, the DEPARTMENT OF CITY PLANNING was directed to issue a NOTICE OF DETERMINATION.

CRA/LA COMMUNITY REDEVELOPMENT AGENCY OF LOS ANGELES was the applicant on a Proposition 1C Infill Incentives Grant Application (\$30,000,000) project titled FIGUEROA CORRIDOR.

FIGUEROA CORRIDOR is also known as:

- Figueroa Corridor Qualified Infill Area
- Linking South LA to Downtown: Figueroa Corridor Proposition 1 C Infill Infrastructure Project
- Figueroa Corridor Streetscape Project

The State dissolved redevelopment agencies. The successor agency CRA/LA DESIGNATED LOCAL AUTHORITY asked the CALIFORNIA DEPARTMENT OF FINANCE DOF for approval for Recognized Obligation Payment Schedule ROPS under DOF Line Item 389. Project is described as:

*Proposition 1C Infill Infrastructure Grant: \$30,000,000. Figueroa Corridor: Linking South LA to Downtown Los Angeles. Numerous public improvement projects to serve residents along Figueroa Corridor. Discrete projects include Figueroa Blvd/11th St Streetscape Improvements including protected bicycle lanes, MLK and Washington Blvd Streetscape Improvements, Expo Park Sports Field reconstruction; Venice/Hope Rec Center; Gil Lindsay Plaza park, and Freeway Cap Park Feasibility Study.*

Payee was shown as CITY OF LOS ANGELES/TBD.

DOF denied the item.

Draft Environmental Impact Report was prepared by Lead Agency CITY OF LOS ANGELES DEPARTMENT OF PLANNING under the title:

*2010 Bicycle Plan-First Year of the First Five-Year Implementation Strategy and the Figueroa Streetscape Project*

State Clearinghouse No. is 2012061092 (ENV-2012-1470-EIR).

Project Location was described as CITYWIDE.

Project Characteristics were described:

*The proposed projects consist of the following: 1. First Year of the First Five-Year Implementation Strategy; and 2. Figueroa Corridor Streetscape Project a project centered around separated bike lane and facilitating pedestrian activity on a three-mile stretch of South Figueroa and adjacent streets around the Staples Center. Both projects are described in more detail below.*

After state legislation, the *First Year of the First Five-Year Implementation Strategy of the Bicycle Plan* was removed and the FIGUEROA STREETScape PROJECT remained.

DEPARTMENT OF CITY PLANNING, after a February 14, 2013 public hearing, issued Staff Reports directed to the DEPARTMENT OF TRANSPORTATION for:

1. *First-Year of the First Five Year Implementation Strategy of the 2010 Bicycle Plan* for the Central City North, Central City, and Silverlake/Echo Park/Elysian Valley Community Plans on Sunset Boulevard on April 1, 2013
2. *First-Year of the First Five Year Implementation Strategy of the 2010 Bicycle Plan* for the Northeast Community Plan on May 24, 2013
3. *First-Year of the First Five Year Implementation Strategy of the 2010 Bicycle Plan* for the Central Area on June 21, 2013
4. *Figueroa Streetscape Project* in the Central City, South Los Angeles, and Southeast Los Angeles Community Plans on August 19, 2013

Please note that DEPARTMENT OF CITY PLANNING STAFF REPORTS are prepared for the CITY PLANNING COMMISSION for recommendation to the CITY COUNCIL or authorization to the Delegation of Authority to the DIRECTOR of the DEPARTMENT OF CITY PLANNING (City Charter). There is no authority for DEPARTMENT OF CITY PLANNING STAFF REPORTS to be delegated to another department for approval.

*First-Year of the First Five Year Implementation Strategy of the 2010 Bicycle Plan* was a joint effort of the DEPARTMENT OF PLANNING and the DEPARTMENT OF TRANSPORTATION.

FINAL EIR FIGUEROA STREETScape PROJECT ENV-2012-1470-EIR (State Clearinghouse No. 2012061092) was issued with a CEQA FINDINGS, STATEMENT OF OVERRIDING CONSIDERATIONS AND MITIGATION MONITORING PROGRAM.

LEAD AGENCY listed is:

*CITY OF LOS ANGELES DEPARTMENT OF TRANSPORTATION  
Prepared by CITY OF LOS ANGELES DEPARTMENT OF PLANNING*

Jaime de la Vega, General Manager of the DEPARTMENT OF TRANSPORTATION, issued a GENERAL MANAGER'S DETERMINATION-FIGUEROA STREETScape PROJECT on August 27, 2013. We see no authorization for that authority in the CITY CHARTER.

NOTICE OF DETERMINATION for Figueroa Streetscape Project, ENV-2012-1470-EIR (State Clearinghouse No. 2012061092) was filed with the COUNTY OF LOS ANGELES by the LOS ANGELES DEPARTMENT OF TRANSPORTATION, as LEAD AGENCY.

Who is responsible under CEQA? Lead Agencies switched. The approval did not come from the CITY PLANNING COMMISSION and LOS ANGELES CITY COUNCIL.

Are we expected to sue on these issues in areas that receive STATE OF CALIFORNIA GRANT FUNDING from PROPOSITION 1C?

YOU ASK for comments to:

*Make the environmental review process more efficient and meaningful*

COMMENTS:

Current information is necessary though not practiced. Technology exists, yet those current studies that use new technology are not referred to because they did not exist. For instance, MILLENNIUM HOLLYWOOD Project was adopted without regard to the CALIFORNIA GEOLOGICAL SURVEY.

Regional Plans such as INTEGRATED REGIONAL WATER MANAGEMENT PLANS are not reviewed. The difficulty with legitimizing these types of plans is due to poor process. Appointed insider water agencies and non-profits dominate. There exists no elected representation and public meetings are behind password access. Brown Act posting and Conflict of Interest Codes no not exist.

Complicated in the environmental issue are the REGIONAL WATER BOARDS. Appointed commissions, they approve SEP Supplemental Environmental Reports without circulation under CEQA to the General Public. Alternatives are non-existent. Contracts are not put out to bid.

Decisions are being made on Land Use through Water Governance and Water Permitting.

This is a problem.

YOU ASK for comments to:

*Reflect California's adopted policy priorities, including, among others, addressing climate change, promoting of infill development, and conserving natural and fiscal resources*

COMMENTS:

Climate Change is difficult when the State, as a whole, ignores oil and gas issues. Methane Mitigation is important, yet none is executed, at least in the CITY OF LOS ANGELES. Researchers have used flir camera equipment to show methane outgassing-some at dangerous levels.

Fracking is not addressed in relationship to the dangers of not only contamination, but of seismicity. Imported water is relied on by the populated cities of California. Any disruption of those water conveyance systems would be catastrophic. State Water Project and other conveyances are not even being considered in the fracking issue.

Economic Impacts need to be taken seriously. Statements of Overriding Considerations are too easy to issue.

Infill Development is an excuse for density. In the Urban Setting, density is around transportation, but not necessarily jobs.

*City of Los Angeles Housing Element 2013-2021* has a capacity for around 8 million population when under 4 million was estimated by Southern California Association of Governments SCAG. The Community Plans of Wilshire, Hollywood, Westlake, South Los Angeles, and Southeast Los Angeles are zoned for increased density. LA River Revitalization Master Plan, Urban Waters Federal Partnership LA River Pilot Program, and the Cornfields-Arroyo Specific Plan are planned around increased development, hotels and floor area ratio transfers.

LA River which is a Flood Control Channel is being designed as Recreation with no regard to agency jurisdiction. NORTH ATWATER CROSSING PROJECT Mitigated Negative Declaration was prepared by the CITY OF LOS ANGELES BUREAU OF ENGINEERING (Lead Agency) while County, State and Federal jurisdictions are

ignored and required permits not issued. NEPA is required and no Joint EIS/EA was issued.

We see no direction for the conservation of natural or fiscal resources.

We do not see that the CITY OF LOS ANGELES has taken responsibility for maintaining infrastructure and capital improvements.

Estimated costs for infrastructure improvements, whether sidewalks, roads or water are in the billions. There is no realism of the taxpayers' finances or quality of life.

YOU ASK for comments to:

*Reflect statutory changes to CEQA and cases interpreting CEQA*

1. *Mandatory Updates.*

*SB 1241 (2012) requires the next update to address fire hazards.*

*SB 97 (2007) further requires periodic updates to address new information regarding greenhouse gas emissions.*

COMMENTS:

In the CITY OF LOS ANGELES, the Safety Element was adopted November 26, 1996, CF 96-1810 superseding the 1975 Safety Plan, the 1974 Seismic Safety Plan and the 1979 Fire Protection and Prevention Plan.

*City of Los Angeles Housing Element 2013-2021* did not address fire hazards or mapping.

CEQA was prepared on *Addendum to the Final EIR for the City of Los Angeles General Plan Framework EIR-SCH# 94071030.* They state that the Addendum is not required to be published. They also state:

*As discussed above, mitigation measures identified in the 1996 FEIR and the policies and programs included in the Framework Element would apply to the proposed Housing Element Update, as would the adopted Mitigation Monitoring Plan.*

Greenhouse Gas Emissions are being inventoried, but not released to the public.

YOU ASK for comments to:

*Reflect statutory changes to CEQA and cases interpreting CEQA*

2. *Process Improvements.*

*Suggestions in this category might address the use of technology to generate and distribute environmental documents, clarifying noticing requirements, document submissions, etc.*

COMMENTS:

We suggest that legal publications with low circulation not be used if you wish for the public to address environmental notices. These legal publications can usually be found only in a Law Library.

Areas in poverty do not have access to the technology. That presents a problem in notification.

More than placing information on a website that may not exist for more than a few months, there should be a place reserved for the Public to review ALL environmental releases. We are finding GOOGLE sites being used and not official CITY websites. We abhor and refuse to sign up to receive information, whether on a GOOGLE site, Twitter or Facebook.

YOU ASK for comments to:

*Reflect statutory changes to CEQA and cases interpreting CEQA*

3. *Substantive Improvements.*

*Suggestions in this category might address the topics in the Appendix G environmental checklist, the role of regulatory standards in a CEQA analysis, the role of regional plans in a CEQA analysis, clarifying rules on mitigation and alternatives analysis, etc.*

COMMENTS:

Since the nuclear reactor accident in Japan, missing from Appendix G is the effect on oceans and coasts. We have a new threat in radiation. Oceans, not under a state jurisdiction become more of a consideration for the environment.

We see no requirements for Mitigation Measures to remain effective outside a construction period. That is not the purpose of CEQA. The short term mitigation responsibility needs to be subordinated to a long-term mitigation practice including the operations and maintenance funding.

Watersheds and ecosystems need to be added as categories.

YOU ASK for comments to:

*Reflect statutory changes to CEQA and cases interpreting CEQA*

4. *Technical, Non-Substantive Updates.*

*Such updates might address cross-references, changes to conform to recent statutory updates, etc.*

### COMMENTS:

So much is determined in the courts, yet not all opinions are published. The legislative body is responsible, yet we have no central records to verify action.

The responsible Lead Agencies need to state their responsibilities upfront. The correct the system, one must go to court. That is expensive and only available to the few who can afford it.

There needs to be a system that alerts when a case is decided. The Appellate Court system and Supreme Court system is not combined with the lower court system. Challenges change decisions, yet decisions are made on the lower court decision in effect.

### OVERALL

CEQA lacks the teeth to minimize environmental damage and balance competing public objectives.

Competing public objectives always weighs to the side with the most “gold.”

There is an emphasis on Public Private Partnerships in California which negate the role of the Agencies and their responsibilities to the Public and place a veil over the disclosure in favor of the private company

Lead Agency changes from even when a Lead Agency has taken jurisdiction on a prior CEQA document. That should not even occur.

Economic Impacts are necessary, for more than 12 months but for the worst case scenario vs the model scenario.

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August 27, 2013

VIA EMAIL and US MAIL

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

CEQA.Guidelineupdate@ceres.ca.gov

Re: Response to Solicitation for Input for upcoming revisions to the CEQA Guidelines, 14 CCR §§ 15000, *et seq.* – Request for Reference to Best Management Practices for Mosquito Control in California

Dear Mr. Calfee:

The Mosquito and Vector Control Association of California (MVCAC) would like to formally request that the Natural Resources Agency incorporate the attached Best Management and Practices guidance (BMP Guidance) into the State CEQA Guidelines, 14 CCR §§ 15000, *et seq.* The BMP Guidance was developed by the California Department of Public Health (CDPH) in collaboration with MVCAC to reduce the spread of diseases and reduce the need to use pesticides. A copy of the most recent July 2012 update can be viewed here, <http://www.cdph.ca.gov/HealthInfo/discond/Documents/BMPforMosquitoControl07-12.pdf>.

The last major revision to the CEQA Guidelines was in the late 1990s. The first case of West Nile virus (“WNV”) in California was detected in 2003. Since then, WNV has spread to all 58 counties in California. Over the past 10 years, the rapid spread of WNV has resulted in over 3,625 cases in human with 130 human fatalities and more than 15,038 bird deaths. (See <http://westnile.ca.gov>.) Thus, the next CEQA Guideline revision will be the first time that the regulations can address the important issue of preventing the spread of WNV and other mosquito-borne diseases.

It is ironic that many mitigation measures to address wetlands, stormwater and other potentially significant impacts under CEQA cause the creation of standing pools of water that accelerate the spread of West Nile virus. That does not need to be the case.

The Department of Public Health has developed a BMP Guidance document that contains simple, low cost methods to add movement to water or revise design features to reduce the desirability of the water feature for mosquito habitat, reduce the spread of disease and reduce the need for use of chemical pesticides.

We believe it is critically important for project planners and designers to use the BMP Guidance as a reference tool at the project design phase and when designing their mitigation measures. The CEQA Guidelines is the principle tool used to ensure that project designs do not significantly impact the environment and that all feasible care is taken at the outset to minimize adverse impacts. We therefore urge OPR to include a reference to the BMP Guidance in its upcoming CEQA Guidelines revision.

One suggestion for possible placement of the reference is in section 15126.4. Some suggested language is provided below for your consideration. However, we are willing to work closely with you to determine the appropriate placement and wording for the BMP Guidance document as you develop your initial drafts of the proposed revisions to the CEQA Guidelines.

*Section 15126.4 Consideration and Discussion of Mitigation Measures Proposed to Minimize Significant Effects*

*(a) Mitigation Measures in General.*

*(1) An EIR shall describe feasible measures which could minimize significant adverse impacts, including where relevant, inefficient and unnecessary consumption of energy.*

*(A) The discussion of mitigation measures shall distinguish between the measures which are proposed by project proponents to be included in the project and other measures proposed by the lead, responsible or trustee agency or other persons which are not included but the lead agency determines could reasonably be expected to reduce adverse impacts if required as conditions of approving the project. This discussion shall identify mitigation measures for each significant environmental effect identified in the EIR.*

*(B) . . .*

*(C) Energy conservation measures, as well as other appropriate mitigation measures, shall be discussed when relevant. Examples of energy conservation measures are provided in Appendix F.*

Christopher Calfee  
Senior Counsel, Governor's Office of Planning and Research  
Page 3

*(D) To the extent the project's mitigation measures result in creation of standing water, an EIR shall describe feasible measures to reduce the potential to create habitat for mosquitoes. Examples of appropriate measures are found in the California Department of Public Health Best Management Practices Guidance., <http://www.cdph.ca.gov/HealthInfo/discond/Documents/BMPforMosquitoControl07-12.pdf>.*

The addition of this language would be beneficial to all project proponents. It would add no additional burdens to approval of projects. Rather it would reduce any potential future liability for project proponents from increased pesticide loads on their properties, as well as risk to the neighboring residents from mosquito-borne illness such as West Nile virus or other mosquito-borne diseases.

If you have any questions regarding this request, or the attached information, please do not hesitate to contact me. Thank you for your consideration.

Most sincerely,



Catherine Smith  
Executive Director, MVCAC

August 30, 2013

VIA Email ([CEQA.Guidelines@ceres.ca.gov](mailto:CEQA.Guidelines@ceres.ca.gov))

Christopher Calfee, Senior Counsel  
California Natural Resources Agency  
1017 L Street, #2223  
Sacramento, CA 95814

**Re: Comments from The Nature Conservancy on the Revisions to the Guidelines Implementing the California Environmental Quality Act**

Dear Mr. Calfee:

The Nature Conservancy (TNC) appreciates the opportunity to comment on the revisions to the Guidelines Implementing the California Environmental Quality Act (CEQA). Our comments below cover three main themes: (1) cumulative impact analysis, (2) habitat connectivity, and (3) climate change.

**Addressing Cumulative Impacts**

The Guidelines should ensure a standards-based approach does not prevent cumulative impacts from being addressed in a comprehensive manner. Since the earliest cases interpreting CEQA and the National Environmental Policy Act (NEPA), it has been clear under each statute that the analysis of cumulative environmental effects cannot be satisfied by compliance with individual categorical regulatory program standards.<sup>1</sup> Simply using categorical regulatory standards as a benchmark for satisfying CEQA is insufficient if other factors are in play that make minimal compliance with the standard inadequate to avert adverse effects.

**Landscape-Scale Regional Planning and Mitigation.**

A significant issue with the operation of CEQA is lack of integration with (frequently absent) regional planning. The Guidelines should encourage collaboratively designed plans that integrate regional and local land use, environmental, and infrastructure objectives. The CEQA guidelines should be modified to recognize the need for integration with regional (and local) planning processes, along with other regulatory program incentives and funding options to accomplish this important goal.

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<sup>1</sup> B CEQA Reform: Issues and Options, Barbour and Teitz, April 6, 2005.

Furthermore, the Guidelines should encourage better long range integrated planning to identify potential environmental conflicts early, and to better value conservation lands and reduce climate change risks to people through the development of regional “greenprints” that better define areas needed to protect floodplains and important habitat areas, including wildlife corridors. A framework for incentives to encourage infill development and smart growth, while imposing a more rigorous process for analysis and mitigation of greenfield development and sprawl, should also be developed.

Tools such as “advance mitigation” provide an ability to better protect important conservation lands. Advance or integrated mitigation – sometimes called “Regional Advance Mitigation Programs” (RAMP) – represents a conservation strategy that is a complementary approach to the development of Habitat Conservation plans or Natural Community Conservation Plans (NCCP’s) under California law. These integrated planning frameworks, provide an important foundational baseline to protect important conservation lands and run along with local General Plans to guide land use decisions.

### **Habitat Connectivity**

The California Essential Habitat Connectivity Project<sup>2</sup> notes the importance of habitat connectivity “because a functional network of connected wildlands is essential to the continued support of California’s diverse natural communities in the face of human development and climate change.” The Guidelines should strengthen the tie to habitat connectivity and provide more clarity on the subject. Additionally, the Guidelines should require analysis and planning for the effects climate change will have on habitat corridors and species migration.

### **Greenhouse Gas Mitigation**

Appendices F and G should be modified to more explicitly include guidance related to biological greenhouse gas (GHG) emissions. Appendix F only focuses on energy and should be expanded to include natural resources. Appendix G, section VII, should include more specific questions related to impacts to natural resources and resulting GHG emissions.

### **Climate Change Adaptation**

#### *Baselines Should Account for Climate Change*

Rapid climate change presents major risks even within a short planning horizon and thus, climate change adaptation should be addressed in the Guidelines. The Council on Environmental Quality (CEQ) offers the following examples of how climate change can affect the environment of a proposed action:

[C]limate change can affect the environment of a proposed action in a variety of ways. For instance, climate change can affect the

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<sup>22</sup> <http://www.dfg.ca.gov/habcon/connectivity/>

integrity of a development or structure by exposing it to a greater risk of floods, storm surges, or higher temperatures. Climate change can increase the vulnerability of a resource, ecosystem, or human community, causing a proposed action to result in consequences that are more damaging than prior experience with environmental impacts analysis might indicate. For example, an industrial process may draw cumulatively significant amounts of water from a stream that is dwindling because of decreased snow pack in the mountains or add significant heat to a water body that is exposed to increasing atmospheric temperatures. Finally, climate change can magnify the damaging strength of certain effects of a proposed action.<sup>3</sup>

Given these potential impacts, it is important to consider the changing climate when establishing a baseline for a proposed project. The recent Court of Appeal decision in *Neighbors for Smart Rail v. Exposition Metro line Construction Authority (Smart Rail)* (2012) 204 Cal.App.4<sup>th</sup> 1480 affirmed the use of a “future baseline” approach, similar to the approach in the CEQ’s Draft NEPA Guidance (discussed below). The court reasoned that the conditions that existed at the time of the EIR would no longer exist when the project came online and over the life of the project, and so reliance on existing conditions “would rest on the false hypothesis that everything will be the same 20 years later.”<sup>4</sup>

Climate science is well-established now to leave little doubt as to the impacts we are already experiencing and that will only worsen in time. Like population growth in Los Angeles in the *Smart Rail* case, climate change is not hypothetical; it is inevitable. The Guidelines (section 15125) should require EIRs to include a description of the physical environmental conditions in the vicinity of the project, as they exist at the time the notice of preparation is published, as well as an analysis of the effects of the project on the environment, given changes in the project’s operating conditions as a result of climate change. A changing climate can alter how the project impacts the environment. If possible, an EIR should address such effects since they are effects caused by the project, although in conjunction with other factors.

Guideline 15126.2(a) states that an EIR should consider siting decisions that expose people to hazards such as flooding, sea level rise and wildfire. These are also reflected in the Appendix G guidelines although climate change adaptation is not explicitly discussed. The guidelines and checklist should be clarified to address how climate change adaptation should be analyzed and addressed under CEQA. These changes could involve specific changes to significance thresholds (for example, to the flooding standard commonly used in EIRs) or broader changes that address

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<sup>3</sup> <http://www.whitehouse.gov/sites/default/files/microsites/ceq/20100218-nepa-consideration-effects-ghg-draft-guidance.pdf> at 6-7.

<sup>4</sup> *Neighbors for Smart Rail v. Exposition Metro line Constr. Auth.*, Case No. B232655 (2d Dist. Ct. App.) decision affirming trial court judgment (Apr. 17, 2012), p. 15, 204 Cal. App. 4<sup>th</sup> 1480 (decision depublished pending appeal to California Supreme Court), 2012 Cal. App. LEXIS 434, \*17.

adaptation more generally. Specifically, § 15126.2(a) should address adaptation and the effects on fire, flood, sea level rise on a project baseline and add habitat corridors that plan for a changing climate. *Additionally, projects sited in an area made riskier by climate change should require CEQA analysis.*

Guidance 15064(d) requires a lead agency to consider “direct physical changes in the environment which may be caused by the project and reasonably foreseeable indirect physical changes in the environment which may be caused by the project”. Where there is no question that adaptation impacts are foreseeable “project impacts,” they must be analyzed and addressed. The Guidance should clarify that when impacts from climate change are reasonably foreseeable, environmental analysis is required. If, for example, a project is in an area that is subject to inundation in the future, and the project will require protection from inundation where none would otherwise be required. This is notably true even if the adaptation that will ultimately be required is outside of the approving agency’s jurisdiction.

Also, when it is reasonably foreseeable that climate change will compound or lengthen a project’s impacts on the environment, further assessment of mitigation and alternatives should be required. Under 15162(e)(2), reasonably foreseeable climate change projections should be addressed in the assessment of a “no project” alternative, when discussing “what would be reasonably expected to occur in the absence of the project?”

#### *Water Supply Analysis Should Account for Climate Change*

There is no authority that specifically addresses how climate change adaptation is to be addressed in water supply assessments. CEQA already requires water forecasting to ensure a project has a reliable water supply. Failure to account for climate change in this forecasting would undermine the analysis and compromise informed decision-making. Adaptation and management of risk should be considered in water planning for water supply and environmental benefits.

Some agencies have begun incorporating discussion of climate change into Water Supply Assessments.<sup>5</sup> Climate change issues have also already arisen in litigation regarding the State’s water supply infrastructure that could affect Water Supply Assessments. In 2007, Judge Wanger in the Eastern District of California invalidated an Endangered Species Act Biological Opinion regarding the effects of the operation of the Central Valley Project and the State of California’s State Water Project on the delta smelt.<sup>6</sup> The Biological Opinion did not consider the effects of climate change on water supply. After noting the evidence before the Fish and Wildlife Service of the effects of climate change on precipitation, the Court wrote “the climate change issue was not meaningfully discussed in the biological opinion, making it impossible to determine whether

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<sup>5</sup> [http://www.co.mendocino.ca.us/planning/pdf/FINAL\\_UVAP\\_WATER\\_STUDY.pdf](http://www.co.mendocino.ca.us/planning/pdf/FINAL_UVAP_WATER_STUDY.pdf).

<sup>6</sup> *Natural Resources Defense Council v. Kempthorne*, 506 F. Supp. 2d 322 (E.D. Cal. 2007).

the information was rationally discounted because of its inconclusive nature, or arbitrarily ignored.”

The Department of Water Resources’ 2009 Update to the California Water Plan states the following “research” goal:

The State should fund a research study to evaluate the effectiveness of SB 610 and SB 211 in coordinating land use and water supply planning, and recommend changes to these laws or their implementation as appropriate. The State should develop guidance on how SB 610 and SB 221 water supply assessments and verifications should address the effects of climate change and Delta export uncertainties on supply reliability.<sup>7</sup>

This type of guidance could have a broad impact and should be provided.

#### *CEQ Guidance Can Serve as a Model*

The CEQ NEPA Draft Guidance for Greenhouse Gas Emissions and Climate Change Impacts<sup>8</sup> can provide a model for California in integrating climate change adaptation into its CEQA analysis.

The CEQ Guidance contains recommendations about how adaptation considerations should be taken into account in scoping and the level of attention and detail to be afforded adaptation issues. CEQ instructs that agencies should identify which climate change effects warrant consideration, how climate change may in turn change the impact, sustainability, vulnerability, and design of the proposed action (and alternatives).<sup>9</sup> CEQ also directs that climate change impacts should be incorporated into the reasonably foreseeable future condition of the affected environment for the “no action” alternative and used as a basis for evaluating alternatives.

The U.S. Forest Service has also issued initial guidance on considering climate change in project-level NEPA analysis. It emphasizes the importance of incorporating climate adaptation considerations into pre-NEPA analysis “to develop purpose and need statements and proposed actions designed to address climate change effects on the local environment.”<sup>10</sup> The Forest Service guidance specifically mentions that, when developing alternatives, it may be appropriate to include alternatives that “enhance adaptive capacity.”<sup>11</sup>

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<sup>7</sup> [http://www.waterplan.water.ca.gov/docs/cwpu2009/0310final/v2\\_all\\_cwp2009.pdf](http://www.waterplan.water.ca.gov/docs/cwpu2009/0310final/v2_all_cwp2009.pdf), at 556.

<sup>8</sup> <http://www.whitehouse.gov/sites/default/files/microsites/ceq/20100218-nepa-consideration-effects-ghg-draft-guidance.pdf>

<sup>9</sup> NEPA Draft Guidance for Greenhouse Gas Emissions and Climate Change Impacts, 75 Fed. Reg. 826 (Feb. 23, 2010), at 2, 6.

<sup>10</sup> USDA FOREST SERV., CLIMATE CHANGE CONSIDERATIONS IN PROJECT LEVEL NEPA ANALYSIS (2009), at 2.

<sup>11</sup> *Id.* at 4.

The state has produced a number of guidance documents on adaptation that can also be used as reference, including the Climate Adaptation Strategy and The Adaptation Planning Guide.<sup>12</sup>

We appreciate your consideration of TNC's comments on the revisions to the CEQA Guidelines and would be happy to provide additional clarification and feedback.

**Contact: Alexandra Leumer, [aleumer@tnc.org](mailto:aleumer@tnc.org)**

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<sup>12</sup> <http://www.climatechange.ca.gov/adaptation/strategy/> and [http://resources.ca.gov/climate\\_adaptation/local\\_government/adaptation\\_policy\\_guide.html](http://resources.ca.gov/climate_adaptation/local_government/adaptation_policy_guide.html)



August 19, 2013

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

**SOLICITATION FOR INPUT: REVISIONS TO CEQA STATUTES AND GUIDELINES**

Dear Mr. Calfee,

I would like to offer the attached observations and suggestions for revisions to the State CEQA Guidelines. These comments represent my perspective from 33+ years of experience as a practicing professional planner in California, most of which has been engaged in the preparation and management of CEQA documents for public agencies and private business entities. My primary concern is to help with streamlining the practice of implementing CEQA to reduce burdens on project applicants and lead agencies, without sacrificing the environmental quality objectives for which CEQA was adopted. I think we can achieve valuable streamlining through changes in the Initial Study Checklist that focus the analyses and discussions of environmental effects more closely with what can be effectively addressed through project design and the span of authority of local government decision-makers. Another key idea proposed is to create a new and separate Initial Study Checklist for plans and programs, which emphasizes the policy level actions and related environmental implications, rather than creation of cumbersome discussions that are crafted to respond to the generic questions that were designed for project level significance determinations and related alternatives and mitigation measures.

I would be happy to discuss my suggestions with you in further detail and wish you the best of luck in this difficult and important effort to improve the California Environmental Quality Act.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Randy A. Nichols'.

Randy A. Nichols, LEED GA  
Principal Consultant



August 27, 2013

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

Dear Mr. Calfee:

Planning & Conservation League, and Planning & Conservation League Foundation, a 501(c)(4) and (3) whose combined mission is to protect California's environment and its people, thanks you for the opportunity to comment on revisions to the California Environmental Quality Act (CEQA) Guidelines and submits the following comments, divided into process improvements, substantive improvements, and technical improvements.

#### Process Improvements

- Language Access
  - o Nearly 20% of Californians speak limited to no English.
  - o CEQA's purpose as a public process fails if it has no mechanisms for alerting such a large portion of our population to potential projects that may affect them.
  - o Pursuant to California Code of Regulations (CCR) § 15140, EIRs shall be written in "plain language."
  - o It is appropriate and necessary for the Office of Planning and Research (OPR) to provide guidance on making the CEQA process accessible to the large portion of Californians for whom "plain language" requires a language other than English.
  
- Mitigation Enforcement
  - o Mitigation is the "heart of CEQA," yet the process for public enforcement is unclear.
  - o Where mitigation is not being implemented, specific guidance should address: how a party interested in enforcing may first give notice to the agency alleged to be in violation, and how much time that agency has after being given notice to begin implementing mitigation before a suit can be brought. This was attempted through a legislative vehicle this year, SB 754 (Evans), but to the extent that this can be clarified in the Guidelines based upon current statutory and case law, it should be.



- Baseline
  - The wide judicial discretion in choosing a baseline for environmental analysis has resulted in wildly different and confusing considerations. Some baselines have been determined to start years into a predicted future, and others start after illegal actions have been undertaken that change the nature of the land, such as removal of sensitive habitat.
  - At a minimum, baselines should not benefit an actor who engaged in illegal or unpermitted actions.
  
- Level of Service
  - Level of service is a useful but outdated tool for addressing traffic impacts, and related safety and air quality, on an area. There are arguments that it is a useful tool, and there are arguments that it promotes automobile traffic as opposed to alternatives.
  - It is inappropriate at this time to remove Level of Service as a tool altogether, but a comprehensive alternative is needed that allows for and promotes pedestrian and transit alternatives.
  
- Record Costs
  - CEQA allows petitioners to elect to prepare the record. Public Resources Code § 21081.6(a)(2) provides that, at the time of project approval, public agencies have a mandatory duty to (1) gather the record of proceedings supporting their approval, and (2) lodge that record with a specified custodian at a specified location.
  - Some public agencies have refused to produce record documents in response to a petitioner's Public Records Act request and have charged petitioners for staff time to collect and produce such documents after litigation has been filed. Public agencies have no basis for charging to produce a record they are already obligated to produce, or for charging to allow a petitioner access to inspect such records.
  - The Guidelines should implement PRC § 21081.6(a)(2) and support the ability of petitioners to prepare the record of administrative proceedings by including provisions that (1) mirror § 21081.6(a)(2), by requiring agencies to designate to location and custodian of the record of proceedings at the time of project approval; (2) forbid public agencies from charging a petitioner for staff time spent gathering records the agency was required by law to gather and lodge with a designated custodian at the time of project approval; (3) recognize that petitioners may request under the Public Records Act to inspect the already gathered and lodged documents that comprise the record at no charge; and (4) limit the agency to only recovering its direct cost of copying such documents, to the extent the petitioner requests the agency to provide such copies rather than making her own at the time of its Public Records Act inspection.

### Substantive Improvements

- Social and Economic Impact Analysis
  - Socio-economic impacts and environmental issues overlap, yet current CEQA interpretation has failed to fully address this intersection.
  - For example, new development can increase the cost of living for existing low-income residents, which in turn limits budgets for adequate food and medical

care. These resource strains, combined with increased stress, diminish public health.

- The Guidelines should incorporate environmental justice assessment where appropriate into the analysis required under CEQA.

- Use of Existing Certified Specific Plans

- Current law allows projects to tier back to specific plans approved as far back as January 1, 1980, meaning that those are plans whose processes were begun in the 1970's, an era when a different ethic of development dominated.
- Limiting tiering to more recent specific plans would ensure that such plans reflect current thinking on urban planning priorities and thus promote more advanced understanding of what constitutes “sustainable growth” and “smart” infill.

- Protect the Public Health

- The protection of the public health and safety is in the intent of the CEQA, in PRC § 21000(d), “it is the intent of the Legislature that the government of the state take immediate steps to identify any critical thresholds for the health and safety of the people of the state and take all coordinated actions necessary to prevent such thresholds being reached.”
- Pursuant to CCR § 15126.2, an EIR shall “analyze any significant environmental effects the project might cause by bringing development and people into the area affected. For example, an EIR on a subdivision astride an active fault line should identify as a significant effect the seismic hazard to future occupants of the subdivision. The subdivision would have the effect of attracting people to the location and exposing them to the hazards found there.”
- Recent Appellate Court decisions conflict with CEQA’s intent and have questioned these guideline provisions. These decisions cannot be squared with the Supreme Court’s consistent and repeated admonishments for over 40 years that “CEQA is to be interpreted ‘to afford the fullest possible protection to the environment within the reasonable scope of the statutory language.’” (*Mountain Lion Foundation v. Fish & Game Com.* (1997) 16 Cal.4th 105.). See also *Save the Plastic Bag Coalition v. City of Manhattan Beach* (2011) 52 Cal.4th 155, 175; *Sunset Sky Ranch Pilots Ass’n v. County of Sacramento* (2009) 47 Cal.4th 902, 907; *Muzzy Ranch Co. v. Solano County Airport Land Use Com’n* (2007) 41 Cal.4th 372, 381; *Laurel Heights Improvement Assn. v. Regents of University of California* (1993) 6 Cal.4th 1112, 1144; *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 563; *Napa Valley Wine Train, Inc. v. Public Utilities Com.* (1990) 50 Cal.3d 370, 376; *Concerned Citizens of Costa Mesa, Inc. v. 32nd Dist. Agricultural Assn.* (1986) 42 Cal.3d 929, 939; *Wildlife Alive v. Chickering* (1976) 17 Cal.3d 190, 198; *Bozung v. Local Agency Formation Com.* (1975) 13 Cal.3d 263, 274; *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 83; *Friends of Mammoth v. Board of Supervisors* (1972) 8 Cal.3d 247, 259.
- No changes should be made to weaken CCR § 15126.2. However, if changes are made they should strengthen and clarify that the public health and safety is an environmental concern and as such, reviews under CEQA must examine how a project’s site will affect the health and safety of those brought to the project.

- Address Displacement of People and Benefits in Infill
  - o In the push to create more infill, existing communities are sometimes left out, either unable to afford to live in the “revitalized” areas or unable to access the benefits because they lack the job skills for the newly created jobs or the income to take advantage of new amenities.
  - o The Guidelines should establish best practices for how to address displacement, including but not limited to mixed-use housing projects, rent control, job skills centers, as well as measures designed to increase the participation of the likely-affected communities.

#### Technical Improvements

- Use of the Internet
  - o Although improvements are currently under development in OPR and the Legislature, we want to emphasize that prompt submission of documents in an electronic format is critical for Californians to be able to access and review information. It will also save paper and labor in the future.

Thank you for this opportunity to comment. Questions may be addressed to Abigail Okrent at [aokrent@pcl.org](mailto:aokrent@pcl.org) or (916) 822-5633.

Sincerely,



Abigail Okrent  
Legislative Director  
Planning & Conservation League

**Suggested Revisions to CEQA Guidelines**  
**by Randy A. Nichols, LEED GA, Principal Consultant of p3 services**  
**August 19, 2013**

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**Preamble/Over-Arching Concern: Provide Meaningful Environmental Analysis While Streamlining to Reduce Obstacles to Economic and Community Investments**

A primary objective of CEQA has always been to consider environmental consequences and identify ways to avoid, reduce, offset or compensate for significant effects, prior to approving a project that requires some form of a discretionary approval and changes the environment in some substantial way. In practice and intent, CEQA is also an important part of the community and project planning process, because it can [but often does not] provide for a meaningful consideration of environmental consequences of proposals and alternatives that would change the use of land or the marine environment in some significant way. With this guiding principle, the Initial Study Checklist questions should be written in a way that fosters productive analysis of a project design and its location, so that meaningful revisions can be made in the early stages of planning that result in avoidance of significant impacts and maintains the integrity of the project objectives. This requires a focus on aspects that are actually under the direct control of the project applicant as well as the lead agency. If the topic of concern is so generalized or is something that is of broad societal concern, rather than site or project specific, and is driven by consumer behavior or manufacturing processes more than the project design, it should not be subject to the CEQA process. Such impacts/issues are better addressed at the level of a jurisdiction, region, service district or statewide, through comprehensive plans, programs and regulatory frameworks.

Consumer behavior and manufacturing processes cannot be dictated or regulated through land use authority and are usually outside of the scope of influence of the project developer. Examples of these include personal or business-level choices of modes of transportation, trip purposes, solid waste generation and disposal and energy production and consumption. Other examples include the products, materials and processes that actually generate environmental impacts of concern, such as material packaging and associated waste disposal requirements, tailpipe emissions and controls, use of combustion engines for heavy construction, combustion engine technology and types of fuels, etc. These processes and technologies are the primary sources of solid waste and air pollutant emissions problems, yet they are outside of the purview of land use authority and also outside of the control of most project proponents who do not control manufacturing processes or energy related technologies. There simply is no effective way to implement CEQA to modify project-level impacts that result from behaviors and processes that cannot be regulated through land use authority. What purpose does it serve, then, to analyze, potential indirect criteria pollutant or GHG emissions and solid waste generation based on land use proposals? This is cumbersome and ineffective, especially considering the imprecise way that our popular air quality emissions models predict emission from various land uses.

Developers design for the primary space and location needs of their consumers. So, for housing developers, it is about lot size and housing product, access to highways and freeways, proximity to schools, jobs and services, ready connection to the energy grid, etc. Why do we bog down the CEQA process to analyze impacts of consumer behavior that cannot be controlled through

the land use design process, such as emissions from vehicle trips, household appliance energy demands, solid waste disposal and landfill impacts, etc.? Developers and lead agencies have no control over who buys and rents market rate homes, so no control over where they work, where they shop, etc. that determines vehicle miles traveled and emissions due to commute, shopping and other trips. Why measure those emissions, then as part of a land use approval process? Why measure emissions from household appliance use in the CEQA process? Developers do not control consumer behavior associated with appliances and often don't select the major appliances that come with the home purchase. In our free enterprise system, we don't want to control consumer choices on what stove or refrigerator they buy or mandate they buy a certain type of low or zero emissions automobile. That is well outside of the local government authority. So why analyze impacts from consumer choices in a process where no meaningful options are available and there is really no effective way to eliminate or significantly reduce impacts? This is a waste of time and money for all involved and does not improve the environment.

This basic perspective of analyzing environmental effects in ways that focus on aspects of the project that can actually be modified and effectively reduced through design features or spatial configuration should govern the selection of topics for analysis in an Initial Study effort at the **project** level. Further, it is likely that most Californians would support efforts that build and maintain a sustainable economy while protecting environmental quality and foster a sustainable, healthy environment. So, wherever CEQA can be streamlined to reduce the time and costs involved in a project approval process, without compromising environmental objectives, this reduces obstacles for the business community, our public institutions, and non-profits to make major investments, particularly involving land development.

#### **Key Issues:**

##### **A. Regional vs. Local and Site Specific**

Is there a regulatory program already in place that establishes project design criteria and review procedures to avoid significant impacts on a regional scale? One example of this is the Basin Plans administered by the California Water Quality Control Boards. When project-level impacts to Waters of the U.S. exceed the applicable permit thresholds, compliance with NPDES Water Quality Permit regulations administered by each RWQCB ensures that individual project level impacts are sufficiently mitigated to meet regional water quality objectives and also to mitigate localized impacts. In many counties, there are also Drainage Area Master Plans ("DAMP") that provide additional design criteria to meet subregional water quality objectives. In Orange County, for example the DAMP now requires a Low Impact Development approach to storm drainage system design. In a CEQA analysis where a project is governed by an existing regulatory program that provides performance standards and design criteria to avoid or reduce potential impacts to less than significant, as a condition for a permit approval, the emphasis should be on showing how the project complies with the applicable standards and regulations, or on impacts that would result from non-compliance.

##### **B. Impacts that are technology-dependent and regional or global in nature**

Should these issues be subject to CEQA? They create significant environmental impacts, but are often not controllable by a project applicant or a lead agency, and are often already regulated

through controls on manufacturing and construction processes. Specific examples are discussed below.

Energy-related emissions depend on the specific technology of energy systems and sources, how the energy is distributed to consumers, and the behavior of energy consumers. Except when the project is a utility-scale energy generation/transmission facility or some other large-scale power generation facility owned and operated by a single land use, these cannot be controlled by the project applicant. There are few options available in the design of typical development projects except for a limited range of choices about types of energy systems, i.e. connect to grid versus on-site production for each consumer unit (a solar PV system for a house or an apartment or an office). Emissions from private automobiles and trucks or vehicle fleets maintained by businesses, governments, educational systems, etc. result from the specific types of engine technology, fuels used to power those vehicles, and the frequency, destinations and lengths of vehicle trips. We can roughly estimate potential emissions based on very limited samples of driving behavior associated with different types of land use, but that doesn't provide any information that can help to reduce the transportation emissions at the tailpipe level. Furthermore, while trip sharing and mixed uses can be identified as policy preferences as ways to reduce trip volumes and trip lengths and thereby transportation emissions, the actual trip decisions cannot be directly regulated or enforced. Consideration of different urban forms as a way to reduce average trip lengths and total vehicle miles traveled is something to consider at a programmatic level, such as through a general plan program. This cannot be addressed effectively at the level of an individual project.

Emissions generated due to consumption of energy can also be roughly quantified, but this rarely results in decisions by project applicants or Lead Agencies to modify building or site design to facilitate use of renewable energy sources or sharing of energy sources and wastes, so what good is such analysis with respect to the CEQA purpose of avoiding and reducing air quality and GHG impacts from energy usage? Decisions to incorporate on-site renewable energy mechanisms are usually made because this is considered to be desirable to the target consumer who will buy or rent the land use product, is part of a company's mission or philosophy, provides a good return on investment or is mandated by some regulatory framework. All of these types of choices are outside of the scope of a land use decision process and thus should be outside of the CEQA process.

CEQA has been around for more than four decades now and it has not produced any meaningful changes in air pollution sources, energy technologies, transportation patterns, consumer behaviors, etc. that are responsible for the vast majority of air quality problems. Meaningful changes in these areas have only resulted from legislative mandates, business innovation, tax incentives, and education. It is evident that CEQA is an ineffective way of dealing with the indirect emissions effects associated with land development and land use actions.

This also applies to analysis of project level GHGs---there is no method of determining whether GHGs generated by an individual land use proposal could have a significant effect on global climate change, so why spend time and money to do that? Any 'thresholds' that may be established by a local lead agency are an artificial construct that provides a method to screen out certain projects while subjecting others to a closer review. Except for projects that are actually generating energy, or involve industrial processes that have direct GHG emissions, where the energy production technology is the subject of review, there is little, if anything, that

can be done to reduce GHGs through a land use action that would have a meaningful effect on regional or global climate change. So, does it really make sense to quantify air pollutant or GHG emissions for an individual project when most of those impacts are a result of specific energy technologies and building designs that are selected?

Is it appropriate or legal for local government agencies dictate choices of electrical energy sources for new land uses, even if there is a clear public purpose such as reducing criteria pollutants and GHGs? This is feasible if the municipality also controls the sources of electrical energy and is the local utility purveyor. But this is typically not the case, so why require assessment of impacts associated with energy usage unless the project is to generate energy? A more useful analysis is to assess the GHG profile to determine volumes, concentrations, spatial impacts and to examine alternatives that would reduce GHG levels. The determination of impact significance would be based on whether the project is consistent with some pertinent GHG Reduction Plan that was established, in part, to regulate these GHG sources, and also on whether the Applicant has demonstrated a “good faith effort” to consider alternatives that would substantially reduce the GHG levels produced by the project. This might include, for example, an alternative that avoids use of more volatile GHGs by substituting less volatile GHGs, as well as absolute reductions of GHGs altogether. A flexible approach would also allow lead agencies to consider the use of offsets at other properties, or perhaps purchase of GHG “credits” as a way to reduce the total GHG net impact of a project.

The CARB Scoping Plan aims to reduce statewide GHG emissions through broad, economic sector-based approaches that must be implemented at the manufacturing level or at the utility scale, or through increasing consumer choices, and cannot be effectively implemented through land use design features. Some of these impacts that occur as a result of building design are being addressed through the CBC Green Building Code standards and more stringent standards adopted by a variety of local governments. A new project cannot be built unless it complies with such standards. Does analysis of energy-related emissions based on types of land uses and the types of buildings and estimated vehicle trips produce any meaningful information that leads to significant modifications to a project design and significant reductions in energy-related emissions that occur off-site, at the energy production source? No, it doesn't. So why include such analysis in a CEQA document? This is a waste of time and money and does not enhance the decision-making process or result in any significant reduction of air pollution or GHG impacts.

#### *Local Sourcing and Transportation Emissions*

Local sourcing of food and building materials can significantly reduce transportation related emissions impacts, compared to the emissions generated by many food products and building materials that must be transported hundreds or thousands of miles. But, should materials sourcing be a subject of CEQA analysis?

#### **C. Project vs. Program Level of Review**

It is sheer folly to estimate quantities of GHGs and criteria air pollutants for a 25 year land use plan, which is not likely to occur exactly as shown on the map and where changes in building technology, automobile technology, materials, trip patterns, etc. will change levels and concentrations of emissions over time. What good does it really do to perform all these

calculations and force some sort of significance determination? There are no practical or regulatory thresholds for rough estimates of a long range planning scenario. A more meaningful purpose of a quantification effort is to examine trade offs in different approaches to a community land use plan, not to try to predict specific environmental impacts or precise thresholds at which the plan would somehow trigger a significant impact. Environmental implications should be examined critically as part of a general plan process, but should the same thresholds apply and the same requirement to make determinations of significance apply as those that have been defined to assess the impacts of an individual project? NO.

How about a Climate Action Plan or a GHG Reduction Plan, which is intended to reduce the influence of anthropogenic-based GHG emissions that are accelerating climate change in ways that are already impacting the biological balance of the planet and human adaptation strategies for survival. Why subject all of this to some sort of generic CEQA process and analysis when the objective is to devise strategies across multiple economic sectors and in land use and transportation systems to reduce emissions in ways that are effective, without constraining economic opportunities? Quantification of potential emissions based on different planning scenarios should be done to inform the planning process, but not for the purpose of identifying potentially significant impacts under CEQA. An alternative to calculating estimated emission levels is to provide a qualitative discussion that demonstrates how particular policy approaches affect GHG generation so that alternative approaches can be compared in terms of more versus less or significantly more or significantly less or more of certain types of GHGs that are more volatile than others, etc. The plan itself may offer extensive quantification, including baseline inventory estimates and projections of broad emission levels or anticipated changes associated with different scenarios. If a particular GHG Plan includes some sort of incentives or even requirements for on-site renewable power, there could be discussion of aesthetic impacts or siting considerations, but since this is conceptual planning and programmatic in nature, why force the analysis into assessment of CEQA thresholds that cannot be accurately assessed until site specific projects occur anyway? It is likely that some jurisdictions who have considered preparation of a CAP or GHG Reduction Plan have struggled with the additional layer of CEQA compliance, including the issue of whether to prepare a Negative Declaration or EIR. This added CEQA layer involves additional costs, time frames, and potential legal challenges that are significant constraints that make it much more difficult to focus highly limited local government resources on the more important effort of developing community-wide strategies to reduce GHGs in ways that the specific communities can support.

Public disclosure and public participation are already required for major planning programs and so eliminating the CEQA process would not interfere with a key objective of CEQA to provide public disclosure of environmental benefits and disadvantages. Much of the California General Plan law and guidelines, e.g., refers to consideration of a broad spectrum of environmental issues, so environmental quality would not be ignored just because there isn't a CEQA process on top of the planning process itself. The public typically has many opportunities to participate in a program planning process and in fact, the public participation component of program planning is usually a key aspect, whether required or preferred by the agency doing the planning.

If planning programs are to remain subject to CEQA, it is strongly suggested that a different set of environmental thresholds be developed to shape the analysis more appropriately on the

comprehensive and long-range effects, and the policy issues and choices that can have major environmental consequences.

Perhaps a separate IS Checklist would be more effective for plans and programs, so that there is no confusion or obfuscation resulting from applying thresholds that are intended for project-level design and implementation decisions. There would be no significance determinations; rather, there would be questions that would trigger analysis and discussion of potential implications of policy approaches as well as discussions of ways in which the proposed plan would establish criteria for project level review to ensure that significant impacts are avoided, or to provide justification for allowing certain significant environmental impacts due to some other overriding factors that benefit the health and well being of the community and/or which achieve other, more important environmental objectives. Later in this discussion, I will present recommendations for a stand-alone IS Checklist for long range planning programs such as local General Plans, Climate Action Plans, Greenhouse Gas Reduction Plans, Water Quality Basin Plans, Regional Transportation Plans, etc.

#### **D. Sustainability**

“Sustainability” is one of the biggest buzz words around today, in business and government. It has a variety of definitions by different interest groups and stakeholders, and in practice, is often limited to energy efficiency and/or renewable energy and waste management initiatives, ignoring the integration of broader economic, social equity and environmental quality considerations that foster the attainment of long-term societal objectives such as healthy communities and prosperous economies.

Consideration of social and economic consequences, together with environmental consequences, is a sustainability perspective, which can be powerful, visionary, and invigorating for local and regional planning programs. Local governments and regional planning agencies may develop sustainability oriented plans and adopt implementing regulations in accordance with their existing governmental powers. Adding “sustainability” to the CEQA process is thus unnecessary to accomplish good planning practices. If social and economic consequences were to be a required aspect of a CEQA “sustainability” analysis, this would have major ramifications on the scope of analysis, process, increased potential for legal challenges, etc. that would result in a far more cumbersome, costly and litigious landscape for project planning and this is not what our economy needs.

## **Recommend Changes to Initial Study Checklist for Project Level (As Opposed to Program Level) Assessments**

*Note\* “ Project-level” activities include new development and redevelopment proposals at the individual site or individual land holding level, intended for sale and/or occupancy in the near-term, with design details that specify lot sizes and shapes, street geometry, building product types, intensities and locations, supporting wet and dry infrastructure, vehicular parking facilities, open space amenities, etc. Project-level development proposals also include specific plans, which may have multiple phase development cycles over a period of years, but which otherwise contain the design features of a project.*

The following recommendations are made to streamline the Appendix G Checklist to eliminate topics that do not foster productive discussion, decision-making or avoidance of environmental impacts and also to suggest some different analytics that would be more effective in generating productive environmental impact assessments and decisions, at the project level of review.

### Aesthetics

- ELIMINATE CHECKLIST ITEM I.C REGARDING VISUAL CHARACTER OF SITE AND SURROUNDINGS.....This threshold is far too subjective and it has been abused to block small-scale development projects because neighbors did not want a different housing product type nearby. There are many examples of urban development where a much taller building occurs within a predominantly low-scale urban area, and this creates its own aesthetic characteristics, often considered to be a benefit. Considerations of scale and visual character and consistency with context and surroundings may be among a community’s most important local values, but this does not make it a significant environmental impact topic. The environment is not “harmed” and people aren’t being physically threatened because some people don’t like the visual qualities of a particular development. If a local government wishes to establish its own design guidelines and enact some enforcement authority relative to those guidelines, then it should handle that on its own and not rely on State environmental law to provide a method of slowing and killing a project because some neighbors simply don’t like the proposed building product, or the proposed tenants, or the perception of excessive density, or whatever the subjective aesthetic concern may be.

### Agriculture and Forest Resources

Make no changes to the checklist questions; however, add a preamble to more precisely define the scope of ‘protected’ agricultural resources as follows:

*“Agriculture” resources consist primarily of farmland, where crops are grown for food or fiber or other purposes that support the economy, scientific research or medical treatments, and on unfarmed land containing fertile soils that have the best physical and chemical properties capable of supporting crop production with or without irrigation. Such fertile soils are defined on the California Department of Conservation’s list of “prime” and “statewide” soils, based on the soil survey database maintained by the Natural Resources Conservation Service. In some cases, commercial livestock farming, when done for food or fiber production, may be considered to be important farmland. General animal husbandry for recreation, lifestyle or commercial purposes,*

such as equestrian farms, horse boarding, breeding and training, etc, is not classified as an agriculture resource.

### Air Quality

- Change item III.c. to read as follows:  
Would the project result in a ~~cumulatively considerable~~ *significant* net increase in *direct emissions* of any criteria pollutant for which the region is in non-attainment under an applicable federal or state ambient air quality standard (including releasing emissions which exceed quantitative thresholds for ozone precursors)? *“Significant” levels would be defined as a volume or concentration level that triggers regulatory agency review and approval. Indirect sources such as emissions from automobile travel and energy consumption, life cycle processes, etc. need not be analyzed, unless the project proposes new land uses in locations that have not been planned for such uses, and the project’s transportation options are limited to automobiles and trucks, where average trip lengths would substantially exceed the regional average for the most frequent types of trips.*

[If the answer is no, then no further analysis is required. If the answer is yes, a quantitative assessment of the sources, volumes, concentrations, frequencies and spatial distribution of the emissions would be required. If a regional plan or program established to reduce and mitigate significant direct emissions is in place, the analysis would also address the project’s consistency with that plan or program.]

### Biological Resources

Make no changes to the existing checklist questions, except that responses would only be required for projects that occur on land with the following characteristics:

- contains or is adjacent to native plant communities and habitat that supports rare, threatened or endangered plants or wildlife species
- contains wetlands resources, and the project’s impacts to such wetlands would require issuance of an Individual Permit from the U.S. Army Corp of Engineers.
- contains riparian resources as defined by the California Department of Fish and Game, the riparian area provides habitat for a sensitive wildlife species that are recognized as such by the CDFG, and such resources are on undisturbed land outside of an urbanized area. “Urbanized” is defined in accordance with the U.S. Census Bureau definitions of urban areas or urban clusters.
- Suggest different questions be developed by appropriate experts for projects impacting the marine environment.

### Cultural Resources

No changes are suggested.

### Geology/Soils

- Eliminate questions VI.d and VI.e

## Greenhouse Gas Emissions

- Revise Item VII.a as follows:

*Would the project generate significant direct emissions of greenhouse gases addressed by the California Air Resources Board's Scoping Plan, to the extent that such emissions exceed some threshold level adopted by the Lead Agency? The Lead Agency may rely on threshold levels developed by the CARB, Cal-EPA, U.S. EPA, local air pollution control districts, County Health Departments, etc., where such thresholds have been developed for the specific emission sources and provide substantial evidence that such threshold levels would have cumulatively considerable contributions to environmental problems associated with GHGs.*

With the above language, it is likely that there will be much less analysis of this topic, since there are few quantitative thresholds available for project-level decisions, none based on actual demonstration of some linkage to a "tipping point" for GHG problems such as climate change. A common response to this revised question may simply be that "there are no applicable thresholds in place; therefore, no further analysis is required." The purpose of this language change is to acknowledge the inefficiency of grappling with the macro-scale problem of GHGs and their influence on atmospheric conditions and climate change at the individual land use action level, and keep the focus on statewide and regional strategies aimed at incremental changes in energy generation, fuels, engine technologies, industrial processes, etc. which are the primary sources of GHGs.

## Hazards and Hazardous Materials

- No changes, except in item VIII.c. add to the end: "...homes, public parks and other outdoor recreation areas, convalescent homes, hospitals or other land uses where people would regularly be exposed to potential hazards associated with such hazardous substances, materials and wastes"

## Hydrology/Water Quality

- Change first question to read:

*Describe any proposed point and/or non-point sources of water pollution. Are these subject to water quality standards or waste discharge standards administered by the applicable Regional Water Quality Control Board? What project design features are proposed to satisfy applicable waste discharge or water quality standards? How would these features achieve compliance?*

To make a determination that a project's water quality impacts would be sufficiently mitigated through compliance with adopted regional or local program standards, the burden of proof should be on the project applicant to demonstrate compliance with applicable regional and subregional regulations through engineering diagrams and preliminary quantitative analysis, and the Lead Agency is responsible for verifying adequacy and accuracy of project's preliminary plans. This explanation/verification of compliance should be in the CEQA document, not something that is simply alluded to as 'evidence' of impact avoidance.

With this in mind, it is suggested that IS Checklist items IX.c-f be consolidated into one question, as follows:

*Does the proposed project include a conceptual drainage and water quality management plan that identifies the primary structural and non-structural mechanisms and locations of meeting the pertinent design criteria and permitting standards of the RWQCB, DAMP or local Best Management Practices? If yes, then the compliance measures are to be specified and described, but no further analysis is required. If no, then a project-specific analysis would be required that would include submittal of conceptual drainage and water quality management measures and accompanying narrative to explain how this conceptual plan will result in achievement of the regional, subregional or local program requirements. [This project-specific analysis could be accomplished within an ND, a MND or an EIR, depending upon the individual circumstances and preferences of the local lead agency].*

If there is no adopted program governing stormwater discharges and related water quality issues through specified project-level design standards, then the following questions would need to be analyzed:

1. Does the project propose to convert pervious surfaces to impervious surfaces? If so, estimate the total surface area involved and the percentage of the total site area that would be impervious in the existing and post-development conditions.
2. Would the developed site generate water pollutants that do not presently occur on site? If so, describe these pollutants and their impacts on surface and groundwater quality.
3. Would the developed site generate more runoff than under current conditions? If so, quantify the amount of increase and describe the impacts resulting from that increased runoff.
4. Does the plan include mechanisms and best practices, such as retention of existing surface drainage and wetlands features, to capture and filter polluted runoff before it leaves the site? If so, describe these and evaluate their effectiveness. If not, explain how the pollutant constituents will be handled to avoid impacts to surface and ground waters.

#### Land Use/Planning

No revisions are suggested; however, it should be noted that checklist item X.b is often misunderstood and misapplied as a general planning consistency analysis, instead of the more narrow focus of conflicting with existing planning policies and regulations adopted to prevent or mitigate specific environmental impacts. So, for example, if a project proposes some land use or design feature that has a noise impact or an air emission impact or a vibration impact, or some other specific environmental impact that is expressly prohibited or restricted by a zoning regulation, that conflict with the existing regulation would be the focus of the response. This question is not about land use compatibility or a way to 'justify' or explain a project's consistency with basic land use and zoning standards. Those issues are supposed to be addressed in the lead agency's staff reports and the standard planning department analysis of the project's consistency with applicable land use plans, policies and regulations.

### Mineral Resources

No changes suggested.

### Noise

No changes suggested.

### Population/Housing

ELIMINATE THIS TOPIC, since it is about broader planning issues such as growth management and often involves statistical analysis of population projections, short and long term job generation, calculations of number of housing units proposed and potential resident population, etc. Social and economic issues, as well as consistency with growth forecasts, are outside of the traditional and appropriate emphasis of CEQA on changes to the physical environment.

The ramifications of a project's housing and employment characteristics on the environment are already being addressed by the other IS checklist topics. This includes potential impacts involving large scale projects or projects which proposed significant increases in land use intensity beyond the levels anticipated in local or regional infrastructure and transportation plans. The social and economic issues, such as consistency with a local Housing Element, can and should be addressed in the 'normal' planning process. As another example, removal of existing housing, especially low-income housing, as well as displacement of certain types of households, is an important social issue; however, this does not affect the health of the physical environment and should be addressed outside of the CEQA process.

Checklist Question XIII.a, is really about Growth Inducement, which is already a mandatory topic for discussion in an EIR, so it is not needed in the IS checklist.

### Public Services

ELIMINATE THIS TOPIC.

If the primary concern is how a project would affect the levels of service of various public services, or trigger a need to expand services and/or to build new facilities to maintain desired service levels, the approach to this issue should be about coordination with the public services providers to allow them to make such determinations, in accordance with their own facilities planning standards and whatever level of service performance standards or targets may have been adopted. Public services concerns are not really about the environmental impacts; they are about the demand for and delivery of community services and facilities that are financed by public funds in some ways. It is thus more about cost and revenue considerations, and when and where to locate new facilities. These are all important community facilities planning concerns, but should be outside of the scope of CEQA. Even if a project is large enough to generate a demand for some sort of new community facility such as a police or fire station, and the location and sizing of such a new facility can be determined to estimate the environmental impacts of eventually building such a facility, does all of that analysis of potential environmental impacts help with the planning and funding of community facilities? Sometimes it does, but often it does not. If there is no impact fee program in place, then how is a project's contribution

to pay for future facilities get calculated, and how is that fee linked to the individual project's 'fair share' of the estimated environmental impacts of the new facilities? This is a lot of analysis for little benefit, in terms of avoiding or mitigating some significant environmental effect. Limitations on mitigation for project-level impacts on public school facilities were settled many years ago in the Mira, Hart, and Murrieta case. So why are schools still listed as a subtopic under Public Services?

### Recreation

- REMOVE THE EXISTING QUESTIONS...these don't add anything new to the analysis of environmental impacts of whatever project the recreational element is part of. The fact that there is a recreational element doesn't create some unique type of environmental effect not being addressed by the other IS questions.
- ADD A NEW QUESTION: *Would the proposed project convert an existing public recreational use to another type of use? If so, what effects would that have on the community's recreation resources?*
- ADD A NEW QUESTION: *Would the proposed project site be located on land designated for a future park or other public outdoor recreation use? If so, what is the community impact of taking that site out of the inventory of future parks and recreation sites?*

### Transportation/Traffic

- Change item XVI.a) to read as follows:

Would the project conflict with an applicable plan, ordinance or policy establishing measures of effectiveness for the performance of the circulation system, taking into account all modes of transportation *currently available to project occupants, proposed as part of the project, or that have been programmed for construction within the near-term (i.e. less than 10 years)*, including mass transit and non-motorized travel and relevant components of the circulation system, including, but not limited to intersections, streets, highways and freeways, pedestrian and bicycle paths, and mass transit.

### Utilities/Service Systems

1. Add this question:

Does the project propose or would it require off-site construction of new or expanded energy or communications facilities that could result in significant environmental effects? (Examples include natural gas and petroleum pipelines and storage tanks, overhead or underground power transmission lines, electrical substations, communications towers).

2. ELIMINATE SOLID WASTE TOPIC

There is probably a regional plan/program in place to address environmental concerns that do not include project level permitting or design criteria, but which are considered sufficient to address problems on a regional basis and where analysis of individual projects would not be beneficial. An example of this is the planning and programs in place for countywide solid waste

management, including siting and management of landfills and other disposal facilities. These programs consist of a comprehensive, long range regional planning effort that attempts to estimate sources and volumes of wastes that would require disposal, analysis of various disposal methods, siting considerations, proposals for new facilities, etc. An individual subdivision project, a 500,000 square foot warehouse, a new sewer treatment plant or whatever, is not going to have solid waste generation or disposal characteristics or requirements that would somehow conflict with the regional plans and programs to handle wastes.

Every land use is required to dispose of its wastes through local haulers and in accordance with local collection and disposal programs, and everyone is supposed to comply with regulations governing solid waste disposal; compliance and enforcement through CEQA is not effective and this is a poor use of CEQA as a way of preventing and mitigating impacts through project design. Moreover, there are many variables affecting generation of wastes, types of wastes, disposal needs, etc. that are dependent on technology, materials, consumer behavior and many regulatory schemes, that cannot be adjusted effectively through a land use approval process.

Project design considerations related to waste generation and disposal are important, but are driven mainly by economic and regulatory considerations that are outside of the land use approval framework. So why bother to analyze project-level impacts on landfills or consistency with a myriad of waste disposal laws that are beyond the control or expertise of the applicant or the Lead Agency? This effort is a waste of time and money in the CEQA process.

#### Mandatory Findings of Significance

No changes are suggested.

**Sample Initial Study Checklist for Long Range Plans and Programs (If consensus is that these should remain subject to CEQA)**

*Aesthetics:*

1. Would the proposed plan allow for significant alteration of scenic natural features such as ridgelines, knolltops, lakes rivers or streams, forests, woodlands, etc. that are regularly visible from public vantage points such as parks, trails, scenic highways, etc.?
2. Explain how the plan would avoid or mitigate significant visual impacts to such scenic features and vistas, or explain what overriding community benefits would be accomplished by allowing such impacts.

*Agricultural Resources*

1. Would the proposed plan allow for new development on land designated by the California Department of Conservation as Prime Farmland, Farmland of Statewide Importance or Unique Farmland? If so, explain the trade-offs considered and describe the overriding community benefits anticipated in the proposal to allow for conversion of such Important Farmland to non-farming land uses. For example, are alternative areas identified in the planning area that could support farming for production of food crops, textile base materials or other plant-based materials that support the local or regional economy, at a similar level of productivity?

*Air Quality*

1. Would the proposed plan allow for development and/or intensification of land uses involving direct emissions of criteria pollutants near existing sensitive receptors, or near undeveloped land where future sensitive land uses are planned?
2. Would the proposed plan allow for development and/or intensification of residential land uses, hospitals, public education campuses, elderly care facilities, etc. near existing sources of direct emissions of air pollution, such as highways, existing power generation facilities that use combustion technologies, landfills, surface mines, industrial processes, etc.?
3. If the proposed plan is a transportation plan or includes a transportation element, would it expand the streets and highway network beyond existing urban limits? Does it address alternative urban forms or modes of transportation that would reduce the extent of street and highway infrastructure and the volume of vehicle miles traveled by combustion-powered automobiles, as well as light, medium and heavy duty trucks?
4. Discuss the air quality impacts resulting from the proposed transportation plan.

*Biological Resources*

1. Does the proposed plan allow for new development within natural communities, within wetlands, within or across wildlife or fish migration routes, within habitat that supports state or federally-listed plants or animals, or on other lands designated for some form of conservation in an officially adopted habitat conservation plan? If so, explain how significant impacts to biological resources would be avoided or mitigated. Discuss the

trade-offs considered in reaching this policy preference to allow encroachment into biologically sensitive lands.

Note\* Adoption of Natural Communities Conservation Plans, Habitat Conservation Plans and similar plans to conserve land for protection and preservation of biological resources would be exempt from CEQA.

#### *Cultural Resource*

- Eliminate this topic for plans and programs

#### *Forest and Timberland*

1. Would the proposed plan allow for new development on land containing “forest land,” as defined in Public Resources Code Section 1220(g), “timberland,” as defined in Public Resources Code Section 4526, or on timberland zoned as Timberland Production, as defined in Public Resources Code Section 51104(g)? If so, explain how significant impacts to such resources would be avoided or mitigated. Discuss the trade-offs considered in reaching this policy preference to allow encroachment into forests or timberlands.

#### *Geology and Soils*

1. Does the plan include mapping and discussion of seismic and geologic hazards within the planning area? Does it identify the sources of this information? Does the plan set forth individual project review procedures to ensure that such hazards are properly identified and that sufficient mitigation or avoidance measures are incorporated into the project design?

#### *Greenhouse Gas Emissions/Climate Change*

1. Does the proposed plan identify specific sites or define criteria to guide siting of utility-scale, community-scale or district-scale renewable electrical energy generation facilities? Does the plan discuss environmental implications associated with building those facilities?
2. Does the proposed plan identify potential sites or establish siting criteria for development of infrastructure to support renewable energy facilities, e.g. electric vehicle charging stations, underground or overhead transmission lines, etc.? Does the plan discuss the environmental implications of building that supporting infrastructure?

#### *Hazards and Hazardous Materials*

1. Does the plan identify sites or criteria for siting of hazardous waste disposal facilities?
2. Does the plan identify routes for transportation of significant volumes of hazardous materials and substances?
3. Does the plan expressly prohibit certain types of land uses known to require, use, dispose of or transport significant volumes of hazardous and toxic materials and substances?

### *Hydrology and Water Quality*

1. Is the planning area governed by a Basin Plan, administered by one of California's Regional Water Quality Control Boards?
2. Is there a local Drainage Area Master Plan (or functional equivalent) to regulate storm water and other waste discharges to ground and surface waters that is administered by the local government agency or another special purpose agency?
3. If there are portions of the planning area not governed by a Basin Plan or a DAMP or its equivalent, does the plan provide regulatory guidance to ensure that local ground and surface water resources are protected from new development or changes in existing land uses? Describe the performance standards and project-level review procedures established in the proposed plan and explain how these would avoid significant impacts to surface and groundwaters.

Note\* Basin Plans prepared by California's Regional Water Quality Control Boards would be exempt from CEQA. Countywide Drainage Area Master Plans and their functional equivalents would be exempt from CEQA.

### *Land Use and Planning*

1. Does the proposed plan include any land use policies or designations that would conflict with an adopted Natural Communities Conservation plan (NCCP), a habitat conservation plan (HCP) or other plan or program adopted for the purpose of conservation or some form of open space management? Please explain your response.

Note\* NCCPs, HCPs and similar conservation plans would be exempt from CEQA

### *Mineral Resources*

1. Does the proposed plan identify any mineral resources within the planning area, and if so, does it establish specific policies to reserve lands known to contain mineral resources for the extraction and processing of such resources?
2. What are the environmental consequences associated with mineral resource extraction and processing?
3. Explain how the proposed plan ensures avoidance or mitigation of significant environmental effects associated with mineral resource extraction and processing.

### *Noise*

1. Does the proposed plan identify new sites for major noise sources in the planning area?
2. Does the proposed plan allow for expansion of existing stationary or mobile noise sources?
3. What are the noise impacts that would result from such new sources?
4. Explain how the plan ensures avoidance or mitigation of significant noise impacts.

Note\* Adoption or update of Noise Elements of a General Plan, as well as local Noise Control Ordinances, would be exempt from CEQA.

### *Population and Housing*

1. Does the proposed plan identify a target population for growth within some estimated time frame? If not, how does the plan identify population growth targets? Do the population targets conflict with any growth forecasts for the planning area that may have been adopted for applicable regional planning programs?
2. What are the proposed policies to house projected levels of population growth? How and where are various types of households and lifestyles to be accommodated?
3. Discuss any proposals that would locate housing in proximity to substantial sources of air pollution, noise, hazardous and toxic materials, airports, jails, heavy industrial centers, etc., where significant land use incompatibilities could occur. Explain why such placement of housing is proposed, despite the presence of such environmental constraints.

### *Public Services*

1. Describe the manner in which the proposed plan anticipates the need for additional tax-funded public services facilities, along with the pertinent planning and siting standards for each type of service and provisions to ensure avoidance of significant environmental impacts when new facilities are being designed.

### *Recreation*

This is principally a matter of concern regarding social benefits, rather than environmental effects. This topic, therefore, would not be included on the Initial Study Checklist.

Environmental impacts resulting from parks and recreation master plans and development of individual parks and other outdoor or indoor recreation projects would be subject to review under CEQA, if they do not qualify for any of the exemptions identified in the CEQA Guidelines.

### *Transportation/Traffic*

1. Does the proposed plan include a transportation element? If not, no further discussion is required. If so, please respond to the following questions.
2. What transportation demands are being addressed by the proposed plan? What travel modes and additional transportation infrastructure are proposed to meet these demands? Identify and describe near-term and long-term land acquisition needs to achieve the desired streets and highway network and supporting infrastructure and maintenance facilities.
3. What are the environmental impacts associated with construction of the additional transportation infrastructure envisioned by the plan? How would the plan avoid or mitigate potentially significant environmental effects? Please provide a discussion of the trade-offs considered in rejecting alternative modes and infrastructure which have reduced environmental effects.

4. For plans that include a vehicular travel network, describe the performance standards that the network is being designed to achieve and explain why those standards were selected.
5. Discuss the ways in which the proposed plan integrates with and/or conflicts with adopted regional or subregional transportation plans that govern portions of the local travel network.

#### *Utilities and Service Systems*

1. Discuss the projected needs for additional publicly funded water, wastewater, storm drainage, energy supply and distribution and waste management/disposal facilities to implement the proposed plan. If the plan would not require such services, no further analysis is required. If so, please respond to the following questions.
  - a. Identify any water, wastewater, storm drainage and energy master plans that exist to meet the demands in the planning area. To the extent that existing master plans cover all or portions of the planning area, no further analysis of those existing plans is required. If the proposed plan includes alternatives to those plans, or provides master planning for areas not covered by such plans, describe how the proposed plan addresses utilities needs in those areas. Discuss environmental impacts associated with proposed alternatives to existing master plans and plans for areas not covered by those existing plans. Explain how the proposed plan would avoid or mitigate potentially significant environmental impacts.
  - b. Explain how private utilities and services such as electrical and natural gas production and distribution facilities, package wastewater treatment plants, waste-to-energy production facilities, etc. would be accommodated in the planning area.

#### *Mandatory Findings of Significance*

This topic would not be included on the Initial Study Checklist for comprehensive plans and programs.

## APPENDIX F: ENERGY CONSERVATION

The language in this part of the CEQA Guidelines and the associated Section 21100b(3) of the Public Resources Code states that analysis of energy conservation concerns is a *mandatory* requirement for all EIRs. Nonetheless, this is a mostly ignored and poorly evaluated topic. So why is it that it is usually ignored or relegated to an arcane and unarticulated component of overly complicated calculations buried in the air quality and greenhouse gas emissions models? It may, in part, be due to the fact that the whole issue of how a project consumes energy for building performance, thermal comfort, lighting, cooking, cleaning and transportation, is a societal and technological issue that goes way beyond what can be effectively addressed through an individual land use proposal or through community-wide planning efforts.

There are many state-level initiatives to reduce dependence on carbon-based fuels that generate significant air pollution and contribute to climate change. Examples include the California Renewable Energy Portfolio standards and a host of energy efficiency incentive programs to reduce energy related emissions and improve the energy performance of new buildings and retrofits. Another example is the fuel standards adopted by CARB, to regulate the pollutant content in petroleum-based fuels as well as gas mileage performance standards. Another example is the CARB standards governing off-road combustion engine equipment that powers most construction machinery.

Should every housing project, employment center, school campus, infrastructure improvement, etc. that is being analyzed in an EIR be subjected to a rigorous analysis of its energy consumption and energy sources and to evaluate alternatives to reduce the amount of energy consumed? This is an enormous burden for project proponents and is a cumbersome, costly, time-consuming effort that does little to address the much larger problem of statewide energy-related emissions problems. It also establishes a major foothold for litigation that is often aimed at defeating the project, rather than the environmental objectives that this part of CEQA was enacted to accomplish.

While energy demand, sourcing, and efficiency are important considerations in project design, without some sort of standards or performance criteria in place, how can local governments objectively and effectively evaluate an individual project with respect to how well it manages energy demand, incorporates clean energy sources and optimizes energy efficiency in design, materials, and mechanical systems? If such standards and criteria have been adopted by a particular jurisdiction, what extra value is gained by subjecting a project to a potential litigation risk or simply more cost associated with a mandatory EIR section addressing energy conservation or energy efficiency, etc.? If such standards have not been adopted, then what is to guide a local agency in determining whether a particular project is “doing enough” and what constitutes a significant threat to the environment that is directly associated with the project’s energy system? If a local government is satisfied with the building energy efficiency performance standards mandated through the California Building Code, should a project opponent be able to challenge a project approval through CEQA, perhaps linking the challenge to failure to comply with Appendix F, claiming it isn’t doing enough or should be held to some higher standard?

What about inefficient energy practices associated with older buildings and older communities, which cannot benefit from the higher performance standards in the current building and energy

codes or are tied into an older energy grid still dependent on hydrocarbon fuels to generate most of their electrical energy? These older aspects of the built environment are major sources of wasteful energy practices. Since CEQA only addresses new development and redevelopment efforts, it cannot address energy-related problems of the older building stock and older energy systems. These are difficult issues and it demonstrates the shortcomings of relying on CEQA to govern project design in order to achieve statewide goals for intelligent energy management.

### **Recommendations**

With all of these issues of fairness, pre-eminence of local government authority, litigation risk, lack of suitable standards to support objective and effective analyses, and a prevailing attitude of ignoring the requirements of Appendix F, it would be sensible to eliminate Appendix F and related language in the CEQA Statutes from CEQA.

An alternative could be to replace Appendix F with something much simpler that allows local lead agencies to set their own protocols on whether and how to analyze the energy profile of certain types of projects or all projects subject to CEQA. In this alternative, a local lead agency should also be required to develop a set of standards to provide clear criteria for determining when a project is somehow creating a 'significant environmental impact' by failing to do enough in terms of efficient and clean energy systems in the project design. Without this, determining the significance of project effects and designing meaningful mitigation measures directly linked to a significant effect would be an arbitrary process and an attractive target for litigation.

**Richard (Dick) H. Platkin, AICP**

**USC Price School of Social Policy**

Reduce the list of land use categories that receive an automatic categorical exemption. For example, CEQA could be a tool to effectively address mansionization in neighborhoods that do not have Specific Plans or HPOZ's, especially when there are cumulative impacts from many large homes built in a small geographical area by the same contractors. These McMansions use much more energy than adjacent smaller homes, generate far more GHG's, usually have larger cars, and often reduce permeable areas and cut down parkway trees through attached garages, double width front yard driveways, and extended curb cuts.

If you need further information, I can elaborate.

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

Re: Solicitation for Input into revisions to the Guidelines Implementing the California Environmental Quality Act

Dear Mr. Calfee,

I'm writing in response to your solicitation for input into revisions of the CEQA Guidelines. I am writing from the perspective of a homeowner who has been adversely impacted by an unfortunate application of these laws and guidelines.

CEQA does not expressly require a public agency to find that mitigation measures adopted for a project are feasible or that they will be implemented. Rather, CEQA requires the agency to find, based upon substantial evidence, that the mitigation measures are "required in, or incorporated into, the project"; or that the measures are the responsibility of another agency and have been, or can and should be, adopted by the other agency; or that mitigation is infeasible and overriding considerations outweigh the significant environmental effects. (§ 21081; Guidelines, § 15091, subd. (b).)

In my particular situation, the County of San Diego had previously approved a minor subdivision of a 3-acre hillside property into three 1-acre properties. I subsequently purchased Parcel 1 at the top of the hill. Parcel 1 was engineered with lower boundaries which meet the standard 5-foot setback to my active septic system and to my designated 100% reserve area. As significant adverse environmental impacts would likely occur if slopes and pads were cut for slab-on-grade construction in the Parcel Map-approved locations for construction on Parcels 2 and 3, the County Sanitarian accepted the Subdivision Engineer's proposal of off-grade construction with no major grading. A negative declaration was then recorded rather than requiring an EIR to be performed.

However, because these requirements were the responsibility of another agency (the County of San Diego Department of Environmental Health), these requirements were not recorded. The Department of Environmental Health has explained that they are not bound by unrecorded requirements, that their responsibility is strictly ministerial -- and that they are not responsible for grading enforcement so long as the grading does not adversely affect the septic system installation on the property described in the permit. Further, the Department has no responsibility to mitigate (or requirement to disclose) a known encroachment to a septic setback until such time as that encroachment becomes an active environmental issue or such time that the impacted homeowner wishes to make any changes to the impacted system or change the construction footprint.

Six years later upon inquiry into construction of a garage (The original detached garage required removal as a condition of Parcel Map approval due to newly imposed front yard setbacks; An attached replacement was anticipated by the County), I discovered the multiple approved off-site encroachments into to my septic system and reserve area. Thereafter the adjacent new downslope homeowner acknowledged the ongoing smell of sewage from beneath an area of excessive ground cover immediately adjacent what we determined to be the lower most septic line. There is now a 12 foot cut slope with the face 7 feet off of my lowermost septic line. The resultant 5:1 imposed leach field setback encroaches into the totality of my septic system and majority of my reserve area.

At this time, with the statute of limitations having long since run, the burden was shifted to the shoulders of my family to somehow mitigate the setback encroachment of the approved off-site grading. The original mitigation method was no longer feasible and feasible alternative mitigation within the bounds of the encroaching property had now been lost to development.

The original mitigation method had been set aside *while it was still feasible* -- as without recording, the developer was able to compel the County's approval. Although the lack of proportionality reasonably prevents the requirement of off-site mitigation of on-site impacts, the County nevertheless is able to uphold otherwise unlawful disproportionate mitigation as it is in the interest of the prevention of public nuisance. At the same time, the County considers the matter to be a private nuisance - which it has no authority to address. It's simply a private nuisance until the system sees enough use that it becomes a public nuisance, at which time the newly imposed burden of infeasible mitigation will be the endgame in this injustice.

All involved County departments refuse discussion of mitigation measures while aggressively defending their combined approvals of adjacent development which is, by their own definitions, that of unsafe development and in violation of numerous provisions of State and County Code.

In [83 Cal. App. 4th 1261] the agency "shall provide that measures to mitigate or avoid significant effects on the environment are fully enforceable through permit conditions, agreements, or other measures" (§ 21081.6, subd. (b)) fn. 4 and must adopt a monitoring program to ensure that the mitigation measures are implemented (§ 21081.6, subd. (a)).

Although the purpose of these requirements is to ensure that feasible mitigation measures will actually be implemented as a condition of development, and not merely adopted and then neglected or disregarded. (See § 21002.1, subd. (b).), a lead agency's finding that a measure is the responsibility of another agency and can and "should" be adopted by that agency has proven *completely insufficient* to provide that measures to mitigate or avoid significant effects on the environment are actually implemented. Yes, they *should have* and still *should* be implemented, but there is no *obligation* whatsoever to do so.

The lead agency's otherwise binding obligation to mitigate adverse environmental impacts is simply transferred to the responsible agency -- where it becomes a "should". The developer can then compel this "should" into a "should have" -- as was done in my case.

The County stands by their explanation that there was nothing they could do to disapprove the proposed work -- They should have let me know but are sorry they didn't.

It seems to me that to be effective in the stated goal of ensuring that feasible mitigation measures will actually be implemented as a condition of development, a lead agency's finding that a critical measure is the responsibility of another agency should include a mandate that the other agency adopt the mitigation measure and create a continuing responsibility for the lead agency if the responsible agency does not uphold the mandate. Any mitigation measure adopted to avoid performing an EIR should require recording.

I appreciate any suggestions you may have on how I might appropriately address this situation at this late date. I have made a formal request of San Diego County Supervisor Bill Horn to discuss this matter. He has formally refused my request and has further asked County Staff to have no further communication regarding resolution of the matter.

This costly, time-consuming, irresolvable conflict has been going on for almost 10 years now as a result of the County relying on an unenforceable "should" rather than a mandate consistent with the purpose of CEQA.

I appreciate any feedback on this.

Sincerely,

A handwritten signature in black ink that reads "Robert J. Rall". The signature is written in a cursive, slightly slanted style.

Robert J. "Bob" Rall  
1031 Marine View Drive  
Vista, CA 92081  
760-945-3321



# SAN DIEGO NATURAL HISTORY MUSEUM

BALBOA PARK - SAN DIEGO SOCIETY OF NATURAL HISTORY - ESTABLISHED 1874

30 August 2013

To Whom It May Concern

I wanted to express my appreciation for the opportunity to provide suggestions for revising CEQA Guidelines involving paleontological resources within the State of California. I would like to suggest the following changes to the current CEQA guidelines, Appendix G.

- Add a separate check-box for **Paleontological Resources** under the ENVIRONMENTAL FACTORS POTENTIALLY AFFECTED checklist.
- Remove item 'c' from Issue **V. Cultural Resources** from the CEQA sample question checklist and reletter the three remaining questions.
- Add a new Issue **VI. Paleontological Resources** to the CEQA sample question checklist using language similar to that provided below.

VI. PALEONTOLOGICAL RESOURCES -- Would the project:

- a) Cause a substantial adverse change to a significant paleontological resource (i.e., documented paleontological collection localities or geologic rock unit/formation known to contain paleontological collection localities with rare and/or well-preserved fossils critical for stratigraphic, paleoecological, or paleoenvironmental interpretation, as well as fossils providing important information about the paleobiology and evolutionary history [phylogeny] of extinct organisms. Generally speaking, significant paleontological resources consist of any vertebrate fossil remains or scientifically important invertebrate or plant fossils)?
- Renumber subsequent Issues on the CEQA sample question checklist to accommodate the new Issue VI. Paleontological Resources.
- Add a new item 'c' to the renumbered Issue **XI. Mineral Resources** on the CEQA sample question checklist using language similar to that provided below.
  - c) Directly or indirectly destroy an unique geologic feature (i.e., formal type localities of geologic formations, unique examples of geologic landforms, and educationally significant geologic exposures that provide unique opportunities to observe prehistoric effects of plutonism, volcanism, metamorphism, sedimentation, erosion, folding, faulting, and mountain building)?

Respectively,

Thomas A. Deméré, Ph.D.  
Curator of Paleontology



# SAN FRANCISCO PLANNING DEPARTMENT

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August 30, 2013

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

**Subject: Comments on Potential Revisions to CEQA Guidelines**

Dear Mr. Calfee:

As the Environmental Review Officer for the City and County of San Francisco ("the City"), and on behalf of the San Francisco Planning Department, I am pleased to respond to the Solicitation for Input issued by the Governor's Office of Planning and Research (OPR) regarding possible revisions to the Guidelines implementing the California Environmental Quality Act (CEQA). The Environmental Planning Division of the San Francisco Planning Department, acting as a Lead Agency for the City, conducts CEQA review for a wide variety of public and private projects, in both urban and natural environments, for all branches of our City government. Additionally, the San Francisco Planning Department conducts CEQA review on an unusually high volume of projects because, in San Francisco, all building permits are considered discretionary actions, which therefore may be subject to CEQA. The San Francisco Planning Department issues approximately 5,000 CEQA determinations per year, the majority of these being categorical exemptions. Therefore, we have a unique lead agency perspective to offer and we have a keen interest in improvements to the clarity and effectiveness of the CEQA Guidelines.

Where applicable, we present our proposed text changes, with additions shown in underline and deletions shown in ~~striketrough~~.

## Recommended Revisions to the CEQA Guidelines

- 1. Amend Section 15300.2(e) to Qualify the Hazardous Waste Sites Exception to Categorical Exemptions, to be Consistent with Appendix G, Section VII, Hazards and Hazardous Materials, Question D**

*Purpose of Change:* Currently, the Guidelines prevent the issuance of categorical exemptions on sites included on hazardous materials lists even if those sites have been cleaned up. The list of

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hazardous waste sites compiled pursuant to Government Code Section 65962.5 is commonly referred to as the "Cortese List." The following three databases constitute the Cortese List:

- the State Department of Toxic Substance Control's (DTSC) Cortese List (36 sites in San Francisco);
- the State Water Quality Control Board's (SWQCB) Cease and Desist Orders (CDO) and Cleanup and Abatement Orders (CAO) databases (18 sites in San Francisco); and
- the SWQCB's Geotracker database (2,396 sites in San Francisco).

As noted on the California Environmental Protection Agency (Cal EPA) web page, "[b]ecause [Government Code Section 65962.5] was enacted over twenty years ago, some of the provisions refer to agency activities that were conducted many years ago and are no longer being implemented..."<sup>1</sup> Once a site is listed on the Cortese List, it is never removed, even when the cleanup action has been completed. For example, of the 2,396 sites in San Francisco listed on the Geotracker database, 2,160 have been closed, meaning the cleanup action has been completed and the site no longer poses a contamination risk.

A cleaned-up site should not constitute unusual circumstances that create the possibility for a significant impact from a project that otherwise meets the criteria for a categorical exemption. Moreover, even where a cleanup action may be ongoing, or where the presence of potential contamination has not yet been determined, a proposed project would not necessarily expose people or the environment to hazardous contamination, e.g., if cleanup of the site is a condition of project approval pursuant to local ordinance. The San Francisco Department of Public Health (SFDPH) recently updated the San Francisco Health Code to require that projects involving excavation of 50 cubic yards or more of soil on potentially contaminated sites undergo review to determine whether site conditions present potential hazards to soil or groundwater. All sites with the potential for contamination are required to undergo site cleanup that is overseen by SFDPH, DTSC, RWQCB, or CalEPA. Therefore, the CEQA Guidelines Section 15300.2(e) prohibition against issuing a categorical exemption for projects on these sites is overly broad. The proposed wording would more appropriately specify that the exception applies only when the project could result in the exposure of people or the environment to significant hazards.

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<sup>1</sup> California Environmental Protection Agency (CalEPA) <http://www.calepa.ca.gov/sitecleanup/corteselist/Background.htm> Accessed on August 29, 2013

In our view, an Initial Study and Negative Declaration is not necessary for sites that have been cleaned up in accordance with federal, state, and local regulations. Similarly, an Initial Study and Negative Declaration is not necessary for sites with identified contamination that must be cleaned up prior to development pursuant to existing federal, state, and local requirements. The proposed revisions would make the hazardous waste sites exception to categorical exemptions consistent with Appendix G, Section VII, Hazards and Hazardous Materials, Question D, which recognizes that a potential impact for projects on sites on the Cortese List occurs only when, as a result, the project also would “create a significant hazard to the public or the environment.” This change would be consistent with the purpose and intent of the statute.

*Existing Text of Section 15300.2(e):*

“(e) Hazardous Waste Sites. A categorical exemption shall not be used for a project located on a site which is included on any list compiled pursuant to Section 65962.5 of the Government Code.”

*Existing Text of Appendix G, VII, Hazards and Hazardous Materials, Question D:*

“Would the project:

d) Be located on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5 and, as a result, would it create a significant hazard to the public or the environment?”

*Proposed Text of Section 15300.2(e):*

“(e) Hazardous Waste Sites. A categorical exemption shall not be used for a project located on a site which is included on any list compiled pursuant to Section 65962.5 of the Government Code unless the site has been or will be investigated and remediated in compliance with all applicable requirements of federal, state and local regulations.”

## **2. Amend Section 15305, Minor Alterations in Land Use Limitations, and Section 15315, Minor Land Divisions, to be Consistent with Section 15304, Minor Alterations to Land**

*Purpose of Change:* Class 4, which exempts projects (such as grading) that directly result in physical change, appropriately limits its exclusion to Seismic Hazard Zones. In contrast, Class 5 and Class 15 exclude all properties greater than the designated slope of 20%, even though they apply to land use limitations and not to actual physical change. By adding the qualifier that a property to be subdivided should be not located on parcel that has more than an average slope of 20% and is not located within an officially mapped area of severe geologic hazards such as an Alquist-Priolo Earthquake Fault Zone or within an official Seismic Hazard Zone, as

delineated by the State Geologist, would ensure that there are not any impacts from geologic hazards and would make the intent of the Categorical Exemption consistent with Class 4. Within San Francisco, over half of the properties with a slope of 20% or more are not located within an official Seismic Hazard Zone, and therefore, would not result in any unique geologic hazards, and therefore, these projects should be categorically exempt. The addition of the below text would make the application of Class 5 and Class 15 Categorical Exemptions consistent with the language used in Guidelines Section 15304, Class 4, Minor Alterations to Land.

*Existing Text of Section 15304 (through subsection (a)):*

“Class 4 consists of minor public or private alterations in the condition of land, water, and/or vegetation which do not involve removal of healthy, mature, scenic trees except for forestry or agricultural purposes. Examples include, but are not limited to:

(a) Grading on land with a slope of less than 10 percent, except that grading shall not be exempt in a waterway, in any wetland, in an officially designated (by federal, state, or local government action) scenic area, or in officially mapped areas of severe geologic hazard such as an Alquist-Priolo Earthquake Fault Zone or within an official Seismic Hazard Zone, as delineated by the State Geologist.”

*Existing Text of Section 15305:*

“Class 5 consists of minor alterations in land use limitations in areas with an average slope of less than 20% which do not result in any changes in land use or density, including but not limited to:

(a) Minor lot line adjustments, side yard, and set back variances not resulting in the creation of any new parcel;

(b) Issuance of minor encroachment permits;

(c) Reversion to acreage in accordance with the Subdivision Map Act.”

*Existing Text of Section 15315:*

“Class 15 consists of the division of property in urbanized areas zoned for residential, commercial, or industrial use into four or fewer parcels when the division is in conformance with the General Plan and zoning, no variances or exceptions are required, all services and access to the proposed parcels to local standards are available, the parcel was not involved in a division of a larger parcel within the previous 2 years, and the parcel does not have an average slope greater than 20 percent.”

*Proposed Text of Section 15305:*

“Class 5 consists of minor alterations in land use limitations in areas with an average slope of less than 20% and are not located within an officially mapped area of severe geologic hazards such as an Alquist-Priolo Earthquake Fault Zone or within an official Seismic Hazard Zone, as delineated by the State Geologist, which do not result in any changes in land use or density, including but not limited to:

- (a) Minor lot line adjustments, side yard, and set back variances not resulting in the creation of any new parcel;
- (b) Issuance of minor encroachment permits;
- (c) Reversion to acreage in accordance with the Subdivision Map Act.”

*Proposed Text of Section 15315:*

“Class 15 consists of the division of property in urbanized areas zoned for residential, commercial, or industrial use into four or fewer parcels when the division is in conformance with the General Plan and zoning, no variances or exceptions are required, all services and access to the proposed parcels to local standards are available, the parcel was not involved in a division of a larger parcel within the previous 2 years, and the parcel does not have an average slope greater than 20 percent and is not located within an officially mapped area of severe geologic hazards such as an Alquist-Priolo Earthquake Fault Zone or within an official Seismic Hazard Zone, as delineated by the State Geologist.”

**3. Amend Section 15332(a) to Allow In-fill Development Projects Consistent with General Plan Policies, Even If Not Consistent with the Zoning Designation**

*Purpose of Change:* The current text of Section 15332(a) prevents numerous projects that require changes in zoning designations for minor discrepancies with zoning in San Francisco from receiving urban infill categorical exemptions. This situation arises from the particulars of the general plan and zoning in San Francisco. It is not uncommon to have projects that are wholly consistent with the General Plan, but require rezoning to allow adaptation of an existing structure to a new use. Affordable housing projects involving reuse of existing buildings are particularly subject to this limitation, and the projects therefore are unable to complete environmental review in time to pursue funding, an obstacle for many affordable housing developers and itself an inconsistency with our Housing Element. Since most cities and counties in California have zoning that is matched to a General Plan designation, we believe that this outcome in San Francisco is an unintended limitation on the use of the urban infill exemption, and do not feel that greater flexibility on this issue as suggested below would

create an opportunity for abuse of the Class 32 exemption. The proposed language would not preclude screening the project for environmental impacts, as Sections 15332(c) and (d) would ensure that the project would not result in impacts to biological resources, traffic, noise, air quality, or water quality, and the Section 15301 exceptions to categorical exemptions would still apply. Retaining sections (b) and (e) would also ensure that a project is occurring in an urban area and is thus an in-fill project. Additionally, local agencies should have the flexibility to apply the infill exemption to proposed urban projects that would not result in environmental impacts. The proposed text would achieve this flexibility.

*Existing Text of Section 15332:*

“Class 32 consists of projects characterized as in-fill development meeting the conditions described below in this section.

- (a) The project is consistent with the applicable general plan designation and all applicable general plan policies as well as with applicable zoning designation and regulations.
- (b) The proposed development occurs within city limits on a project site of no more than five acres substantially surrounded by urban uses.
- (c) The project site has no value as habitat for endangered, rare or threatened species.
- (d) Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality.
- (e) The site can be adequately served by all required utilities and public services.”

*Proposed Text of Section 15332 (through subsection (a)):*

“Class 32 consists of projects characterized as in-fill development meeting the conditions described below in this section.

- (a) The project is consistent on balance with the applicable general plan designation and or all applicable general plan policies ~~as well as with applicable zoning designation and regulations.~~”

#### **4. Amend Appendix G, Section XVI, Transportation/Traffic, Question A to Allow Lead Agencies to Identify the Appropriate Focus for the Circulation System Impact Analysis**

*Purpose of Change:* A “significant effect on the environment” means a substantial, or potentially substantial, adverse change in the environment” (CEQA Statute Section 21068). The CEQA Statute does not state a significant effect on the environment can mean a conflict with an applicable plan, ordinance, or policy. The CEQA Statute does state that plans, ordinances, or policies may reduce significant effects on the environment to less-than-significant levels (e.g., 21083.3(d) and Section 21084(b)). If a project conflicts with a plan, ordinance, or policy, that conflict may inform the lead agency in making the determination of whether or not the project

would have a significant effect on the environment, but the conflict itself should not be construed to mean a significant effect on the environment. The proposed revisions to Appendix G Checklist Question XVI (a) would clarify this intent of the CEQA Statute.

The proposed revisions would require the evaluation of safety, as well as performance, which is particularly important in a dense urban environment, and on rights-of-way that are shared by many transportation modes. The revisions also would allow the lead agency to identify which components of the circulation system should be the focus of the analysis, depending on what is most relevant locally. For example, San Francisco is a Transit First city, with an extensive bicycle network we largely give priority to transit and bicycle facilities over vehicular rights-of-way. However, other jurisdictions may prioritize vehicular rights-of-way, truck access, farm equipment, etc. Further, some jurisdictions may analyze impacts to highways and freeways, while others only conduct impact analysis on freeway ramps. The proposed revisions would allow each lead agency to identify which components are locally relevant, without the need to include every listed example.

*Existing Text*

“Would the project:

a) Conflict with an applicable plan, ordinance or policy establishing measures of effectiveness for the performance of the circulation system, taking into account all modes of transportation including mass transit, and non-motorized travel and relevant components of the circulation system, including but not limited to intersections, streets, highways and freeways, pedestrian and bicycle paths, and mass transit? “

*Proposed Text:*

“Would the project

a) Conflict with ~~an applicable plan, ordinance or policy establishing~~ established measures of effectiveness for the performance and/or safety of the circulation system, taking into account all modes of transportation including mass transit, and non-motorized travel and relevant components of the circulation system (as identified by the lead agency), which may include, ~~including~~ but are not limited to, intersections, streets, highways and freeways, pedestrian and bicycle paths, and mass transit facilities? “

**5. Amend Appendix G, Section XVI, Transportation/Traffic, Question B To Eliminate Reference to Level of Service Standards and Travel Demand Measures**

*Purpose of Change:* County congestion management agencies should have the flexibility to establish alternative standards for measuring the effectiveness of roads and highways.

Therefore, the initial study checklist should be revised to remove the reference to level of service standards and travel demand measures.

*Existing Text*

“Would the project:

b) Conflict with an applicable congestion management program, including, but not limited to level of service standards and travel demand measures, or other standards established by the county congestion management agency for designated roads or highways?”

*Proposed Text:*

“b) Conflict with an applicable congestion management program, ~~including, but not limited to level of service standards and travel demand measures,~~ or other standards established by the county congestion management agency, for designated roads or highways?”

**6. Amend Appendix G, Section XV, Transportation/Traffic, Question D To Address Hazards from Conflicts between Transportation Modes**

*Proposed Change:* Checklist Question XVI (d) should be revised to encompass any hazards that could occur due to inadequate site lines, or any other site circulation issue that could result in a hazard. In San Francisco, we are challenged by varied topography, which can result in line of site issues. Additionally, this question should be expanded to address potential conflicts between different transportation modes (i.e. transit, pedestrians, vehicles), which are of importance to analyze in urban areas.

*Existing Text*

“Would the project:

d) Substantially increase hazards due to a design feature (eg., sharp curves or dangerous intersections) or incompatible uses (e.g. farm equipment)?”

*Proposed Text:*

“d) Substantially increase hazards due to a design feature (e.g., sharp curves, steep slopes, or dangerous intersections) or incompatible uses (e.g., farm equipment), or the creation of conflict points between transportation modes?”

## **7. Amend Section 15301, Existing Facilities, To Include Transit Systems**

*Purpose of Change:* In an urban environment such as San Francisco, oftentimes there are discretionary changes required for minor alterations to existing transit systems. Such alterations are of the type of minor physical changes to existing facilities that qualify for a Class 1 categorical exemption. The inclusion of the proposed text would clarify that Class 1 applies to transit systems.

*Existing Text (introduction):*

“Class 1 consists of the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that existing at the time of the lead agency’s determination.”

*Proposed Text (introduction):*

“Class 1 consists of the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, transit systems, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that existing at the time of the lead agency’s determination.”

## **8. Amend Section 15303, New Construction or Conversion of Small Structures, To Cover Projects that Involve Both Conversion and Expansion**

*Purpose of Change:* We think that the wording “minor modifications” in the Class 3 categorical exemption language could be read to include minor expansions, and that it is worthwhile to make that more clear in the Guidelines. In an urban environment, such as San Francisco, often we conduct CEQA review on projects that involve a change of use and a minor expansion. The inclusion of the proposed text in Class 3 to clearly cover minor expansions, therefore, would be appropriate.

*Existing Text (introduction):*

“Class 3 consists of construction and location of limited numbers of new, small facilities or structures; installation of small new equipment and facilities in small structures; and the conversion of existing small structures from one use to another where only minor modifications are made in the exterior of the structure. The numbers of structures described in this section are the maximum allowable on any legal parcel. Examples of this exemption include, but are not limited to:...”

*Proposed Text (introduction):*

“Class 3 consists of construction and location of limited numbers of new, small facilities or structures; installation of small new equipment and facilities in small structures; and the conversion of existing small structures from one use to another where only minor expansion and/or modifications are made ~~in the exterior of the structure~~. The numbers of structures described in this section are the maximum allowable on any legal parcel. Examples of this exemption include, but are not limited to:...”

**9. Amend Section 15304, Minor Alterations to Land, Examples to Include Installation of Shared Lane Markings and Public Amenities**

*Purpose of Change:* As San Francisco sharpens its focus on infill development opportunities, there is a need to provide a commensurate level of public amenities as part of the infill development. Street trees, bicycle infrastructure, and street furniture are features of walkable, pedestrian-friendly communities that are less reliant on vehicles. These amenities do not result in significant environmental effects and their installation would be facilitated by clarification that such improvements are covered under the Class 4 categorical exemption. The addition of installation of shared lane markings on existing rights-of-way would not alter rights-of-way capacity, nor would it change roadway operations. The addition of shared lane markings alerts drivers that bicycles share the road, which is permitted by California Vehicle Code anyway. In addition, the placement of shared lane markings ensures that bicyclists ride out of the way of the door zone. These features improve roadway safety and do not have the potential to result in any significant environmental effects.

*Existing Text (introduction and subsections (h) and (i)):*

“Class 4 consists of minor public or private alterations in the condition of land, water, and/or vegetation which do not involve removal of healthy, mature, scenic trees except for forestry or agricultural purposes. Examples include, but are not limited to:...

(h) The creation of bicycle lanes on existing rights-of-way.

(i) Fuel management activities within 30 feet of structures to reduce the volume of flammable vegetation, provided that the activities will not result in the taking of endangered, rare, or threatened plant or animal species or significant erosion and sedimentation of surface waters. This exemption shall apply to fuel management activities within 100 feet of a structure if the public agency having fire protection responsibility for the area has determined that 100 feet of fuel clearance is required due to extra hazardous fire conditions.”

*Proposed Text (subsection (h), plus a new subsection (j)):*

(h) The creation of bicycle lanes or the installation of shared lane markings on the existing rights-of-way....

(j) Installation of public amenities, including but not limited to street trees, bicycle racks and other street furniture, within the public right of way, including streets, sidewalks and parks."

**10. Amend Section 15333, Small Habitat Restoration Projects, and Section 15065, Mandatory Findings of Significance, to Clarify Criteria Related to Biological Resources Impacts**

*Purpose of Change:* The proposed revisions would clarify one of the criteria for Class 33 exemptions specified in Section 15333(a). Section 15333(a) makes reference to Section 15065; however, only the portion of Section 15065 specifically addressing the criteria relative to endangered, rare, or threatened species or their habitat is relevant. The existing Section 15065 includes criteria addressing not only endangered, rare or threatened species or their habitat, but also historic resources, short- and long-term environmental goals, cumulative impacts, and effects on human beings. Moreover, the criterion related to historic resources in Section 15065(a)(1) should be a standalone item.

*Existing Text of Section 15333 (through subsection (c)):*

"Class 33 consists of projects not to exceed five acres in size to assure the maintenance, restoration, enhancement, or protection of habitat for fish, plants, or wildlife provided that:

- (a) There would be no significant adverse impact on endangered, rare or threatened species or their habitat pursuant to section 15065,
- (b) There are no hazardous materials at or around the project site that may be disturbed or removed, and
- (c) The project will not result in impacts that are significant when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects."

*Existing Text of Section 15065 (through subsection (a)(4)):*

"(a) A lead agency shall find that a project may have a significant effect on the environment and thereby require an EIR to be prepared for the project where there is substantial evidence, in light of the whole record, that any of the following conditions may occur:

- (1) The project has the potential to: substantially degrade the quality of the environment; substantially reduce the habitat of a fish or wildlife species; cause a fish or wildlife population to drop below self-sustaining levels; threaten to eliminate a plant or animal community; substantially reduce the number or restrict the range of an

- endangered, rare or threatened species; or eliminate important examples of the major periods of California history or prehistory.
- (2) The project has the potential to achieve short-term environmental goals to the disadvantage of long-term environmental goals.
  - (3) The project has possible environmental effects that are individually limited but cumulatively considerable. "Cumulatively considerable" means that the incremental effects of an individual project are significant when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.
  - (4) The environmental effects of a project will cause substantial adverse effects on human beings, either directly or indirectly.
- (b)(1) Where, prior to the commencement of preliminary review of an environmental document, a project proponent agrees to mitigation measures or project modifications that would avoid any significant effect on the environment specified by subdivision (a) or would mitigate the significant effect to a point where clearly no significant effect on the environment would occur, a lead agency need not prepare an environmental impact report solely because, without mitigation, the environmental effects at issue would have been significant.
- (2) Furthermore, where a proposed project has the potential to substantially reduce the number or restrict the range of an endangered, rare or threatened species, the lead agency need not prepare an EIR solely because of such an effect, if:
- (A) the project proponent is bound to implement mitigation requirements relating to such species and habitat pursuant to an approved habitat conservation plan or natural community conservation plan;
  - (B) the state or federal agency approved the habitat conservation plan or natural community conservation plan in reliance on an environmental impact report or environmental impact statement; and
  - (C)
    1. such requirements avoid any net loss of habitat and net reduction in number of the affected species, or
    2. such requirements preserve, restore, or enhance sufficient habitat to mitigate the reduction in habitat and number of the affected species to below a level of significance.
- (c) Following the decision to prepare an EIR, if a lead agency determines that any of the conditions specified by subdivision (a) will occur, such a determination shall apply to:
- (1) the identification of effects to be analyzed in depth in the environmental impact report or the functional equivalent thereof,
  - (2) the requirement to make detailed findings on the feasibility of alternatives or mitigation measures to substantially lessen or avoid the significant effects on the environment,
  - (3) when found to be feasible, the making of changes in the project to substantially lessen or avoid the significant effects on the environment, and
  - (4) where necessary, the requirement to adopt a statement of overriding considerations."

*Proposed Text of Section 15333(a):*

“(a) There would be no significant adverse impact on endangered, rare or threatened species or their habitat pursuant to section 15065(a)(1), ...”

*Proposed Text of Section 15065(a)(1) (plus a new subsection (5)):*

“(a) A lead agency shall find that a project may have a significant effect on the environment and thereby require an EIR to be prepared for the project where there is substantial evidence, in light of the whole record, that any of the following conditions may occur:

- (1) The project has the potential to: substantially degrade the quality of the environment; substantially reduce the habitat of a fish or wildlife species; cause a fish or wildlife population to drop below self-sustaining levels; threaten to eliminate a plant or animal community; or substantially reduce the number or restrict the range of an endangered, rare or threatened species; ~~or eliminate important examples of the major periods of California history or prehistory....~~

- (5) The project has the potential to eliminate important examples of the major periods of California history or prehistory.”

**11. Amend Appendix G, Section IX, Land Use and Planning, to Eliminate Question C, which Is Redundant with Section IV, Biological Resources, Question F**

*Purpose of Change:* The question of whether a project would “[c]onflict with any applicable habitat conservation plan or natural community conservation plan” is appropriately addressed in Appendix G, Section IV, Biological Resources, where it is already covered under question “f”, which asks whether the project would, “[c]onflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan?” Therefore, the question within the Land Use section is redundant.

*Existing Text of Appendix G, Section IV, Biological Resources, Question F:*

“Would the project:

- f) Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan?”

*Existing Text of Appendix G, Section IX, Land Use and Planning, Question C:*

“Would the project:

(c) Conflict with any applicable habitat conservation plan or natural community conservation plan?”

*Proposed Text of Appendix G, Section X, Land Use and Planning, Question C:*

“Would the project:

~~(c) Conflict with any applicable habitat conservation plan or natural community conservation plan?”~~

## **12. Amend Appendix G, Section XVII, Utilities and Service Systems, To Separate the Major Subtopics and To Standardize the Question Format**

*Purpose of Change:* The existing Utilities and Service Systems subsection includes overlapping criteria addressing water and wastewater impacts related to supply and capacity, facility construction, and regulatory requirements. The suggested revisions would separate the major utility/service system subtopics, allowing each system to be addressed individually within a response or sequence of responses, and clarifying whether a potential impact is related to water or wastewater. The proposed revisions would also reformat questions “d” through “g” so that a “yes” response corresponds to a potential significant impact, consistent with the criteria for all other environmental topics in Appendix G.

*Existing Text*

“Would the project:

- a) Exceed wastewater treatment requirements of the applicable Regional Water Quality Control Board?
- b) Require or result in the construction of new water or wastewater treatment facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?
- c) Require or result in the construction of new storm water drainage facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?
- d) Have sufficient water supplies available to serve the project from existing entitlements and resources, or are new or expanded entitlements needed?
- e) Result in a determination by the wastewater treatment provider which serves or may serve the project that it has adequate capacity to serve the project’s projected demand in addition to the provider’s existing commitments?

f) Be served by a landfill with sufficient permitted capacity to accommodate the project's solid waste disposal needs?

g) Comply with federal, state, and local statutes and regulations related to solid waste?"

*Proposed Text:*

"Would the project:

~~a) Exceed wastewater treatment requirements of the applicable Regional Water Quality Control Board?~~

a) Have insufficient water supplies available to serve the project from existing resources?

b) Require or result in the construction of new water ~~or wastewater~~ treatment facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?

~~c) Require or result in the construction of new storm water drainage facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?~~

c) Exceed wastewater treatment requirements of the applicable Regional Water Quality Control Board or result in a determination by the wastewater treatment provider which serves or may serve the project that it does not have adequate capacity to serve the project's projected demand in addition to the provider's existing commitments?

~~d) Have sufficient water supplies available to serve the project from existing entitlements and resources, or are new or expanded entitlements needed?~~

d) Require or result in the construction of new wastewater treatment facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?

~~e) Result in a determination by the wastewater treatment provider which serves or may serve the project that it has adequate capacity to serve the project's projected demand in addition to the provider's existing commitments?~~

e) Require or result in the construction of new storm water drainage facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?

f) Be served by a landfill that does not have sufficient permitted capacity to accommodate the project's solid waste disposal needs?

~~g) Comply with federal, state, and local statutes and regulations related to solid waste?~~

g) Violate or be unable to comply with federal, state, or local statutes or regulations related to solid waste?

### **13. Amend Section 15123, Summary, to Increase the EIR Summary Page Limit to 50 Pages**

*Purpose of Change:* Given the required contents of an EIR summary, it is difficult to limit the page count to 15 pages. Many jurisdictions, such as San Francisco, list in tabular format each significant effect of the proposed project together with the proposed mitigation measures, as well as the impacts of the project alternatives that would reduce or avoid the significant impact. While informative to the reader and easy to follow, presentation in this manner can be voluminous, especially when graphics are included in summaries intended to be stand-alone volumes for more complex EIRs. A maximum page count of 50 pages would be sufficient to include all required contents and would still be a manageable size for the reader, many of whom do not read beyond the summary.

*Existing Text:*

“(c) The summary should normally not exceed 15 pages.”

*Proposed Text:*

“(c) The summary should normally not exceed ~~15~~50 pages.”

### **14. Amend the Guidelines to Clarify When Use of a Future Baseline Is Appropriate**

*Purpose of Change:* For phased projects and programmatic (plan) analysis, it is not a useful exercise to analyze the impacts of a 20-year planning project relative to today’s conditions without also accounting for other growth and physical infrastructure changes that would occur during that time. San Francisco urges OPR to include in its revisions to the CEQA Guidelines a clear explanation of when reliance on a future baseline is appropriate when identifying and evaluating significant impacts.

Thank you for this opportunity to provide input on what revisions should be made to the CEQA Guidelines. We appreciate your consideration of our recommendations and welcome any questions or comments you may have. Please contact Lisa Gibson at (415) 575-9032 or at [Lisa.Gibson@sfgov.org](mailto:Lisa.Gibson@sfgov.org) regarding this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Sarah Jones", with a long horizontal flourish extending to the right.

Sarah B. Jones  
Environmental Review Officer  
San Francisco Planning Department

August 30, 2013

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

**Project: Solicitation for Input for Improvements to CEQA Guidelines**

**District CEQA Reference No: 20130639**

Dear Mr. Calfee:

The San Joaquin Valley Unified Air Pollution Control District (District) is in receipt of the Solicitation for Input for improvements and comprehensive updates to the CEQA Guidelines. The District requests that the following comments and recommendations for process improvements be considered when updating the CEQA Guidelines:

1. Process Improvements:
  - a. Notice of Completion

The District acts as a Trustee Agency for any project within the San Joaquin Valley Air Basin that has the potential to impact air quality and for which the District is not a Lead or Responsible Agency. The District acts as a Responsible Agency when it has discretionary power over a project that requires air pollution control permits but does not have the principal authority to carry out the project. When acting as a Responsible Agency the District considers the environmental document prepared by the Lead Agency and reaches its own conclusions on whether and how to approve the project involved. Many Lead Agencies and/or their consultants rely on the State Clearinghouse for distribution of their environmental documents to the appropriate Trustee and Responsible Agencies. However, it is the District's experience that the District does not receive environmental documents for review when they are routed through the State Clearinghouse only and not routed directly from the Lead Agency to Trustee and Responsible Agencies.

**Seyed Sadredin**  
Executive Director/Air Pollution Control Officer

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**Northern Region**  
4800 Enterprise Way  
Modesto, CA 95356-8718  
Tel: (209) 557-6400 FAX: (209) 557-6475

**Central Region (Main Office)**  
1990 E. Gettysburg Avenue  
Fresno, CA 93726-0244  
Tel: (559) 230-6000 FAX: (559) 230-6061

**Southern Region**  
34946 Flyover Court  
Bakersfield, CA 93308-9725  
Tel: 661-392-5500 FAX: 661-392-5585

The State Clearinghouse requires that a Notice of Completion (NOC) be submitted with any Environmental Impact Report (EIR), Negative Declaration (ND), or Mitigated Negative Declaration (MND) to be distributed for agency review. For many natural resources (e.g. water, biological species, etc.) the NOC provides the agency name or a space for the Lead Agency to identify the Trustee/Responsible agency with the state and/or regional jurisdiction over that resource. For air resources, however, the NOC currently identifies only the agency with statewide jurisdiction, that is, the Air Resources Board (ARB). Although the NOC does provide space to list other agencies not already identified in the NOC, it does not guide Lead Agencies into identifying one of the 35 air districts that have regional jurisdiction over air quality. If a Lead Agency does not specify the air district(s) in which the project will have a local and/or regional impact, the environmental document is distributed only to ARB and not to the affected air district.

The lack of routing of EIRs to the District for review is of concern to the District. The District recommends that a place be added to the NOC to identify routing the CEQA document to local Air District.

b. Notices for Posting to County Clerk

CEQA requires a Notice of Determination be filed with the County Clerk within five working days after approval of the project. Due to the short timeframe associated with such requirement, the District is suggesting that an electronic submission of the notices to the County Clerk be an available option.

2. Substantive Improvements:

a. Mitigation Measures and Mitigation Monitoring and Reporting Program

The Guidelines state that the mitigation must be discussed and a Mitigation Monitoring and Reporting Program (MMRP) approved for the CEQA documents. Guidance is not very clear on how to make measures that are outside of an agency's jurisdiction be reported and made enforceable.

The District recommends that an example of a MMRP be added to the appendices of the Guidelines.

b. Streamlining CEQA for Small businesses/Small projects

The District had the opportunity to meet with a representative of the Office of Governor/Office of Business & Economics Development to discuss a concept called "GoBiz". The purpose of this concept is to assist small business owners be successful with their development projects. The CEQA process can often be challenging and time consuming, and therefore can hinder a development project rather than being conducive. The District would like your office to consider options

to (1) streamline the CEQA process that can be made available for these small business owners and small projects, and (2) areas in the CEQA process that can be expedited such as reducing review process where amendable.

If you have any questions or would like to discuss the District's recommendations further, please contact Jessica Willis, Air Quality Specialist, by phone at (559) 230-5818 or by e-mail at [jessica.willis@valleyair.org](mailto:jessica.willis@valleyair.org).

Sincerely,

David Warner  
Director of Permit Services

A handwritten signature in blue ink that reads "Jessica R. Willis". The signature is written in a cursive style.

For: Arnaud Marjollet  
Permit Services Manager

DW:jw

Governor's Office of Planning and Research  
1400 Tenth Street  
Sacramento, CA 95814

**William Craven**  
**Chief Consultant**  
**Senate Natural Resources and Water Committee**

I am writing on behalf of Senator Fran Pavley who has pending legislation (SB 633) on the CEQA-related issue of temporary land uses and the existing CEQA exemptions for those activities. She is very interested in OPR considering the issue posed in SB 633 in its upcoming Guidelines revisions which could perhaps obviate the need for legislation.

As you know, the premise of the legislation is that OPR would provide some guidance to local governments and other sponsors of local events on the most effective use of these existing exemptions, whether any CEQA review at all is necessary for events with minor impacts, and how to determine what level of CEQA review should be attached to various types of events.

Senator Pavley is not interested in creating new exemptions, but she is aware of confusion and disparate and uneven use of the existing exemptions such that she believes some guidance from OPR would be very helpful to local sponsors of temporary events.

Among the questions that could be included in such guidance are these: (1) When is it appropriate to approve events through ministerial permits? (2) When is it necessary to conduct an environmental review pursuant to CEQA? (3) Is there any guidance on the appropriate use of negative declarations, mitigated negative declarations, or environmental impact reports that could be helpful to local events organizers that OPR could provide?

As I am sure you have heard from the sponsors of SB 633, there are tens of thousands of local events in California each year with a wide range of environmental impacts, some undetermined number of which probably have very little environmental impact, and all of which have economic value in their local communities ranging from fundraisers for local charities to large civic events.

Local communities apparently process local events through a wide range of mechanisms ranging from discretionary reviews to ministerial approvals often for events that would seem to be roughly equivalent in impact. The process statewide would benefit from some guidance to local governments and other events sponsors so that some uniformity and some clarity is brought to approving or permitting these events.

I realize that one possible answer to all this is every event must be analyzed on its own and that there may not be many "bright lines" that OPR can offer such that there is precise certainty for all events in California in a given year. However, that is not the request. Instead, I think some clear guidance from OPR on the considerations, including the questions listed earlier, that should be evaluated by local officials or sponsors of local events would be very helpful.

Thank you very much for considering this request.

Sincerely,  
William Craven

Hello Christopher Calfee

What I found is a local dishonest public agency, a special independent district!  
This public agency lacks good faith!

Please the make the following minor word change!

Article 6

Section 15072 (b)

See the second to last sentence!

Remove the following words "at least one of"

Add the following words "all of"

The paragraph will read in part; shall also give notice of intent to adopt a negative declaration or mitigated negative declaration by "all of" the following procedures

What the District Administrator did was to publish the notice in the Sacramento Bee instead of using the local Orangevale newspaper, where the project was actually located!!

When i found out (i traced the publication to the Sacramento Bee because the notice i was given looked like it was published in the Bee) i was very upset, to say the least!

Thank you for making this "minor" but very important word change!

Terry Benedict

**RAMIRO VILLALVAZO, ASLA, RLA**  
**Director, Public Services (Rec./Lands/Special Uses)**  
**USDA Forest Service**  
**Pacific Southwest Region**

I appreciate this opportunity to give my personal input on the current CEQA Guidelines. As the Public Services Director of Recreation, Lands, Special Uses for California's National Forests, I also appreciate the important work you and other OPR staff are doing with this CEQA update process. Through the many decisions it supports, CEQA contributes to the quality of life across California every day, and leave an environmental and social legacy for generations. I would like for the updated CEQA to stimulate a new generation of distinctively sustainable decisions that allow people to enjoy the rich and beautiful resources of California indefinitely.

My personal input centers on this one Goal:

To fully implement the current visionary CEQA Policy statements that support California's outdoor Recreation and Scenic Values (below):

- *“provide a high-quality environment that at all times is healthful and pleasing to the senses and intellect of man”* (CEQA PRC 21000.b)
- *“take all action necessary to provide the people with... enjoyment of aesthetic, natural and scenic... qualities”* (CEQA PRC 21001.b)
- *“create and maintain conditions... to fulfill the social and economic requirements of present and future generations.”* (CEQA PRC 21001.e)

I believe this vision can be realized only by substantially strengthening the scientific foundations for an updated set of Recreation and Scenery Guidelines, coupled with leadership in the use of environmental design arts to professionally interpret and oversee statewide CEQA guideline implementation.

Current Guidelines for these values are about 50% incomplete, narrowly focused, and lack scientific backing to support the significant array of human health, tourism, quality of life, economic and social productivity benefits that depend on high quality outdoor recreation opportunities available throughout California's 100 million acres.

I have been privileged to engage in the development and implementation of USFS Recreation and Scenery conservation systems for decades now. These systems continue to evolve and guide public lands conservation practices through active public and professional collaborations, and are currently applied nationwide, largely due to their effectiveness and strong science foundation. Jerry Mosier, a recently retired USFS landscape architect who applied his career to Recreation and Scenery conservation in California, recently sent me his draft CEQA Guidelines input which reflect current "best science" conservation principles and analysis methods. Please give these recommendations (attached) serious consideration as samples of proven methods that could substantially improve on pertinent CEQA Guidelines, and enable actual achievement of CEQA's excellent Policy statements above.

In summary, 3 reasons why CEQA implementation guidelines need substantial updating:

- 1) To fill very significant achievement gaps between CEQA's robust policy statements and its current implementation Guidelines, which are narrowly focused, incomplete, and insufficiently strategic or systematic – again, by far insufficient to support CEQA Policy achievement.
- 2) There is a need for consistency, or at least compatibility, with current best science methods currently in practice on federal lands across over 35% of California, such as the Recreation Opportunity Spectrum (ROS), and the Scenery Management System (SMS). These nationally sanctioned systems of the USFS (and similar in BLM) fully address the CEQA Policy aspects of Recreation, Scenery and Aesthetics.
- 3) Application of a statewide methodology and advocacy for these values is essential to consistently implement CEQA's Policy for Rec/Scenery/Aesthetics across its 100 million acres of public and private lands. Some form of State Program leadership on what may be called the "Environmental Design Arts" is necessary, to provide the professional thoroughness, guidance and oversight to implement the chosen California methodology via CEQA and through other state programs, agencies and departments. These arts have been most successfully advocated and conserved by the Landscape Architecture profession. While this comment may appear to extend beyond the subject of CEQA Guideline updates, it is actually an essential element of successful CEQA implementation. There are many examples today where current conditions are highly inconsistent with CEQA Policy - and it will take serious efforts to eliminate such shortfalls. Professional Environmental Design Arts leadership is key. Currently within the state there is very uneven and inconsistent design arts proficiency, and state permitted projects cannot be said to routinely or consistently meet the CEQA Policy above. Cal-Trans and the State Department of Recreation and Parks appear to be the only state agencies that have landscape architects providing environmental design arts services, while other Agencies (Cal-Fire, Resources Agency, etc.) oversee actions on huge areas of the state with little to no adequate design arts guidance and no professionals to provide the services needed. The State's multiple Agencies & Departments need consistent and professional best science methods, to achieve CEQA policy across California using established recreation and scenery conservation systems and principles.

I offer examples of specific opportunities for significant improvement within current CEQA guidelines:

**RECREATION** - Current Guidelines for evaluating significance only address deterioration of neighborhoods, regional parks or other rec facilities, due to changes in use and/or the potential recreation impacts on the environment. While recreation is identified as a Environmental Factor to evaluate, it is not on Project Applicant's list of questions about project effects or environmental setting. No guidance is provided to systematically consider effects on recreation opportunities, activities or the valued settings that are the basis for their attractiveness.

SCENERY is hidden in the list of Environmental Factors to evaluate under "AESTHETICS," and though critical, it is the only value addressed. Eighty percent of human perception is by

sight alone, and almost every project creates scenery effects. Scenery needs to be ADDED as its own Environmental Factor to be evaluated. Aesthetic Guidelines randomly use terms like scenic, visual, and views instead of Scenery. Guidelines need to address substantial adverse effect on scenic vistas, and impacts to scenic elements/resources (vegetation, rock outcroppings, water elements, etc.); for example along a state scenic highway.

**AESTHETICS** – Currently only addresses scenery and should be expanded to consider all aesthetic physical perceptions, which affect and do matter when considering how and why humans enjoy the outdoors and natural environment. Particularly environmental sounds and smells have a bearing on people's enjoyment of a site or setting.

Thank you for considering my comments and recommendations.



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August 30, 2013

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**Re: Response to OPR Solicitation for Input: Revisions to the Guidelines Implementing CEQA**

Dear Mr. Calfee:

In reviewing the Revisions to the Guidelines Implementing CEQA the Viejas Band of Kumeyaay Indians ("Viejas") would like to comment at this time. Resources that are culturally significant to Viejas are often overlooked under the current CEQA statute which results in these resources not being thoroughly considered when project decisions are made.

Viejas is requesting the following:

- The identification and cultural significance of a resource must be done before a decision is made on the project that will impact the resource. This will help mitigate the project's impact on the cultural resource.
- Qualified Native American monitors should be included in the initial cultural resource surveys. The Native American monitors can provide cultural insight into resources that an archaeologist cannot.

Christopher Calfee  
CEQA Comment  
August 30, 2013  
Page 2 of 2

- Tribal cultural knowledge and tribal analysis should be included in the Guidelines so as to assist in the identification of the resource, its cultural significance and to determine its appropriate treatment according to customs and traditions.
- The standard cultural resources survey and identification toolkit should include noninvasive tools such as geoarchaeology, ground penetrating radar and historic human remains.
- Tribal cultural resources should be listed as historic resources so that these resources will be properly considered when project decisions are made.
- In Appendix G the Cultural Resource and Paleontological Resource/Geologic Features section should be split into distinct sections. This will allow for more thorough and just attention to be given to these cultural resources.

Thank you for your consideration of these revisions that will help preserve our Tribal cultural resources. If you have any further questions, concerns or comments, please contact me at 619-659-2341 or [frbrown@viejas-nsn.gov](mailto:frbrown@viejas-nsn.gov).

Sincerely,  
VIEJAS BAND OF KUMEYAA Y INDIANS

**/s/ Frank Brown**

Tribal Historic Preservation Officer

**Input to CEQA Implementation Guidelines**  
Focusing on California's Recreation, Scenery and Aesthetics  
Jerry Mosier - August 2013

**Introductory Comment**

CEQA's foundational goals and policy statements provide an ideal vision for California's Recreation, Scenery and Aesthetics:

- *“provide a high-quality environment that at all times is healthful and pleasing to the senses and intellect of man”* (CEQA PRC 21000.b)
- *“take all action necessary to provide the people with... enjoyment of aesthetic, natural and scenic... qualities”* (CEQA PRC 21001.b)
- *“create and maintain conditions... to fulfill the social and economic requirements of present and future generations.”* (CEQA PRC 21001.e)

However, CEQA's specific guidance to implement the above policies falls substantially short in both scope of influence and the application of current “best science” practices. Two CEQA Appendices appear to be where specific guidance improvements can be most effectively implement CEQA Policy:

- Appendix G - Environmental Checklist Form identifying “Environmental Factors Potentially Affected” and “Sample Questions” to evaluate effects and determine “significance”
- Appendix H - Environmental Information Form, “Project Description” and “Environmental Setting” sections

Guideline recommendations to better implement CEQA policy for Recreation, Scenery and Aesthetics values follows below, after introductory statements about the importance of these values to California citizens.

## Its all about US and our Future Together

**RECREATION** is the performance of satisfying and joyful acts that “Re-Create” one’s self-identity, in subtle yet meaningful ways (as in: “**WOO HOO, That was AWESOME !**” or the unspoken “That just felt Great!”). At its core, recreation is a universally practiced method of self-healing that restores us physically, emotionally, mentally and spiritually. These recreation health benefits directly contribute to the productivity of individuals and society. Outdoor Recreation, the subject of this paper, also produces major economic benefits, through recreation support businesses, tourism and real estate industries, community “quality of life” competitiveness, and by greatly reducing health care costs. As an example, California’s Outdoor Recreationists spent nearly \$21 billion in 2008, supporting about 200,000 jobs (CA Outdoor Rec Plan Data<sup>1</sup>). Nature-based outdoor recreation is reported to be on the rise nationwide, with participation growing by 7% and recreation days growing by 40% between 2000 and 2009 (USFS Cordell<sup>2</sup>). California’s population increases of 10+%/decade coupled with so many healthy baby boomers pursuing outdoor recreation indicates a growing recreation demand and need for decades to come (CA Outdoor Rec Plan<sup>3</sup>). Providing satisfying recreation opportunities is an extremely timely and effective strategy to help achieve a healthy, productive and sustainable California.

**RECREATION SETTINGS** are the diverse blend of one or more geographic “Places” and their unique “Conditions”, which combine to provide distinct sets of existing and potential recreation opportunities. Their continuously evolving ecological (biophysical and social) context controls what Conditions are available now and into the future. Conditions that typically influence recreation setting functionality and quality include the following: size, scenic character, mixture of unaltered nature and human alterations, proximity to public access roads and trails, and the degrees of personal freedom, challenge and risk available (USFS ROS<sup>4</sup>). When Conditions are in decline or are inconsistent with recreation preferences, shortages or impairments of important recreation satisfaction, health, and social sustainability benefits can be expected. This occurs perhaps most noticeably and frequently when socially valued Scenery is impaired to levels inconsistent with public preference thresholds.

**SCENERY** is what we see, the perceivable visible imagery displayed by Places and their features. Research indicates that 80% of human perception is based on the sense of sight (Bruce; U. of Newcastle; USFS<sup>5</sup>), thus scenery is the dominant sensory input that people use to give meaning to their environment and support their recreation activities. Californian’s participation in Scenery enjoyment (as driving for pleasure, sightseeing and driving through natural scenery) ranked #2 within the state’s top 15 recreation activities in 2007 (CA Outdoor Recreation

Plan 2008 Trends<sup>6</sup>). Preferred Scenery is dominated by “socially valued scenery attributes”, which may be naturally occurring or influenced by humans. In 2007, a survey of California outdoor recreationists indicated 98% of all recreationists felt that viewing scenic beauty (as opposed to undesired scenery) is important to the enjoyment of their favorite recreation activities (CA Outdoor Recreation Plan<sup>7</sup>). National participation in scenery appreciation, the “viewing and photographing nature”, is the fastest-growing type of nature-based recreation (Cordell<sup>2</sup>). High quality scenery, where valued scenic features are dominant, is a critically important Condition within recreation settings. California’s current CEQA policy related to scenery indicates its social importance:

- *“provide a high-quality environment that at all times is healthful and pleasing to the senses and intellect of man”* (CEQA PRC 21000.b)
- *“take all action necessary to provide the people with... enjoyment of aesthetic, natural and scenic... qualities”* (CEQA PRC 21001.b)
- *“create and maintain conditions... to fulfill the social and economic requirements of present and future generations.”* (CEQA PRC 21001.e)

To actually implement these policy statements would mean to achieve, or at least make progress toward, a socially valued scenery across California’s entire 100+ million acres, and in a manner that is ecologically sustainable for future generations. While this is a virtuous long-term goal, much of California does not have a high quality environment pleasing to the senses, or gives scenic enjoyment, or is trending to do so for future generations. There is a significant gap to close, by working now towards a statewide, systematic stewardship of California’s scenery and thereby largely restore its recreation settings and human habitations. This will require new actions within numerous state agencies, departments, programs and projects, but can begin with effective updates to the current CEQA Guidelines Appendix G. Beyond these CEQA updates, substantial improvements are necessary just to implement CEQA statewide, through some new statewide form of State Agency oversight. This would need to be coupled with a widespread and routine application of professional environmental design arts to all projects that influence California’s recreation, scenery and aesthetic values. This will require a significantly expanded California environmental design arts stewardship capability – which is absolutely necessary to implement the CEQA Guidelines highlighted above.

Nature-based scenery within outdoor recreation settings is at its core valued by Californians for its intricately ordered ecological complexity. This complexity inspires people to wonder, consider the natural and universal systems at play, and for some, to appreciate the necessity to sustain healthy ecosystems and their displays of beauty as a scenery legacy for current and future generations. The provision of California’s socially valued scenery through time and ecological

change requires a deliberate statewide consideration of ecological limitations and opportunities, coupled with active stewardship implementation practices. Sustaining scenery within an integrated ecosystem context is infrequently practiced today, but US Forest Service landscape architects in California have recently developed and applied such a process (documented in the “SMS Appendix J”<sup>8</sup>). Today’s scenery conservation challenge is to restore and maintain socially valued scenery and other values within fully integrated sustainable ecosystems, or alternatively, to let ecosystems continue evolve by default into much less attractive and less sustainable conditions. These default conditions do not satisfy California’s CEQA policy statements above, nor will they support functional human re-creation opportunities and their accompanying personal and societal benefits.

**RECOMMENDATIONS for CEQA Implementation Guidelines**

Focusing on California’s Recreation, Scenery and Aesthetics

**Appendix G Environmental Checklist Form – AESTHETICS and SCENERY**

(Selected pertinent excerpts of Appendix G are included above applicable comments and recommendations)

**ENVIRONMENTAL FACTORS POTENTIALLY AFFECTED:**

The environmental factors checked below would be potentially affected by this project, involving at least one impact that is a "Potentially Significant Impact" as indicated by the checklist on the following pages.

- |   |   |   |
|---|---|---|
| <input type="checkbox"/> Aesthetics               | <input type="checkbox"/> Agriculture and Forestry Resources | <input type="checkbox"/> Air Quality                        |
| <input type="checkbox"/> Biological Resources     | <input type="checkbox"/> Cultural Resources                 | <input type="checkbox"/> Geology /Soils                     |
| <input type="checkbox"/> Greenhouse Gas Emissions | <input type="checkbox"/> Hazards & Hazardous Materials      | <input type="checkbox"/> Hydrology / Water Quality          |
| <input type="checkbox"/> Land Use / Planning      | <input type="checkbox"/> Mineral Resources                  | <input type="checkbox"/> Noise                              |
| <input type="checkbox"/> Population / Housing     | <input type="checkbox"/> Public Services                    | <input type="checkbox"/> Recreation                         |
| <input type="checkbox"/> Transportation/Traffic   | <input type="checkbox"/> Utilities / Service Systems        | <input type="checkbox"/> Mandatory Findings of Significance |

**Appendix G Environmental Checklist Form COMMENT**

**SCENERY is a universally appreciated value very frequently affected by California projects, yet it is inappropriately ABSENT from CEQA’s Appendix G “Checklist” of Environmental Factors Potentially Affected (SCENERY is often not routinely evaluated because it is inappropriately concealed within the AESTHETICS Factor).**

**The absence of “SCENERY” in the Checklist makes a routine and appropriate consideration of project scenery effects much less likely, as well as the beneficial recreation and social outcomes of scenery. To assure that CEQA Guidelines PRC 21000.b&c, and 21001.b are most effectively implemented, specific inclusion of Scenery as a separate Factor is **essential**. Inclusion of SCENERY as a separate Factor will best assure appropriate consideration of**

California's 100 million acres of natural beauty and valued scenery, which is widely recognized as a universally enjoyed source of human enjoyment and inspiration, that provides a broad range of health, social and economic benefits.

#### **Appendix G Environmental Checklist Form SCENERY RECOMMENDATION**

**Add "SCENERY" as an "Environmental Factor Potentially Affected" because:**

- a) It would take effective action to better achieve CEQA Policy
  - *"take all action necessary to provide the people with... enjoyment of aesthetic, natural and scenic... qualities"* (CEQA PRC 21001.b)
  - *"provide a high-quality environment that at all times is healthful and pleasing to the senses and intellect of man"* (CEQA PRC 21000.b)
- b) Listing "SCENERY" as a Factor would best communicate in the clearest and most plainly spoken word available, to describe what humans perceive as the visual imagery of places and features. Listing SCENERY would also eliminate the current problem of this socially important value being "hidden" within the "Aesthetics" Factor.
- c) Scenery, what we see as the physical imagery of places and features, is the DOMINANT sensory experience and input of human perception (researchers estimate **80% of human perceptions are based on sight<sup>1</sup>**). Identifying SCENERY as an independent "Factor Potentially Affected" would faithfully "take all actions necessary" per CEQA 21001.b to increase the likelihood that projects are appropriately evaluated for Scenery effects and mitigation opportunities.
- d) **Scenery is a valued contributor to 98% of all recreation activities<sup>2</sup>.** Without specific listing of a SCENERY "Factor", scenery contributions to the functionality and benefits of recreation settings are not as likely to be recognized or maintained.
- e) **Scenery is affected by the vast majority of changes to the environment,** therefore its high frequency effects merit routine evaluations best reinforced through SCENERY being listed as an independent Factor potentially affected.

Lastly related to "SCENERY" being included as a new "Factor", I strongly recommend use of the word "Scenery" instead of "Visual" or other variants, not only for clear and plain communications, but also because "visual" is an overly simplified, technical jargon term. Actual SCENERY involves the imagery perceived by humans actively sampling a myriad of images through the sense of sight, by selectively scanning, zooming in and out, panning around or gazing, as they choose, moment to moment. The term "visual" implies an overly simplistic ocular, or snapshot version of this complex imagery. The classical origins of "scenery" should also not

be ignored, with scenery as the “scenes” that humans perceive through sight and their mind’s eye, while acting on the “stage” of the world.

**Appendix G Environmental Checklist Form - AESTHETICS and SCENERY**  
 (Selected excerpts of Appendix G’s “Sample Question” Section - applicable recommendations follow below)

**SAMPLE QUESTION**

Issues:

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
I. AESTHETICS -- Would the project:				
a) Have a substantial adverse effect on a scenic vista?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b) Substantially damage scenic resources, including, but not limited to, trees, rock outcroppings, and historic buildings within a state scenic highway?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c) Substantially degrade the existing visual character or quality of the site and its surroundings?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d) Create a new source of substantial light or glare which would adversely affect day or nighttime views in the area?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**Env. Checklist Form, Sample Questions - SCENERY RECOMMENDATION**

Establish the following new SCENERY Factor Sample Questions to guide determination of scenery effects and their Significance, which would replace current scenery-related Questions of the AESTHETICS Factor. Ultimately, these questions should be updated again when a future State of California scenery analysis process is developed. In the interim, the recommended questions below are compatible with state-of-the art methods currently in practice by federal agencies in California (the USFS Scenery Management System with its Appendix J ecosystems update, and the similar BLM Visual Resource Management system

- these systems currently apply to 35 of California's 100 million acres of federal lands).

SCENERY - Would the project:

- a) Alter or impair the socially valued scenery within view of residences, communities, cities, recreation and special interest areas, rivers, public roadways, vista points, recreation trails, mountain peaks, traditional native American sites or other cultural sites?
- b) Noticeably alter the socially valued scenery in an area where the scenery is currently unaltered or imperceptibly altered?
- c) Impair the socially valued scenery to the degree that the project's alterations becomes the dominant perception of that scenery?
- d) Prevent or substantially delay the planned achievement or restoration of the socially valued scenery?
- e) Result in unavoidable adverse scenery effects in areas listed in "a)" above, that would require compensatory scenery restorations or acquisitions in or near the project area to maintain its cumulative scenic integrity?
- f) Restore, or enhance sustainability of socially valued scenery for current and future generations, through activities that support the ecological resiliency of valued scenery attributes (such as restoring the historic wildfire role in fire-adapted ecosystems, promoting restoration of scenic attributes such as mature trees and stands, restoring historic or desired species & spatial biodiversity, and conserving the quality and clarity of water bodies and atmospheric conditions)?
- g) Result in scenery outcomes consistent with the goals, priorities, objectives or tolerance thresholds of community members and local, county, state and federal agencies?

#### **Env. Checklist Form - Sample Questions - AESTHETICS COMMENT**

The "Aesthetics" Questions are incomplete (lacks questions for human aesthetic perceptions of beautiful/desired sounds, smells, tastes and physical contacts) - See AESTHETICS Recommendation below. The existing Questions a-d about Scenery result in an excessively narrow scenery analysis lacking current best science to fully address statewide scenery issues, including the State's scenery stewardship responsibilities shared with other agencies, professionals and citizens (see SCENERY recommendations below).

#### **Env. Checklist Form, Sample Questions - AESTHETICS RECOMMENDATION**

**Expand the "AESTHETICS" Factor 's scope of Sample Questions to briefly address the full set of sensory perceptions that people enjoy in their environment (sights, sounds, smells, tastes and physical contacts).** A basic consideration of effects on the beauty or desirability of these sensory perceptions

would enable implementation of CEQA PRC 21000.b: “provide a high quality environment that is at all times healthful and pleasing to the senses and intellect of man.” Such considerations should result in a linkage with other affected Factors selected for project analysis. For example, a basic AESTHETIC analysis of sights could refer to, but not duplicate the more detailed “SCENERY” Factor analysis. Similarly, the NOISE Factor would link with AESTHETIC effects of sounds, AIR QUALITY with smells, WATER QUALITY with tastes and contacts. The AESTHETICS of physical contacts with weather, water, vegetation and terrain may link with several applicable Factors.

**APPENDIX G - Env. Checklist Form - Sample Questions - RECREATION**

(Selected excerpts of Appendix G’s “Sample Questions” - recommendations follow below)

**SAMPLE QUESTION**

Issues:

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
<b>XIV. RECREATION</b>				
a) Would the project increase the use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b) Does the project include recreational facilities or require the construction or expansion of recreational facilities which might have an adverse physical effect on the environment?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**Sample Questions - RECREATION COMMENT**

**RECREATION Sample Questions above are very narrow in scope and lack guidance for a complete, systematic evaluation of critical and common effects to Recreation: changes to the Opportunity for Recreation Experiences, Recreation Activities, and Recreation Setting Places and Conditions.**

**Sample Questions - RECREATION RECOMMENDATION**

**Add the following questions, making existing questions unnecessary.**

RECREATION - Would the project impair, enhance or maintain:

- a) Recreation Opportunities (current and future options available to provide valued Recreation Experiences with compatible Activities & Settings)?
- b) Recreation Activities (hiking, sightseeing, biking, boating, etc)?

- c) Recreation Settings (the blend of Places and their specific Conditions that enable desired Opportunities and Activities to function properly)?
- d) Recreation Outcomes (recreation-induced human health, community quality of life, real estate, tourism, social stability and economics benefits)?
- e) Recreation Consistency with applicable plans, ordinances or policies?

The above structure follows ROS/Recreation Opportunity Spectrum methods used by federal agencies in California (USFS/20 million acres, BLM/15 million ac, NPS/13 million ac, etc). **ROS or something compatible should be applied statewide to enable stewardship consistent with federal agencies in California.**  
**APPENDIX H Env. Information Form – Effects Questions – (excerpt below)**

*Are the following items applicable to the project or its effects? Discuss below all items checked yes (attach additional sheets as necessary).*

	<b>Yes</b>	<b>No</b>
21. Change in existing features of any bays, tidelands, beaches, or hills, or substantial alteration of ground contours.	<input type="checkbox"/>	<input type="checkbox"/>
22. Change in scenic views or vistas from existing residential areas or public lands or roads.	<input type="checkbox"/>	<input type="checkbox"/>
23. Change in pattern, scale or character of general area of project.	<input type="checkbox"/>	<input type="checkbox"/>
24. Significant amounts of solid waste or litter.	<input type="checkbox"/>	<input type="checkbox"/>
25. Change in dust, ash, smoke, fumes or odors in vicinity.	<input type="checkbox"/>	<input type="checkbox"/>
26. Change in ocean, bay, lake, stream or ground water quality or quantity, or alteration of existing drainage patterns.	<input type="checkbox"/>	<input type="checkbox"/>
27. Substantial change in existing noise or vibration levels in the vicinity.	<input type="checkbox"/>	<input type="checkbox"/>
28. Site on filled land or on slope of 10 percent or more.	<input type="checkbox"/>	<input type="checkbox"/>
29. Use of disposal of potentially hazardous materials, such as toxic substances, flammables or explosives.	<input type="checkbox"/>	<input type="checkbox"/>
30. Substantial change in demand for municipal services (police, fire, water, sewage, etc.).	<input type="checkbox"/>	<input type="checkbox"/>
31. Substantially increase fossil fuel consumption (electricity, oil, natural gas, etc.).	<input type="checkbox"/>	<input type="checkbox"/>
32. Relationship to a larger project or series of projects.	<input type="checkbox"/>	<input type="checkbox"/>

**Environmental Setting**

- 33. Describe the project site as it exists before the project, including information on topography, soil stability, plants and animals, and any cultural, historical or scenic aspects. Describe any existing structures on the site, and the use of the structures. Attach photographs of the site. Snapshots or polaroid photos will be accepted.
- 34. Describe the surrounding properties, including information on plant~ and animals and any cultural, historical or scenic aspects. Indicate the type of land use (residential, commercial, etc.), intensity of land use (one-family, apartment houses, shops, department stores, etc.), and scale of development (height, frontage, set-back, rear yard, etc.). Attach photographs of the vicinity. Snapshots or polaroid photos will be accepted.

**APPENDIX H Env. Information Form – RECREATION RECOMMENDATION**

- **Recommend a NEW Effects Question** to adequately identify potential RECREATION effects (locate after Question 21):

**Change in recreation opportunities, activities or settings, or conditions that enhance them?**

- **Question 33**, recommend adding “recreational” after “historical”, to adequately identify any recreational aspects of properties.

**APP H - Env. Info Form, Effects Questions - SCENERY RECOMMENDATION**

**Question 22, recommended revision:**

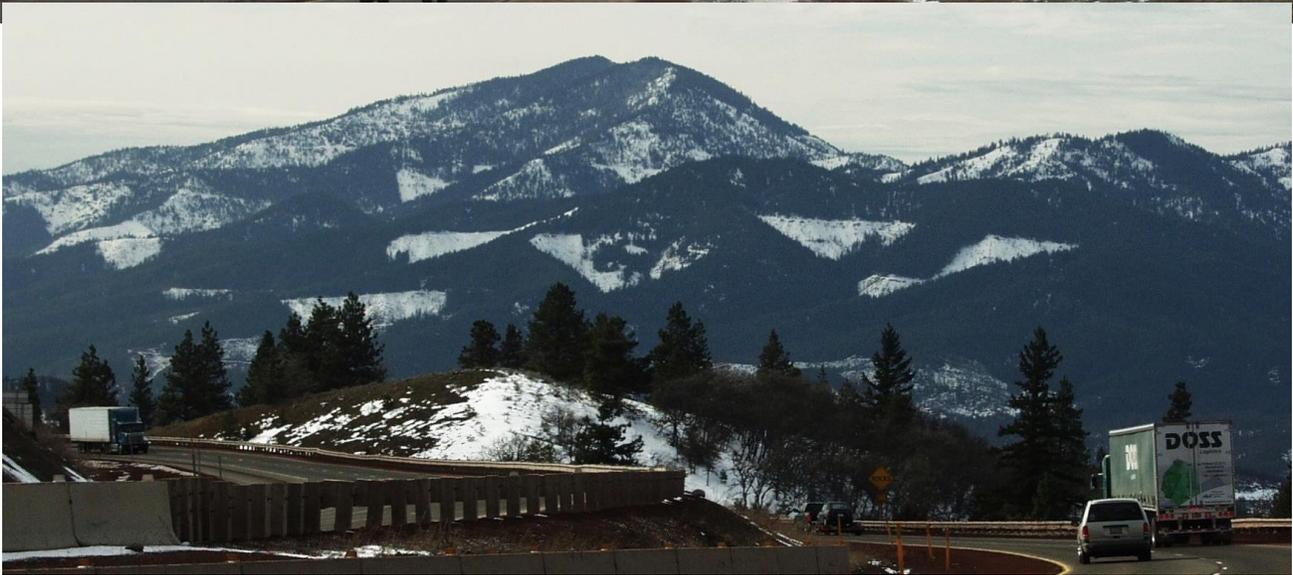
- **Change in the magnitude and dominance of scenery disturbances, or the socially valued scenery attributes, or the socially valued scenic character?**

This revision appropriately addresses ALL effects of scenery change: change in the scenery alteration/disturbance, change in the condition of scenery attributes/features, and changes in the overall scenic character that people value. The relative visibility of such scenery changes from certain viewpoints, and the protections suitable for certain viewpoints, is a secondary level of evaluation and consideration that is more appropriately evaluated in the “discussions” that this form recommends for questions that are answered with a “YES”.

This revision also replaces the adjective “scenic” (used in the AESTHETIC sample questions) with the noun “scenery” which most directly and literally refers to all perceived imagery, while the term “scenic” as an adjective means it is the subset of all imagery that is considered by someone to be exceptionally attractive, as in “the most scenic of all scenery”.

- **Question 33**, replace “scenic” with “scenery” for the reason described above.

**EVIDENCE OF NEED For BETTER REC/SCENERY CEQA GUIDELINES**  
**January 2013 Interstate 5 View - Welcoming travelers to California**



Inconsistent with CEQA Policy below and State Calfire Rules to protect Scenery

- *“provide a high-quality environment that at all times is healthful and pleasing to the sense and intellect of man”* (CEQA 21000.b)
- *“take all action necessary to provide the people with... enjoyment of aesthetic, natural and scenic... qualities”* (PRC 21001.b)
- *“create and maintain conditions... to fulfill the social and economic requirements of present and future generations.”* (21001.e)

•

10,000+ travelers view this mountain scenery each day, from I-5's northernmost 6 mile stretch of continuous elevated views to blocky clear cuts below, in violation of State Forestry rules for natural appearing shapes. These eyesores will persist for 15-20+ years. WE CAN DO BETTER !

### CITED REFERENCES

#### **1 California Outdoor Recreation Plan 2008**

[http://www.parks.ca.gov/?page\\_id=23880](http://www.parks.ca.gov/?page_id=23880) (accessed 8/21/2013)

## **California Outdoor Recreation Plan**



### **California Outdoor Recreation Planning Program**

California State Parks' Planning Division develops the California Outdoor Recreation Plan (CORP), the statewide master plan for parks, outdoor recreation, and open space for California. The CORP provides policy guidance to all outdoor recreation providers, including federal, state, local, and special district agencies, that provide outdoor recreational lands, facilities and services throughout California. The CORP is also the primary tool for prioritizing Land and Water Conservation Fund grant allocations to local governments.

The CORP is updated periodically. The most recent was produced in 2008 and approved in 2009. Planning staff has begun work on the 2014 CORP. The first two research elements of the 2014 CORP are published below.

### **2014 CORP Research Elements/Stand-alone Publications**

#### **2011 Economic Study on Outdoor Recreation in California**

This research element consists of two reports that document the annual economic

contribution to the California economy from recreation on public land and common spaces throughout the state. The first report evaluates the economic effects on California's economy from outdoor recreation statewide, at federally- and state-managed lands, local and regional parks, and other public outdoor locations. The second report measures the economic contributions of the State Park System specifically.

**[Statewide Contributions and Benefits](#)** (140 pages, 1.0 mb .pdf)

This report quantifies the economic contribution from statewide outdoor recreation to California's economy. Outdoor recreation trip and equipment expenditures totaled almost \$21 billion in California in 2008 and supported about 200,000 jobs. When economic multiplier effects are included, these figures rise to nearly \$40 billion and about 313,000 jobs. [Fact Sheet](#)

**2 USDA Forest Service, 2012, Outdoor Recreation Trends and Futures – A Technical Document Supporting the Forest Service 2010 Resources Planning Act Assessment.** H. Ken Cordell, Southern Research Station, Asheville, NC  
[http://www.srs.fs.usda.gov/pubs/gtr/gtr\\_srs150.pdf](http://www.srs.fs.usda.gov/pubs/gtr/gtr_srs150.pdf), accessed 8/21/2013

**3 California Outdoor Recreation Plan 2008, Trends and Challenges, p 11, 14**  
<http://www.parks.ca.gov/pages/795/files/2009-2014%20corp-trends%20and%20challenges.pdf> accessed 8/21/2013

**4 USDA Forest Service, Recreation Opportunity Spectrum/ ROS Primer and Field Guide**  
[http://www.fs.usda.gov/Internet/FSE\\_DOCUMENTS/stelprdb5335339.pdf](http://www.fs.usda.gov/Internet/FSE_DOCUMENTS/stelprdb5335339.pdf)  
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**Bruce, V., Green, P.R., Georgeson, M.A., 1996. Visual perception, physiology, psychology and ecology,** Psychology Press, East Sussex.

**University of Newcastle, 2002. Visual Assessment of Windfarms Best Practice.  
Scottish Natural Heritage Commissioned Report F01AA303A.**

[http://www.snh.org.uk/pdfs/publications/commissioned\\_reports/f01aa303a.pdf](http://www.snh.org.uk/pdfs/publications/commissioned_reports/f01aa303a.pdf).

accessed 8/21/2013

Bruce et al. (1996) estimate that 80% of man's perception is based on sight, however other sensory, physiological and psychological factors also influence our perception of place and people use many cues to perceive size, shape, depth and distance (University of Newcastle, 2002). Paul Gobster, personal communication 8/7/2013, [pgobster@fs.fed.us](mailto:pgobster@fs.fed.us).

USDA Forest Service, 1973. Agriculture Handbook # 434,  
National Forest Landscape Management Volume 1, page 1.

"87% of man's perception is based on sight"

**6 California Outdoor Recreation Plan 2008, Trends and  
Challenges**, California Department of State Parks and Recreation  
website, [http://www.parks.ca.gov/?page\\_id=23880](http://www.parks.ca.gov/?page_id=23880), accessed  
8/21/2013

**SCENERY Enjoyment is California's #2 Outdoor Recreation Activity**

(See list below, from California Outdoor Recreation Plan 2008)

Generally, Californians tend to participate in activities that are less expensive, require less equipment, and need fewer technical skills. The Public Opinions and Attitudes Survey 2007 discovered that Californians' top 15 activities (by participation) were:

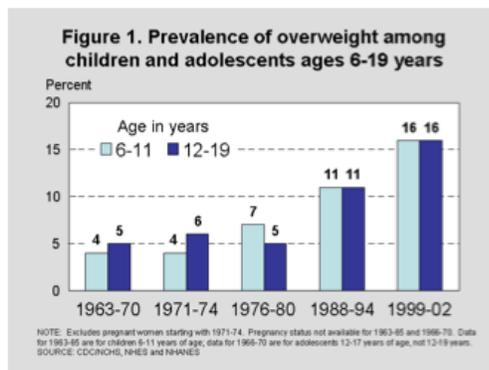
1. Walking for fitness or pleasure	74.2%
2. Driving for pleasure, sightseeing, driving through natural scenery	59.8%
3. Beach activities	59.2%
4. Swimming in a pool	50.9%
5. Day hiking on trails	46.9%
6. Wildlife viewing, bird watching, viewing natural scenery	45.9%
7. Jogging and running for exercise	39.8%
8. Bicycling on paved surfaces	36.3%
9. Outdoor photography	33.3%
10. Using open turf areas	33.3%
11. Using play equipment, play structures, tot-lots	32.8%
12. Organized team sports such as soccer, football, baseball, softball, basketball	25.6%
13. Fishing – freshwater	21.4%
14. Bicycling on unpaved surfaces and trails	15.9%
15. Surfing or boogie boarding, windsurfing	14.1%

**G. Health Concerns**

**1. Obesity rates in children and adults**

Results from the 1999-2002 National Health and Nutrition Examination Survey (NHANES), using measured heights and weights, indicate that an estimated 16 percent of children and adolescents ages 6-19 years are overweight. As shown in Figure 1, this represents a 45 percent increase from the overweight estimates of 11 percent obtained from NHANES III (1988-94).

The prevalence of obesity continues to be a health concern for adults, children and adolescents in the United States. Data from the most recent



**7** California Outdoor Recreation Plan 2008, Trends and Challenges, page 15, California Department of State Parks and Recreation website  
<http://www.parks.ca.gov/pages/795/files/2009-2014%20corp-trends%20and%20challenges> accessed 8/21/2013

**8** USDA Forest Service, 2007, Appendix J, Draft Update to Landscape Aesthetics – A Handbook for Scenery Management, Agriculture Handbook # 701.  
<http://www.reclink.us/page/scenery-management-system-sms>, accessed 8/21/2013