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VIA EMAIL: CEQA.Guidelines@resources.ca.gov

October 12, 2015

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

RE: Comments on Proposed Updates to the CEQA Guidelines, Preliminary Discussion Draft ("PDD")

Dear Mr. Calfee:

We are grateful for the opportunity to provide you with these comments on the PDD. Further, we appreciate the substantial amount of time and energy that was put into drafting the PDD. Many of the issues addressed in the PDD are complex and come with a variety of sometimes conflicting case law.

Our approach to providing these comments is to comment only on provisions which we believe could use some further clarification, strengthening, or redaction born out of the nearly 45 years of experience of trying to comply with CEQA. These comments also reflect comments gathered from more than 2 dozen of the most prominent CEQA litigators in the state.

The difference between the use of a law and the abuse of a law comes down to its intended purpose. At its best, CEQA was intended to benefit the environment. That is a valid use of CEQA. However, to use CEQA to stop or delay a project because its neighbors don't want the project located next to them, to extract labor concessions, money or other goods or services, or to restrict business competitors are abuses. While few laws are perfect, after more than four decades the growth in CEQA abuse should no longer be acceptable. We look forward to continuing to work with OPR, the Administration and other stakeholders to enact thoughtful improvements that retain the statute's fundamental purpose of environmental protection and public engagement while eliminating the abuses that have real costs to both California's environment and its economy.

Therefore, our comments are supportive where we believe there is some benefit to the environment that can be gained from a proposed amendment and critical where there is no benefit to be gained but that will, in our view, simply foment litigation.

We greatly appreciate the Governor and the entire Administrations intent to improve the CEQA process. We completely agree with, and hope that our comments are taken in the spirit of, producing "a ***balanced*** package that is intended to make the process easier and quicker to implement, and better protect natural and fiscal resources consistent with other state environmental policies." PDD at p. 7. (Emphasis in original).

Guideline 15064. . Using Regulatory Standards in CEQA (pp. 12-19)

Using already existing standards can help to streamline the CEQA compliance process and can provide consistency in environmental protection. Standards, adopted by statute, regulation, ordinance, plan, or otherwise are the result of an enormous amount of time and expertise – usually by agencies charged with the protection of that resource. Fighting over the validity of a standard in the context of its application to an impact it would mitigate, simply wastes the time and resources of the agency or legislative body that originally adopted it and the agency that desires to use it. It also gives project opponents a second bite at the standard in the context of project approval and results in an endless game of moving the goal posts for project proponents.

With this as background, we view the last 2 sentences of (b)(2) as inadvertently conflating thresholds of significance with compliance with regulatory standards. Language regarding the development and use of thresholds of significance are covered in Guideline 15064.7, as the first sentence of the proposed new (b)(2) recognizes, and as a general comment we believe it creates confusion rather than clarity to propose to address thresholds of significance in Guideline 15064.

We therefore recommend that the first sentence of proposed (b)(2) be retained and the second 2 sentences be deleted.

Regarding the second sentence, in our view it does not reflect the holding of CEQA case law or a statutory command. As the textual explanation points out, the proposed second sentence is merely a "caution" from the *Protect the Historic Waterways* opinion, and the textual rationale is that "demonstrating that compliance with a threshold indicates that a project's impact is less than significant is *impliedly* already required by CEQA." (emphasis added). However, we do not believe that this is supported by the holding of a published decision or statutory command. Nor do we believe that the CEQA Guidelines should codify every cautionary dictum from every published opinion, nor implied requirements derived from other Guidelines. More importantly, we believe that the proposed sentence is not consistent with the existing language in (h)(3) that suggests that lead agencies should explain how implementing a plan, regulation, or program ensures that a project's cumulative effect is not significant. (h)(3)'s language refers to the substantive measures contained in a plan, regulation, or program and an explanation of how compliance with those measures supports a determination regarding less than significance. The proposed language in the second sentence here, by contrast, calls for explanations regarding a threshold of significance itself. Thresholds of significance are already required to be supported by substantial evidence.

The third sentence should be deleted because it improperly shifts the current standard of upholding the decision of the lead agency when there is substantial evidence to support its decision (even where there is contrary substantial evidence), to a standard that presumes the invalidity of the lead agency's determination that the standard has been complied with when there is any conflicting substantial evidence. This also undermines the "normal" presumption (see, Guideline 15064.7(a)) and is a significant expansion of CEQA. *See, e.g., Oakland Heritage Alliance v. City of Oakland* (2011) 195 Cal.App.4th 884, 898-899 ("The substantial evidence standard is applied to conclusions, findings and determinations. It also applies to the challenges to the scope of an EIR's analysis of a topic, the methodology used for studying an impact and the reliability or accuracy of the data upon which the EIR relied…. It also applies to factual disputes over whether adverse effects have been mitigated or could be better mitigated…. Whether these mitigations were in fact sufficient to reduce the seismic risks to a less than significant level is a factual question subject to review for substantial evidence…. [A]nd the question of whether seismic impacts can be, or have been, mitigated to a less than significant level is properly treated as one of fact." (internal citations and quotations omitted))

Moreover, as noted above, not every phrase from a court decision is a holding deserving of inclusion in the Guidelines. We believe that the citation from *Protect the Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal.App.4th 1108-9, is dicta. The holding of the case is:

> We conclude the Agency abused its discretion because the EIR does not contain a required statement indicating the reasons why the Agency determined that the reduction in the surface flow of local streams would not be significant. *Id.* at 1103.

The holding is based on a failure to explain why the lead agency found the effects were not significant, not whether the lead agency considered substantial evidence showing that, despite compliance with the threshold, there may still be a significant environmental effect from a project:

> The question the Agency had to answer was whether the reduction of the surface flow in the streams constituted a *significant* environmental effect, i.e., "a substantial, or potentially substantial, adverse change in the environment." (*CEQA, § 21068.*) Here, the Agency answered that question in the negative. Plaintiff contends it did so because it applied standards of significance that did not even address the reduction in stream flow as a potential environmental effect of the project. We cannot determine whether plaintiff is correct, however, because, contrary to CEQA requirements, the EIR fails to explain the reasons *why* the Agency found the reduction in stream flow would not be significant. (Emphasis underlined, added.) Id.at 1111.

See also, *El Morro Community Ass'n v. California Dept. of Parks and Recreation* (2004) 122 Cal.App.4th 1341, 1353 ("[Amador] involved an EIR that failed to analyze a particular significant environmental effect of the proposed project. It did not involve the matter of interpretation of the Guidelines."); *North Coast Rivers Alliance v. Marin Municipal Water Board* (2013) 216 Cal.App.4th 614, 638 ("In [Amador]…the petitioner argued the lead agency failed to comply with CEQA by omitting a discussion of a canal project's impacts on riparian habitats. The court disagreed, explaining that the EIR's one-sentence statement that 'riparian habitat will "continue to thrive along local streamcourses if canal leakage is eliminated"' constitutes a valid statement of reasons for the Agency's significance determination…, citing Public Resources Code, §21100, subd. (c), and Guidelines, § 15128").

The lead agency considered the substantial evidence, found it not significant, but did not explain why. The third sentence would mislead practitioners.

Accordingly, we suggest that the last sentence of (b)(2) should also be deleted as follows:

(2) Thresholds of significance, as defined in Section 15064.7(a), may assist lead agencies in determining the significance of an impact. ~~When relying on a threshold, the lead agency should explain how compliance with the threshold indicates that the project's impacts are less than significant. A lead agency shall not apply a threshold in a way that forecloses consideration of substantial evidence showing that, despite compliance with the threshold, there may still be a significant environmental effect from a project.~~

Guideline 15064.7. Using Regulatory Standards in CEQA (pp. 12-19)

As an initial comment, we believe important published opinions validating project-specific thresholds and distinguishing them from generally applicable thresholds should be reflected in the updated Guidelines. Specifically, the holdings in *Save Cuyuma Valley v. County of Santa Barbara* (2013) 213 Cal.App.4th 1059 and *Oakland Heritage Alliance v. City of Oakland* (2011) 195 Cal.App.4th 884 clarify that CEQA does not require a public agency to adopt thresholds for general use; that an agency may rely on thresholds developed for a particular project and such thresholds do not require formal adoption; and that an agency is not required to explain why it did

not use a different threshold of significance, such as one found in Appendix G. These opinions should also be noted in the Authority cited section for this Guideline.

We suggest revising (b) to read as follows:

(b) Thresholds of significance to be adopted for general use as part of the lead agency's environmental review process must be adopted by ordinance, resolution, rule, or regulation, and developed through a public review process and be supported by substantial evidence. However, a public agency is not required to adopt thresholds of significance for general use, and may rely on a threshold of significance developed for a particular project, so long as it supported by substantial evidence. Formal adoption of a threshold of significance developed for a particular project is not required. A lead agency is not required to explain why it did not use a different threshold of significance than the one it chose to use.

With respect to proposed new (d), we have several comments and suggestions. First, it is more appropriate to refer to the standards at issue here as "regulatory standards" rather than "environmental standards." The seminal case on the subject—*Communities for a Better Environment v. California Resources Agency* (2002) 103 Cal.App.4th 98—consistently uses the term "regulatory standards," as do myriad other published opinions. Also, as shown in the discussion below, the modifier "environmental" is too restrictive and would give a false impression that certain regulatory standards, compliance with which published opinions have held satisfy CEQA, may not be appropriate because they may not be thought of as strictly "environmental" standards *per se*, even though compliance with them in fact addresses environmental effects as defined in CEQA. We also would note that in the PDD Executive Summary, the first example cited of an efficiency improvement is the proposal's promoting the use of "existing **regulatory standards** in the CEQA process." (original emphasis). Also, the heading of the section for Guideline 15064 is "**Using Regulatory Standards in CEQA**."

Second, the language requiring an explanation of how a regulatory standard will avoid or reduce project impacts is overbroad and should be modified to reflect the situations where existing standards adopted by other agencies have already undergone this analysis and explanation. Also, the second sentence of (d) includes cumulative impacts. However, cumulative impacts are not always significant**.** This provision should be limited to cumulative impacts where they apply.

As to (d)(1), the list should also include standards founds in a variety of plans, some of which are mentioned in Guideline 15064(h)(3), and standards that are set in statute or guidance documents.

As noted above, some standards, such as building codes are adopted principally for health and safety purposes, not for the purpose of environmental protection. However, building codes address an environmental effect caused by the project, e.g., the level of emissions associated with energy use. See, *Tracy First v. City of Tracy* (2009) 177 Cal.App.4th 912. The inclusion of (d)(2) would arguably eliminate the use of building codes as standards which account for an almost 70% increase in stringency of energy efficiency since 2002. We think it is better to focus on environmental effects, rather than the ostensible purpose or intent of a particular regulatory standard. The criteria of (d)(2) would be adequately covered by (d)(3).

(d)(4) focuses on whether or not the standard is "designed" to apply to the "type of project" under review. In a similar way, we think it is better to focus on the environmental effect rather than the type of project the standard was designed for.

Therefore, we suggest that (d) be modified as follows:

(d) Any public agency may adopt or use a regulatory ~~an environmental~~ standard as a threshold of significance. In adopting or using a regulatory ~~an environmental~~ standard as a threshold of significance, a public agency shall explain how the particular requirements of that ~~environmental~~ regulatory standard will avoid or reduce project impacts, including cumulative impacts where applicable, to a less than significant level only in those instances in which the agency or legislative body which created the standard has not already done so, or where the lead agency is creating its own standard. For the purposes of this subdivision, a~~n~~ "~~environmental~~ regulatory standard" is a rule of general application that is adopted by a public agency through a public review process and that is all of the following:
(1) a quantitative, qualitative or performance requirement found in an ordinance, resolution, rule, regulation, order, applicable plan, statute, or other ~~environmental~~ requirement or guidance document of general application;
~~(2) adopted for the purpose of environmental protection;~~
~~(3)~~(2) addresses the same environmental effect caused by the project; and,
~~(4)~~(3) ~~is designed to apply~~ applies to the type of ~~project~~ impact under review.

Guideline 15168. "Within the Scope" of a Program EIR (pp. 20-24)

With respect to subdivision (c), paragraph (2), we believe that the second sentence creates the inference that if the later activity is *not* consistent with the listed factors, those later activities will not be considered within the scope of the program EIR.

Therefore, we suggest that the second sentence be deleted:

> **Determining that a later activity is within the scope of a program covered in the program EIR is a factual question that the lead agency determines based on substantial evidence in the record. ~~Relevant factors that an agency may consider include, but are not limited to, consistency of the later activity with the type of allowable land use, overall planned density and building intensity, geographic area analyzed for environmental impacts, and description of covered infrastructure, as presented in the project description or elsewhere in the program EIR.~~**

With respect to Subdivision (c), paragraph (5), program EIRs don't include "detailed" description of planned activities because they often are not known at the time the program EIR is produced. That is the reason for using a program EIR. The second sentence refers to a "project" which is usually a term used in connection with the subsequent later activity, rather than the program EIR that is intended in this context.

Therefore, we suggest the following:

> (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.

Finally, the holding in the published opinion in *Oakland Heritage Alliance* provides clarification on important recurring questions involving Guideline 15168 that we believe warrant recognition in this Guidelines update. We suggest adding the following language at the end of (5):

> Nothing in this section or any other provision of CEQA mandates a particular level of environmental review in evaluating later projects within the scope of a certified program EIR. In some cases it will be necessary to prepare a negative declaration and in others to prepare a full environmental impact report, and in other cases, it will be sufficient to determine that the project is within the scope of the program EIR and no further CEQA documentation is required.

Guideline 15152. Clarifying Rules on Tiering (pp. 25-28)

We are concerned that this new language in (h) constrains the options and flexibility currently built into CEQA in the use of tiering. Instead, the proposed new language states that where methods are more specific, those provisions *shall* apply, thereby eliminating tiering as an option. The background to the amendment acknowledges that Public Resources Code section 21094 is broadly worded to potentially be used for any number of programs, plans, policies, or ordinances, with a wide variety of content. The discretion is left up to lead agencies. We don't believe that there is any legal authority to support the elimination of tiering in those other circumstances.

Therefore, we suggest the following:

> **Where other methods have more specific provisions, lead agencies may elect to use those other methods ~~provisions~~ either in lieu of or in conjunction with tiering ~~shall apply, rather than the provisions in this section~~.**

Guideline 15182. Transit Oriented Development Exemption (pp. 29-33)

The existing section 15182 reads: "Residential Projects Pursuant to a Specific Plan". Subdivision (c) is intended to replicate this title but reads "Residential Projects within Specific Plans." To avoid confusion over whether or not "within" means something different from "pursuant to", **we suggest the following:**

> **Residential Projects ~~within~~ pursuant to Specific Plans**.

We also believe that language in the explanatory text is unsupported by case law and experience and could potentially cast doubt on the existing specific plan statutory exemption. For example, the text asserts that the existing exemption is "difficult to apply in practice" and cannot be used if changed circumstances occur unless a supplemental EIR is prepared to cover "the entire specific plan area." We are unaware of case law supporting this commentary.

Guideline 15301. Existing Facilities (pp. 34-37)

The inclusion of "historic" is a positive development and reflects existing case law. This provision could be further improved by giving some clarification of what is meant by historic use.

Therefore, we suggest the following:

> 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 **historic** use **beyond normal operating conditions. "Normal operating conditions may include the existing setting (operations at the time the project application is filed), normal occupancy of an existing structure for its authorized use (even if the structure was unoccupied or only partially occupied at the time the project application was filed)**. The types of "existing facilities" itemized below are not intended to be all-inclusive of the

> types of projects which might fall within Class 1. The key consideration is whether the project involves negligible or no expansion of an existing use.

Subdivision (c) of the exemption applies to minor street improvements. Whether they fit this classification should be determined through the general "negligible or no expansion of historic use" provision, rather than an absolute bar on adding a lane. A small road grading project could add a turn lane without increasing overall road capacity, and should not be disqualified from the exemption. Moreover, as a logical and factual matter, adding bicycle lanes may significantly increase safety risks far more than adding an automobile lane. For example, adding bike lanes in a congested urban setting could significantly increase bike usage and potential bike conflict with other bikes, pedestrians, or cars, while striping an existing unmarked roadway in a rural setting could significantly improve traffic safety. Finally, we note that the explanatory text's reliance on *Erven v. Board of Supervisors* as authority for the proposition cited is inaccurate as that opinion's discussion of road widening was clearly dicta ("Since the action taken by the Board merely authorized repair and maintenance of public roads in the service area, it fell within the…exemption…. Should the Board decide in the future to widen existing public roads or to acquire private road easements, by condemnation or dedication, and improve them, such actions would not qualify for exemption….")

Therefore, we suggest the following:

> (c) Existing highways and streets, sidewalks, gutters, bicycle and pedestrian trails, and similar facilities (this includes road grading for the purpose of public safety**, and other alterations such as the addition of bicycle facilities, including but not limited to bicycle parking, bicycle-share facilities and bicycle lanes, pedestrian crossings, and street trees, and other similar improvements** ~~**that do not create additional automobile lanes**~~).

<u>Appendix G Checklist</u> (pp. 38-71)

As a general comment, we do not believe the checklist is improved by combining multiple standards into one, for two reasons. First, as a practical matter, in many cases both within lead agencies and within the consulting firms who prepare EIRs, each subject matter is distributed to a different subject matter expert to fill out. Combining these sections that are now separate will confuse the process and complicate the completion of the Checklist. Second, when more than one standard is combined, it will not be possible to indicate that one item is potentially significant, less than significant with mitigation, without mitigation, or no impact without including the other item in that characterization. This may be used in litigation to claim that an impact is significant when it was not intended to be indicated that way.

Therefore, we suggest that the current structure of the Checklist be maintained by keeping items and categories separate.

Another general comment is that it seems that some of the proposed amendments enter into the area of litigation currently pending at the California Supreme Court in *CBIA v. BAAQMD*. We believe that many published appellate decisions[1] support the conclusion that CEQA is intended to

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[1] *Ballona Wetlands Land Trust v. City of Los Angeles* (2011) 201 Cal.App.4th 455; *South Orange County Wastewater Authority v. City of Dana Point* (2011) 196 Cal. App.4th 1604, 1617; *San Lorenzo Valley Cmty. Advocates v. San Lorenzo Unified Sch. Dist.* (2006) 139 Cal.App.4th 1356, 1372; *Baird v. County of Contra Costa* (1995) 32 Cal.App.3th 1464, 1468; *City of Long Beach v. Los Angeles Unified School District* (2009) 176 Cal. App.4th 889, 905.

consider on the impacts of a project on the environment and not the impacts of the existing environment on the project. Therefore, if the Checklist items or offending Guidelines were to be amended, they should be amended to reflect this case law, not ignore it. See, *Marina Point, Ltd. v. Wolfson (1982) 30 Cal.3d 721, 734-735* (when the Legislature amends a statute without altering portions of the provision that have been previously judicially construed, "the Legislature is presumed to have been aware of and to have acquiesced in the previous judicial construction"), *with Traverso v. People ex. rel. Dep't of Transp.* (1996) 46 Cal.App.4th 1197, 1206-1207 (where an agency's administrative interpretation alters or enlarges the terms of a statute, the interpretation does not govern the interpretation of the statute, "even though the statute is subsequently reenacted without change"). If the PDD is to avoid delving into the issues currently pending at the California Supreme Court as it indicated in pp. 8-9, there are some amendments that we believe should not be made as indicated below. Specific areas of existing environmental impacts on the project such as seismic, flooding, sea level rise, toxics in the soil, wildfire risks, climate adaptation etc. are already addressed in the planning process outside of CEQA. Adding these provisions to CEQA is redundant without adding any protection to the environment or the health and safety of people.

We also note that the PDD expressly provides in the Executive Summary's "What is Not in the Package" section that it will not be addressing transportation issues such as those related to SB 743, or the GHG emissions issue currently pending before the California Supreme Court. We are concerned that some members of the public, upon reading the section "What is Not in the Package" abandoned reading further, believing that those issues were not contained in the PDD. This undermines the notice to the public of what is contained in this proposal and therefore, provisions that touch on "What is Not in the Package" should be removed.

<u>Aesthetics</u> (pp. 50-51)

For the reasons stated above (the PDD should avoid combining standards), scenic vista and scenic resources should be separated. In addition, scenic highway should reflect what is in b) and therefore should be modified to indicate "<u>state</u> scenic highway."

It would be helpful to clarify that scenic vistas in a) are those viewed from a public vantage point as is indicated in c).

<u>Air Quality</u> (pp. 52-53)

We believe that deleting this introductory language removes the discretion that lead agencies have to apply the significance criteria and instead make it automatically binding on the lead agency. Additionally, in *CBIA v. BAAQMD*, BAAQMD maintains that the adoption of its significance criteria were voluntary on the part of local lead agencies. The deletion would not only eliminate lead agency discretion but would also override the intent of the air district. This is an issue in the pending case and for this reason also, the status quo should be maintained.

Therefore, we suggest that the language be undeleted and maintained:

III. AIR QUALITY -- **<u>Where available, the significance criteria established by the applicable air quality management or air pollution control district may be relied upon to make the following determinations</u>.** Would the project:

For the same reasons, we believe that the addition to a) should be removed to read:

a) Conflict with or obstruct implementation of the applicable air quality plan ~~**or exceed significance criteria established by the applicable air quality management or air pollution control district**~~?

We believe that the addition to b) is more ambiguous and therefore more likely to be the subject of litigation than the existing language.

Therefore, we suggest that b) read as follows:

b) Violate any air quality standard or **contribute substantially to** ~~**result in a cumulatively considerable net increase in**~~ an existing or projected air quality violation?

With regard to subsection e) dust is included as particulate matter in previous subsections and haze is either an undefined aesthetic or it is smog which is adequately covered by the previous subsections.

Therefore, we suggest that dust and haze be removed so that e) reads as follows:

e) **Result in frequent and substantial emissions (such as** odors~~**, dust or haze**~~**) for a substantial duration that adversely** affect a substantial number of people?

Biological Resources (pp. 53-55)

With respect to subsection c), project proponents, practitioners and lead agencies are familiar with the definition of wetlands as contained in Section 404 of the Clean Water Act and know how to apply it in the CEQA context. We believe that it would cause confusion, uncertainty and litigation to delete the reference to that statute. In addition, it would be helpful to specify the definition in state law of wetlands contained in the Porter Cologne Water Quality Act.

Therefore, we suggest that the provision be undeleted to read as follows:

c) Have a substantial adverse effect on **state as defined in the Porter Cologne Water Quality Act or** federally protected wetlands **as defined by Section 404 of the Clean Water Act** (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means?

Cultural Resources (p. 55)

As mentioned in our general comments about the Checklist, the combination of standards may create confusion as to which item is potentially significant. **For that reason, we believe that both a) and b) should remain as set forth in the existing checklist.**

With respect to subsection c), we believe that second sentence addressing paleontological resources etc., should remain in the Cultural Resources section of the checklist since that fits with the subject matter expertise. However, it should have its own subsection, perhaps as a new e).

Therefore, we suggest the following:

c) Cause a substantial adverse change in the significance of a tribal cultural resource as defined in Public Resources Code Section 21074?

e) Directly or indirectly destroy a unique paleontological resource or site or unique geologic feature?

Energy (pp. 56-57)

We believe that it is premature to include an energy component in the checklist for the following reasons:

1) The PDD does not acknowledge *Tracy First v. City of Tracy*) (2009) 177 Cal.App.4th 912 ("*Tracy First*"), creating the impression that there is a split in the courts as to what is required. On one side, *Tracy First* found that compliance with California Building Energy Efficiency Standards is sufficient. On the other side, *California Clean Energy Committee v. City of Woodland* (2014) 225 Cal.App.4th 173) appears to require more. Yet the proposed threshold appears to tilt in favor of the latter and ignore the former. We believe that *Tracy First* is a standard that is legally valid and should continue to be allowed to be used – energy efficiency standards have statutory authority specific to energy use and *Tracy First* has not been overruled or reversed. We do not believe that the PDD should be making a change to the Guidelines that is contrary to existing case law by favoring one decision and excluding another dealing with the same issue.
2) More importantly, Appendix F, on which *California Clean Energy Committee v. City of Woodland* depends, arises out of the state of energy affairs in the mid-1970s. At the time, energy was derived principally from petroleum or coal, the adverse environmental impacts of which are clear. Today, clean and renewable energy sources are common. SB 350 requires a 50% renewable portfolio standard by 2030 and facilitating the electrification of transportation. Assuming for the sake of argument that Appendix F applies to private projects (see Guideline 15126.2), industry has adopted distributed generation in the form of increased use of rooftop solar and electric vehicle charging stations. These measures and more to come will result in energy use without significant adverse environmental impacts. Yet, Appendix F takes a last-century approach. The focus is on energy use, rather than whether or not there are negative environmental consequences. For example, in 2017, a home that complies with residential energy efficiency standards then in effect will be almost 70% more energy efficient than a home that was built in 2002. In addition, homes today and in the future may include rooftop solar, batteries to store that energy, and an electric vehicle charging station in the garage, in an effort to power the home entirely by clean energy. Yet, Appendix F still requires a significant impact simply because it focuses on energy use rather than impacts on the environment. Accordingly, we believe that Appendix F is overdue for an update that is based on 21st century realities. We would be happy to assist OPR in this effort. Until that time, we do not believe it is appropriate to suggest a threshold in the Guidelines.
3) Proposed amendment b), above, testifies to the outdated approach by treating items which would provide that including environmental *benefits* (renewable energy and energy efficiency) should be considered a significant adverse impact on the environment. We suggest that b) be deleted.
4) Additionally, "wasteful, inefficient, or unnecessary" is a very subjective standard. For example, would this prohibit holiday night lighting? Would this prohibit signage used to advertise a business location at night? Here again, *Tracy First* incorporates lighting in energy efficiency codes and indicates compliance with the code is sufficient.
5) Neither the project proponent nor the lead agency has control over the type of equipment used in the construction of the project (there are no energy free or clean energy heavy construction equipment vehicles) or equipment used in homes after they are purchased (consumers are buying more technology which demand energy so that in 2017, it is

estimated that 75% of a new home's energy use will be from the plug load, not on building inefficiencies). Equipment energy use is more appropriately addressed by the manufacturers of that equipment. More importantly, to the extent that the use of this equipment causes adverse impacts on the environment, e.g., air quality or greenhouse gases, they are already required to be analyzed by other provisions of CEQA. A separate energy calculation is redundant.

6) Transportation is part of the proposed SB 743 Guidelines and should be addressed there.
7) The authority cited, Public Resources Code section 21100(b)(3) only applies in the context of an EIR. Inclusion in the checklist would expand that requirement beyond just EIRs and would be beyond the statutory authority granted in 21100(b)(3).

Therefore, we suggest that section V be deleted from this proposal.

~~**V. ENERGY – Would the project:**~~
~~**a) Result in wasteful, inefficient, or unnecessary consumption of energy, during project construction or operation?**~~
~~**b) Incorporate renewable energy or energy efficiency measures into building design, equipment use, transportation or other project features?**~~

VIII. Hazards and Hazardous Materials (pp. 57-58)

The PDD, at pp. 8-9, indicate that the issue of whether CEQA requires analysis of impacts of the environment on the project or vice-versa is currently being addressed by the California Supreme Court and therefore the PDD will not address them. However, the changes made in this subsection do just that.

If the PDD does address this issue, the PDD should follow the cases that have addressed the issue and determined that CEQA does not concern itself with the effects of the environment on a project. See footnote 1. As previously stated, the PDD should not be proposing language that is contrary to existing case law. Therefore, e), f) and h) should be deleted from this subsection. Additionally, the issues of proximity to airstrips, wildfire, flooding and unstable soils are already covered in other laws that require them to be addressed in the planning process. In our view, the these provisions arm project opponents with tools to litigate without providing any added protection to the environment or the health and safety of people.

As stated in our general comments above, combining various impacts into one standard, e.g., paragraph e) and h) is problematic.

If there is to be a noise standard, rather than "excessive noise", it should refer to "noise exposure violating applicable noise standards."

Therefore, we suggest the following:

~~e) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, **or within the vicinity of a private airstrip,** would the project result in a safety hazard **or excessive noise** for people residing or working in the project area?~~

~~h) Expose people or structures to a significant risk of loss, injury or death involving wildland fires, **flooding or other inundation, unstable soils and other potential hazards including where wildlands are adjacent to urbanized areas or where residences are intermixed with wildlands**?~~

IX. Hydrology and Water Quality (pp. 58-60)

We believe that (b) should be changed to conform to the Sustainable Groundwater Management Act as follows:

(b) Substantially deplete ~~decrease~~ groundwater supplies or interfere substantially with groundwater recharge such that it ~~there~~ would interfere with the sustainable yield of the local groundwater basin ~~be a net deficit in aquifer volume or lowering of the local groundwater table level~~.

In (c)(iii), we suggest deleting "or provide substantial additional sources of polluted runoff" because that impact is already captured in the new addition to (a) as follows:

(iii) create or contribute runoff water which would exceed the capacity of existing or planned stormwater drainage systems ~~or provide substantial additional sources of polluted runoff~~; or

XI. Land Use and Planning (pp. 61-62)

We believe that the standard contained in subsection b) could be further strengthened by emphasizing that the concern in this paragraph is which an impact on a protected resource not merely the conflict with a plan. In addition, we believe that "applicable" should continue to apply. There is no purpose for evaluating inapplicable plans, and the universe of such inapplicable plans is simply too large and undefined. Finally we believe it would be best to maintain "of an agency with jurisdiction over the project" for fear that deleting it will be interpreted to mean that in addition to those agencies with jurisdiction over the project, the plans, policies or regulations of even those agencies without jurisdiction will need to be considered.

Therefore, we suggest the following:

b) **Cause a significant environmental impact on a protected resources due to a conflict** with any **applicable** land use plan, policy, or regulation **of an agency with jurisdiction over the project** adopted for the purpose of avoiding or mitigating an environmental effect?

XI. Open Space, Managed Resources and Working Landscapes (pp. 62-65)

We believe that the inclusion of "working landscapes" is a substantial broadening of the definition of impacts under CEQA that does not have support in existing case law; in fact it is not mentioned in the CEQA statute or, based on electronic searches, in any reported CEQA decision. CEQA contains no definition of "working landscapes" and the PDD indicates that "considerations may include, *among others…*" leaving it open-ended. (p. 63). The term "working landscapes" and "among others" should be eliminated.

a)(i) is duplicative of biological resources; a)(ii) is duplicative of the wetlands threshold on p.54 of the PDD; a)(iii) is duplicative of the cultural resources identified on p. 55 of the PDD. These (all of a)) should be eliminated from this subsection.

With respect to b), most of these provisions contain no reference to "significant" impacts. We suggest that they include a "significant" qualifier.

With respect to agricultural resources, we believe that if agricultural land is to be protected in CEQA, the quality of the land must be such that it will continue to be used for agricultural purposes, absent the proposed project. Therefore, we suggested that the criteria constituting agricultural land be narrowed to: (1) prime farmland, farmland of statewide significance, or

unique farmland, (2) be consistent with the applicable Sustainable Communities Strategies, (3) have a proven water supply and (4) not be contributing to violations of air quality and water quality standards.

Additionally, "among other things" is open-ended and does not give specific direction to those filling out the checklist. To avoid unnecessary litigation, "among other things" should be deleted.

"Significant" should be added to (iii) –(vi) as well. In the case of oak woodlands, the PDD conflicts with a statutory scheme which does not treat all conversion as significant, but requires counties to determine this and includes some exemptions. See, Public Resources Code section 21083.4.

(iv) treats the conversion of forest land to non-forest use as significant. Existing CEQA language is limited to "timber production". Forest land is not defined and raises the issue of what constitutes a forest – is the removal of trees on an infill site a conversion of forest land? Perhaps this provision, which seems adequately covered in (v) could be eliminated.

(vii) duplicates what is included in the Hydrology section and should be removed.

(viii) substantially impede groundwater recharge should be moved to Hydrology and Water quality as a new IX(c)(v).

c) deals with outdoor recreation, parks and trails. This should be clarified to indicate that it applies to *public* parks, trails etc. Additionally, this adds a new impact category, increasing demand that would result in substantial physical deterioration. This is most likely to occur in infill areas that are increasing density for city parks where additional land is scarce. This is adequately addressed through the fee authority local governments have to mitigate park impacts and the Quimby Act. Here there is already law that addresses these items and we don't believe there is a reason to have it also addressed in CEQA.

d) deals with impacts of the existing environment (hazards) on the project – a topic that will be avoided (PDD at pp. 8-9). The inclusion of impacts of the existing environment on the project is contrary to existing case law. See footnote 1. In addition, the provisions of d), (i) – (iv) are duplicative of what is covered in other Appendix G items and duplicative of other provisions of planning law which will be addressed outside of CEQA. Finally, the reduction of wildfire hazard areas is a beneficial environmental impact since that would prevent the degradation of air quality and carbon emissions resulting from wildfires. For these reasons, d) in its entirety should be eliminated from the PDD.

Therefore, we suggest the following:

XI. OPEN SPACE <u>AND</u> MANAGED RESOURCES ~~AND WORKING LANDSCAPES~~ – Would the project adversely affect open spaces containing natural resources ~~and working landscapes~~? Considerations may include~~, among others,~~ whether the project would:
a) ~~Adversely impact open space for the preservation of natural resources, including, but not limited to:~~

~~(i) habitat required for the preservation of fish and wildlife species, including habitat corridors;~~
~~(ii) waters of the state; or~~
~~(iii) unique paleontological resource or site or unique geologic feature?~~

~~b)~~ Adversely impact open space used for production of resources by~~, among other things~~:

(i) converting farmland to non-agricultural use. For purposes of the CEQA Guidelines, farmland means prime farmland, farmland of statewide significance, or unique farmland that is consistent with the applicable Regional Transportation Plan, whose operations does not contribute to an air or water quality violation, and has water supplies available to serve the farm operations during future normal, dry and multiple dry years for a 20 year projection;
~~(ii) changing existing zoning or plan designations for agricultural uses to non-agricultural use~~;
~~(iii)~~ (iii) conflicting with a Williamson Act contract;
(~~iv~~) ~~converting forest land to non-forest use;~~
~~(v)~~ (iv) significantly changing existing zoning or plan designations for forest land (as defined in Public Resources Code section 12220(g)), timberland (as defined by Public Resources Code section 4526), or timberland zoned Timberland Production (as defined by Government Code section 51104(g)), to non-forest land uses;
~~(vi)~~ (v)significantly converting oak woodlands;
~~(vii) substantially impeding groundwater recharge;~~
~~(viii)~~ (vi)causing substantial soil erosion or the loss of topsoil; or
~~(ix)~~ (vii) causing the loss of availability of a known mineral resource.

~~c)~~ b) Adversely affect publicly owned open spaces used for outdoor recreation, including parks, trails and similar resources through conversion to non-recreation uses ~~or by increasing demand to a degree that substantial physical deterioration would occur~~?

~~d) Place new structures in or otherwise adversely affect areas requiring special management due to hazards, including, but not limited to:~~

~~(i) areas subject to periodic inundation, including coasts, wetlands, and riparian areas and flood zones;~~
~~(ii) wildfire hazard areas;~~
~~(iii) unstable soil areas, including fault zones, liquefaction zones, areas subject to landslides and expansive soil areas; or~~
~~(iv) areas required for the protection of water quality and water supply?~~

XIII. Population and Housing (pp. 65-66)

With respect to proposed b), the addition of "people or" is problematic and should be deleted. The causes of displacement of people are inherently speculative. Literature reviews have found no clear causal relationships between specific types of projects and actions and displacement, while at the same time studies have found that specific types of projects and activities can have diametrically opposing correlations. For example, some studies and social equity advocates now argue that public and private investment in transit facilities and development of high density infill housing along transit corridors are associated with risk of displacement. Other studies have come to the opposite conclusion—that they are associated with a lessened risk of displacement. The important point here is that not only is there no clear case law compelling this Guideline change, but in practice the proposed addition of "humans" will be used by project opponents to target infill and transit oriented development as causing a significant impact based on a modeled risk of displacing people. The existing Guideline properly addresses the situation where the project involves physically removing or converting existing affordable housing and there is a statutory or regulatory requirement to construct new replacement housing. Only this situation is sufficiently direct and tethered to actual foreseeable physical changes in the environment to warrant placement in the Guideline.

b) should therefore return to its existing form:

b) Displace substantial numbers of existing ~~**people or**~~ housing, necessitating the construction of replacement housing elsewhere?

c) **Result in a substantial imbalance in regional jobs / housing fit?**

Our concerns with the inclusion of this new standard in CEQA are:

1) This impact is already addressed at the regional level through the regional housing needs assessment and should not be a consideration on a project-by-project basis.
2) A jobs/housing fit is more appropriately dealt with through other environmental impacts already covered in existing CEQA provisions (e.g., air quality impacts associated with tailpipe emissions, GHG emissions, transportation and road impacts) or contemplated future CEQA provisions (e.g., VMT/SB 743 amendments) that the PDD has indicated will not be included. The first category is already included in the guidelines and a jobs housing fit would be duplicative and only serve to complicate CEQA.
3) Jobs/housing fit is a socioeconomic indicator which, standing alone cannot be considered an adverse environmental impact. See, e.g., *Snarled Traffic Obstructs Progress v. City & County of San Francisco* (1999) 74 Cal.App. 4th 793; *Goleta Union School District v. Regents of University of California* (1995) 37 Cal.App.4th 1025; *Eureka Citizens for Responsible Government v. City of Eureka* (2007) 147 Cal.App.4th 357; *Maintain Our Desert Environment v. Town of Apple Valley* (2004) 124 Cal.App.4th 430; *San Franciscans Upholding Downtown Plan v. City & County of San Francisco*(2002) 102 Cal.App.4th 656, 697; *Friends of Davis v. City of Davis* (2000) 83 Cal.App.4th 1004, 1019; *San Franciscans for Reasonable Growth v. City & County of San Francisco* (1989) 209 Cal.App.3d 1502, 1516; *No Slo Transit, Inc. v. City of Long Beach* (1987) 197 Cal.App.3d 241, 256.

Therefore, we suggest that c) be deleted.

~~c) **Result in a substantial imbalance in regional jobs / housing fit? Displace substantial numbers of people, necessitating the construction of replacement housing elsewhere?**~~

XVI. Transportation (pp. 67-68)

With respect to subsection a), we believe that plans, ordinances and policies should apply only where applicable. This maintains some predictability and rationality to the planning process.

We believe that the issues dealing with transit, roadways, bicycle lanes and pedestrian paths are covered in the SB 743 Guidelines proposal and should not be included in this PDD consistent with the statement at pp. 8-9. This will allow stakeholders to consider the whole of OPR's actions rather than trying to address them piecemeal. This also applies to paragraph b) in its entirety and c) insofar as it includes "induce additional automobile travel…by adding new roadways to the network?"

As we and a broad-based coalition commented with in connection with the CEQA Guidelines implementing SB 743, the theory of "induced demand" underlying the proposal would necessarily ensnare transit and other multimodal transportation projects. The fundamental problem is that the theory of induced demand posits a roadway network that cannot be expanded, and an infinite supply of people will be "induced" to replace any driver that, for whatever reason, decides not to drive. The conclusion of this theory is that no project or program that prompts a person to leave the roadway network can legitimately claim to reduce VMT, congestion, or "take

vehicles off the road." In Appendix E of the proposed SB 743 Guidelines concedes that under this theory: "transit lanes, which are designated for transit vehicles only… attract… transit vehicles from general purpose lanes, freeing up capacity in those lanes, and as a result can induce private passenger vehicle travel.

While proponents of the induced demand theory view it as a means to attack road, highway, and bridge improvements, it cannot be limited to these projects. Applied fairly and evenly, the implementation of induced demand undermines the fundamental tenets of smart growth, transit-oriented development, and multimodal transportation planning, and should be rejected.

Furthermore, as the coalition also noted, like traffic congestion, VMT by itself is not an environmental impact. Rather, it is a metric that can be used as a proxy for evaluating other environmental impacts. Importantly, the environmental impacts for which VMT acts as a proxy are already required to be analyzed and mitigated under separate stand-alone CEQA resource areas such as air quality and greenhouse gas (GHG). The result of the proposal is therefore the addition of a new and redundant non-environmental CEQA resource area. If there is concern about the independent mitigation requirements under California law for existing CEQA resource areas, then a legitimate policy discussion and ensuing legislation or regulation may be appropriate. But to ratchet down existing mitigation requirements by shrouding them in a new non- environmental set of CEQA obligations occasions new mitigation obligations (the propriety of which is open to debate) as well as the inherent uncertainty about the extent of those obligations and the corresponding CEQA litigation—often for reasons wholly unrelated to the environment—that is inherent in inserting them within CEQA.

Therefore, we suggest that the three additions to these paragraphs be deleted and b) should now be deleted in its entirety.

Therefore, we suggest the following:

> a) Conflict with a**n applicable** plan, ordinance or policy **establishing measures of effectiveness for the** ~~**addressing the safety or**~~ performance of the circulation system~~**,**~~ ~~**including transit, roadways, bicycle lanes and pedestrian paths?**~~ **, 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**?
>
> 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? Cause substantial additional vehicle miles traveled (per capita, per service population, or other appropriate measure)?**~~

For these reasons, the c) in its entirety should reads as follows:

> **Substantially increase hazards due to a design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment)**?

XVII. Utilities and Service Systems (pp. 68-69)

With respect to subsection d), this provision imports the requirements of *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal. 4th 412, as well as the water supply

assessment and verification statutes. (Wat. Code § 10910; Gov. Code § 66473.7.). That law only applies to projects of a certain size – projects defined in Water Code section 10912. Therefore, d) should indicate that limit.

In addition, adding "reasonably foreseeable future development" at the checklist stage makes it easier to kick projects out of a negative declaration based on water supply and is not consistent with the language in *Vineyard*; this may be confusing what an EIR must evaluate with what needs to be evaluated at the checklist stage. This phrase should be deleted.

Finally, this provision should parallel the requirement in Water Code section 10910. As written, it could be construed to show a water supply for the project with no time limit and no law requires that.

Therefore, we suggest the following:

> d) For a project defined in Water Code section 10912, does it have ~~Have~~ sufficient water supplies available to serve the project **~~and reasonably foreseeable future development~~ during normal, dry and multiple dry years for a 20 year projection ~~from existing entitlements and resources, or are new or expanded entitlements needed~~**?

XVIII. Wildfire (pp. 69-70)

SB 1241 is limited to projects located *on* lands classified as state responsibility areas or very high fire severity zones. See, Public Resources Code section 21083.01. The expansion to include "or near" should be eliminated.

Additionally, a standard of "substantially" impair, so that insignificant impairments (e.g., hairline cracks in road pavement, etc.) that do not affect a response or evacuation would not trigger a significant impact.

Therefore, we suggest the following:

a) Substantially impair ~~Impair~~ an adopted emergency response plan or emergency evacuation plan?

Subsection b) deals with impacts from the environment on the project that the PDD has indicated won't be addressed due to pending litigation. The cases in footnote 1, all of which were published when SB 1241 was enacted requires an interpretation that SB 1241 was *not* intended to reverse those cases, either by its express language or by the rules of statutory interpretation (the Legislature is deemed to know of all existing published cases and absent express language to the contrary, they continue unmodified. *See Marina Point, Ltd. v. Wolfson* (1982) 30 Cal.3d 721, 734-35.

Additionally, fires are episodic and pollutants from them can shift in unpredictable directions. Historical data is not available in most locations that indicate wind direction and frequency of fires. The focus should rightfully be placed on emergency response plans and evacuation plans as identified in a), above. Evacuation would avoid exposure to pollutants. And there is also no historical precedent in CEQA practice or in case law for requiring projects to evaluate the potential episodic exposure to wildfire pollutants; this is a category of analysis that is simply not currently prepared, and it is difficult to envision how it could be prepared.

New development has a track record of *preventing* the spread of wildfires. This is due largely to new fire safe building codes, defensible space requirements, and indoor fire sprinklers, among others things. Some

of the measures new development uses may be found at:
http://www.fire.ca.gov/fire_prevention/fire_prevention_wildland_codes.php

As noted above, the prevention of wildfires – and the prevention of greenhouse gas emissions they cause - is a beneficial impact on the environment, not an adverse impact. Indeed, new housing being built in California is the model to follow for protecting against wildfires. Numerous examples of the success of this kind of fire protection were featured in every major newspaper in the state including the LA Times, the San Diego Union Tribune, the Sacramento Bee, and the Orange County Register. Copies of these articles are **attached to these comments.**

Therefore, b) should be deleted:

~~b) Due to slope, prevailing winds, and other factors, expose project occupants to, or exacerbate risks from, pollutant concentrations from a wildfire or the uncontrolled spread of a wildfire?~~

With respect to subsection c), roads, fuel breaks and emergency water sources are measures to mitigate the impacts of wildfires and should not be considered as potential significant impacts of a project that may cause fires.

Therefore, we suggest the following:

c) Require the installation or maintenance of associated infrastructure (such as ~~roads, fuel breaks, emergency water sources,~~ power lines or other utilities) that may exacerbate fire risk or that may result in temporary or ongoing impacts to the environment?

For these reasons and those stated regarding b) above, subsection d) should be deleted:

~~d) Expose people or structures to significant risks, including downslope or downstream flooding or landslides, as a result of runoff, post-fire slope instability, or drainage changes?~~

Guideline 15234. Remedies and Remand (pp. 72-74)

As an initial matter, we support the intent of adding guidance relating to remands to the PDD. With some modification, this Guideline can bring much needed clarity to an area of CEQA often misunderstood or misapplied.

With respect to (a), we believe the first sentence should be strengthened to avoid any inference that if a CEQA violation is prejudicial, there is any presumption or default remedy of voiding the project approvals and/or the EIR as a whole. We think appropriate guidance comes from *Pres. Wild Santee v. City of Santee* (2012) 210 Cal.App.4th 260, 286-290, where the Court held generally that a trial court need not "mandate a public agency decertify the EIR and void all related project approvals in every instance where the court finds an EIR violates CEQA."

We suggest that the first sentence of (a) read as follows:

(a) ~~Not every violation of CEQA is prejudicial requiring rescission of project approvals.~~ Where a court finds a violation of CEQA, there is no requirement or presumption that a public agency decertify the EIR and/or void all related project approvals.

Also, to eliminate confusion regarding whether the aspects of the mandate that shall be issued on remand are in the conjunctive or disjunctive, we suggest adding language to the end of the second sentence in (a) to read as follows:

If a court determines that a public agency has not complied with CEQA, and that noncompliance was a prejudicial abuse of discretion, the court shall issue a peremptory writ of mandate requiring the agency to do one or more of the following:

With respect to (c), we believe the language at the end of the proposed new subdivision goes beyond statutory and case law by suggesting that an agency may proceed with a project or activities during remand *only* in instances where the environment will ostensibly be given a greater level of protection than if the project is allowed to remain operative. This language may improperly interfere with the judicial branch's exercise of its equitable powers. Although the circumstances identified may be a factor in a particular court's remedial order in a specific case, it is not a precondition for a court to remand a matter while leaving project approvals in place or practical effect.

Therefore, we suggest that (c) be revised to read:

(c) An agency may also proceed with a project, or individual project activities, during the remand period where the court has exercised its equitable discretion to leave project approvals in place or in practical effect during the period ~~because the environment will be given a greater level of protection if the project is allowed to remain operative than if it were inoperative during that period~~.

Guideline 15126.2. Analysis of Energy Impacts (pp. 76-80)

We believe that significant amendments should be made to this Guideline for the following reasons:

1) As noted above, the PDD treats this issue as a split in the courts as to what is required. On one side, *Tracy First v. City of Tracy* (2009) 177 Cal.App.4th 912 ("*Tracy First*") found that compliance with California Building Energy Efficiency Standards is sufficient. On the other side, *California Clean Energy Committee v. City of Woodland* (2014) 225 Cal.App.4th 173 ("*CCEC*") appears to require more. Yet the proposed threshold appears to tilt in favor of the latter and ignore the former. We believe that *Tracy First* is a standard that is legally valid and should continue to be allowed to be used – energy efficiency standards have statutory authority specific to energy use and *Tracy First* has not been overruled or reversed. The PDD should not be making a change to the Guidelines that is contrary to existing case law.
2) More importantly, Appendix F, on which *CCEC* depends, arises out of the state of energy affairs in the mid-1970s. At the time, energy was derived principally from petroleum or coal, the adverse environmental impacts of which are clear. Today, clean and renewable energy sources are common. SB 350 requires a 50% renewable portfolio standard by 2030 and facilitating the electrification of transportation. Industry has adopted distributed generation in the form of increased use of rooftop solar and electric vehicle charging stations. These measures and more to come will result in energy use without adverse environmental impacts. Unfortunately, Appendix F takes a last-century approach. The focus is on energy use, rather than whether or not there are negative environmental consequences. For example, in 2017, a home that complies with residential energy efficiency standards then in effect will be almost 70% more energy efficient than a home that was built in 2002. In addition, homes today and in the future may include rooftop

solar, batteries to store that energy, and an electric vehicle charging station in the garage, in an effort to power the home entirely by clean energy. Yet, Appendix F still requires a significant impact simply because it focuses on energy use rather than impacts on the environment. Accordingly, we believe that Appendix F is overdue for an update that is based on 21st century realities. The addition of Energy Impacts to in this section should focus on the extent to which the project relies on clean energy instead of energy use in general. We would be happy to assist OPR in this effort.

3) The inclusion of location is duplicative of transportation-related energy. Therefore, location should be deleted.
4) "All product phases and components" is duplicative of "construction and operation". "All product phases and components" should be deleted.
5) "Among others" is open-ended and should be deleted to avoid ambiguity which precipitates litigation.
6) Additionally, "wasteful, inefficient, or unnecessary" is a very subjective standard. For example, would this prohibit holiday night lighting? Would this prohibit signage used to advertise a business location at night? Here again, *Tracy First* incorporates lighting in energy efficiency codes and indicates compliance with the code is sufficient. "Wasteful, inefficient, or unnecessary" should be defined to specify that the use of renewable energy sources is not wasteful, inefficient or unnecessary.
7) Neither the project proponent nor the lead agency has control over the type of equipment used in the construction of the project (there are no energy free or clean energy heavy equipment vehicles) or equipment used in homes after they are purchased (consumers are buying more technology which demand energy so that in 2017, it is estimated that 75% of a new home's energy use will be from the plug load, not on building inefficiencies). Equipment energy use is more appropriately addressed by the manufacturers of that equipment. More importantly, to the extent that the use of this equipment causes adverse impacts on the environment, e.g., air quality or greenhouse gases, they are already required to be analyzed by other provisions of CEQA. A separate energy calculation is redundant.
8) We wish to point out that the inclusion of this item conflicts with the PDD's statement at pp. 8-9 that SB 743 and GhG issues will not be addressed in the PDD. This item deals with both issues.
9) This provision should be limited to state agencies, boards, and commission in the context of EIRs on state projects. It seems this revision is based on a 1974 statute (Public Resources Code § 21100(b)(3)) that was intended to apply only to *state* lead agencies, and a recent appellate decision that is questionable in this regard as it involves a *city*, i.e., a local agency. (Discussion Draft, at 41-42, citing the statute and *California Clean Energy Committee v. City of Woodland* (2014) 225 Cal.App.4th 173 ("*CCEC*"); *see* West's Ann. Cal. Codes, Pub. Resources Code, Div. 13, Ch. 3 (entitled "State Agencies, Boards and Commissions") & § 21100 (entitled "Environmental impact report on proposed state projects," etc.), emphasis added; Guidelines §§ 15368 (defining "local agency") and 15383 (defining "state agency").) Our Supreme Court has held that statutory chapter and section headings are given considerable weight in determining legislative intent (e.g., *People v. Hall* (1991) 1 Cal.4th 266, 272), and Appendix F itself states that: "Potentially significant energy implications of a project shall be considered in an EIR *to the extent relevant and applicable to the project*." (Emphasis added.) It is far from clear – notwithstanding the *CCEC* case and the 1976 appellate case involving a county defendant that it relies on (cases are not authority for propositions not considered) – that energy efficiency analysis was ever intended by the Legislature to be a mandatory EIR topic for *all* lead agency (as opposed to *state* agency) projects, and the PDD cites no statute or case law in the PDD expressly addressing this issue.

(b) **Energy Impacts. ~~The~~ For state project EIRs, the EIR shall include an analysis of whether the project will result in significant environmental effects due to wasteful, inefficient, or unnecessary consumption of non-renewable energy. This analysis should include the project's energy use during construction and operation ~~for all project phases and components~~, including transportation-related energy~~, during construction and operation~~. In addition to project design, which if it complies with existing energy standards is insignificant, other relevant considerations may include~~, among others,~~ the project's size, ~~location,~~ orientation, equipment use if feasible and any renewable energy features that could be incorporated into the project. (Guidance on information that may be included in such an analysis is presented in Appendix F.) This analysis is subject to the rule of reason and shall focus on non-renewable energy demand that is caused by the project.**

Guideline 15155. Water Supply Analysis in CEQA (pp. 81-88)

The PDD proposes to expand the water supply analysis in CEQA to include *all* projects. ("OPR proposes to add the discussion of water supply analysis requirements, which apply to *all* project types, to existing Section 15155, which governs consultation requirements with public water systems for certain types of projects." Emphasis added. PDD at p. 84). As a general matter, we are unable to find any authority, requiring the application of all four factors listed under subdivision (f) of Guideline 15155 to all projects. For some of the factors, we could not find any precedent for their application to any size project, large or small. Therefore, we suggest that the proposed addition be limited to "projects as defined in Water Code section 10912". Since *Vineyard Area Citizens for Responsible Growth v. City of Rancho Cordova* (2007) 40 Cal.4th 412, was a project that met the definition in Water Code section 10912, we think it appropriate to use that definition of a project.

The information proposed to be required in (f) is detailed and complex. It would be a great hardship for smaller projects to produce this information on their own.

An urban water management plan is supposed to satisfy the function of providing the water supply analysis for the planned population within the applicable general plan. If the water demand for the project is included in the urban water management plan, there should be no further obligation on the part of the project. This concept is also embodied in Appendix G XIII Population and Housing paragraph a (p. 65).

In general, water supply analysis has been the subject of quite a few CEQA cases. When SB 610 and SB 221 were being negotiated, express representations were made that if this information were included in the planning process, it would not be used as a no-growth tool, but instead would be used by water providers to plan future supplies of water. Unfortunately, litigation over water supply analysis has increased along with costs and delays, while no new water supplies have resulted from this addition to CEQA. We would like to avoid a similar result with any new additions to CEQA.

It should be noted that projects have become much more water efficient due to changes in the building code and appliance efficiency standards, not due to CEQA. Homes are now 50% more water efficient than a home built in 1980. In addition, outdoor water use has become much, much more efficient through the adoption of the model water efficient landscape ordinance.

In our experience, water supply analyses have, for the most part, not taken into account these new water efficiency achievements in new development. Many water providers and project opponents simply give the existing average water use per home, including agricultural operations, which do not reflect new development realities.

Finally, we believe that the language in (f)(1)-(4) should undergo some wordsmithing to more accurately reflect the *Vineyard* decision (see below) including a statement that "certainty regarding long-term future water supplies" is not required. *Vineyard* at 432.[2]

Therefore, in order to more closely conform to Vineyard and avoid redundancy, we suggest the following:

(f) ~~The degree of certainty regarding the availability of water supplies will vary depending on the stage of project approval. A lead agency should have greater confidence in the availability of water supplies for a specific project than might be required for a conceptual plan~~. For projects defined in Water Code section 10912, water supplies and water supply planning must be more certain as land use approvals move from the more general planning projects to more specific development projects. However, certainty regarding long-term future water supplies is not required. An analysis of water supply in an environmental document for projects defined in Water Code section 10912 that would exceed the water demand planned for in the urban water management plan shall include the following:
(1) Sufficient information ~~regarding the project's proposed water demand and proposed water supplies~~ to permit the lead agency to evaluate the pros and cons of supplying the amount of water that the project will need.
(2) An analysis of the reasonably foreseeable ~~long-term~~ environmental impacts of supplying water ~~throughout the life of all phases of~~ to the project.
(3) An analysis of ~~circumstances affecting~~ the likelihood that ~~of the water's availability, as well as the degree of uncertainty involved. Relevant factors may include but are not limited to, drought, salt-water intrusion, regulatory or contractual curtailments, and other reasonably foreseeable demands on the water supply~~ water supplies identified for the project may actually be available and the circumstances affecting the likelihood of the water's availability.
(4) If the lead agency cannot confidently predict the availability of an anticipated future supply, ~~a particular water supply,~~ it shall discuss possible replacement sources, including at least in general terms the environmental consequences of using those alternatives sources. ~~conduct an analysis of alternative sources, including at least in general terms the environmental consequences of using those alternative sources, or alternatives to the project that could be served with available water.~~

Guideline 15125. Baseline (pp. 90-95)

There is no authority that we know of to require, as general practice for *every* project EIR, that a lead agency describe the environmental setting from a "regional perspective" as the PDD proposes (p. 94). This is an expansion of the requirements already found in (a) that an EIR must include a description of the physical environment conditions "in the vicinity of the project," and the language in (c) which emphasizes knowledge of the regional setting and special emphasis on environmental resources that are rare or unique to the region and would be *affected* by the project. The proposed language requiring every project—no matter how small and/or localized—to describe the full range of physical environmental conditions for an entire region would be burdensome and overbroad.

We therefore propose to refer back to the "vicinity of the project" language in (a) in new (a)(1)

[2] We note that the current definition of "project" in Water Code section 10912 is different from the definition of "water-demand project" in Guideline 15155.

Additionally, *Neighbors for Smart Rail v. Exposition Metro Line Construction Authority* (2013) 57 Cal.4th 439, provides that baselines may include projected future conditions, including conditions beyond the time when the project becomes operational.

> For example, in an EIR for a new office building, the analysis of impacts on sunlight and views in the surrounding neighborhood might reasonably take account of a larger tower already under construction on an adjacent site at the time of EIR preparation. For a large-scale transportation project like that at issue here, to the extent changing background conditions during the project's lengthy approval and construction period are expected to affect the project's likely impacts, the agency has discretion to consider those changing background conditions in formulating its analytical baseline. Contrary to Justice Baxter's view (conc. & dis. opn. of**]** Baxter, J., *post*, at p. 476), <u>such a date-of-implementation baseline does not share the principal problem presented by a baseline of conditions expected to prevail in the more distant future following years of project operation—it does not omit impacts expected to occur during the project's early period of operation</u>. (*Id.*, at 453. Emphasis added).

Also, in order to be fully consistent with the *Neighbors for Smart Rail* definition of an existing conditions baseline, a new third sentence should be added to proposed Section 15125(a)(1) and make the existing third sentence into the fourth sentence, but with an added parenthetical. With these revisions, (a)(1) would read as follows:

(1) Generally, the lead agency should describe <u>the</u> physical environmental <u>conditions referenced in subdivision (a)</u> as they exist at the time of 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~~. Where existing conditions change or fluctuate over time, a lead agency may define existing conditions by referencing historic conditions that are supported with substantial evidence. <u>Projected future conditions that will exist at the time that the project becomes operational may also be used to define existing conditions so long as the projected future conditions are supported by reliable projections based on substantial evidence in the record.</u> In addition to existing conditions, a lead agency may also use a second baseline <u>or baselines</u> consisting of projected future conditions <u>(including conditions beyond the time when the project becomes operational)</u> that are supported by reliable projections based on substantial evidence in the record.

Finally, *Communities for a Better Environment v. South Coast Air Quality Management District* 2010) 48 Cal.4th 310, 326, made a distinction that should be included in the proposal to maintain accuracy: CEQA's rules relating to the existing physical conditions baseline do not apply when agency action involved modification of a project previously evaluated under CEQA. Therefore, we suggest that (a)(3) be modified as follows:

(3) A lead agency may not rely on hypothetical conditions, such as those that might be allowed, but have never actually occurred, under existing permits or plans, as the baseline<u>, unless the project was previously evaluated under CEQA, in which case the baseline for analsyis is determined based on the prior CEQA evaluation</u>.

<u>Guideline 15126.4. Deferral of Mitigation Details</u> (pp. 96-101)

In general, the proposed amendments to this Guideline go substantially beyond the existing case law, which has emphasized primarily that an agency must commit to mitigation, and specify performance standards. There are cases that that permit the deferral of mitigation without any discussion of whether

the formulation of mitigation is impractical or infeasible. See, e.g., *Center for Biological Diversity v California Department of Fish & Game* (2015) 234 Cal.App.4th 214, 240-241 (holding that performance standards are required without any discussion of whether it is impractical or infeasible to develop more specificity at the EIR stage); *Clover Valley Foundation v. City of Rocklin* (2011) 197 Cal.App.4th 200, 236 (allowing deferred mitigation with performance standards and commitment to mitigate, without any reference to impracticability or infeasibility). The cases also do not generally require that the lead agency "list the mitigation options to be considered, analyzed and possibly incorporated in the mitigation plan," although the fact that this was done has been referenced in some opinions. As proposed, Section 15126.4 would require *all* four measures identified in (a)(1)(B) to be present in order to defer mitigation measures. This is contrary to the case law, including *CBD v. CDFG*, and *Oakland Heritage Alliance v. City of Oakland* (2011) 195 Cal.App.4th 884, 906.

We believe it would be appropriate here to add a provision that acknowledges that compliance with a generally applicable environmental regulation is a proper form of deferral of mitigation. (*See, e.g.*, *North Coast Rivers Alliance v. Marin Municipal Water District Board of Directors* (2013) 216 Cal.App.4th 614, 647-648 [commitment to consult with NOAA and avoid take under CWA and ESA permitting processes]; *Save Cuyama Valley v. County of Santa Barbara* (2013) 213 Cal.App.4th 1059, 1070 [compliance with SMARA required by mitigation measure for river bed sand/gravel mining project]; *Oakland Heritage Alliance v. City of Oakland, supra*, 195 Cal.App.4th at 898-912 [mitigation for material seismic impacts properly requir ed future compliance with Seismic Hazards Mapping Act and State and City Building Codes to protect public safety]; *Tracy First v. City of Tracy* (2009) 177 Cal.App.4th 912, 932-934 [required compliance with applicable Title 24 energy standards proper].)

Therefore, we suggest the following amends:

(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. Formulation of mitigation measures **~~should~~ shall** not be deferred until some future time. <u>However, compliance with generally applicable environmental regulations is permissible deferral of mitigation where a regulatory agency other than the lead agency will issue a permit for a project that will impose mitigation requirements.</u> **~~However, measures may specify performance standards which would mitigate the significant effect of the project and which may be accomplished in more than one specified way.~~ Deferral of the specific details of mitigation measures ~~may be~~ <u>is</u> permissible ~~when it is impractical or infeasible to fully formulate the details of such measures at the time of project approval, or where a regulatory agency other than the lead agency will issue a permit for a project that will impose mitigation requirements~~, provided that the lead agency**
1. ~~fully evaluated the significance of the environmental impact and explained why it is not feasible or practical to formulate specific mitigation at the time of project approval;~~
~~2.~~ commits to mitigation, <u>and</u>
<u>2.</u> ~~3.~~ lists ~~the~~ mitigation options to be considered, analyzed and possibly incorporated in the mitigation plan; ~~and~~ <u>or</u>~~4.~~ adopts specific performance standards that will be achieved by the mitigation measure.

<u>Guideline 15357. When is a Project Discretionary?</u> (pp. 142-143)

Our concern with the proposed amendment to this section is that it will make many currently non-discretionary permits, discretionary. Many cities now routinely add one or more standardized conditions to building and other commonly-understood "ministerial" permits, such as restrictions on noise during certain hours, construction parking, traffic controls and no case has found these to be discretionary for purposes of CEQA. With this amendment, even a no-condition permit "could" have conditions for building permits and would now be transformed into a discretionary CEQA project. With this change,

simple activities such as the replacement of a window in a home, renovations of a city park bathroom, or the addition of a residential deck could become a project subject to CEQA.

Therefore, we suggest that this amendment be deleted 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**, or other fixed standards**. ~~**The key question is whether the approval process involved allows the public agency to shape the project in any way that could materially respond to any of the concerns which might be raised 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).

Guideline 15370. Conservation Easements as Mitigation (pp.144-145)

We agree with the background explanation that conservation easements *may* be used as mitigation. However, there are a variety of resources that may be mitigated through conservation easements, some of which may be temporary, e.g., BDCP/California WaterFix has recently been reduced to a 30-year time period. Additionally, even with respect to agricultural land mitigation, climate adaptation may make some land currently used in agricultural production no longer suitable for that purpose. We believe that temporary conservation easements should also be an option.

Therefore we suggest that subdivision (e) be modified as follows:

(e) Compensating for the impact by replacing or providing substitute resources or environments**, including through temporary or permanent protection of such resources in the form of conservation easements**.

We greatly appreciate your consideration of these comments on these very complex issues. If you have any questions regarding these comments, please don't hesitate to contact Nick Cammarota at (916) 340-3304 or ncammarota@cbia.org.

WILDFIRE ARTICLES

THE ORANGE COUNTY REGISTER

December 23, 2007

New homes in O.C. withstand wildfire better than older ones

Recent blazes point to the benefits of fire-resistant building methods. It's the older homes that have fire officials worried.

By: Jeff Collins and Ronald Campbell
The Orange County Register

Hundreds of thousands of Orange County residents are living in wildfire's traditional stalking grounds. As many as 90,000 more will join them in the next two decades as 30,000 homes are built in fire's longtime habitat.

But if there's one lesson to be derived from the recent Santiago fire that consumed 28,000 acres of Orange County backcountry in the fall, it's that new housing developments can withstand firestorms much better than older ones.

Fewer fire trucks were needed to keep flames from devouring homes in Foothill Ranch and Portola Hills, which escaped unscathed because of tile roofs and greenbelt buffers around them.

Nearby, 15 homes were lost to fire in steep, wooded Modjeska Canyon, where older homes are more susceptible to fire.

Nobody knows what areas will burn next or when. But experts are sure the beast will return again and again, feeding on chaparral and grasslands and, most likely, Orange County homes as well.

"In a century, it's going to happen twice" in each area, said Richard Minnich, a professor of earth sciences at UC Riverside who has studied wildfires. He said chaparral burns about once every 30 years.

"People think, 'Nice views, the birds and the bees,' " Minnich added. But "chaparral is nothing less than a carpet of gasoline in the worst of conditions, and the worst of conditions happen every year."

In the wake of firestorms that struck Southern California in October, attention has focused on whether cities and counties should restrict development in wild lands.

But if such development is to take place – and even the most ardent critics are at a loss as to how to prevent it – it should be done the way it's done in Orange County, where homes are clustered together, vegetation is controlled and homes are built with noncombustible materials, say local fire officials and developers. Critics of developments in wild lands agree.

"At least there seems to be some sanity (in Orange County) about controlling expansion into the wild-land interface," Minnich said.

"The proof is in the pudding," added Orange County Fire Authority Chief Chip Prather,

referring to Foothill Ranch and Portola Hills, which withstood two recent wildfires without losing a home.

"The fire prevention measures performed as expected," Prather said. "What keeps me awake at night are those other areas."

Existing housing

Prather ticked off a list of areas that concern him, areas where homes have flammable roofs and little or no brush clearance: unincorporated areas in North Tustin, he said, and parts of Laguna Beach, as well as sections of Lake Forest, Mission Viejo, Orange and Anaheim.

"The conflagration potential is terrible," he said.

Residents in some areas have taken steps to reduce the risk, replacing wood-shake roofs with tile or steel. Some homeowner associations have cleared away brush and planted green vegetation up against homes. Some communities have formed so-called fire safe councils to improve communities and prepare evacuation plans.

But here and there, wood shingles are still found on homes, some of which are perched at the top of the slope instead of being set back where the risk of catching fire is less. And many older homes still have wood siding as well as open eaves that can trap embers in a firestorm.

Statistics aren't readily available on the number of existing homes in wild lands, but past Register articles indicated that Orange County added 46,000 units to zones with high fire hazards between 1990 and 2001.

Before that, an estimated 14,000 homes were built in Anaheim Hills alone in the 1960s and 1970s. In addition, developments such as Coto de Caza, Rancho Santa Margarita, Dove Canyon, Mabury Ranch and Portola Hills sprouted from former grasslands before 1991 – more than 23,000 housing units in all.

Those homes alone total more than 83,000 units. Assuming the countywide average of three residents per household, those homes account for nearly 250,000 people living in or near high fire hazard zones.

Some of those communities are safer than others, said OCFA Assistant Chief Laura Blaul, who oversees the authority's fire prevention efforts. Homes built in the 1980s and since have "fuel modification" zones around them and were built with noncombustible materials.

Still, Blaul estimated there are at least 9,800 homes without those safeguards in the unincorporated areas and the 22 cities that the OCFA protects. That's equal to about 30,000 residents, not to mention horses and pets.

Minnich, the UC Riverside professor, said older homes in places like Santiago Canyon and neighboring canyons are "like matchboxes waiting to go off."

"We can't ignore fire," added Tom Scott, a University of California natural resource specialist based in Riverside. "There's a tacit understanding that the firefighters will always be there. But there are areas where defending housing is difficult under any circumstance."

Eighty percent of homes burn due to flying embers, Scott said, making wooden decks little more than kindling and open eaves traps for glowing cinders.

The two biggest things people can do to make existing homes safer are reroof with noncombustible materials and make sure that vents are screened to keep embers from getting into their attics, Blaul said.

Homeowners also should box up their eaves to keep embers out during wildfires and clear brush away from the house, making sure to sweep leaves and pine needles from the roof and rain gutters.

But such measures come with a price tag. Prather said perhaps insurance companies can be induced to provide incentives to homeowners, paying for improvements up front rather than after an emergency occurs. Perhaps local governments can waive

fees for permits as an inducement, he said.

"You've got issues. It's a private residence," he said. "I'd like to explore maybe some incentives (that) can be provided."

New housing: a bird's-eye view

From 300 to 700 feet above the ground, the proposed 2,500-home Mountain Park site looked like a dull, empty landscape when viewed two weeks ago from the OCFA's Vietnam War-era helicopter, which has been converted into a water bomber.

Dry brush dots the brown hills on either side of the 241 toll road.

It looks peaceful now, but this spot was the scene of the Green River fire that devoured more than 53,000 acres in 1948. Nineteen years later, the Paseo Grande fire consumed 51,000 acres in virtually the same area.

Just south of the Mountain Park site, Battalion Chief Brian Stephens, who oversees the fire authority's helicopter unit, keys his microphone and points to the still-blackened, funnel-shaped hills where a burning, abandoned car ignited the 2,000-acre Windy Ridge fire in March.

A little farther south, the Irvine Co.'s proposed Village of East Orange – a 3,900-home project surrounding Irvine Lake – is still blackened from the Sierra Peak fire of 2006.

The Rancho Mission Viejo site, where 14,000 homes are planned on both sides of the Ortega Highway, was the scene of two of Orange County's biggest fires in the past century, including the Steward fire of 1958, which consumed almost 70,000 acres.

Still, developers, fire officials and even critics think Orange County's building standards and building style will ensure that these and other fire-zone projects will be safe.

The county enacted building standards in the late 1970s for backcountry homes in fire-prone areas, requiring 170-foot-wide vegetation buffers consisting of 20 feet of open space fringed by an irrigated section and – in areas closest to open space – thinned vegetation.

In 1996, after the Laguna fire, the county also toughened building standards, requiring that homes be constructed with noncombustible materials, dual-pane windows, boxed-in eaves and screened vents.

Developers must ensure that roads will be wide enough for fire trucks and that fire hydrants will have sufficient water capacity. In some cases, builders have been required to install indoor sprinklers in homes.

The helicopter lumbers over a fire-blackened gully separating homes in Foothill Ranch. It's clear that flames from the recent Santiago fire crept up to the backyards lining the gully, only to die when it hit a green ribbon of irrigated vegetation surrounding the development.

"Noncombustible fences. Noncombustible doors. One hundred-seventy feet of landscaping," Stephens said, pointing to the homes. "That buys us a lot."

The Irvine Co. and Rancho Mission Viejo, which account for 93 percent of the homes planned for Orange County's fire zones, are including new fire stations and wild-land firefighting equipment in their projects.

All 14,000 homes in Rancho Mission Viejo's plan will have indoor sprinklers and will be built to new statewide standards that take effect next year. There will be vegetation buffers around each development within the project and deed restrictions limiting landscaping in the development to fire-resistant plants and trees.

But if such standards are to be effective, property owners and their associations must maintain the vegetation buffers well into the future, said Assistant Chief Blaul. Firefighters have complained in the past that some associations skimp on upkeep or change the plants.

Right now, enforcement isn't strong enough, Blaul said. Los Angeles and Ventura counties have mandatory measures to enforce vegetation rules.

"Orange County doesn't have it," she said.

The Sacramento Bee

November 9, 2007

Ideas for fire-safe developments are no secret; State commission laid some out in 2003, but is there the will to implement them?

Now that the Southern California fires of October are contained, after burning nearly 1,800 houses and 490,000 acres, Californians are continuing to assess some of the lessons learned.

Some of the lessons are holdovers from the 2003 fires, and they were laid out by the Governor's Blue Ribbon Fire Commission.

The most significant fact is that people increasingly are moving into landscapes of chaparral where fire has long been part of the natural system.

In the past, these areas caught fire every decade. If people continue to build in what is called the "wildland/urban interface," the edges of naturally fire-prone forests and dry grasslands, they have to learn to live with the risk of fire. Protection from wildfire, as the commission noted in 2004, cannot simply rely on increased funding for equipment and firefighters.

The primary issue is how to act responsibly to create fire-safe communities. In this regard, two commission findings from 2004 stand out:

* "Currently, appropriate minimum building standards and fire safety requirements are neither mandated nor consistently enforced in all communities in High and Very High Fire Hazard Severity Zones."

* "Most structural losses occurred where homes had little or no vegetation clearance or were built using combustible building materials, and were thus vulnerable to wildfires."

Then as now, communities with strong building and brush clearance codes, backed by regular inspections, suffered the least losses. As the Washington Post story noted, "Houses that strictly adhered to fire-preventive building and landscaping rules survived the fires, while nearby structures that paid less attention to those regulations went up in flames."

For example, in five newly built subdivisions in San Diego County where the Witch fire burned 197,990 acres, not one house burned. That area was subject to strict new building and landscaping codes and regular inspections. But in an older community a quarter-mile away, where residents did not adhere to fire department recommendations, the houses were destroyed.

The problem continues to be, as the commission noted in 2004, that recommendations concerning building code requirements and appropriate vegetation "have consistently been among the most difficult to implement."

That has to change.

People still are using combustible materials for building. Some communities have toughened building code standards -- such as banning wood shingle roofs and requiring fire retardant Class

A roofing, boxed eaves, fire sprinklers and spark arrestors on chimneys -- but others have not.

People also continue to keep inappropriate vegetation around their homes. Some communities have strengthened tree and brush management requirements -- such as requiring fire-resistant plants (including monkey flower and sage) and getting rid of combustible trees (including eucalyptus and palm trees) -- but others have not.

In the aftermath of the most recent fires, Gov. Arnold Schwarzenegger wants the commission to assess "next steps" in the state's fire preparation efforts. A top priority should be to pass strict code requirements -- and enforce them -- for post-fire rebuilding and retrofitting of existing homes.

Los Angeles Times

October 24, 2007

Why some averted disaster; Newer communities have been built with fire resistance in mind.

By: Megan Garvey and David Pierson
Los Angeles Times

For nearly an hour, Marianne Shannon thought Stevenson Ranch's luck had run out.

The winds seemed so fast, much stronger than in 2003, when the last massive fire threatened her home. She watched from her cul-de-sac Monday afternoon as flames exploded just a few hundred feet away. A firefighter told her to take down her curtains to prevent them from igniting. Gusts knocked down the faux headstones she'd set up for Halloween.

Then as quickly as the danger came, the threat passed.

"The firemen were saying we were pretty well protected," Shannon said.

Once again this 5,000 home master-planned community south of Santa Clarita emerged unscathed by fire.

California cannot avoid wildfires. But proper building techniques have proved to greatly reduce the threat to homes and businesses. Fire safety experts said Stevenson Ranch, and other modern communities like it, have made their own luck.

Precautions used there include fire-resistant materials such as concrete roof tiles, double-paned heat-resistant windows and enclosed eaves. A 200-foot greenbelt with fire-resistant plantings rings the property.

Additional buffers of stone and concrete culverts were constructed behind properties adjacent to canyons and other open land.

When it comes to saving homes and neighborhoods from fire, some developments are more equal than others. The story was the same this week in Orange County, where firefighters kept a raging 18,000-acre blaze from newer planned communities in Foothill Ranch, Irvine and Lake Forest.

As fire threatened the newer developments of Portola Springs and Northwood on Sunday, fire officials decided to let residents take shelter in their homes rather than evacuate them, Capt. Stephen Miller of the Orange County Fire Authority said Sunday from near the frontline.

"If we were not confident they would not be threatened, that we would not be able to save the homes, we would not put them in that situation," Miller said.

But a significant number of California communities remain far short of such standards. Nearly 5 million homes in the state are at high to extreme risk from wildfires, and 84% of them are in urban areas abutting areas designated as wildlands, according to a report by the California Department of Forestry and Fire Protection. That report was published in October 2003, the month deadly fires swept through the

state and into backyards of Stevenson Ranch homes.

Many fire-safe features in practice there are borne out of planning and building code changes enacted in the aftermath of devastating 1993 fires, said Ron Coleman, a former California state fire marshal and forestry and fire protection chief.

Higher standards will soon be required of all new building statewide, at least in the zones where fire risk is highest. The California Building Standards Commission last month approved standards recommended by the state fire marshal for buildings in fire hazard zones.

Those requirements are to go into effect in January 2008 in areas under state control, and after that date, any new permits issued in such zones will require that the new standards be met.

New construction under local control won't have to meet the standards until July 2008, and then only buildings in "very high fire severity" zones must comply.

"The fact that a neighborhood will survive an assault by a fire is a combination of factors," said Coleman, now vice president of Emergency Services Consulting Inc. in Elk Grove, Calif. "What I'm talking about is building tracts so there is defensible space built into the design, so access roads are built considering the need for fire engines to be coming in and evacuees going out."

Changing building practices has not been easy, said Coleman, who noted that it has taken more than a decade for the concept of defensible space to win wide acceptance.

Given the state's limited firefighting resources, he said, stringent requirements are needed. As the devastation this week made clear, there are too few fire crews to fight blazes block by block.

"Defensible space assumes someone is going to be there defending the house," he said. "In my opinion, the home has to be survivable, and that means ignition-resistant construction that protects structures from radiant heat and embers."

No one knows how many homeowners have done everything they can to protect their homes from wildfire. In a study released Tuesday, the nonprofit Natural Resources Defense Council examined the fire preparedness of the Love Creek neighborhood in Avery, a town in the central Sierra Nevada range. The community has about 50 homes built between 1940 and 2001 and was chosen because researchers considered it typical for mountain towns.

"Not one home . . . complied with all the basic standards necessary to ensure survival from a forest fire," the report's authors wrote. "Every home assessed failed multiple safety measures."

The estimate for bringing residences up to minimum standards averaged about $2,500, with $4,500 more needed, on average, to clear vegetation.

Experts say fire protection efforts need to be communitywide to be effective.

In neighborhoods that have been hard-hit by fire, "you will find that some individual property owners did everything they could to protect their property but were endangered by neighbors who didn't," Coleman said.

Many homeowners ordered to evacuate make costly mistakes, Coleman said, leaving windows or garage doors open, not clearing flammable items from near the house. Even something as simple as using tinfoil to reflect the heat from windows facing a down slope can decrease the likelihood of a home's igniting, he said.

Firefighters say neighborhoods and homes that appear girded for fire are more likely to be defended when hard choices about resources need to be made. Well-designed communities are also less likely to require evacuations, even when blazes get close.

In Stevenson Ranch, where red fire retardant stained the nearby hillsides and residents

had garden hoses ready to douse flying embers, resident Laurie Sarman said firefighters deployed to her cul-de-sac did not seem worried. One firefighter reassured her.

"He was confident, even in the winds, that our house wasn't going anywhere," said Sarman, who lived there through the 2003 scare as well.

On Tuesday, life seemed mostly back to normal in Stevenson Ranch. Couples walked their dogs, joggers crossed the neighborhood and children skateboarded, their schools closed for the day.

Eating al fresco at a cafe off Stevenson Ranch Parkway, Mike and Monika Cook said that between the firefighters and the precautions already taken, they were not worried.

Just as they are most days, landscapers were out working, with sprinklers watering surrounding grounds. The homeowners association newsletter published earlier in the year urged residents to call if they saw any thick vegetation so it could be taken away.

"They've got it under control," said Monika Cook, her dog Buddy panting by her side. "The homeowners association keeps the brush clear. They don't leave it to residents to do it."

For Sarman, who admits to "freaking out" during the 2003 fires, this week proved less stressful. That close call, she said, was an awakening.

"We just didn't think about it [before]. It never crossed our minds. I mean, what's brush?" she said.

Now educated, Sarman surveyed her property with a new eye.

"We have a nice line of defense," she said.

SAN DIEGO COUNTY WILDFIRES

'Shelter in place' kept flames at bay

Strategy pays off but has its critics

By Lori Weisberg and Emmet Pierce
STAFF WRITERS

December 2, 2007

When the order came to evacuate his home near Rancho Santa Fe, Emil Costa already had made up his mind to stay, despite his wife's frantic pleas. Why should he flee, the retired physician reasoned, when he lives in one of the nation's few “shelter in place” communities, an enclave where residents can feel protected in a wildfire?

DON KOHLBAUER / Union-Tribune

Homes in The Crosby subdivision near Rancho Santa Fe were spared in the Witch Creek fire, despite flames that burnt hillsides above this “shelter in place” community.

Costa, who stayed alone, calmly watched from behind closed doors and windows as dense smoke darkened the sky and wind-whipped flames leapt across the hillside less than 20 feet beyond his backyard. Outside, embers rained down, a few igniting wood chips in his garden and melting irrigation tubing. He remained in the home for the entire evacuation period, never panicking.

“I didn't feel like I was being a hero,” Costa said. “I just felt that I was doing the right thing because 'shelter in place' is designed for you to stay and defend your home.”

Not all firefighters support that notion, and none recommends defying evacuation orders, as Costa, 65, did during the October wildfires. Yet no one can argue with the outcome: While homes less than a mile away burned, Costa's 1½ -year-old house in the Crosby subdivision survived the onslaught.

None of the 2,460 upscale tract and custom homes in the county's five shelter-in-place communities was destroyed, although a few were touched by flames. Yet all the homes nestle among the brush-covered hills and steep canyons of North County, giving their owners the feel of a remote country retreat.

Despite its success, no formal assessment is under way to gauge how well the shelter-in-place concept performed in The Crosby, Cielo, The Bridges, Santa Fe Valley and 4S Ranch. Officials say the results speak for themselves.

The outcome of the communities' trial by fire has won recognition for San Diego County as the nation's leader in implementing such protection strategies, which are used extensively in Australia. And the potential to market such fire-safe features in new housing hasn't gone unnoticed by San Diego builders.

Some, such as Barratt American, developer of the planned Fanita Ranch project in Santee, are counting on strict construction and landscaping standards to draw buyers to new-home communities located on the fire-prone urban fringe.

“It does save lives and it becomes a benefit to the new-home builder,” said Barratt American President Michael Pattinson. “When you can point to five master-planned communities that had shelter in place that did not lose a home between them, I think it is very significant.”

Located north and south of Del Dios Highway, the five North County developments sit like islands amid the burned landscape. That's because their required ignition-resistant landscaping and noncombustible building materials deprived the blaze of fuel, Rancho Santa Fe firefighters say. Skeletal trees and blackened hillsides stand in stark contrast to untouched backyards that formed barriers between the homes and the flames.

It's clear that the defensive design of the shelter-in-place communities worked, said Clay Westling, senior structural engineer with the county Department of Planning and Land Use. He said the county's post-fire study is focusing on how individual structures in the unincorporated areas of the county fared in the fires.

“If you design a community the way the Rancho Santa Fe fire department has designed their communities, it will dramatically increase the chances of communities surviving a wildfire,” Westling added.

'On the cutting edge'

As global warming leads to prolonged droughts and longer fire seasons, many firefighters see the use of shelter-in-place development standards as an important new tool against wildfires.

San Diego County communities “are on the cutting edge of that concept,” said Mike Dougherty, the U.S. Fire Administration's wildfire program manager. Within the five areas of the Rancho Santa Fe Fire Protection District, the strategy calls for construction and landscaping standards so stringent that homeowners can remain sheltered in their houses if they're unable to evacuate.

CRISSY PASCUAL / Union-Tribune
Former Rancho Santa Fe Fire Chief Erwin Willis helped craft the district's shelter-in-place rules.

Rancho Santa Fe Battalion Chief Mike Gibbs had a close-up view of how well the standards worked on a hellish drive down San Antonio Rose Court on Oct. 22, the day after the recent wildfires broke out. While winds from the Witch Creek inferno rocked his Chevy Suburban, a wall of flames between 100 and 150 feet high suddenly crossed a 100-foot-wide buffer zone and struck two houses in the Crosby development. But the homes didn't burn because of their fire-resistant construction and the absence of flammable vegetation.

“The fire hit the east side of the homes and then moved down laterally between the homes,” Gibbs said.

The defensive strategy is often misunderstood by fire authorities and the public, said Dave Bacon, a retired Cleveland National Forest fire chief. He heads Firewise 2000 Inc., a fire-protection consulting firm in Escondido.

Shelter in place “doesn't mean you always stay at home,” Bacon said. “It means you can stay at home because you have done advance preparation. You need to know when to evacuate and when evacuation is too late.”

Opponents fear the strategy will endanger lives by encouraging people to ignore evacuation orders.

That's precisely why San Diego developer Fred Maas balks at the idea of using shelter-in-place standards to promote newer developments as totally fire-safe.

CRISSY PASCUAL / Union-Tribune

Emil Costa, who lives in The Crosby, ignored the evacuation order and watched as the slope behind his backyard burned.

“Short of completely sealed concrete houses, it's very hard to absolutely give people a sense of security (that) you can weather any firestorm,” said Maas, president of Black Mountain Ranch LLC, which is developing the 2,600-home Del Sur project in north San Diego.

“To give people a false sense of security is imprudent, and to represent to them that they'd be safe from a natural disaster is something I'm not comfortable with,” Maas said.

Critics also see defensive fire strategies such as shelter in place as just another way to allow continued sprawl in areas most vulnerable to wildfires.

Longtime Fanita Ranch opponent Van Collinsworth is skeptical of Barratt American's development plans. He contends that the Fanita Ranch area, 2,600 acres of open terrain and hills along the city's northern boundary, is so fire-prone that no amount of preparation can protect residences.

“You are putting people in harm's way,” Collinsworth said.

Joan Van Ingen says shelter-in-place proponents haven't given enough consideration to the danger of smoke inhalation to those who may remain behind during a fire. She lives in Champagne Village near the Merriam Mountains north of Escondido, where a 2,700-unit development is proposed.

Some supporters think the strategy was misnamed.

DON KOHLBAUER / Union-Tribune

Cleared vegetation and irrigated landscaping kept homes near Rancho Santa Fe safe despite flames that went through and around the shelter-in-place

Santee Fire Chief Mike Rottenberg's department doesn't use the term “shelter in place” in fire-protection plans. He worries that it may lead some people to remain behind if an evacuation is ordered.

communities. Some San Diego builders are counting on strict construction and landscaping standards to draw buyers to new-home communities on the fire-prone urban fringe.

While interpretations of the strategy vary, typical shelter-in-place requirements call for large swaths of irrigated, fire-resistant plantings; homes built of noncombustible materials; interior sprinklers; and wide roadways to provide easy access for firefighters.

Experts say that with the exception of interior fire sprinklers, construction costs aren't significantly higher than those for new housing in other communities.

For the Rancho Santa Fe Fire Protection District, it also means regular enforcement of its fire-safe standards. That's crucial in distinguishing newer planned communities from developments elsewhere that market themselves as shelter in place, said Cliff Hunter, the district's fire marshal.

Hunter said his department has hired an urban forester to routinely inspect homes and properties to ensure that they remain fire-safe.

“Say the homeowner sells his house, a new person goes in and plants six new pine trees where the limbs are starting to touch the house,” he said. “In a non-shelter-in-place community, that wouldn't be monitored. In our case, we'd say, 'Take it out.' ”

Tougher requirements

Increasingly, developments in outlying areas will look more like shelter-in-place communities simply because fire and building codes are becoming much tougher.

Bacon's consulting firm worked on fire-protection plans for Cielo, Fanita Ranch and Merriam Mountains. While Merriam Mountains and Fanita Ranch aren't formally designated as shelter-in-place developments, Bacon says both meet or exceed the same stringent requirements.

In Escondido, fire-code provisions have been toughened to protect rural developments from wildfires, especially those more than five minutes from the nearest fire station. But the Escondido Fire Department doesn't have the staff, as Rancho Santa Fe does, to continually monitor homes and landscaping, Division Chief Mike Lowry said.

The 44-home Ranchos at Vistamonte development in the city, near the Wild Animal Park, is designed to be so resistant to fire that “if a brush fire started and the residents didn't have time to safely evacuate, these homes are much safer than those built prior to 2003,” Lowry said.

The county recently included shelter-in-place strategies in its new guidelines for determining significant environmental impacts for wild-land fire protection. The key word is “guideline.”

“In the development process it is one of the considerations that may be applied to a project. It is certainly not a requirement,” said Ralph Steinhoff, fire service coordinator for the Department of Planning and Land Use.

Sen. Dianne Feinstein, D-Calif., who was in San Diego last week to conduct a public hearing in the wake of the wildfires, has called for more stringent fire-and building-code provisions governing new development.

The county's unincorporated areas, including 17 independent fire districts, already boast some of the toughest regulations in the state, Hunter said.

After Jan. 1, when new state regulations go into effect guiding development in the wild-land/urban interface, local fire districts will start implementing even tougher code provisions, Hunter said. Included in the state code are requirements for fire-resistant decking and roofs.

But will those provisions make new subdivisions safe enough that homeowners can remain inside their houses when an order to evacuate comes?

Erwin Willis, the retired Rancho Santa Fe fire chief who's credited with helping devise the district's shelter-in-place regulations, believes they will. If there's plenty of time to evacuate, though, residents should still leave, he said.

“We're never going to change California as a fire-prone area, so the structures we build must be safe for these areas,” Willis said. “We have the technology to build structures that are safe in wild-land areas and to keep those structures safe. I think it's safe enough that I would stay.”

He concedes that the district's defensive strategy can be a lightning rod for critics who oppose growth in rural areas.

One of those critics is Hidden Meadows resident Madelyn Buchalter. To air her concerns that shelter in place doesn't work, she helped create a Web site called “Liar! Liar! County's on Fire!” at **www.llcfire.com**.

Buchalter says evacuation is always a safer alternative than sheltering in place, which is “a very perilous, risky strategy.”

Shelter Down Under

Locally, shelter-in-place strategies target new subdivisions. But Australia, which is widely credited with developing the fire-prevention technique, uses it more broadly.

Residents there are encouraged to evacuate their homes early or remain in place to help extinguish the flames. Virtually no neighborhood – no matter how old or densely built – is considered indefensible, said Keith Harrap, an assistant commissioner with the New South Wales Rural Fire Service in Sydney.

The strategy was widely adopted in Australia after major wildfires in 1994, he said. Since then, property losses have been much smaller.

Stephen J. Pyne, author of “Fire in America,” a history of wild-land fires, favors Australia's more aggressive approach to shelter in place. He also questions whether it was necessary to evacuate more than a half-million people during San Diego County's recent wildfires.

There will always be residents who ignore evacuation orders and stay to defend their homes from wildfires, Pyne said, adding: “Instead of having people on their roofs in Bermuda shorts with hoses, maybe we should train them how to do it. I think it is an option we have missed.”

▪Lori Weisberg: (619) 293-2251; **lori.weisberg@uniontrib.com**

Associated Press

October 31, 2007

BLAZES TEST HOME, LANDSCAPING RESTRICTIONS

Fighting fire with codes
Stringent building standards credited with saving Calif. homes

By: Elliot Spagat
Associated Press

RANCHO SANTA FE, Calif. --Dr. Jorge Llorente became irritated recently when the fire department kept rejecting his plans to landscape his hacienda-style home with jacarandas and avocado trees.

But he is grateful now.

Those restrictions may well have saved his multimillion-dollar home when a wildfire passed through last week.

"Now that we have a chance to see how it works, we are tickled pink," the retired surgeon said. "I'm a convert. I'm a true believer."

Lots of people in Rancho Santa Fe have become converts after braving last week's wildfires, the first major test of the stringent construction and landscaping standards adopted by the community in 1997. The San Diego suburb lost 53 houses, but none of them was in the five subdivisions that embraced restrictions designed to be so tough that people can stay in their homes if they cannot evacuate.

As Southern California begins to rebuild from the blazes that killed at least seven people and destroyed more than 2,000 homes, homeowners and government officials are looking at places as far away as Australia and as nearby as Stevenson Ranch in Santa Clarita, north of Los Angeles, that have adopted strict standards that require such precautions as nonflammable roofs, indoor sprinklers and regular watering of shrubs.

Rancho Santa Fe practices a strategy known as "shelter-in-place," designed to insulate homes from flames if people cannot evacuate.

The fire department in Rancho Santa Fe scrutinizes plans for every tree and bush and sends inspectors with measuring tapes to make sure its orders are obeyed.

Trees and bushes must be a certain distance from the house and cannot exceed a certain height. Roofs must be nonflammable, and shrubs near the house must always be watered. Indoor sprinklers are a must.

Columns must be masonry, stucco or precast concrete; windows must be dual-paned or tempered glass; and wood fences cannot touch the home.

"Rancho Santa Fe has done some really, really pivotal work," said Ron Coleman, former California state fire marshal and vice president of Emergency Services Consulting Inc. in Elk Grove, Calif. "It's a success story."

Cliff Hunter, Rancho Santa Fe's fire marshal, said he believes the standards saved homes.

"I just go by the results," he said as he drove through the wide streets of a subdivision where hillside flames stopped just short of homes.

Fire experts caution that no home is fireproof; they prefer the term "ignition-resistant." Advocates say such precautions give firefighters time to save more vulnerable homes in fast-moving fires.

But some critics say the shelter-in-place strategy may lull homeowners into a false sense of security, leading them to stay in their homes when they should flee.

Shelter-in-Place Neighborhoods

These communities are designed, built and maintained to allow homeowners to survive a worst-case wildfire without loss of life or structural damage. Houses and property are designed so fire goes around instead of through them, enabling residents to stay in their homes so they won't have to evacuate on dangerous roads.

Houses are built with fire-resistant materials such as stucco, rock or fiber cement siding. Indoor sprinklers are standard, as are dual-pane or tempered-glass windows.

A 100-foot space around each home must be free of wooden fencing, wooden play equipment, certain trees and shrubs, and items such as solar panels.

THE ORANGE COUNTY REGISTER

October 25, 2007

Smoke darkens the sky over Northwood in Irvine on Sunday as fires burned in the Portola Hills.

By: Sonya Smith
Orange County Register

The city's sky has been filled with smoke while residents' minds have been filled with questions and fear for five days as a wildfire has roared in north Irvine.

The fire started as a blaze covering 20 acres just before 6 p.m. Sunday. It moved fast, rolling southeast from the Santiago and Silverado canyons through Hicks Canyon to the edge of Portola Parkway.

As of mid-afternoon Wednesday, the fire had grown to 19,200 acres, cost about $10 million in damage, destroyed nine homes, damaged eight homes, destroyed eight outbuildings and damaged 12 outbuildings.

Mother nature has suddenly been on everyone's minds – shifting winds have kept residents wondering whether to pack up and leave, and caused firefighters to chase, fight and sometimes pull back from the fire. And now residents are relieved that no structures were burned in the city.

Irvine officials said at Tuesday's council meeting that updated fire and building codes keep Irvine homes and businesses well-protected against fires. The construction rules require things such as a zone around homes to give firefighters a protected area to fight between home walls and flames. Also, homes are built with roofs and closed eaves that block fire-starting embers.

These construction rules Irvine Co. spokesman Mike LeBlanc said will keep safe all new homes, such as those being built in north Irvine.

And protection against wildfires is also part of planning for the future Great Park. Great Park Design Studio Chief-of-Staff Michelle Sullivan said the park's design will be planned in part with the Fire Authority, especially in natural areas planned next to future homes. The most recent discussion on fire safety was planned, but canceled, for Monday.

"We're just starting the process, but fire safety is definitely incorporated into the planning of the Great Park," Sullivan said.

Throughout the fire fight, a few areas of the city were at some points evacuated – including some residents of Portola Springs, West Irvine, Northwood and the 80-year-old sisters who live at Irvine's historic Lambert Ranch. Many other residents chose to leave on their own, like the Watsons in West Irvine who stayed Sunday night at a La Quinta hotel in Tustin.

John Watson and his wife were in town this week visiting his daughter and were surprised to also find flames racing along the hillsides above his daughter's three-story home. By Monday, the family returned to the home and work. Watson, however, stayed at the house and ventured out on Portola

Parkway at the 261 Toll Road to take photos of the fire.

"This way I can show my daughter how close the fire was to her home."

Just 100 yards away, firefighters responded to about a dozen fire engines to flames licking a tan brick wall next to homes about 11 a.m.

The erratic winds had sent an ember over Portola Parkway, causing a fire to break out on a belt of trees and shrubs between West Irvine homes and the 261 Toll Road.

Firefighter Mitchell Kahn was one of the firefighters battling the blaze with fire hoses and shovels.

He met the Santiago wildfire just after it broke out Sunday, after managing just two bites of dinner. On Monday he'd battled the blaze through the night – stopping for a 30-minute break.

"It was a long, long night," Kahn said, who wore Oakley sunglasses under his goggles trying to keep out the dust.

Evacuees were sent late Sunday to the Lakeview Senior Center, where about 45 people visited, and 13 spent the night, according to Red Cross officials. At 8 a.m. Monday the volunteers were packing up, only to return at noon as the center was reopened as a place for people to seek refuge from the smoke.

But Irvine was also host to four-legged refugees – as of Wednesday the Irvine animal shelter had taken in 10 cats, 37 dogs, a tortoise and a potbelly pig from evacuees from around the county.

A few hundred people were still without power, after fierce winds and fire tore through some electrical lines, as of mid-afternoon 85 residents were without power. But Southern California Edison was keeping a close eye on the high-voltage transmission lines at the San Onofre Nuclear Generator Station as the Camp Pendleton fire raged nearby.

Those lines were San Diego County's last link to imported energy, after fires destroyed the other

The Signal

November 12, 2007

New Building Codes Reflect Recent Fire Destruction

By: Parimal M. Rohit
The Signal

New standards for Stevenson Ranch will dictate which construction materials builders may use.

New homes and buildings built in Stevenson Ranch are now subject to more stringent building code standards. The state will be enforcing these new codes Jan. 1, 2008. Local responsibility for code enforcement will be in effect July 1, 2008.

The new building code standards are part of a remapping program by the state of California and the Department of Forestry and Fire Protection. The updated building codes, which apply to areas where California is responsible for wildland fire protection, include provisions for ignition-resistant construction standards where urban and wildland areas meet. Building officials can use the updated fire hazard severity zones to determine appropriate construction materials for new buildings in wildland urban zones. Under the new standards, new buildings must include tile or asphalt roofs, dual-paned windows with one pane made of tempered glass, installation of ignition resistant-decking, replacement of vents, and closing off of all spaces underneath buildings.

Stevenson Ranch is an area that falls under the wildland urban zones, where the Department of Forestry and Fire Protection is financially responsible for wildland fire protection and prepares Very High Fire Hazard Severity recommendations for local areas that share responsibility with the department. Local responsibility varies according to location. For Stevenson Ranch, the county Fire Department in the Santa Clarita Valley assists the state with local responsibility.

Stevenson Ranch residents have already taken steps to incorporate precautions, such as installing fire-resistant concrete roof tiles, double-paned heat-resistant windows and enclosed eaves. According to the department, several residents in Stevenson Ranch made fire-resistant changes to their property in time for last month's wildfires.

New homes and buildings will be required to meet the new building code standards under the remapped fire hazard severity zones. However, owners are not legally required to make changes to existing buildings.

"These maps were originally created in the 1980s. We are remapping it because mapping science has created new information that was not previously available, which will allow us to be better prepared for fires," said June Iljana, spokeswoman for the California Department of Forestry and Fire Protection. The remapping effort incorporates improved wildland fire behavior science, data sets and understanding of structure ignition mechanisms during wildfires.

For more information about whether your home or office is in a fire hazard severity zone, please visit

www.fire.ca.gov/wildland.php, and click on the "2007 Fire Hazard Severity Zone Maps" logo on the right side. If you do not have web access, you may call the Santa Clarita Fire Department at (661) 259-2111 for more information.

Los Angeles Times

November 11, 2007

Enforce rules, reduce fires

Re: "Region's new homes lining up in fires' path," Nov. 11

This article about where homes are built blames new subdivisions, which were easier to defend and suffered less damage than older homes in the recent fires. As The Times pointed out in the article, "Why some averted disaster" (Oct. 24), new code changes and building materials have made such communities more fire-resistant than ever before. If local government stopped building homes in potentially dangerous areas, we wouldn't allow construction anywhere in the Golden State. That's not reality.

What is reality is that while new building codes are in place, defensible-space rules are not being adequately enforced and the amount of combustible materials in nearby wild lands is unnaturally high, creating a virtual tinderbox around communities. Without addressing these facts, no community can survive the types of fires that we've seen in recent years.

Robert Rivinius
President, chief executive
California Building Industry Assn.
Sacramento