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BY EMAIL

October 12, 2015

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

RE: Proposed Updates to the CEQA Guidelines

Dear Mr. Calfee:

On behalf of Communities for a Better Environment (CBE), we appreciate the opportunity to comment on the Preliminary Discussion Draft of the Proposed Updates to the CEQA Guidelines. CBE is an environmental justice organization whose mission is to build people's power in California's communities of color and low income communities to achieve environmental health and justice by preventing and reducing pollution and building green, healthy and sustainable communities and environments.

Proposed Amendments to Section 15125-Baseline (pp. 90-95)

We are concerned that the proposed amendment to Section 15125 would allow agencies to routinely disregard the actual existing physical environmental conditions—the real conditions on the ground—in favor of historical conditions that were more harmful to the environment. Specifically, the proposed second sentence to Section 15125(a)(1) provides, “[w]here existing conditions change or fluctuate over time, a lead agency may define existing conditions by referencing historic conditions that are supported with substantial evidence.” This would create an exception that essentially swallows the rule that, in determining the baseline for the project, the lead agency should describe the physical environmental conditions as they exist at the time the notice of preparation is published (or at the time environmental analysis is begun if no such notice is published). Existing conditions often “change or fluctuate” over time; the proposed amendment would give agencies carte blanche to set a baseline by referencing historical conditions.

Moreover, this change would directly conflict with the California Supreme Court's holding in *Communities for a Better Environment v. SCAQMD* (2010) 48 Cal.4th 310, which affirmed the longstanding CEQA principle that the CEQA baseline is the current level of operations at a facility. The proposed amendment to Section 15125 would essentially reverse that decision. This would likely have major impacts, for example, where an existing facility had high levels of emissions in the past but subsequently reduced emissions due to intervening regulatory requirements. Such facilities could expand and increase emissions to historic levels without undergoing CEQA review at all, if the lead agency uses the historic conditions as baseline. Existing CEQA guidelines and case law already provide the flexibility to an agency to consider historic conditions when setting a baseline. "Neither CEQA nor the CEQA Guidelines mandates a uniform, inflexible rule for determination of the existing conditions baseline." *Communities for a Better Environment*, 48 Cal.4th at 328. The Court recognized that environmental conditions may vary from time to time, for example, as temporary lulls or spikes in operations may result from peak impacts or recurring periods of resource scarcity. Agencies currently have the discretion to consider such variations in setting a baseline, provided of course that the determination is supported by substantial evidence.

The proposed second sentence to Section 15125 should be deleted.

Proposed Section 15234-Remedies and Remand (pp. 72-75)

This proposed section completely undermines the principle that, where CEQA's mandates are violated, the violations are presumed to be prejudicial to public involvement. *Sierra Club v. State Board of Forestry*, (1994) 7 Cal.4th 1215, 1236. Proposed Section 15234 starts with the pronouncement that not every CEQA violation is prejudicial requiring rescission of project approvals.

This section should start by stating the default rule that project approval normally must be set aside when the CEQA violation deprived decision makers and the public of information necessary for reasoned decision making. There are certain limited special cases, such as where the underlying project promotes increased environmental protection, where courts have allowed less than an entire project approval to be set aside. This is addressed in proposed Section 15234(c). But this limited exception should not be presented as if it were a universal principle. Courts must scrupulously enforce CEQA's mandates in order to ensure its purposes of environmental protection and public involvement in the decision-making process are fulfilled.

Proposed Revision to Appendix G- Elimination of Prime Farmland from Checklist

The conversion of prime farmland, unique farmland or farmland of statewide importance to nonagricultural use is often a significant impact on the environment that must be considered during CEQA review, and we object to its elimination from the Environmental Checklist Form (Appendix G).

Christopher Calfee

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Proposed Amendments to Section 15182- Transit Oriented Development Exemption (pp. 29-33)

Proposed Section 15182(b)(1)(A) would expand an existing CEQA exemption for projects deemed to be “transit oriented development.” There is currently an exemption from CEQA review for a residential, commercial or mixed-use project located in a specific plan area that has already undergone CEQA review, if the project is located in an area served by high quality public transit. The proposed amendments to Section 15182 would expand this exemption to areas with “planned” public transit. This would create a massive loophole and allow residential and mixed-use projects to avoid CEQA review if they are located in an area where public transit is planned, but may never be completed.

Sincerely,

Richard Drury