



February 13, 2014

Christopher Calfee, Senior Counsel  
Governor's Office of Planning and Research  
1400 Tenth Street  
Sacramento, CA 95814  
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**Re: Comments on 2014 CEQA Guidelines Update Regarding Baseline Issue**

Dear Mr. Calfee:

This comment letter is submitted by the Environmental Defense Center (EDC) in order to provide input requested by the Governor's Office of Planning and Research (OPR) in developing topics for the 2014 California Environmental Quality Act (CEQA) Guidelines Update. EDC protects and enhances the environment through education, advocacy and legal action. We appreciate the opportunity to comment in particular on the baseline issue (Guidelines § 15125), which is proposed to be addressed in this update, and which has been an area of concern in many of our cases.

The OPR's December 30, 2013 solicitation for input states that the update will provide "guidance on appropriateness of use of alternative baselines, including changes resulting from climate change, future baselines to address large-scale infrastructure, historic use, and unpermitted uses." We commend OPR for addressing such situations that warrant alternative baselines, and encourage OPR to develop guidance that at a minimum does not reward illegal or unpermitted activities.

In the case of a project where the current physical conditions on the site include unpermitted, illegal activities and/or structures, the baseline from which to analyze impacts should be set prior to such illegal uses. An understanding of the impacts of such illegal uses on a project site will help the public and decision-makers more fully understand the environmental conditions that existed prior to such illegal uses. This is a realistic and accurate baseline on which to base an understanding of the impacts of a proposed project, mitigation measures and project alternatives, all necessary to adequate CEQA review. Moreover, often such illegal uses on a site would have been "projects" within the meaning of CEQA if they had been done legally, and would have therefore been subject to environmental review in the first place.

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In *Communities for a Better Environment v. South Coast Air Quality Management Dist.* (2010) 48 Cal. 4th 310, 327-328, an environmental impact report (EIR) had described baseline environmental conditions as the highest possible amount of nitrogen oxide emissions allowed from an oil refinery. The court found this was not an accurate reflection of the *actual* amount of day-to-day emissions produced by the refinery. This baseline made the proposed project, which would expand and increase operations, falsely appear to have no impacts. Likewise, failing to acknowledge that environmental impacts and degradation may have occurred as a result of formerly illegal uses also misleads. Not providing an accurate baseline of the environmental conditions before such impacts or degradation occurred can create the false impression that a new project will have less or no impacts. Such misleading runs afoul of CEQA's fundamental goal that environmental review should foster informed decision-making.

EDC encourages OPR to develop guidance that ensures that illegal or unpermitted actions, for example, habitat clearing, tree removal or grading do not go unaddressed. In fact, we are aware of some instances in which a property owner has developed a full project without permits, and then avoided environmental review because the alleged baseline already included the physical changes to the property. The Guidelines should clarify that the impacts of such actions must be addressed in the environmental review process through an appropriate baseline. OPR's clarification in this regard will not only ensure adequate environmental review of projects and activities, but will also provide a fair and level playing field for those property owners and applicants who go through the proper process.

Thank you very much for your consideration of these comments and for your continued efforts on updating and clarifying the CEQA Guidelines. Please feel free to contact us if you have any questions regarding our suggestions.

Sincerely,

A handwritten signature in blue ink, appearing to read "Nicole G. Di Camillo".

Nicole G. Di Camillo  
Staff Attorney