

October 8, 2015

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

**Re: Comments on Governor's Office of Planning and Research Preliminary Discussion Draft of Amendments to the CEQA Guidelines (August 11, 2015)**

Dear Mr. Calfee:

Thank you for the opportunity to provide comments and suggestions on the "Preliminary Discussion Draft of Amendments to the CEQA Guidelines" written by the Office of Planning and Research (OPR) dated August 11, 2015 (hereafter referred to as the Preliminary Discussion Draft).

The mission of the San Diego Unified Port District (District) is to protect the Tidelands Trust resources by providing economic vitality and community benefit through a balanced approach to maritime industry, tourism, water and land recreation, environmental stewardship and public safety. The District was created with the San Diego Unified Port District Act (hereinafter referred to as "Port Act") adopted by the California State Legislature in 1962 as amended. The Port Act recognizes the Public Trust Doctrine, and states that tidelands and submerged lands are only to be used for statewide purposes. To this end, the District is charged with management of the tidelands and diverse waterfront uses along San Diego Bay that promote commerce, navigation, fisheries, and recreation on granted lands. When issuing discretionary permits and/or project approvals for projects and activities located within tidelands, the District often serves as the lead agency under CEQA.

The District understands that the Preliminary Discussion Draft identifies changes in nearly thirty sections of the Guidelines, which address various steps of the environmental review process. The District further understands that the Preliminary Discussion Draft is intended to make the environmental review process easier and quicker to implement, while continuing to protect the natural and fiscal resources consistent with other state environmental policies. The District appreciates OPR's work on this update and concurs with many of the changes.

The intent of this letter is to provide support for changes that would improve the District's environmental review process, as well as identify changes that would benefit from further clarification or consideration. The first section of the letter identifies

changes that the District generally supports, and includes a brief explanation of how it would improve the environmental review process. The second section identifies changes that the District has concerns with, based largely on the type of projects that the District typically processes and/or the District's operations. Amendments that have been flagged as an area of concern are followed by recommended changes to the text and/or other revisions that OPR should consider. The District's goal is to provide OPR with constructive feedback that can be incorporated into subsequent iterations of the comprehensive update to the CEQA Guidelines document.

### **Proposed CEQA Guidelines Amendments Supported by the District**

The vast majority of changes that are proposed in the Preliminary Discussion Draft are improvements that add important clarifications to the Guidelines, while continuing to ensure strong environmental protection measures are applied. The District is highly supportive of many of these changes, particularly the ones identified below:

1. Page 15, Paragraph 4. § 15064. Determining the Significance of the Environmental Effects Caused by a Project (b) (2).
  - The additional text proposed to this section adds clarity by expressly stating that thresholds of significance may be used in determining whether impacts of a project may be significant, but advises that the appropriateness of a threshold needs to be explained and supported by substantial evidence.
2. Page 22 to 23, § 15168. Program EIR (c)(1)(2)(3)(4)(5)(d)(3).
  - The revisions proposed in these sections help clarify when later activities can rely on a program EIR.
3. Page 27, Paragraph 7. § 15152 Tiering (h).
  - This revision helps clarify that tiering is only one mechanism to help streamline the environmental review process, but that there are other more specific provisions that may apply, and that those provisions should be used when warranted.
4. Page 35 and 36, § 15301. Existing Facilities (c).
  - These changes clarify that "historic" uses can be considered as part of the environmental baseline and that right-of-way improvements related to bicycles, pedestrians and transit would normally not result in an environmental impact. This minor change may reduce costs for improving multi-modal facilities on District tidelands.
5. Page 51, Initial Study I. Aesthetics (b) Substantially degrade the existing visual character or quality of public views of the site and its surroundings in conflict with applicable zoning and other regulations?
  - This is a helpful clarification by emphasizing the impact should be limited to public views. It also reduces some of the subjectivity

- This is a helpful clarification by emphasizing the impact should be limited to public views. It also reduces some of the subjectivity associated with a visual analysis by introducing applicable zoning and other regulations to be considered.
6. Page 61, Initial Study X. Land Use Planning (b) Cause a significant environmental impact due to a conflict with any applicable land use plan, policy, or regulation ~~of an agency with jurisdiction over the project (including, but not limited to the general plan, specific plan, local coastal program, or zoning ordinance)~~ adopted for the purpose of avoiding or mitigating an environmental effect?
- These revisions help lead agencies to focus on whether the conflict with a land use plan, policy or regulation actually *causes* a significant environmental impact, thereby making the determination of significance more straightforward.
7. Page 94, Paragraphs 1 through 4. § 15125. Environmental Setting (a) (1) (2) (3)
- These revisions clarify that a lead agency has various options in establishing a projects baseline condition (including historic conditions), provided that it makes sense for the project and can be supported by substantial evidence.
8. Page 98, Paragraph 5 through 9. § 15126.4 Consideration and Discussion of Mitigation Measures proposed to Minimize Significant Effects (a) (1) (B) 1, 2, 3 and 4.
- The revisions incorporated into these sections help clarify what mitigation details may be deferred and when such deferral may be permissible.
9. Pages 106 to 107, § 15088. Evaluation of and Response to Comments (b) and (c).
- This revision clarifies that the level of detail a lead agency provides in its response to comment may correspond to the level of detail that is provided in the comment.
10. Page 136. § 15124. Project Description. The additional text to discuss project benefits
- This revision clarifies that the project description may also discuss project benefits, which will ultimately help decision-makers balance competing interests.

**Areas of Concern and Recommended Revisions to the Proposed CEQA Guidelines Amendments**

11. Page 31 to 33, § 15182. Residential Projects Pursuant to a Specific Plan.

We understand that part of the intent behind the Proposed CEQA Guidelines Amendments is to better align CEQA with California's environmental goals, including the reduction of greenhouse gas emissions and the promotion of infill development. To further align CEQA with other statewide environmental goals, the District requests to modify the draft exemption language to also apply to Port Master Plans. As currently proposed, the revised exemption would only apply to certain residential, commercial and mixed-use projects that would be consistent with a *specific plan* adopted pursuant to Article 8, Chapter 3 of the Government Code. However, Port Master Plans, and amendments thereto, go through a similar legislative and discretionary process on the local level to be adopted and certain projects on tidelands can meet the criteria listed in the exemption, albeit pursuant to a Port Master Plan and not a Specific Plan.

12. Page 57, Initial Study V. Energy (b) Incorporate renewable energy or energy efficiency measures into building design, equipment use, transportation or other project features?

The proposed revision is not written in a way that allows a lead agency to determine when there would be an impact. To enable agencies to more easily make a determination and to maintain consistency with other Appendix G – Environmental Checklist questions, the District recommends the following revision:

- b) Impede or prevent the use of certain design techniques or other technologies (including building design, usage of equipment, and/or transportation options) that could utilize renewable energy and/or incorporate other energy efficiency measures?

Thank you for the opportunity to provide comments and suggestions regarding OPR's efforts to amend the CEQA Guidelines, as identified in the Preliminary Discussion Draft of Amendments to the CEQA Guidelines, dated August 11, 2015. We look forward to continuing to work with you on this important update

Sincerely,



Jason H. Giffen

Director, Environmental and Land Use Management