

From: gecons
Sent: Tuesday, August 25, 2015 9:53 AM
To: CEQA Guidelines@CNRA
Subject: CEQA Guidelines Discussion Draft

Dear Mr. Alex;

The revisions for the most part look good, however, there is one glaring exception that is in direct conflict with prevailing case law, namely, the change to the aesthetics/visual impacts questions on the checklist form. My comments reflect my understanding of CEQA based on a 33-year career implementing, teaching, and consulting on CEQA and associated documents.

The change relies on the Bowman v. Berkeley decision, however it completely ignores numerous other cases ranging from Pocket Protectors v. City of Sacramento to the Ocean View Homeowners v. Montecito Water District that all require visual quality to be assessed in terms of its a project's impacts on the environment. Additional case law (for example Berkeley Keep Jets Over the Bay v. Board of Port Commissioners) makes it clear that impacts are to be determined not on the basis of compliance with local codes, but rather in terms of actual impacts on the environment. Therefore the proposed checklist's approach of determining significance of impacts to views in terms of compliance with local ordinances is impermissible. The folly of this approach is heightened in that many agencies do not even have zoning controls that directly address aesthetics.

In addition, OPR's proposed change include another important item expressly in conflict with prevailing case law, namely limiting the aesthetic impacts to be considered to only public views. The Ocean View Estates case addressed this issue directly and found that whether or not a view was public or private was immaterial to the impact. As the court stated in that decision:

Appendix G's criterion (c) standard does not require potential harm to be so "dramatic" as to block a scenic view; the applicable and straightforward question is whether a project may cause substantial degradation of a site's existing visual character.

As an Oakland resident who had to engage the AG's office (under John Vandekamp) to successfully stop then Mayor Brown's similar attempt to run roughshod over CEQA's aesthetic impact requirements when he was mayor, I recognize the fingerprints of our CEQA-loathing governor on this legally impermissible change. (While Mayor of Oakland, he also petitioned the state Supreme Court, unsuccessfully, to overturn the Pocket Protector's decision). Please revise the checklist question b under aesthetics to read as follows:

b) Substantially degrade the existing visual quality or character of views of the site and surroundings.

Additionally, item a) should not be limited to scenic highways as there is NO legal support to that limitation (see Montecito quote, above). Please revise that checklist item to read as follows:

a) Have a substantial adverse effect on a scenic vista.

Thank you for your consideration.