

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

Re: CEQA Guidelines Update

Dear Mr. Calfee,

Thank you for the opportunity to provide input on the Discussion Draft of the Proposed Update to the CEQA Guidelines, dated August 11, 2015. I commend OPR on undertaking a comprehensive update of the Guidelines. As you know, this is the first such attempt in many years, and while several individual issues have been incorporated into the Guidelines, it is important to provide this level of comprehensive review more frequently than has occurred in the past.

I approach this draft from the position of a CEQA practitioner, but also as former OPR staff – so while I approach the proposed update from a perspective of its practical use in the planning field, I hopefully temper that with an understanding of OPR's interest in furthering the environmental policy goals of California. Most of the proposed updates are corrections of past minor errors or useful clarifications of recent statute and case law. I therefore have focused my comments on Appendix G, as this section will have possibly the largest day-to-day impact on the implementation of CEQA by public agencies, and because the reorganization of Appendix G is not as directly tied to statutory changes or case law.

I appreciate OPR's effort to simplify and consolidate issues where possible, in keeping with your observation that the purpose of the checklist is not to provide an exhaustive list, but to provoke thought and investigation. The checklist does not replace the need to address potentially significant environmental impacts within the context of the individual project. That said, I believe several of the changes miss the mark, and contrary to your stated intent, will not serve the lead agencies in identifying potentially significant effects.

1. Aesthetics. The rewording of current item I(e) raises two questions. First, what is the basis of limiting the impact discussion to "public views?" Public views are addressed under item (a) as scenic views and scenic highways are almost by definition public. However, is it not possible that given a sufficient number of sensitive receptors, that a significant change in a viewshed not normally visible to the public could be significant? That seems to be one of the implications of *The Pocket Protectors v. the City of Sacramento*, where rear yard viewsheds and setbacks were a consideration in the aesthetic impact. Second, while the Bowman case seems to support the use of design standards when considering aesthetic impacts, these appears contrary to another important line of thought that OPR has weaved into this proposed update – that regulatory standards *may*, with adequate supporting evidence, serve as a threshold of significance, they are not equivalent. Limiting the analysis of visual change to compliance with zoning and development standards seems an anomaly that would not be accepted in other environmental issues. Furthermore, while beauty may be in the eye of the beholder, the idea that a substantial change in the visual environmental cannot be objectively analyzed is overly simplistic, and flies in the face of substantial efforts by both FHWA (and integrated into Caltrans guidance) and the Department of the Interior to analyze and protect visual resources. Therefore, I support the consolidation of issues (a) and (b), but find the changes to item (c) problematic.

2. Cultural Resources. I appreciate the addition of tribal cultural resources in this section, pending further refinements per AB 52. However, the placement of paleontological resources in “Open Space” has limitation, which I discuss below.
3. Geology and Soils. This is one of those sections that had indeed become overly specific for a general checklist (accessing UBC tables, for example, is a frequent complaint for initial study preparers). However, the placement of this topic into “Open Space” is not a good solution, which I discuss below.
4. Energy. I agree that the placement of energy issues into Appendix F can cause problems, as highlighted by *California Clean Energy Committee v. City of Woodland*. However, the inclusion of item (b) is not a helpful stand-alone question in the checklist. While this language is based on Public Resources Code 21100(b)(3) and Appendix F, in statute it is specific to the contents of an EIR. The initial study should focus on whether or not there is a potentially significant effect that requires mitigation (which could include renewable energy or energy efficiency measures). It is a case of putting the cart (mitigation) before the horse (impact) as currently worded in the checklist. A more general question regarding inefficient or wasteful use of energy (resulting in a significant effect upon the environment) would be more helpful for lead agencies in determining whether or not an EIR was required.
5. Hazards/Noise. I strongly disagree with the proposal to add airport noise into the discussion of safety hazards, Item VIII(e). I assume the purpose was to bundle airport land use issues into one area. While this may make sense if the issue were to be discussed in Land Use, Item IX, it makes no sense to combine noise into the hazards section, which deals with physical harm related to the use of hazardous material, flood, fire, and aircraft-related accidents. The State Aeronautics Act, and the California Airport Land Use Handbook treat noise and accident safety as two distinct issues. While an airport land use plan may consider these two issues together in creating compatibility zones (generally for smaller general aviation airports with smaller noise footprints) the analysis and underlying rationale for the compatibility zones is arrived at separately. By dividing airport noise from other project-related construction and operational noise effects, as discussed in Item XI, you have needlessly complicated the discussion of noise and increased the possibility that the initial study preparer will not look at noise as a comprehensive issue with multiple components. For the reader of an initial study, if they want to understand the noise environment, must they now read two separate sections to understand the interaction of noise sources and the project? This is a step backwards in the checklist – and is similar to an existing problem that you propose to fix in this update: the separation of the HCP/NCCP topic between land use and biology. I strongly urge you to keep airport noise where it belongs – in the noise section.
6. Open Space, Managed Resources, and Working Landscapes. I imagine you will get several comments on this, as it represents a marked change in the organization of the checklist. I do not object to the idea of reorganization. However, there are several issues with the proposed changes, as written, which do not properly serve the lead agency or the public. Open space is a broadly defined term. Is the intent of the language to imply these are only issues for projects in “undeveloped” areas. Or are they only issues for projects in areas where land has been designated in a general plan or zoning amendment as “open space”? This is a needless addition to the checklist, which raises the possibilities for confusion, and the possible “scoping out” of potentially significant effects because they did not fit into the lead agency’s definition of open space.
 - While agricultural land is often considered “open space” from the perspective that it is undeveloped with structures (and therefore “open”), many in the agricultural

community bristle at this definition, as it implies a habitat and recreational component that complicates the use of agricultural lands for private economic activity.

- While forestlands and woodlands may be considered a form of open space, the implementation of local zoning for these resources may be distinct from other “open space” categories and needlessly confuse the issue. In addition, separating oak woodlands as a habitat type from the biological discussion does not serve the initial study preparer or the public.
- Flood and wildland hazard areas may have separate state designations, as well as local zoning overlays, but these plans and regulations may not reference open space. Again, why try to fit this into an “open space” issue when it is actually a hazard issue?
- The placement of geological hazards into open space implies that this is only to be considered when the project is in a special zoning designation. Is a project automatically safe from seismic hazards if it’s not within an Alquist Priolo zone, or local seismic hazard overlay? Of course not. In addition, the geological issue is needlessly divided between the new open space section, and a small mention in the revised hazards section. This proposed update should be fixing previous duplication and division of issues, not creating new ones.
- Are paleontological impacts limited only to designated open space? If OPR desires to separate this issue from cultural resources, perhaps a stand-alone item or subheading in geology (which will be a primary input for analysis) would be more suitable.

Thank you for the opportunity to comment on the proposed update. This is an important step for OPR and the Guidelines, and I look forward to the next stages of the process.

Sincerely,

Brian J. Grattidge