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February 14, 2014

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

Dear Mr. Calfee:

Thank you for the opportunity to comment on your document "Possible Topics to be Addressed in the 2014 CEQA Guidelines Update" dated December 30, 2013. Our comments for your review and consideration follow:

Section 15060.5 [Pre-application Consultation]

As OPR considers "recasting" this section and "adding provisions to address specific consultation requirements," we would like to strongly support that two of the existing provisions of this section be retained: (1) pre-application consultation occurs only because a project applicant has requested the consultation; and (2) the decision to include one or more responsible agencies, trustee agencies, or other public agencies is within the sole discretion of the lead agency.

As OPR considers suggestions on tribal consultation, we respectfully suggest that OPR consider an amendment to Section 15063(g) rather than Section 15060.5 and require that any such tribal consultation be initiated at the request of those Tribes interested in being consulted.

Section 15063 [Initial Study]

We support the proposed clarification to subdivision (g) that the lead agency may share an administrative draft of the initial study with the applicant in order to ensure accuracy in the project description and mitigation measures. We understand that this would be at the discretion of the lead agency and would extend to the applicant only.

Section 15064 [Determining the Significance of the Environmental Effects Caused by a Project]

We look forward to reviewing the proposed explanation for when a standard may be used appropriately in determining the significance of an impact under CEQA.

We recognize that “cumulative impact” analysis under subdivision (h)(1) poses challenges for many lead agencies. However, we strongly urge that OPR not single out “loss of open space” as an example of potential cumulative impacts under subdivision (h)(1). The list of “potential cumulative impact” is long and we do not think that the pathway through cumulative impact analysis is clarified by singling out a particular impact.

Section 15125 begins by describing the “environmental setting” and explaining that the “environmental setting” will “normally constitute the baseline physical conditions by which the lead agency determines whether an environmental impact is significant.” We support adding an explanation of baseline to Section 15125 rather than Section 15064 since the issue is raised more directly in Section 15125.

Section 15065 [Mandatory Findings of Significance]

We strongly suggest that OPR refrain from proposing an amendment to Section 15065 that adds roadway widening and the provision of excess parking as examples of projects that may achieve short-term environmental goals (congestion relief) to the disadvantage of long-term environmental goals (reducing greenhouse gas emissions) for the following reasons:

1. The Guidelines should not single-out one particular type of “short-term environmental goal” as an example. Including a single example in the Guidelines emphasizes its importance in a manner that is not supported by the broad definition of “environment” found in Section 15360.
2. CEQA contemplates that the lead agency will identify (based upon substantial evidence) its short-term environmental goals and its long-term environmental goals consistent with the goals and purposes of CEQA. We do not think it appropriate for OPR to make that determination for all lead agencies in the Guidelines.
3. We are aware that the Legislature has asked OPR to adopt different metrics for traffic impact analysis that may elevate reducing greenhouse gas emissions over congestion relief. However, we strongly suggest that OPR consider that a significant number of local government lead agencies do not have access to public transit modalities and will not have access – absent substantial funding opportunities – to public transit in the future. When considering the balance between reduction of traffic congestion and reduction of greenhouse gas emissions, we urge OPR to distinguish between the wide varieties of lead agencies in the State.

4. We note that a reduction in parking requirements is based upon the assumption that the consumer can reach his destination through an alternative means of transportation or by walking. As noted in #3, above, when these alternatives are not present (through no fault of the city's land use decisions), then it seems inaccurate to identify such cities' parking requirements as "excess."
5. OPR may wish to consider further explanation of the finding required under 15065(a)(2) in Appendix G.

Section 15087 [Public Review of Draft EIR]

We understand that the Attorney General has said that all documents cited in an EIR must be made available for public inspection. We agree with this summary of the law and would like to add the simple qualification that documents must be made public if they are in the possession of the lead agency.

Section 15088 [Evaluation of and Response to Comments]

We support clarifying that responses to comments may correspond to the level of detail contained in the comment.

Section 15091 [Findings]

We support clarifying the difference between feasibility for the purpose of analysis in an EIR and feasibility for purpose of making findings.

Section 15125 [Environmental Setting]

We support a description of the environmental setting that includes a description of the community within which the project is proposed but caution a change to the Guidelines which would either overemphasize the immediately surrounding uses of land or change the analysis of economic and social impacts.

Section 15357 [Discretionary Project]

We agree that there is often confusion about the difference between a "discretionary" and "ministerial" project. We will look forward to reviewing a draft augmentation of the definition that supports CEQA "streamlining."

Appendix G: Environmental Study Checklist

We would like to take this opportunity to reiterate our concerns with the phrase "excess parking" as discussed in our response to Section 15065 above and an approach which fails to distinguish between cities with access to transit and cities without access to transit. We understand that OPR thinks that some jurisdictions

require “too much” parking. However we would urge OPR to present this issue with a neutral tone that does not betray this judgment.

New Appendix [Supplement Review Checklist]

We think this new Appendix could be a valuable aid to both lead agency implementation, and applicant understanding, of CEQA.

Thank you again for the opportunity to review this document. We look forward to reviewing a draft of the proposed amendments to the Guidelines.

Again, thank you for the opportunity to comment on the “Possible Topics to be Addressed in the 2014 CEQA Guidelines Update”. Please do not hesitate to contact me should you have any questions at (916) 658-8250 or kkolpitcke@cacities.org. We look forward to continuing our valuable relationship with OPR.

Sincerely,



Kirstin Kolpitcke
Legislative Representative