



October 12, 2015

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

Subject: The Riverside County Transportation Commission's Input in Response to "Proposed Updates to the California Environmental Quality Act Guidelines, Preliminary Discussion Draft" Dated August 11, 2015

Dear Mr. Calfee:

The Riverside County Transportation Commission (Commission) appreciates the opportunity to comment on the Office of Planning and Research's "Proposed Updates to the CEQA Guidelines, Preliminary Discussion Draft" dated August 11, 2015.

As the regional transportation planning agency for Riverside County, the Commission serves as both lead agency and responsible agency for many California Environmental Quality Act Guidelines (CEQA) documents each year, often in coordination and consultation with the California Department of Transportation, and in partnership with federal transportation agencies for joint CEQA/NEPA documents. As a result of the increased demands placed on infrastructure in Riverside County due to population growth and urbanization, the Commission has served as lead or responsible agency for transportation projects involving billions of dollars in investments, which will help to alleviate congested traffic conditions on several of the region's main transportation corridors.

Comments on the Guidelines Update

1. § 15064(b)(2): Suggest removing the newly proposed language as these points are already required by CEQA.
2. § 15064.7: The proposed addition clarifies that agencies may adopt an environmental standard as a threshold of significance. However, it is unclear whether adoption of a standard as a threshold of significance requires the notification and public review requirements of 15064.7(c).
3. § 15168(c)(2): The proposed addition may end up inconsistent with the forthcoming opinion of the California Supreme Court in *Friends of the College of San Mateo Gardens v. San Mateo Community College Dist.*, rev. gtd. 1/15/14, Case No. 5214061.
4. § 15182(c)(1): Suggest adding the words "exempt from CEQA" just to clarify.

5. § 15301: Regarding the Class 1 Existing Facilities exemption, the Commission is concerned about the change from using “existing use” as the baseline to now using “historic use” as a baseline. It seems the Office of Planning and Research’s (OPR) intent is to expand the applicability of the exemption but we can see arguments arising over whether the exemption now applies in a situation where “historic” capacity/use was X, but then recently it became Y. (Perhaps the change was even subject to environment review.) Now a project will not expand use beyond Y (the “existing” use but perhaps not the “historic” use) – does the exemption apply? We suggest revising the exemption to read, “involving negligible or no expansion of existing or historic use.”
6. § 15234(d): Suggest deleting the words “agency need not expand the scope of analysis” and replacing it with “agency need not reanalyze project impacts to resource areas beyond what is necessary to respond to the court’s decision.”
7. § 15126.2(b): The background discussion for this change indicates OPR believes in most cases a full lifecycle analysis is not necessary to analyze energy impacts. We suggest adding this clarification to the regulation itself.
8. § 15155(f): 15155 relates to water supply assessments, which are only required of cities and counties. However, the new language suggests the provisions of this regulation apply to all “lead agencies.” Suggest replacing “lead agency” with “city or county.”
9. § 15087(c)(2): OPR’s background text explains this new language is supposed to clarify that agencies don’t need to accept comments via social media, and that an agency can inform the public it will not accept comments in that form. However, as written, it sounds like lead agencies can set any kind of limit they want on how they accept comments. Worried agencies will want to use the new language to unreasonably limit how they take comments (i.e., agency will only accept comments via email, or agency will only accept comments provided in hard copy and delivered in person, etc.).
10. § 15004(b): The proposed revision deletes the final line of text in (b)(1)(A), but this text has been cited in a long line of relevant and important case law. We are worried that deleting this line will lead to arguments over whether that case law is still applicable and we believe OPR’s intent is that it is still applicable. We don’t see a danger in keeping the deleted text in the regulation even if OPR then further clarifies the issue in new text elsewhere.
11. § 15061(b)(a): We suggest terming the common sense general rule the “common sense exemption” as opposed to the “common sense exception.”
12. § 15063(a)(4): We suggest that instead of referring an agency to section 15084(d) (which applies to EIRs), the guidelines include the list of how an agency can prepare an Initial Study here.
13. § 15357: We suggest deleting the newly proposed text. The phrase, “whether the approval process involved allows the public agency to shape the project,” is somewhat confusing. Further, the phrase, “in any way that could materially respond to... concerns which might be raised in an [EIR]” is also confusing, given that discretionary projects can be approved with an exemption, negative declaration, or MND.

14. Appendix G Checklist Comments:

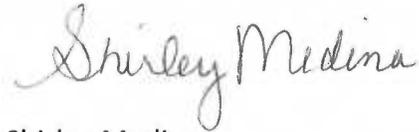
- a. Scenic Resources: Recommend OPR clarify Aesthetics Question (b) regarding scenic resources “within a state scenic highway.” It has been a long-standing question whether agencies should consider impacts to scenic resources ONLY if they occur within a designated scenic highway – or in general? Further suggests providing clarification on whether the analysis is to examine impacts looking out from the site or also in to the site.
- b. Air Quality 2nd Question of App G (Page 53): Question now asks if a project will obstruct AQMP or will exceed significance criteria from local AQMD/APCD. Does this mean a lead agency may pick which of these to analyze, or is the question meant to say that lead agencies must look at both and an issue with either would be significant?
- c. Air Quality 3rd Question of App G (Page 53): Recommend deleting. The first half is duplicative of Air Quality question (a), and the second half duplicates the existing CEQA obligation to look at cumulative impacts for all resources. Further, it is unclear how to measure “haze.”
- d. Energy New Section of App G (Pages 56-57): Given these questions and the existing Public Resources Code requirements to look at energy impacts (and thus mitigation and alternatives that would avoid significant impacts), do we even need Appendix F anymore? Suggest deleting to avoid duplication.
- e. Hazards 5th Question of App G (Page 58): Asks if project will result in excessive noise to people residing/working in the area. This appears to be duplicative of the Noise analysis. Suggest deleting this.
- f. Hydrology and Water Quality 2nd Question App G (Page 59): Why take the example out of Appendix G for determining when a project would substantially “decrease” groundwater supplies? The example discusses whether a project would impact the production rate of nearby wells such that the wells would not support existing land uses or planned uses for which permits have been granted. This is a helpful example as it assists consultants and lead agencies in developing and employing a threshold for what constitutes “substantial” depletion or decrease.
- g. Land Use and Planning 2nd Question App G (page 61): Why take the word “applicable” out of the phrase “applicable land use plan, policy or regulation”? Concerned this will lead to confusion and recommend keeping it in.
- h. Landscapes App G question (b)(vii) (Page 64): This appears to be duplicative of Water Quality question (b). Recommend deleting. Further, question (d) appears to violate *Ballona Creek* re: analyzing impacts of the environment on the project. Suggest deferring this revision until the Supreme Court issues its ruling in the pending *CBIA v. BAAQMD* case.
- i. Population 3rd question (Page 65): Unclear whether lead agencies may use whatever guidance they think is best to judge this.

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- j. Utilities 4th Question (Page 69): The language regarding water supplies now parrots the language of the Water Supply Assessment and Water Supply Verification Statutes as it requires reviewing the adequacy of projects under normal, single dry and multiple dry year scenarios. This seems to extend the type of analysis done for WSA-worthy projects to all projects that trigger CEQA, no matter how small. This appears to be a step beyond the authority of the statutes. Recommend not adding this language.
- k. Mandatory findings of significance (Page 70): The Mandatory Finding of Significance under State CEQA Guidelines, section 15065(a)(2) should be added as a question in Appendix G. State CEQA Guidelines section 15065(a)(2) asks whether: “(2) The project has the potential to achieve short-term environmental goals to the disadvantage of long-term environmental goals.”

Thank you for the opportunity to provide comments on the Proposed Updates to the CEQA Guidelines. The Commission looks forward to participating in a continued public engagement process over these updates.

Sincerely,



Shirley Medina
Planning and Programming Director

By email (CEQA.Guidelines@resources.ca.gov)