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GOVERNOR'S OFFICE *of* PLANNING AND RESEARCH



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Possible Topics to be Addressed in the 2014 CEQA Guidelines Update

December 30, 2013

I. Introduction

During the summer of 2013, the Governor's Office of Planning and Research (OPR) and the Natural Resources Agency distributed a [Solicitation for Input](#) on possible changes to the CEQA Guidelines. Over forty organizations, public agencies, and individuals submitted [written suggestions](#) for changes. Several [broad themes](#) emerged.

This document identifies the specific suggestions that appear consistent with the California Environmental Quality Act (Pub. Resources Code §§ 21000 et seq.) and case law, as well as the goals described in the Solicitation for Input. Note, some suggestions were modified to be consistent with legal authority or to fit within the structure of the Guidelines. Please also note that because OPR and the Natural Resources Agency continue to engage in outreach with various stakeholders, additional topics and changes may be considered beyond those listed in this document.

II. Input Requested

OPR and the Natural Resources Agency seek your input on this preliminary list of topics. In particular, we seek the following:

1. Are these topics appropriate for the CEQA Guidelines Update?
2. Are there any important topics that we missed and that should be addressed?
3. If you have not already provided specific suggested language, do you have any that we should consider?

Input may be submitted electronically to CEQA.Guidelines@ceres.ca.gov. While electronic submission is preferred, suggestions may also be mailed or hand delivered to:

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

Please submit all suggestions before **February 14, 2014 at 5:00pm.**

III. Specific Suggested Changes

The following briefly describes the topics that OPR intends to address in this comprehensive update.

Section 15051 (Criteria for Identifying the Lead Agency)

Clarify when the determination of lead agency may be made by agreement. Specifically, provide that the agency that acts first shall “normally” be the lead agency, which leaves open the possibility of designating another by agreement.

Section 15060.5 (Pre-application Consultation)

Recast this section to address consultation more generally. Add provisions to address specific consultation requirements, and include suggestions on tribal consultation. Address consultation with regional air districts.

Section 15061 (Preliminary Review)

In subdivision (b)(3), replace the phrase “general rule” with “common sense exemption” to be consistent with the terminology used by the Supreme Court in *Muzzy Ranch v. Solano County ALUC* (2007) 41 Cal. 4th 372.

Section 15063 (Initial Study)

Clarify that initial studies may be prepared by contract to the lead agency, consistent with Section 15084. Also clarify in 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.

Section 15064 (Determining the Significance of the Environmental Effects Caused by a Project)

Add a definition of regulatory standard, and explain when a standard may be used appropriately in determining the significance of an impact under CEQA.

Add loss of open space as an example of potential cumulative impacts in subdivision (h)(1).

Add explanation of baseline in this section, since 15125 technically addresses the contents of an environmental impact report.

Section 15064.4 (Determining the Significance of Impacts From Greenhouse Gas Emissions)

Clarify that analysis of greenhouse gas emissions is required, and the role of the Scoping Plan in determining the significance of greenhouse gas emissions.

Further clarify that “business as usual” (or hypothetical baseline) analysis is not appropriate. Also clarify that, particularly for long range plans, lack of complete precision in projections of emissions will not make the use of models inadequate for information disclosure purposes.

Section 15065 (Mandatory Findings of Significance)

Add 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).

Section 15082 (Notice of Preparation)

Clarify that NOPs must be posted at the County Clerk’s office.

Section 15083 (Early Public Consultation)

Clarify that the lead agency may share an administrative draft of the EIR, or portions thereof, with the applicant in order to ensure accuracy in the project description and mitigation measures.

Section 15087 (Public Review of Draft EIR)

Revise section 15087 to require that all documents “incorporated by reference” into the environmental impact report be made available for public inspection, but not necessarily every document cited in the EIR.

Clarify that copies provided to the public and to libraries may be electronic copies.

Section 15088 (Evaluation of and Response to Comments)

Clarify that proposed responses to public agency comments may be provided electronically.

Clarify that responses may correspond to the level of detail contained in the comment, and specifically that responses to general comments may be general. Provide further that comments that do not explain the basis for the comments or the relevance of evidence submitted with the comment do not require a response. *Citizens for Responsible Equitable Environmental Development v. City of San Diego*

(2011) 196 Cal. App. 4th 515; Gilroy Citizens for Responsible Planning v. City of Gilroy, 140 Cal. App. 4th 911.

Section 15091 (Findings)

Clarify requirements regarding the need for findings on alternatives, as well as the difference between feasibility for the purpose of analysis in the environmental impact report versus actual feasibility for the purpose of making findings.

Section 15107 (Completion of a Negative Declaration)

Provide that a lead agency may request an extension of time (under the Permit Streamlining Act) to be consistent with Section 15108.

Section 15124 (Project Description)

In the description of the project's technical, economic, and environmental characteristics, allow the lead agency to discuss the project's benefits.

Section 15125 (Environmental Setting)

Provide guidance on appropriateness of use of alternative baselines, including changes resulting from climate change, future baselines to address large-scale infrastructure, historic use, and unpermitted uses.

Provide that the description of the environmental setting may include a description of the community within which the project is proposed in order to better analyze the specific impacts to that community.

Clarify the analysis of consistency with adopted plans, both local and regional.

Section 15126.4 (Consideration and Discussion of Mitigation Measures Proposed to Minimize Significant Effects)

Provide guidance on when an agency may appropriately defer mitigation details.

Discuss mitigation banking.

Mention vectors as an example of potential impacts that result from mitigation measures.

Provide additional guidance on mitigation of energy impacts.

Section 15126.6 (Consideration and Discussion of Alternatives to the Proposed Project)

Provide guidance on the feasibility of alternatives.

Section 15152 (Tiering)

Clarify that tiering is only one streamlining mechanism, and this section does not govern the other types of streamlining.

Section 15155 (City or County Consultation with Water Agencies)

Provide further guidance on the adequacy of water supply analysis under CEQA. Also account for increasing variability in water supply.

Section 15168 (Program EIR)

Provide further guidance on determining whether a later project is “within the scope” of a program EIR.

Section 15182 (Projects Pursuant to a Specific Plan)

Add description of new specific plan exemption in Section 21155.4.

Section 15222 (Preparation of Joint Documents)

Clarify that CEQA lead agencies may enter into a memorandum of understanding to facilitate joint review with a federal lead agency.

Section 15269 (Emergency Projects)

Clarify that emergency exemption does not preclude projects responding to emergencies that require some long-term planning, consistent with the *CalBeach Advocates v. City of Solana Beach* (2002) 103 Cal. App. 4th 529 decision.

Section 15301 (Existing Facilities)

Revise to incorporate holding in *Communities for a Better Environment v. South Coast Air Quality Management Dist.* (2010) 48 Cal. 4th 310, regarding the level of historic use, so that the exemption

cannot be used to expand the use of a facility beyond its historic use (rather than use at the time of the lead agency's determination).

Clarify that this exemption includes alterations for bike lanes, pedestrian crossings, street trees, and implementation of other complete streets features.

Section 15357 (Discretionary Project)

Augment the definition of a "discretionary project" to provide further guidance about whether a project is ministerial or discretionary.

Section 15370 (Mitigation)

Clarify that preservation in perpetuity can be appropriate mitigation.

Section 15378 (Project)

Revise the definition of "project" to more clearly address pre-approval agreements.

Appendix G: Environmental Study Checklist

Several suggestions recommended changes to the Appendix G sample environmental checklist. Some of the topics that may be addressed include the following:

- Add a question about conversion of open space generally, and then give examples (agriculture, forestry, habitat connectivity, etc.) of possible impacts.
- Add a question about the cumulative loss of agricultural land.
- Add fire hazard questions (SB 1241).
- Move the question about geologic features and paleontological features from the cultural resources section to the geology section.
- Remove question (c) in land use planning because it is already covered in the section on biological resources.
- Add a question about providing excess parking.
- Revise the section on utilities to be clearer and remove redundancy, and add questions related to energy infrastructure.
- Revise the questions regarding biological resources and mandatory findings of significance to be consistent with Section 15065.

Appendix J (Examples of Tiering)

Revise to provide better guidance on use of different and new streamlining tools.

New Appendix (Mitigation Monitoring and Reporting Program)

Provide a sample Mitigation Monitoring and Reporting Program.

New Appendix (Supplemental Review Checklist)

Provide a checklist to guide supplemental review, including guidance on fair argument

New Appendix (Transportation Analysis)

Provide guidance on a non-LOS analysis of transportation impacts. Also address local conditions, safety, mode conflicts.

IV. Issue That Will Not Be Addressed at This Time

Many commenters suggested providing further clarification of Section 15126.2, and the required analysis of a project's relationship with its environment. The California Supreme Court recently accepted review of *California Building Industry Assn. v. Bay Area Air Quality Management Dist.* (2013) 218 Cal. App. 4th 1171. Review in that case is limited to the following question: "Under what circumstances, if any, does the California Environmental Quality Act (Pub. Resources Code, § 21000 et seq.) require an analysis of how existing environmental conditions will impact future residents or users (receptors) of a proposed project?" The Office of Planning and Research will not suggest any changes to this section until after the Supreme Court rules on this issue.