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VIA EMAIL: CEQA.Guidelines@resources.ca.gov

Ken Alex
Director
Governor's Office of Planning and Research
1400 Tenth Street
Sacramento, CA 95814

Re: Comments Regarding "Proposed updates to the CEQA Guidelines,
Preliminary Discussion Draft"

Dear Mr. Alex:

Thank you for the opportunity to provide comments and suggestions on the Governor's Office of Planning and Research's "Proposed Updates to the CEQA Guidelines, Preliminary Discussion Draft," dated August 11, 2015.

The Orange County Office of County Counsel in conjunction with our client at Orange County Public Works (OCPW), submit this letter in response to the request for comments on the Preliminary Discussion Draft. OCPW is responsible for ensuring CEQA compliance for public and private projects in unincorporated Orange County. Our comments focus on the practical application of the proposed revisions and any issues we foresee arising in applying those revisions. Specifically, our comments focus on the practical application of the Proposed Amendments to Appendix G.

Proposed Amendments to Appendix G

On page 44 of the Discussion Draft, the Office of Planning and Research poses questions for reviewers regarding the proposed amendments to Appendix G. We answer questions 2 and 4 below in the context of our comments regarding the Proposed Amendments to Appendix G.

Some of the proposed revisions, as currently set forth raise concerns regarding practical application. For example, new checklist sections and questions are proposed for the following categories: "Energy," "Open Space, Managed Resources and Working Landscapes," and "Wildfire." The Preliminary Discussion Draft does not include a square checkbox for the significance categories for each of the questions posed under these sections. It is unclear whether this was an unintentional error or whether these are questions that are not subject to the checklist significance categorization, but instead are

questions intended to be answered with a “yes” or “no.” If these questions are intended to be answered “yes” or “no,” what is the practical significance of answering “yes” to these questions? Does a “yes” mean there is automatically an impact or a significant impact? As phrased and without the checkboxes, it is unclear what a practitioner should do with regard to the question posed in each of these sections.

In the proposed section on “Energy,” the question in subsection b (page 57 of Preliminary Discussion Draft) asks whether the project “[i]ncorporate[s] renewable energy or energy efficiency measures into building design, equipment use, transportation or other project features?” Unlike much of Appendix G, this question does not ask whether the project causes any substantial adverse environmental impacts, but instead whether the project integrates project features that save energy. The question as phrased does not appear appropriate for Appendix G, but instead appears appropriate as a consideration for mitigation for energy impacts.

In addition, OCPW believes it would be useful for practitioners if the “Energy” section referenced Guidelines section 15126.2 (as proposed to be amended) and Appendix F, as these are resources that provide further direction regarding the required “Energy” analysis.

With regard to the proposed new section “Open Space, Managed Resources and Working Landscapes,” we request clarification on the definition of “working landscapes,” as this term is not defined in the definitions provisions of either the Public Resources Code or the CEQA Guidelines. Similarly, we request clarification regarding the reference to “open space used for production of resources.” (Preliminary Discussion Draft at p. 63.) “Open space for production of resources” could be interpreted as only including open space used for commercial agricultural production. However, the sub-questions indicate that the open space involved would be “farmland” or “forest land,” which are natural resources, not “open space used for production of resources.” OCPW requests clarity on this conflict.

The proposed new “Wildfire” section (Preliminary Discussions Draft a pp. 69-70), poses a question (subsection b) that requires analysis of the effect of the environment on the project (so-called “reverse-CEQA”), a question currently pending before the California Supreme Court in *California Building Industry Ass’n v. Bay Area Air Quality Management District*, Supreme Court No. S213478 (Review granted November 26, 2013). Given that this issue remains unresolved, this question is not appropriate at this time.

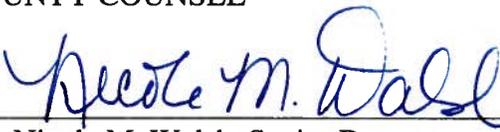
The Office of Planning and Research also asked reviewers whether “the format of Appendix G [could] be improved to be more user-friendly.” As a suggestion, Appendix G could be more user-friendly by including references to pertinent Public Resource Code and CEQA Guidelines sections. Internet links (as long as updated regularly) to data resources would also be helpful to practitioners.

Comments Re: Revisions to CEQA Guidelines
October 9, 2015
Page 3

Thank you for your consideration of these comments. If you have any questions please contact Peter DeMarco at (714) 834-5777.

Very truly yours,

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By 
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Cc:
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