



August 27, 2013

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

Dear Mr. Calfee:

Planning & Conservation League, and Planning & Conservation League Foundation, a 501(c)(4) and (3) whose combined mission is to protect California's environment and its people, thanks you for the opportunity to comment on revisions to the California Environmental Quality Act (CEQA) Guidelines and submits the following comments, divided into process improvements, substantive improvements, and technical improvements.

Process Improvements

- Language Access
 - o Nearly 20% of Californians speak limited to no English.
 - o CEQA's purpose as a public process fails if it has no mechanisms for alerting such a large portion of our population to potential projects that may affect them.
 - o Pursuant to California Code of Regulations (CCR) § 15140, EIRs shall be written in "plain language."
 - o It is appropriate and necessary for the Office of Planning and Research (OPR) to provide guidance on making the CEQA process accessible to the large portion of Californians for whom "plain language" requires a language other than English.

- Mitigation Enforcement
 - o Mitigation is the "heart of CEQA," yet the process for public enforcement is unclear.
 - o Where mitigation is not being implemented, specific guidance should address: how a party interested in enforcing may first give notice to the agency alleged to be in violation, and how much time that agency has after being given notice to begin implementing mitigation before a suit can be brought. This was attempted through a legislative vehicle this year, SB 754 (Evans), but to the extent that this can be clarified in the Guidelines based upon current statutory and case law, it should be.



- Baseline
 - The wide judicial discretion in choosing a baseline for environmental analysis has resulted in wildly different and confusing considerations. Some baselines have been determined to start years into a predicted future, and others start after illegal actions have been undertaken that change the nature of the land, such as removal of sensitive habitat.
 - At a minimum, baselines should not benefit an actor who engaged in illegal or unpermitted actions.

- Level of Service
 - Level of service is a useful but outdated tool for addressing traffic impacts, and related safety and air quality, on an area. There are arguments that it is a useful tool, and there are arguments that it promotes automobile traffic as opposed to alternatives.
 - It is inappropriate at this time to remove Level of Service as a tool altogether, but a comprehensive alternative is needed that allows for and promotes pedestrian and transit alternatives.

- Record Costs
 - CEQA allows petitioners to elect to prepare the record. Public Resources Code § 21081.6(a)(2) provides that, at the time of project approval, public agencies have a mandatory duty to (1) gather the record of proceedings supporting their approval, and (2) lodge that record with a specified custodian at a specified location.
 - Some public agencies have refused to produce record documents in response to a petitioner's Public Records Act request and have charged petitioners for staff time to collect and produce such documents after litigation has been filed. Public agencies have no basis for charging to produce a record they are already obligated to produce, or for charging to allow a petitioner access to inspect such records.
 - The Guidelines should implement PRC § 21081.6(a)(2) and support the ability of petitioners to prepare the record of administrative proceedings by including provisions that (1) mirror § 21081.6(a)(2), by requiring agencies to designate to location and custodian of the record of proceedings at the time of project approval; (2) forbid public agencies from charging a petitioner for staff time spent gathering records the agency was required by law to gather and lodge with a designated custodian at the time of project approval; (3) recognize that petitioners may request under the Public Records Act to inspect the already gathered and lodged documents that comprise the record at no charge; and (4) limit the agency to only recovering its direct cost of copying such documents, to the extent the petitioner requests the agency to provide such copies rather than making her own at the time of its Public Records Act inspection.

Substantive Improvements

- Social and Economic Impact Analysis
 - Socio-economic impacts and environmental issues overlap, yet current CEQA interpretation has failed to fully address this intersection.
 - For example, new development can increase the cost of living for existing low-income residents, which in turn limits budgets for adequate food and medical

care. These resource strains, combined with increased stress, diminish public health.

- The Guidelines should incorporate environmental justice assessment where appropriate into the analysis required under CEQA.

- Use of Existing Certified Specific Plans

- Current law allows projects to tier back to specific plans approved as far back as January 1, 1980, meaning that those are plans whose processes were begun in the 1970's, an era when a different ethic of development dominated.
- Limiting tiering to more recent specific plans would ensure that such plans reflect current thinking on urban planning priorities and thus promote more advanced understanding of what constitutes “sustainable growth” and “smart” infill.

- Protect the Public Health

- The protection of the public health and safety is in the intent of the CEQA, in PRC § 21000(d), “it is the intent of the Legislature that the government of the state take immediate steps to identify any critical thresholds for the health and safety of the people of the state and take all coordinated actions necessary to prevent such thresholds being reached.”
- Pursuant to CCR § 15126.2, an EIR shall “analyze any significant environmental effects the project might cause by bringing development and people into the area affected. For example, an EIR on a subdivision astride an active fault line should identify as a significant effect the seismic hazard to future occupants of the subdivision. The subdivision would have the effect of attracting people to the location and exposing them to the hazards found there.”
- Recent Appellate Court decisions conflict with CEQA’s intent and have questioned these guideline provisions. These decisions cannot be squared with the Supreme Court’s consistent and repeated admonishments for over 40 years that “CEQA is to be interpreted ‘to afford the fullest possible protection to the environment within the reasonable scope of the statutory language.’” (*Mountain Lion Foundation v. Fish & Game Com.* (1997) 16 Cal.4th 105.). See also *Save the Plastic Bag Coalition v. City of Manhattan Beach* (2011) 52 Cal.4th 155, 175; *Sunset Sky Ranch Pilots Ass’n v. County of Sacramento* (2009) 47 Cal.4th 902, 907; *Muzzy Ranch Co. v. Solano County Airport Land Use Com’n* (2007) 41 Cal.4th 372, 381; *Laurel Heights Improvement Assn. v. Regents of University of California* (1993) 6 Cal.4th 1112, 1144; *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 563; *Napa Valley Wine Train, Inc. v. Public Utilities Com.* (1990) 50 Cal.3d 370, 376; *Concerned Citizens of Costa Mesa, Inc. v. 32nd Dist. Agricultural Assn.* (1986) 42 Cal.3d 929, 939; *Wildlife Alive v. Chickering* (1976) 17 Cal.3d 190, 198; *Bozung v. Local Agency Formation Com.* (1975) 13 Cal.3d 263, 274; *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 83; *Friends of Mammoth v. Board of Supervisors* (1972) 8 Cal.3d 247, 259.
- No changes should be made to weaken CCR § 15126.2. However, if changes are made they should strengthen and clarify that the public health and safety is an environmental concern and as such, reviews under CEQA must examine how a project’s site will affect the health and safety of those brought to the project.

- Address Displacement of People and Benefits in Infill
 - o In the push to create more infill, existing communities are sometimes left out, either unable to afford to live in the “revitalized” areas or unable to access the benefits because they lack the job skills for the newly created jobs or the income to take advantage of new amenities.
 - o The Guidelines should establish best practices for how to address displacement, including but not limited to mixed-use housing projects, rent control, job skills centers, as well as measures designed to increase the participation of the likely-affected communities.

Technical Improvements

- Use of the Internet
 - o Although improvements are currently under development in OPR and the Legislature, we want to emphasize that prompt submission of documents in an electronic format is critical for Californians to be able to access and review information. It will also save paper and labor in the future.

Thank you for this opportunity to comment. Questions may be addressed to Abigail Okrent at aokrent@pcl.org or (916) 822-5633.

Sincerely,



Abigail Okrent
Legislative Director
Planning & Conservation League