

Christopher Calfee, Deputy Secretary and General Counsel  
California Natural Resources Agency  
1416 Ninth Street, Suite 1311  
Sacramento, CA 95814

Dear Chris

Thank you for the opportunity to comment on the proposed CEQA Guidelines amendments and now on the 15-day revisions. The proposed revisions are generally very useful in removing redundancies and providing clarity.

Despite the changes embodied in the 15-day revisions, many of my prior comments, particularly related to energy use, have not been addressed. I offer some additional comments on the 15-day revisions that I think would clarify the proposed language and avoid inadvertent misinterpretations by practitioners. These comments are my own and do not reflect the opinions of my employer. My comments and suggested revision language follow.

Sincerely,

Antero Rivasplata, AICP  
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Sacramento, CA 95822

## Comments on the proposed 2018 CEQA Guidelines 15-day Revisions

The proposed guidelines language is presented below in **bold** type. My suggested deletions and revisions are shown in strike-out and underlined, non-bold text.

### Section 15269.

15269(b): the added language could be misinterpreted as allowing planning for long-term projects, rather than those necessary to address an emergency. I suggest the following replacement language:

(b) Emergency repairs to publicly or privately owned service facilities necessary to maintain service essential to the public health, safety, or welfare. **Emergency repairs include those that require a reasonable amount of planning to address an anticipated emergency, subject to the limitations described in subsection (c).**

### Section 15357.

The proposed revision to the definition of “discretionary project” should mention that discretion also includes the ability to apply mitigation measures. This is consistent with the decisions in *Sierra Club v. County of Sonoma* (2017) 11 Cal.App.5th 11, *Sierra Club v. Napa County Board of Supervisors* (2012) 205 Cal.App.4th 162, and *San Diego Navy Broadway Complex Coalition v. City of San Diego* (2010) 185 Cal.App.4th 924:

“Discretionary project” means a project which requires the exercise of judgment or deliberation when the public agency or body decides to approve or disapprove a particular activity, as distinguished from situations where the public agency or body merely has to determine whether there has been conformity with applicable statutes, ordinances, **or regulations, or other fixed standards. The key question is whether the public agency can use its subjective judgment to decide whether and how to carry out or approve a project and apply necessary mitigation.** A timber harvesting plan submitted to the State Forester for approval under the requirements of the Z'berg-Nejedly Forest Practice Act of 1973 (Pub. Res. Code Sections 4511 et seq.) constitutes a discretionary project within the meaning of the California Environmental Quality Act. Section 21065(c).

### Appendix G Environmental Checklist Form

The revision to item 11 relating to Native American tribal consultation would establish a new requirement for a consultation plan that is neither supported by statute nor necessary to successful consultation. Preparation of a formal plan is not necessary in all circumstances. I recommend deleting that proposed requirement.

11. Have California Native American tribes traditionally and culturally affiliated with the project area requested consultation pursuant to Public Resources Code section 21080.3.1? If so, has consultation begun ~~is there a plan for consultation that includes, for example, the determination of significance of impacts to tribal cultural resources, procedures regarding confidentiality, etc.?~~

### Appendix N: Infill Environmental Checklist Form

Make the same change to item 13 as recommended for item 11 in Appendix G, above.