

CALIFORNIA STATE LANDS COMMISSION

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Established in 1938

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July 19, 2018

VIA EMAIL (CEQA.Guidelines@resources.ca.gov)

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

Dear Mr. Calfee:

Thank you for the opportunity to comment on the California Natural Resources Agency's proposed 15-day revisions to the previously proposed revisions to the State CEQA Guidelines (15-Day Revisions) (Guidelines). California State Lands Commission (CSLC or Commission) staff appreciates your agency's efforts to engage the public and stakeholders to improve the efficiency, clarity, and relevance of the Guidelines, and in this spirit of collaboration we offer our comments on the 15-Day Revisions. Due to the CSLC's broad jurisdiction over state lands, including sovereign tide and submerged lands and school lands, the CSLC frequently acts as a CEQA lead agency, as well as a responsible agency and a trustee agency. For example, in the Senate Environmental Quality Committee 2017 CEQA Survey Report, CSLC is listed as the fourth among state agencies for number of total CEQA projects, fourth for CEQA projects requiring an EIR, and third in the number of CEQA lawsuits.¹

The comments are listed in the order set forth in the Proposed 15-Day Revisions text (numerical by section number, followed by comments on Guidelines Appendix G).

Technical note: where our letter suggests revisions to the 15-Day Revisions, the Natural Resources Agency's proposed revisions are treated as accepted and are shown in plain

¹ Senate Environmental Quality Committee, CEQA Survey FY 2011/12 to FY 2015/16, October 2017, p. 9, available at http://senv.senate.ca.gov/sites/senv.senate.ca.gov/files/ceqa_survey_full_report_-_final_12-5-17.pdf.

type. CSLC staff's suggested additions are shown in **bold underlined** type and deletions are shown in bold ~~strikethrough~~.

Section 15125, subdivision (a)(2)

The 15-Day Revisions revise the subdivision to reflect current case law on the use of future conditions as the baseline:

(2) A lead agency may use projected future conditions (beyond the date of project operations) as the sole baseline for analysis only if it demonstrates with substantial evidence that use of existing conditions would be either misleading or without informative value to decision-makers and the public. Use of projected future conditions as the only baseline must be supported by reliable projections based on substantial evidence in the record.

However, the phrase “beyond the date of project operations” implies that a future condition could be evaluated at a time when project operations have been completed. Commission staff recommends that the 15-Day Revision to subdivision (a)(2) be changed to mirror the language present in (a)(1) so that the subdivision reads as follows:

(2) A lead agency may use projected future conditions (beyond the date **when the project becomes operational** ~~of project operations~~) as the sole baseline for analysis only if it demonstrates with substantial evidence that use of existing conditions would be either misleading or without informative value to decision-makers and the public. Use of projected future conditions as the only baseline must be supported by reliable projections based on substantial evidence in the record.

Alternately, the phrase “beyond the date project operations begin” could be used in subdivision (a)(2).

In addition to increasing clarity, either of these rewordings would more closely align with the relevant language from case law, “well beyond the date the project is expected to begin operation” (*Neighbors for Smart Rail v. Exposition Metro. Line Constr. Auth.* (2013) 57 Cal.4th 439, 453).

Section 15126.4, subdivision (a)(1)(B)

The 15-Day Revisions revise the subdivision to clarify when details of mitigation measures may be identified after project approval:

(B) The specific details of a mitigation measure, however, may be developed after project approval when it is impractical or infeasible to include those details during the project's environmental review, provided that the agency (1) commits itself to the mitigation, (2) adopts specific performance standards the mitigation will achieve, and (3) identifies the type(s) of potential action(s) that can feasibly achieve that performance standard and that will be considered, analyzed, and potentially incorporated in the mitigation measure. Compliance with a regulatory permit or other similar process may be identified as mitigation if compliance would result in implementation of measures that would be reasonably expected, based on substantial evidence in the record, to reduce the significant impact to the specified performance standards.

The revision above uses the term "performance standard" mostly in the plural but also once in the singular, which could lead to confusion over whether a single performance standard would be permissible for a mitigation measure in this context. Therefore, Commission staff recommends the following minor changes for clarity:

(B) The specific details of a mitigation measure, however, may be developed after project approval when it is impractical or infeasible to include those details during the project's environmental review, provided that the agency (1) commits itself to the mitigation, (2) adopts **the** specific performance standard(s) the mitigation will achieve, and (3) identifies the type(s) of potential action(s) that can feasibly achieve **the that** performance standard(s) and that will be considered, analyzed, and potentially incorporated in the mitigation measure. Compliance with a regulatory permit or other similar process may be identified as mitigation if compliance would result in implementation of measures that would be reasonably expected, based on substantial evidence in the record, to reduce the significant impact to the specified performance standard(s).

Appendix G: Updating the Environmental Checklist

I. Aesthetics:

The Natural Resources Agency proposes to edit question c) as follows:

c) In non-urbanized areas, substantially degrade the existing visual character or quality of public views of the site and its surroundings? (Public views are those that are experienced from publicly accessible vantage point.) If the

project is in an urbanized area, would the project conflict with applicable zoning and other regulations governing scenic quality?

CSLC staff observes that non-urbanized areas, such as unincorporated portions of a county, may be subject to land use regulations or laws governing scenic quality. Therefore, Commission staff recommends that the 15-Day Revision be changed to read as follows:

c) In non-urbanized areas, substantially degrade the existing visual character or quality of public views of the site and its surroundings? (Public views are those that are experienced from a publicly accessible vantage point.) If the project is in an urbanized **or non-urbanized** area, would the project conflict with applicable zoning and other regulations governing scenic quality?

Commission staff recommends the same change for the corresponding section of Appendix N: Infill Environmental Checklist Form.

Topics for Future Guidelines Updates

While Commission staff recognizes that the time constraints of rulemaking will not allow for additional substantive revisions to this round of Guidelines updates, staff proposes the following topics for possible future updates to the Guidelines:

- **Navigation impacts on the state's navigable waterways:**
This important impact consideration does not fit well within the current Appendix G Environmental Checklist. It is an impact consideration that could apply to recreation, transportation, and perhaps public services, yet seems to be entirely absent from Appendix G. As a lead, responsible, and trustee agency, the Commission always evaluates impacts to navigation, which is central to the agency's mission and protection of the Public Trust and public rights.
- **Aquatic Invasive Species (AIS):**
The Commission is charged with preventing or minimizing the introduction of nonindigenous AIS species to California waters by regulating marine vessel ballast water and biofouling. Additionally, the Commission also considers AIS impacts to inland and freshwater environments as part of its CEQA review of projects. To assure that lead agencies and project applicants are aware of these requirements and concerns, CSLC staff requests inclusion of aquatic invasive species (AIS) impacts as a stand-alone impact consideration for the biological resources section of Appendix G.

Christopher Calfee, Deputy Secretary and General Counsel
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Once again, thank you for the opportunity to review and comment on the 15-Day Revisions. Should you have any questions regarding these comments, please do not hesitate to contact us.

Sincerely,

A handwritten signature in blue ink that reads "Lucinda Calvo". The signature is written in a cursive style with a large initial "L" and a long, sweeping underline.

Lucinda Calvo
Staff Attorney