

**Lockey, Heather@CNRA**

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**From:** Rader, David <David.Rader@pln.sccgov.org>  
**Sent:** Thursday, March 15, 2018 2:00 PM  
**To:** CEQA Guidelines@CNRA  
**Subject:** Santa Clara County Comment Letter  
**Attachments:** SCC Comments on Nov 2017 Proposed CEQA Guidelines Update.pdf

To the California Natural Resources Agency:

Attached is our letter with comments on the November 2017 version of the CEQA Guidelines update.

Regards,  
Dave

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Governor's Office of Planning and Research  
Sacramento, CA

March 15, 2018

To OPR staff:

The County of Santa Clara Department of Planning and Development offers the following comments on the proposed November 2017 Proposed Updates to the CEQA Guidelines.

**1. §15064(b)(2)**

Because a lead agency will already have considered substantial evidence in using a threshold, it appears the last sentence in this proposed section is referring to outside input. Therefore, we suggest the following edit (suggested edits are in underline/strikethrough format) to clarify:

Compliance with the threshold does not relieve a lead agency of the obligation to consider substantial evidence submitted by other agencies or the public indicating that the project's environmental effects may still be significant.

**2. §15051(c)**

OPR has proposed to change this section as follows:

(c) Where more than one public agency equally meets the criteria in subdivision (b), the agency which will act first on the project in question will normally ~~shall~~ be the lead agency.

We think this change introduces too much uncertainty into the process and may lead to unnecessary delays on reaching resolution on who the lead agency shall be. We would prefer to see *shall* retained and qualified as follows:

(c) Where more than one public agency equally meets the criteria in subdivision (b), the agency which will act first on the project in question shall be the lead agency unless there are special circumstances that warrant otherwise.

### 3. Appendix G - Environmental Checklist Form

Overall, the County feels that OPR has made some welcome improvements to the checklist by consolidating redundant criteria and clarifying unclear wording subject to interpretation. However, we recommend additional changes below to ensure consistency with guidance from the State Supreme Court under *California Building Industry Association v. Bay Area Air Quality Management District* and to prevent any ambiguity on significance criteria. We also propose further clarifications to OPR-proposed revisions and new language within the checklist, which introduces new interpretation challenges for Lead Agencies.

#### I. AESTHETICS

OPR has the following changes to item c):

c) Substantially degrade the existing visual character or quality of **public views of** the site and its surroundings? **If the project is in an urbanized area, would the project conflict with applicable zoning and other regulations governing scenic quality?**

The County would note that mere conflict with zoning or other regulations governing scenic quality is not in and of itself an environmental impact, and we would recommend deleting the new second sentence. This recommendation is also inconsistent with the OPR-proposed change to criteria b) in XI. LAND USE, which replaces *conflict* with *cause a significant environmental impact due to a conflict with any land use plan, policy, or regulation*.

#### IX. HAZARDS AND HAZARDOUS MATERIALS

Because a new wildfire section of the checklist is proposed to be added, the following criteria seems redundant to us, and we recommend that the revised question g) below be deleted in its entirety:

~~h) g) Expose people or structures, **either directly or indirectly**, to a significant risk of loss, injury or death involving wildland fires **including where wildlands are adjacent to urbanized areas or where residences are intermixed with wildlands?**~~

#### X. HYDROLOGY AND WATER QUALITY

OPR has proposed the following changes to criteria b):

b) Substantially ~~deplete~~ **decrease** groundwater supplies or interfere substantially with groundwater recharge such that **the project may impede sustainable groundwater management of the basin (e.g., the production rate of pre-existing nearby wells would drop to a level which would not support existing land uses or planned uses for which permits have been granted)?**

Although the addition of sustainable groundwater management of the basin is a worthy addition, we would note that deleting the language within parenthesis above causes the County some concerns. The County unincorporated areas are rural and any effects of a proposed project on nearby wells that

are used as a water source should be evaluated as a part of the environmental review, when relevant, and we recommend this example be retained.

## XI. LAND USE AND PLANNING

OPR has proposed the following changes to criteria b):

b) ~~Conflict~~ **Cause a significant environmental impact due to a conflict** with any **applicable** land use plan, policy, or regulation ~~of an agency with jurisdiction over the project (including, but not limited to the general plan, specific plan, local coastal program, or zoning ordinance)~~ adopted for the purpose of avoiding or mitigating an environmental effect?

We consider that the deletion of *applicable* and *of an agency with jurisdiction over the project (including, but not limited to the general plan, specific plan, local coastal program, or zoning ordinance)* would leave this requirement unnecessarily open ended.

Although the County is in favor of evaluating conflicts with policies only from the standpoint of whether it would cause an environmental impact, we would note that this significance criteria is redundant in light of the fact that environmental impacts are already being evaluated in the specific topic areas against applicable regulatory settings. Therefore, it begs the question why there needs to be a separate land use impact? Moreover, policies and regulations are not necessarily related to land use, so this criteria does not fall clearly into a section on land use.

It should also be noted that while §15125(d) requires that an EIR shall discuss any inconsistencies between the proposed project and applicable general plans, specific plans, and regional plans, the Appendix G environmental checklist is also used for Initial Studies that lead to a negative declaration or mitigation negative determination. So, this requirement is not universal to all CEQA documents that might rely on the checklist.

Due to the above reasons, we would recommend either deleting this question in its entirety or revising the criteria as follows:

b) ~~Conflict~~ **Cause a significant environmental impact due to a conflict** with any **applicable** land use plan, policy, or regulation **of an agency with jurisdiction over the project (including, but not limited to the general plan, specific plan, local coastal program, or zoning ordinance)** adopted for the purpose of avoiding or mitigating an environmental effect?

## XIV. POPULATION AND HOUSING.

Regarding the addition of the word *unplanned* to population growth in criteria b), the County finds this term to be vague and suggests further elaboration from OPR to avoid confusion. For example, if the project is consistent with a jurisdiction's general plan, land use element, or housing element, would it be considered "unplanned"?

## XX. WILDFIRE.

The County of Santa Clara has long evaluated projects in relation to whether they are in a wildland-urban interface, an evaluation this new section builds upon. However, the County feels that criteria b) is problematic as currently written:

**b) Due to slope, prevailing winds, and other factors, exacerbate wildfire risks, and thereby expose project occupants to, pollutant concentrations from a wildfire or the uncontrolled spread of a wildfire?**

First, the County notes that the phrase “and thereby expose project occupants to” is in conflict with guidance from the *State Supreme Court under California Building Industry Association v. Bay Area Air Quality Management District* in that it refers to an impact on the project rather than the project’s impact on the environment. Second, without additional guidance from State agencies, such as Cal Fire, Lead Agencies will find it difficult to implement a highly technical evaluation of fire risk based on such factors as slope and prevailing winds.

#### 4. §15064.3

OPR has proposed text under 15064.3(b)(1), which is referenced in the XVII. Transportation section of the Appendix G checklist, that provides criteria for evaluating transportation impacts for land use projects, as follows:

**(1) Land Use Projects. Vehicle miles traveled exceeding an applicable threshold of significance may indicate a significant impact. Generally, projects within one-half mile of either an existing major transit stop or a stop along an existing high-quality transit corridor should be presumed to cause a less than significant transportation impact. Projects that decrease vehicle miles traveled in the project area compared to existing conditions should be considered to have a less than significant transportation impact.**

The County agrees that projects within one-half mile of either an existing major transit stop or a stop along an existing high-quality transit corridor should be presumed to cause a less than significant transportation impact. In addition, the County also appreciates that when compared to earlier versions of the proposed guidelines, this text provides more flexibility for lead agencies to determine VMT thresholds.

This flexibility is especially important given the wide variety of land use contexts that exist throughout the state, from transit-rich urban areas to rural areas where local land use policies allow some local-serving or resource-based development to occur but where VMT reduction opportunities are limited. Given most of unincorporated County is rural in nature, while still being a part of a larger urban region, we welcome the flexibility.

Sincerely,



Rob Eastwood, AICP  
Planning Manager, County of Santa Clara