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From: Verne Ball <Verne.Ball@sonoma-county.org>
Sent: Thursday, March 15, 2018 10:52 AM
To: CEQA Guidelines@CNRA
Subject: CEQA Guidelines comment letter
Attachments: SONOMA_STAFF_CEQA_GUIDELINES_COMMENT_LETTER.PDF

Good morning,

Attached are comments from Sonoma County staff.

Best regards,

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March 15, 2018

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Re: Sonoma County Staff Comments Regarding Proposed Modifications to the CEQA Guidelines

Dear Deputy Secretary Calfee:

Sonoma County staff appreciates the opportunity to comment on the proposed modifications to the CEQA Guidelines. Many of the proposed amendments already represent CEQA best practices. However, some of the “vehicle miles travelled” amendments are unclear, and in part because of their urban focus, could result in unintended consequences. An underlying purpose of SB 743 was to prevent CEQA from becoming an obstacle to environmental objectives. With that purpose in mind, Sonoma County staff offers the following comments and suggestions:

Comments on proposed new Guideline 15064.3

1. The reasoning the Natural Resources Agency has stated for utilizing “vehicle miles travelled” (VMT) as a metric for transportation impacts is that VMT is associated with *other* impacts, most importantly air quality impacts, including greenhouse gases. While this is indisputable, using VMT as a metric for other impacts without qualification that it is a proxy could lead to duplicative analysis or the double counting of impacts. If there is a failure to recognize that decarbonizing automobile transportation mitigates the “impact” of “vehicle miles travelled,” this will make it more complex to decarbonize the automobile transportation sector. Sonoma County staff therefore believes that the term “automobile travel” should be replaced with “fossil-fueled automobile travel” in proposed section 15064.3.

2. Sonoma County staff greatly appreciates and supports the inclusion of the language regarding methodological discretion in proposed section 15064.3(d) but would request that the first sentence be clarified to accurately reflect the breadth of that discretion: “A lead agency has discretion to choose the most appropriate methodology to evaluate significance, and in doing so, to choose the appropriate methodology to evaluate a project’s vehicle miles travelled.”

The proposed language of section 15064.3(a) states, “For the purposes of this section, ‘vehicle miles travelled’ refers to the amount and distance of automobile travel attributable to a project.” Different “attribution” methodologies can be equally accurate but fundamentally different, and in some cases in a diametrically opposed manner; for example, production methodologies fundamentally differ from consumption methodologies in “attributing” VMT. If the Natural Resources Agency uses the term “attributable” in this context, then the Natural Resources Agency should add a definition of that term that recognizes that there are multiple approaches towards attribution. In addition, the Office of Planning and Research’s “technical” observation that while different metrics can be used, incompatible metrics should not be used in making comparisons should be included in the amendments.

Sonoma County staff also suggests that the “purpose” language in the guideline be revised to clearly acknowledge that projects—more than just “land use” projects, as stated in section 15064.3(b)(1)—can both increase and decrease VMT. With these concerns in mind, we suggest that the proposed language be revised to state: “For the purposes of this section, ‘vehicle miles travelled’ refers to the amount and distance of fossil-fueled automobile travel, and the change in that amount that results from the project.”

3. The shift from local and regional congestion to “vehicle miles travelled” raises issues of geographic scope that the Natural Resources Agency should not ignore. The proposed section 15064.3(b)(1) uses the term “in the project area” without explanation solely in the “land use” context. The methodological provisions do not discuss geography even though geography is a core methodological issue.

The trips that travel through an agency’s jurisdiction may be national or international. All CEQA projects have at least some connection to “vehicle miles” in interstate commerce. However, just because national and international miles could theoretically be tracked in some manner, with methods that could conceivably be developed in the future, that does not mean that doing so would be meaningfully related to the scope of an agency’s authority to impact VMT. State agencies have limited authority. Local agencies have even more geographically limited authority, and that authority allows neither extraterritorial regulation nor local discrimination against extraterritorial commerce. (*E.g.*, *City of Los Angeles v. Shell Oil Co.* (1971) 4 Cal.3d 108, 119.) CEQA does not require analysis that is a “meaningless exercise” and the Guidelines should recognize this principal in this context. (*San Diego Navy Broadway Complex Coal. v. City of San Diego* (2010) 185 Cal.App.4th 924, 940.) Sonoma County staff requests additional language clarifying that all VMT

analysis and all associated models have boundaries, and that the necessity of setting boundaries calls for reasonable line drawing. Section 15064.3(b)(4) should explicitly include language like the following: “While extraterritorial analysis may be required to evaluate transportation impacts, the boundaries utilized in estimating vehicle miles travelled should be reasonably related to the scope of an agency’s authority and reasonable judgments about the agency’s meaningful ability to influence transportation impacts. The relationship between the agency’s jurisdiction and the geographic scope of analysis calls for reasonable line drawing by the agency based on substantial evidence.” Failing to constrain analysis of “vehicle miles travelled” to that which is reasonable, meaningful, and informative relative to the scope of agency authority will only incentivize the much broader enactment of ministerial standards, which does not appear to be the Natural Resources Agency’s intent.

Finally, and relatedly, the proposal uses the term “vehicle miles travelled” but does not explain how freight fits into that proposal, including in the Office of Planning and Research’s “technical” documents. This is a tremendously significant gap. If the Natural Resources Agency adopts these guidelines, Sonoma County staff requests robust guidance in the Guidelines and Final Statement of Reasons with respect to freight. The Natural Resources Agency should clarify what it means by the terms “vehicle” and “automobile,” and again, Sonoma County staff requests that these clarifications in the proposed amendments take into account the scope of agency authority.

Comments on proposed amendments to Guideline 15125

4. The proposed addition to section 15125(a)(3) correctly states that “hypothetical conditions” that “might be allowed” cannot be the baseline. The term “might be allowed” is misleading, however, since there is no legal difference between cases where the conditions “might be” allowed and where they “are” allowed if the conditions are hypothetical. We also note that the amendment addresses only one fact pattern in which hypothetical conditions are improperly utilized as the baseline. We suggest a minor amendment to track case law: “A lead agency may not rely on hypothetical conditions, such as those that could or should have existed but have not occurred, under existing permits or plans, as the baseline.” (*Center for Biological Diversity v. Dept. of Fish & Wildlife* (2015) 234 Cal.App.4th 214, 249; *Communities for a Better Environment v. South Coast Air Quality Management District*, (2010) 48 Cal.4th 310, 321; *Citizens for East Shore Parks v. State Lands Commission* (2011) 202 Cal.App.4th 549, 561; *CREED-21 v. City of San Diego* (2015) 234 Cal.App.4th 488, 507.)
5. Section 15125 addresses the baseline for normal CEQA impacts, but it uses terms like “local and regional,” and “the vicinity of the project,” and it has never been updated to address the incremental impact of global greenhouse gas emissions. Sonoma County staff requests that this omission be remedied in this update in order to avoid technical controversies about CEQA terminology that distract from environmentally meaningful analysis.

Comments on proposed amendment to Guideline 15064(b)(2)

6. The proposed amendment to section 15064(b)(2) is unnecessary and unclear, and it will lead to pointless arguments about the location of the explanation of significance thresholds as well as arguments about what type of explanation or analysis is required. First, significance thresholds may not involve issues of “compliance.” Second, significance thresholds require reasonable line drawing, and that line drawing is not typically included within an EIR for reasons of practicality. Suggesting that every EIR needs to explain every significance threshold it uses, which amounts to requiring an explanation of agency explanations, is unreasonable. The proposed language should be omitted or, alternatively, amended to make it clear that analysis of significance thresholds within an EIR is not required. However, if it is the Natural Resources Agency’s intent to require explanatory discussion of thresholds specifically within the body of an EIR, then the amendment should be clarified and also provide that this discussion may be incorporated by reference.

Sonoma County staff thank the Natural Resources Agency for its efforts and for its consideration of these comments. In the past, the Legislature has responded to public controversy regarding efforts to reduce VMT by dramatically constraining agency authority. While SB 743 provides a new and valuable opportunity to the Natural Resources Agency to encourage the reduction of VMT, given the importance of reducing greenhouse gases, the Natural Resources Agency would be wise to be mindful of past experience so that its actions endure longer than the trip reduction efforts that gave way to the prohibitions in Health and Safety Code sections 40454 and 40717.9. Ensuring that CEQA’s process is workable is part of your agency’s fiduciary responsibility in implementing the statute. Even if our suggestions are not adopted, explanations in the Final Statement of Reasons will provide valuable assistance to agencies and stakeholders.

Very truly yours,

/s/

Verne Ball
Deputy County Counsel