

**Lockey, Heather@CNRA**

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**From:** John Edwards <jrickdance@yandex.com>  
**Sent:** Wednesday, March 14, 2018 10:56 AM  
**To:** CEQA Guidelines@CNRA  
**Subject:** Re: Comments to Amendments and Additions to the State CEQA Guidelines California Natural Resources Agency  
**Attachments:** Dept of Nat Res CEQA Comments.pdf

Dear Mr. Christopher Calfee,  
Deputy Secretary and General Counsel California Natural Resources Agency

Attache are my UDATED comments to the subject document. I will attend the meeting in Los Angeles. Thank you for the opportunity to comment.

Sincerely,

John Edwards

14 March 2018

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

Subject: Recommendations to proposed AMENDMENTS AND ADDITIONS TO THE STATE  
CEQA GUIDELINES CALIFORNIA NATURAL RESOURCES AGENCY

Dear Mr. Calfee,

I hereby make several recommendations to the proposed CEQA regulations based on my prior experience with NEPA and because of deficiencies I noticed in the EIR process, specifically notifications for the Scoping process, for the Butcher-Solana Residential Development Project in Torrance, California. I will address your specific sections and provide reasons for my comments. My primary concern is with public notification, especially in section 15082, since notification was not appropriately done for Scoping the Torrance project. The project is now very controversial. I will send you a copy of a letter I am preparing for the Torrance Planning Department.

1. Section 15082 - Notice of preparation of and determination of Scope of EIR. Amend to state the notice must also be filed with the County Clerk of Cities that border the project. Also Clarify that the public that will be impacted, even if in another city adjacent to a project, will be notified. Specify how the public will be notified through: Local newspapers, other local media, postings on or off the site in the area of the project, direct mailing to owners and occupants of nearby or affected property.

My basis for this is our experience on this project, the limited and misused Torrance code which does not meet the intent of CEQA, the guidance of the Council on Environmental Quality for NEPA which has useful and specific public notification requirements, and which was the original basis for CEQA, logic, and best practices from the NAEP (National Association of Environmental Professionals), given below.

1. Council on Environmental Quality Executive Office of the President REGULATIONS For Implementing The Procedural Provisions Of The NATIONAL ENVIRONMENTAL POLICY ACT 40 CFR Parts 1500-1508 (2005)

2. §1506.6 Public involvement. Agencies shall:

**(a) Make diligent efforts to involve the public in preparing and implementing their NEPA procedures.**

**(b) Provide public notice of NEPA-related hearings, public meetings, and the availability of environmental documents so as to inform those persons and agencies who may be interested or affected.**

(1) In all cases the agency shall mail notice to those who have requested it on an individual action.

(2) In the case of an action with effects of national concern notice shall include publication in the FEDERAL REGISTER and notice by mail to national organizations reasonably expected to be interested in the matter and may include listing in the 102 Monitor. An agency engaged in rule-making may provide notice by mail to national organizations who have requested that notice regularly be provided. Agencies shall maintain a list of such organizations.

(3) In the case of an action with effects primarily of local concern the notice may include:

(i) Notice to state and areawide clearing-houses pursuant to OMB Circular A-95 (Revised).

- (ii) Notice to Indian tribes when effects may occur on reservations.
- (iii) Following the affected state's public notice procedures for comparable actions.**
- (iv) Publication in local newspapers (in papers of general circulation rather than legal papers).**
- (v) Notice through other local media.**
- (vi) Notice to potentially interested community organizations including small business associations.
- (vii) Publication in newsletters that may be expected to reach potentially interested persons. (viii) Direct mailing to owners and occupants of nearby or affected property.**
- (ix) Posting of notice on and off site in the area where the action is to be located.**

(c) Hold or sponsor public hearings or public meetings whenever appropriate or in accordance with statutory requirements applicable to the agency. Criteria shall include whether there is:

**(1) Substantial environmental controversy concerning the proposed action or substantial interest in holding the hearing.**

(2) A request for a hearing by another agency with jurisdiction over the action supported by reasons why a hearing will be helpful. If a draft environmental impact statement is to be considered at a public hearing, the agency should make the statement available to the public at least 15 days in advance (unless the purpose of the hearing is to provide information for the draft environmental impact statement).

**(d) Solicit appropriate information from the public.**

(e) Explain in its procedures where interested persons can get information or status reports on environmental impact statements and other elements of the NEPA process.

(f) Make environmental impact statements, the comments received, and any underlying documents available to the public pursuant to the provisions of the Freedom of Information Act (5 U.S.C. 552), without regard to the exclusion for interagency memoranda where such memoranda transmit comments of Federal agencies on the environmental impact of the proposed action. **Materials to be made available to the public shall be provided to the public without charge to the extent practicable, or at a fee which is not more than the actual costs of reproducing copies** required to be sent to other federal agencies, including the Council.

3. Title 40 PART 6—PROCEDURES FOR IMPLEMENTING THE NATIONAL ENVIRONMENTAL POLICY ACT AND ASSESSING THE ENVIRONMENTAL EFFECTS ABROAD OF EPA ACTIONS

Subpart B—EPA's NEPA Environmental Review Procedures

§6.203 Public participation.

(a) General requirements. (1) The procedures in this section apply to EPA's environmental review processes, including development, supplementation, adoption, and revision of NEPA documents.

**(2) The Responsible Official will make diligent efforts to involve the public,** including applicants, in the preparation of EAs or EISs consistent with 40 CFR 1501.4 and 1506.6 and applicable EPA public participation regulations (e.g., 40 CFR Part 25).

- 4. The City of Torrance only notified people in a radius of 500 feet for a project that will have very large impacts to the adjacent cities. This notification limit was based on a Torrance statute that requires notifications be made to residents within 300 feet of a project, but that in practice the distance was extended by a mayor 10 years ago to 500 feet, although it is not in the statute, it was done presumably because it gave notice to

more people who may be impacted by an action. The statute addresses public hearing for variances. **Chapter 4 Variances Waivers. Article 1 - Variances. 94.1.3 PUBLIC HEARING.** Upon receipt of the application, the secretary of the Planning Commission shall set a date, time and place for a public hearing thereon before the Planning Commission and shall send notice thereof to the owners of land included within a three hundred (300) foot radius of the exterior boundaries of the land for which the variance is sought, as shown on the last equalized assessment roll. The Planning Commission may conduct the hearing in an informal manner. The rules of evidence shall not apply; the hearing may be adjourned to a future time at the discretion of the Planning Commission without the giving of further notice, other than an announcement by the Commission of the date, time and place of such adjourned meeting. An identical public notification requirement is found in section **91.41.1 HILLSIDE AND COASTAL ZONE.** The local ordinance is misapplied with respect to a large project that greatly impacts neighboring cities. Changes to CEQA must help cities understand how to notify the appropriate public, which for larger projects may extend beyond the boundaries of their cities.

5. Logically and practically it makes sense for a lead agency to reach out to the public who will be most impacted by a project. If an agency fails to inform those who will be impacted by a project, there may be less controversy initially, as people are unaware of the project. But if it becomes known, the people will often rise up and try to stop the project through the courts. If an agency by design, or ignorance goes down that path, it creates an uncooperative and contentious relationship that benefits no one. If a lead agency involves all with a stake in the project, whether for or against it, there is much more likelihood that an improved and mitigated project may result. This is borne out by best practices developed by environmental professionals. It is the obvious principle that if people are allowed a voice and to input to a decision, they are much more likely to support it.
6. GUIDANCE ON BEST PRACTICE PRINCIPLES FOR ENVIRONMENTAL ASSESSMENTS The NAEP Report to the CEQ (NATIONAL ASSOCIATION OF ENVIRONMENTAL PROFESSIONALS) Council on Environmental Quality Pilot Project Prepared by National Association of Environmental Professionals NEPA Practice. 12 Aug 2014 (FULL ARTICLE ON PUBLIC NOTIFICATION ATTACHED)  
The CEQ Guidance on Efficient and Timely Environmental Reviews states:  
agencies can also choose to take advantage of scoping whenever preparing an EA. Scoping can be particularly useful when an EA deals with uncertainty or controversy regarding potential conflicts over the use of resources or the environmental effects of the proposed action, or where mitigation measures are likely to play a large role in determining whether the impacts will be reduced to a level where a Finding of No Significant Impact can be made. A lead agency preparing an EA may use scoping to identify and eliminate from detailed study the issues that are not significant or that have been covered by prior environmental review. The scoping process provides a transparent way to identify significant environmental issues and to deemphasize insignificant issues, thereby focusing the analysis on the most pertinent issues and impacts.
7. CEQA AND NOTICING BEST PRACTICES FOR COMPLYING WITH CEQA, THE BROWN ACT AND OTHER PUBLIC NOTICING REQUIREMENTS October 6, 2016 League of California Cities Annual Conference: Sent to anyone who has requested notice (of intent) AND one (1) or more of the following: Published in a newspaper; Mailed to owners and occupants contiguous\* to project site; Posting on- or off-site near the area; Practice tip – use jurisdiction’s mailing radius.

2. Section 15087 - Public Review of Draft EIR. Amend this section to specify that the impacted public be notified with some specific examples, eg. local newspapers / other media, outlets, postings in the area, letters to neighbors in impacted areas.
3. Section 15124 - Project Description. It states that the project description must include a statement of objectives sought by the project. Spell out that this means the purpose of the project. For example: "the project description must include a statement of objectives sought by the project, e.g. the Purpose of the Project." Reason, existing language is not clear to the average reader.
4. Section 15126.4 - I recommend mitigation measures be included in the Initial Study, so that the public has an idea of what options are feasible.
5. Section 15152 - Tiering. Is tiering being promoted? If so then state that it is required or strongly encouraged. The project in Torrance is not being Tiered even though the project requires a Zone Change and a General Plan change. So his section would encourage or require the city of Torrance to perform CEQA on the General Plan first, then a second CEQA on the Zone Change, then a third on the project?
6. Section 15182 - Residential Projects Pursuant to a Specific Plan. This makes sense in general to promote use of mass transit and to reduce regulatory burden. However, there may be particular circumstances that require exceptions, so there should be a way to handle these. For example if the project were to tear down a home of architectural or historic significance, e.g. a Frank Lloyd Wright Jr. house, and replace it with another (as occurred in Palos Verdes Estates), it would warrant or trigger some CEQA analysis.
7. Section 15062 - Notice of Exemption. If the public is to be able to react in a timely manner, there must be timely public notifications.
8. Section 15072 - Notice of intent to adopt a Negative Declaration or Mitigated Negative Declaration. Notification of public transit agencies within a 1/2 mile radius was added. Add that the impacted public shall also be notified in the same manner as EIR / Scoping notification is made.
9. Section 15075 - Notice of Determination on a project for which a proposed negative or mitigated Negative Declaration has been approved. Add that he impacted public shall be notified in the same manner as EIR / Scoping notification is made.
10. I recommend that California Natural Resources Agency or the clearinghouse provide training to City Planners who implement CEQA, and how to notify the public for EIR's and Scoping.

Thank you for the opportunity to comment on your proposed changes to the CEQA Regulations.

Sincerely,

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MS Environmental Engineering - USC • Former Chief Environmental Management Division, USAF Space and Missile Systems Center (SMC) • Former Deputy Director Engineering and Architectures SMC • Former Planning Commissioner, Hermosa Beach, CA • White House Closing the Circle Award • Los Angeles Magazine Environmental Publishers Award

**ASSESSMENTS The NAEP Report to the CEQ (NATIONAL ASSOCIATION OF ENVIRONMENTAL PROFESSIONALS) Council on Environmental Quality Pilot Project Prepared by National Association of Environmental Professionals NEPA Practice. 12 Aug 2014**

<http://www.naep.org/assets/NAEPGuidanceonBPPsforEAstotheCEQ/naep-ceq-finalbppsforeas20140812.pdf>

**BPP (Best Practice Principles) 7: EXTENT OF PUBLIC INVOLVEMENT FOR EAs**

**Background Information**

This BPP for assessing the appropriate level of public involvement and participation in EAs is based primarily on CEQ regulations implementing NEPA, specifically 40 C.F.R. §§ 1506.6 and 1501.4(b), questionnaire survey responses, a review of case law, comments from the CEQ, and practitioner experience.

The survey respondents indicate the public involvement process is of high value to the adequacy of EAs. The responses indicate that lack of public involvement is strongly correlated with inadequate EAs.

Specifically, Question 6 asked respondents, based on their general NEPA knowledge and EA experience, to prioritize the relative importance of certain inadequacies identified with the absence of public participation for expansive EAs. Participants used a numbering scale of 1 to 3, with 1 denoting highly important, 2 denoting medium importance, and 3 indicating minor importance. A total of 279 people answered the part of Question 6 relating to the absence of public participation. The rating average was 1.90, which means it fell somewhere between highly and medium importance — 95 participants (34.1%) rated this highly important, 117 participants (41.9%) rated it as medium importance, and 67 participants (24.0%) rated it as minor importance. In addition, 34 people out of the 279 responders (12%) made comments, but none of them related to public participation.

Question 7 asked participants to list three features, based on their general NEPA knowledge and EA experience, which are typically associated with adequate EAs. A total of 269 people answered Question 7. In addition, there were 39 comments specifically directed toward public participation.

Question 18 asked if EAs of various types and sizes should be circulated for solicitation of public reviews and comments with the final EAs including responses to the received comments. As seen on a sliding scale, expansive EAs and mitigated FONSI EAs were strongly perceived as needing public participation (87.8% and 68.6%, respectively), while traditional EAs with lesser scope were not as likely to need public participation efforts (38.0%).

To summarize, results of the 2012 survey identified the lack of public participation and involvement as a major inadequacy of EAs. This conclusion underscores the need to address this issue through a BPP that will help agencies develop high quality EAs that support informed decision making and are defensible.

**BPPs for Extent of Public Involvement for EAs**

**1. CEQ Regulations and Guidance on the Extent of Public Involvement**

The CEQ established public involvement as a primary purpose of NEPA. 40 C.F.R. § 1500.1(b) ("NEPA procedures must insure that environmental information is available to public officials and citizens before decisions are made. . ."). Public scrutiny is essential to the implementation of NEPA and a cornerstone of informed decision making. 40 C.F.R. § 1500.1(b).

CEQ's regulations define EAs as "a concise public document" and directs agencies to mandate that agencies "make diligent efforts to involve the public in preparing and implementing their NEPA procedures." 40 C.F.R. § 1506.6(a) (emphasis added). In doing so, agencies may "[p]rovide public notice of NEPA-related hearings, public meetings, and the availability of

environmental documents so as to inform those persons and agencies who may be interested or affected." 40 C.F.R. § 1506.6(b).

The CEQ FAQs address public involvement in its Question 38 and Answer, stating that EAs: must be available to the public. Section 1506.6 requires agencies to involve the public in implementing their NEPA procedures, and this includes public involvement in the preparation of EAs and FONSI. These are public 'environmental documents' under Section 1506.6(b), and, therefore, agencies must give public notice of their availability.

The CEQ Regulations at 40 C.F.R. §1506.6 provide agencies with discretion on how to conduct public involvement in EAs. Each EA is different, and different circumstances will dictate different public participation approaches. CEQ Regulations further provide that "[t]he agency shall involve environmental agencies, applicants, and the public, to the extent practicable ..." 40 C.F.R. § 1501.4(b). The CEQ requires that an agency make its FONSI available for public review when the proposed action is closely similar to one that normally requires an EIS or when the nature of the proposed action is one without precedent. See 40 C.F.R. § 1501.4(e)(2).

In determining when a public hearing or meeting is appropriate, the CEQ directs agencies to consider whether substantial environmental controversy exists concerning the proposed action or whether substantial interest exists in holding a hearing. See 40 C.F.R. § 1506.6(c)(1).

Although this regulation does not distinguish between EAs and EISs, some courts have inferred that this regulation applies to EAs, when an agency implements its NEPA procedures. See *Theodore Roosevelt Conservation Partnership v. Salazar*, 616 F.3d 497, 519 (D.C. Cir. 2010); *California Trout v. FERC*, 572 F.3d 1003, 1016 (9th Cir. 2009).

The CEQ Task Force on Modernizing NEPA recommended that the CEQ issue guidance clarifying the requirements for public involvement, among other issues, for mitigated FONSI. NEPA experts and public stakeholders expressed broad support for clarifying the requirements for public involvement, calling for consideration of public involvement in the use of mitigated FONSI, where the FONSI depends on mitigation in an adaptive management approach. The report noted concern for public involvement for those tiered EAs based on larger programmatic documents. The CEQ Mitigation and Monitoring Guidance incorporates and references these findings. These recommendations are consistent with the EA BPP survey results.

The CEQ Regulations explicitly address the role of scoping in preparation of an EIS. See 40 C.F.R. § 1501.7 ("There shall be an early and open process for determining the scope of issues to be addressed and for identifying the significant issues related to a proposed action. This process shall be termed scoping."). The CEQ Guidance on Efficient and Timely Environmental Reviews states:

agencies can also choose to take advantage of scoping whenever preparing an EA. Scoping can be particularly useful when an EA deals with uncertainty or controversy regarding potential conflicts over the use of resources or the environmental effects of the proposed action, or where mitigation measures are likely to play a large role in determining whether the impacts will be reduced to a level where a Finding of No Significant Impact can be made. A lead agency preparing an EA may use scoping to identify and eliminate from detailed study the issues that are not significant or that have been covered by prior environmental review. The scoping process provides a transparent way to identify significant environmental issues and to deemphasize insignificant issues, thereby focusing the analysis on the most pertinent issues and impacts. We recommend that agencies review their NEPA implementing procedures, as well as their NEPA practices, to ensure they have the option of scoping for EAs.

In this same guidance, the CEQ discussed the adoption of other agency NEPA documents by an action proponent. Here, the CEQ restated that the regulations do not do not require agencies

to prepare a draft EA and circulate a draft or final EA for public review or comment. This guidance is consistent with the case law, which is further discussed below.

In summary of the regulations and CEQ guidance, federal agencies must engage the public in the EA process; however, the type and form of public involvement is left to the individual agency and on a case-by-case basis. Recent CEQ guidance encourages agencies to use the public scoping process to focus the EA analysis on potentially significant environmental issues.

## 2. Extent of Public Involvement, Case Law

The courts have disagreed on the extent to which and the manner in which agencies must afford meaningful opportunities for public involvement on a decision to prepare an EA instead of an EIS. While some cases don't require public involvement, a few courts have held that public involvement is required, with different formulations of this requirement. For an extensive discussion of the cases that discuss public commenting on EAs, see Daniel R. Mandelker et al., *NEPA Law and Litigation* § 7:14.

The Ninth Circuit, in *Bering Strait Citizens for Responsible Resource Development v. U.S. Army Corps of Engineers*, 524 F.3d 938 (9th Cir. 2008), adopted a moderate position when it stated that the circulation of a draft EA is not required in every case. The court opined that

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"requiring the circulation of a draft EA in every case could require the reversal of permitting decisions where a draft EA was not circulated even though the permitting agency actively sought and achieved public participation through other means. The regulations do not compel such formality." The court enunciated the following rule: "[a]n agency, when preparing an EA, must provide the public with sufficient environmental information, considered in the totality of circumstances, to permit members of the public to weigh in with their views and thus inform the agency decision making process." The BPP process outlined below is based on the Ninth Circuit's moderate position.

## 3. Recommendation for the Extent of Public Involvement

Agencies should involve the public in preparation of EAs and FONSI to permit members of the public to weigh in with their views. In determining the extent and type of public involvement, agencies should use methods for public involvement on a sliding scale and in consideration of the totality of the circumstances. The public should be given as much environmental information as is practicable, prior to completion of the EA, so that the public has a sufficient basis to address those subject areas that the agency must consider in preparing the EA. Depending on the circumstances, the agency could provide adequate information through public meetings or by a reasonably thorough scoping notice.

Public involvement, and specifically, scoping, can be particularly useful when an EA deals with uncertainty or controversy regarding potential conflicts over the use of resources or the environmental effects of the proposed action or where mitigation measures are likely to play a large role in determining whether the impacts will be reduced to a level where a Finding of No Significant Impact (FONSI) can be made.

At a minimum, the agency should provide a notice of the availability of EAs and FONSI to interested or affected parties and the public, and to public agencies and applicants. This responsibility should not be confused with the formalized EIS public involvement process. The notice of available provides notice that the EA or FONSI is available for review by the public. Impacts to certain resources, such as coastal impacts, noise, visual impacts or involving access to public lands, or involving certain agencies, for example, may require additional public outreach or involvement, or possibly, circulation of a draft EA. Involving members of the public to weigh in with their views informs and thus, strengthens the agency decision-making process and analysis.



This sliding-scale approach may include a combination of public involvement methods depending on the particular circumstances, and as practicable, in accordance with 40 C.F.R. §§ 1506.6 and 1501.4(b). These methods include public involvement in the scoping process, public meetings or hearings or other methods of information dissemination, or providing the draft EA for public comment, as practicable.