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From: Stuart Flashman <stu@stufash.com>
Sent: Friday, March 9, 2018 2:04 PM
To: CEQA Guidelines@CNRA
Subject: Comments on CEQA Guideline Amendments Package
Attachments: 2018 comment letter on CEQA Guidelines revisions.pdf

Please see attached comment letter.

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TRANSMISSION VIA E-MAIL

March 9, 2018

Office of Planning and Research
1400 10th Street
P.O. Box 3044
Sacramento, CA 95812-3044
Attn: CEQA Guideline Amendments

Re: Comprehensive Package of Proposed Amendments to the CEQA Guidelines.

To Whom it May Concern:

I am submitting the following comments on the above-referenced amendment package as a California attorney and CEQA practitioner for more than twenty-five years. While the package contains many worthwhile features, there is still significant room for improvement. More importantly, some aspects of the proposed guideline may unintentionally result in weakening CEQA's protection of both the environment and of the right of the public to be fully informed and comment on the environmental effects a project may have. For these reasons, I would ask that OPR consider revising the Guideline Amendments along the lines suggested in these comments.

§ 15182

The expansion of this section to cover projects other than residential project is an issue of concern. The idea of exempting projects proximate to transit is based on the idea that such projects will have lower transportation and related (e.g., air quality, GHG emissions) impacts because residents/employees/customers/clients will be more likely to utilize transit rather than private automobiles to access the project. However, that idea is subject to a number of limitations that are not adequately addressed by the proposed amendments.

Specifically, some kinds of commercial projects are much less likely to have customers utilize transit. Some obvious examples include: Automotive dealerships and repair businesses, wholesale dealerships of any sort that involve sales and pickup of caseload or greater quantities of goods, retail sales outlets selling primarily large items not easily transported by public transit (examples include sales of appliances other than small appliances, sales of furniture or home, garden, workshop furnishings or equipment not easily carried [e.g., rugs, sizeable power tools, lawnmowers, large light fixtures, and other bulky items], retail sales of case quantities of goods [e.g., warehouse retailers]). These items are likely to be transported by purchasers in a private automobile or truck, or to be delivered by truck. In either case, the proximity of public transit is largely irrelevant to the project's transportation and related impacts.

An additional concern involves the connectivity and availability of the public transit. While the intersection of two "major transit lines" may make a project highly

transit accessible, as may the presence of a transit/ferry terminal, that is not necessarily the case. To take an obvious example, it is often the case that transit lines, particularly bus lines, will be routed to allow easy access to a major employer by its employees. The area served will be designed to optimize access by employees to the business or government center involved. However, employees/customers of that employment center may not reflect the customer/resident base of a mixed-use project at the route intersection. For example, a “blue collar” employment center such as a manufacturing complex may aim to connect to residential areas for blue-collar employees. However, a mixed-use project aimed at upper middle class residents and businesses (e.g., accountants, attorneys, gift shops, fashion boutiques, etc.) may not reap any benefits in terms of transit use from those bus lines.

Another potential complication can arise based on actual availability of the transit to those going to and from the project. Two “limited” transit lines may have high frequency service, but not have a transit stop at or near where they cross. Similarly, a transit line may have a station near the project, but at peak hours the transit vehicles may already be full when they reach that station. For example, the MacArthur and West Oakland BART stations in Oakland are served by trains that, at peak transit hours, are already full or near-full in the commute direction (inbound in the AM, outbound in the PM). Thus, during those important hours, there may not be transit capacity available for a new project near the station.

The best way to deal with all these potential exceptional circumstances would be to place this exemption under the categorical exemptions section of the Guidelines and make it subject to the exceptions identified for such exemptions.

§ 15301

I am concerned about the expansion of this exemption to cover “former” uses without providing any time limit on how far back such a former use can be considered. This essentially is a special case of the general requirement that environmental review be based on “existing conditions.” While there is little question that a short period of vacancy, for example, less than six months, would generally not result in any changes to the circumstances surround a former use, longer term discontinuance or vacancy can result in changes in the existing conditions.

For example, if a large manufacturing facility were to close, and remain vacant for several years, other projects might be considered and approved in the interim period. The environmental reviews of those projects would use as their baseline the existing conditions without the operating factory. This could affect many impacts, including air quality, water quality, transportation, etc. If the factory were allowed to reopen after that five year gap, its project-specific impacts might be unchanged, but its cumulative impacts could now be highly significant. Thus any such exemption must be limited to situations where there have not been changes to the baseline, other than the closure of the facility, that might result in cumulative impacts.

Appendix G

Under Wildfire, the checklist should include an additional category related to potential for wildfires to significantly and adversely affect agricultural, forestry, or biological resources, namely, would the project expose significant agricultural, forestry, or biological resources to significant risks related to wildfires, including downslope or downstream flooding or landslides etc.

§ 15064.3

Subsection (b)(1) asserts that projects within ½ mile of a major transit stop or a stop along an existing high quality transit corridor should be presumed to cause less than significant transportation impact. What evidence is there that the distance from a major transportation stop should be the same as for a stop on a high-quality transit corridor? A rapid transit station where trains can travel 15-20 miles in 15-20 minutes would be far more attractive than a bus line along a congested street where a bus may only travel 2-3 miles in 15 minutes. The radius needs to adjust to the attractiveness of the transit. People will walk further to access more efficient transit, and efficiency includes speed and connectivity, not just frequency. Any presumption should be explicitly identified as being rebuttable based on substantial evidence that the distance should be less or more than ½ mile. An estimation of likelihood of transit use should be the primary determinant, not distance.

There should be a clear preference for quantitative versus qualitative analysis. The presumption of no significant impact from a qualitative analysis should be considered rebutted if substantial quantitative evidence is presented contradicting the qualitative analysis.

Any model being used to estimate vehicle miles travel needs to have been validated before it should be considered substantial evidence.

§ 15064.4

In considering the significance of a project's GHG emissions over various timeframes, evidence concerning the potential for GHG emissions to reach a "tipping point" - a point beyond which the ability to halt or reduce the rise in atmospheric GHG levels is significantly reduced, should be considered in evaluating the significance of a project's GHG emissions.

Once a tipping point has been passed, the significance of reductions in GHG emissions must take into account the already increased background rate of GHG emissions. Conversely, earlier reductions in GHG emissions, especially those which might reduce the likelihood of reaching a tipping point or which would extend the time until a tipping point would be reached, should be considered far more significant than GHG emissions after a tipping point, and GHG emission increases should also be considered far more significant if they would increase the likelihood of reaching a tipping point or reduce the time until a tipping point is reached.

In simple terms, early GHG reductions should be considered more beneficial than later reductions, and earlier increases in GHG emissions may be considered a significant adverse impact even if they are "balanced" by later GHG emission decreases, especially if the later decreases could occur after a tipping point.

§ 15125

In considering the environmental setting for a project, any environmental condition resulting from an illegal or unpermitted activity or condition should not be considered. Rather, the environmental setting should assume that any existing illegal activity and/or condition would be terminated and the effect of the illegal activity/condition remediated unless substantial evidence indicates that remediation is infeasible prior to the project's approval. In that case, while the direct project impacts may consider effects related to the illegal activity condition, the long-term or cumulative

3/9/18

Page 4

impact analysis should assume the remediation of any effects of the illegal activity/condition.

In addition, if the illegal activity/condition is a result of actions of the project sponsor or a party in privity with the project sponsor, the project must include full remediation of any effects from the illegal activity/condition as a necessary precondition associated with the project. Anything otherwise would be inequitable and would be rewarding illegal or improper behavior.

Thank you for the opportunity to comment on these CEQA Guidelines Amendment. Please keep me informed of any further action on these amendments.

Most sincerely,


Stuart M. Flashman