

Lockey, Heather@CNRA

From: Art Coon <arthur.coon@msrlegal.com>
Sent: Friday, March 9, 2018 1:55 PM
To: Calfee, Christopher@CNRA; CNRA_CEQA_GUIDELINE@LISTSERVICE.CNRA.CA.GOV
Subject: RE: CEQA Guidelines Hearing Information

Importance: High

Thanks, Christopher, and hello.

As you probably know, I follow CEQA developments closely and with concern. I have a comment for the record that I previously made to OPR, but I notice that the problematic proposed updated provision hasn't yet been corrected, so I will reiterate it here to the Resources Agency and you before I forget.

Proposed section 15125(b)(2)'s first sentence regarding a "historic conditions baseline" conflicts with (1) the preceding subdivision (b)(1)'s recognition that an "existing conditions" baseline may properly reference historical conditions (i.e., to most realistically reflect "existing conditions" of a project where conditions and impacts change and fluctuate over time) **if supported by substantial evidence**; and (2) case law saying the same thing (see, e.g., *Association of Irrigated Residents v. Kern County Board of Supervisors* (2017) 17 Cal.App.5th 708). Proposed (b)(2) would purport to extend the judicial scrutiny specified in the Supreme Court's *Neighbors for Smart Rail* decision for *sole future baselines* to the inapposite context of *existing conditions baselines grounded in historical conditions*, **in direct conflict with the holding of the case cited above on that very issue**. This is a flat-out misstatement of CEQA which would be invalid as written if challenged in court, and would also lead to much needless mischief for lead agencies attempting to follow the law if it remains as presently proposed.

Fortunately, the "fix" for this error is very easy: simply delete "either a historic conditions baseline or" from proposed (b)(2)'s first sentence. Hopefully, this will get corrected before the error finds its way into the final revised Guidelines. Feel free to call me if you have any questions.

Best regards,
Art Coon

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From: Calfee, Christopher@CNRA [mailto:Christopher.Calfee@RESOURCES.CA.GOV]
Sent: Wednesday, March 07, 2018 3:40 PM
To: CNRA_CEQA_GUIDELINE@LISTSERVICE.CNRA.CA.GOV
Subject: CEQA Guidelines Hearing Information

Reminder: The California Natural Resources Agency will conduct hearings on the proposed regulatory update to the CEQA Guidelines on March 14 and 15, 2018. Hearing times and locations are below:

Sacramento

Date: March 15, 2018

Time: 1:30-4:30pm

Location: California Energy Commission

Rosenfeld Hearing Room
1516 9th Street, Sacramento, CA 95814

Los Angeles

Date: March 14, 2018

Time: 1:30-4:30pm

Location: California Science Center

Annenberg Building

Muses Room

700 Exposition Park Dr, Los Angeles, CA 90037

A webcast will be offered for the hearing in Sacramento on the 15th which you can access at the following link: <http://cal-span.org/unipage/index.php?site=cal-span&meeting=2301&owner=CNRA>. Materials related to this rulemaking are available on the Natural Resources Agency's website at <http://resources.ca.gov/ceqa/>.

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