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From: Alisha C. Pember <apember@adamsbroadwell.com>
Sent: Thursday, March 15, 2018 4:36 PM
To: CEQA Guidelines@CNRA
Cc: Nirit Lotan
Subject: Comments on Additions and Amendments to the State CEQA Guidelines
Attachments: 1644-082acp - CEQA Guidelines Rulemaking Comments.pdf

Good afternoon,

Please see attached our Comments on the additions and amendments to the State CEQA Guidelines.

If you have any questions, please contact Nirit Lotan.

Thank you.

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Via Email and U.S. Mail

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Re: Comments on Additions and Amendments to the State CEQA Guidelines

Dear Mr. Calfee:

On behalf of the State Building and Construction Trades Council of California, an umbrella organization representing over 400,000 construction workers in California and their families, and California Unions for Reliable Energy, a coalition of labor organizations whose members encourage sustainable development of California's energy and natural resources, please accept these comments on the Natural Resources Agency's proposal to add, amend and adopt regulations implementing Title 14, Division 6, Chapter 3 of the California Code of Regulations, the Guidelines for implementation of the California Environmental Quality Act ("CEQA Guidelines").[1]

The Office of Planning and Research ("OPR") is authorized to propose, and the Natural Resources Agency ("Agency") is authorized to certify and adopt, a regulation only if it is consistent and not in conflict with CEQA.[2] We reviewed the proposed amendments and find that while some of the changes are consistent with

[1] Pub. Resources Code § 21000, *et seq.*
[2] Gov. Code §11342.2; see also *Communities for a Better Environment v. Cal. Resources Agency* (2002) 103 Cal.App.4th 98, 108.

the statute and case law, other changes are not. Some changes would also result in confusion, increased litigation and, importantly, weakened environmental review of public health and environmental impacts contrary to the Legislature's intent in enacting CEQA. For these problematic proposals, we recommend not approving the amendments and revising the language to accurately reflect the plain language of CEQA, the Legislature's goals in enacting CEQA and case law interpreting the statute.

The following comments include nine issues, arranged in the order they appear in the updates package circulated by OPR in November 2017.[3]

I. Regulatory Standards as Thresholds of Significance (§15064 and §15064.7)

Proposed amendments to sections 15064 and 15064.7, which would allow public agencies to use regulatory standards as thresholds of significance, violate CEQA, would result in internally inconsistent CEQA Guidelines and in increased litigation.

First, in proposed amendments to section 15064(b)(2), the word "should" fails to comply with CEQA and would result in internally inconsistent CEQA Guidelines. It states that an agency "should" briefly explain how compliance with a standard means the impact would be less than significant and "should" support this conclusion with substantial evidence. This proposed amendment is inconsistent with a public agency's "duty under CEQA to meaningfully consider the issues raised by the proposed project."[4]

The proposed amendment is also different from the language proposed in section 15064.7(d). Proposed amendments to section 15064.7(d) state that the agency "shall" explain the effect of using the standard. With regard to supporting the conclusion, section 15064(f) similarly states that the agency "shall" base its decision on substantial evidence. Therefore, without changing the word "should" to "shall," proposed section 15064(b)(2) is inconsistent with CEQA and the CEQA Guidelines.

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[3] OPR's Proposed Updates to CEQA Guidelines, November 2017 is incorporated herein by reference: http://opr.ca.gov/docs/20171127_Comprehensive_CEQA_Guidelines_Package_Nov_2017.pdf.

[4] *Californians for Alternatives to Toxics v. Dept. of Food & Agriculture* (2005) 136 Cal.App.4th 1, 16.

Second, proposed amendments to section 15064.7(d)(3) would result in increased litigation regarding a public agency's duty to analyze actual environmental impacts, as required by CEQA. The amendment states that an environmental standard is a rule which "addresses the environmental effect caused by the project." Unlike OPR's 2015 draft proposed amendments, the amendment does not clarify that the standard must address the "same environmental effect." However, case law is clear on this issue.

Public agencies must have "meaningful information reasonably justifying an expectation of mitigation of environmental effects."[5] Agencies may not use standards which technically deal with the same environmental effect, but do not deal with the true effects caused by the project.[6] In *Californians for Alternatives to Toxics v. Dept. of Food & Agriculture*, the court set aside an agency's decision where the agency used standards that dealt with the effects of pesticides, but did not cover the actual effects caused by application of pesticides in a specific program.[7] The requirement that the agency will consider the "project's *actual* environmental impacts" rather than the "project's compliance with some generalized plan." was reiterated by the court in *Communities for a Better Env't v. California Res. Agency.*[8] Even though this issue is well settled by the courts, the proposed amendment to section 15064.7(d)(3) would result in increased litigation regarding whether agencies must address the actual environmental effects.

II. Program EIR Review (§15168)

A. Reference to Section 15162

Proposed amendments to section 15168(c)(2) are internally inconsistent with the CEQA Guidelines and, therefore, are invalid. CEQA Guidelines section 15162(b) states that, if a subsequent EIR is not required, the "lead agency shall determine whether to prepare a subsequent negative declaration, an addendum, or no further documentation." However, proposed amendments to section 15168(c)(2)

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[5] *Leonoff v. Monterey County Bd. of Supervisors* (1990) 222 Cal.App.3d 1337, 1355.
[6] *Californians for Alternatives to Toxics v. Dept. of Food & Agriculture* 136 Cal.App.4th 1.
[7] *Id.*
[8] *Communities for a Better Env't v. California Res. Agency* (2002) 126 Cal.Rptr.2d 441, 453 (emphasis added).

state that if "pursuant to section15162, no subsequent EIR would be required (...)," the project can be approved as being within the scope of a program EIR. This proposed language is inconsistent with the directive in section 15162(b), results in confusion regarding the agency's required course of action once it determines a subsequent EIR is not required and would result in increased litigation.

We recommend that the language in section 15168(c)(2) be revised to read: "[i]f the agency finds that pursuant to Section 15162, no subsequent EIR, subsequent negative declaration, an addendum, or other further documentation would be required, the agency can approve the activity ...." Otherwise, section 15168(c)(2) is internally inconsistent with the CEQA Guidelines and invalid.

B. List of Relevant Factors

The list of "relevant factors" proposed in section 15168(c)(2) is improper for several reasons: it is inconsistent with case law; it adds factual findings to the CEQA guidelines based on facts in limited case law; each factor is not dispositive of whether a project was sufficiently analyzed in a prior program EIR; and it contains no exception that requires an agency to consider substantial evidence, as required by CEQA.

Each of the proposed amendments to section 15168(c)(2)'s "relevant factors," standing alone, is not enough to make a legally adequate CEQA determination, and some are not even consistent with the limited case law on which the amendment relies. For example, "geographic area analyzed for environmental impacts" is a factor that is purportedly derived from the court decision in *Santa Teresa Citizen Action Group v. City of San Jose*.[9] However, the court in *Santa Teresa* also looked at other crucial factors and concluded the project was "the same" as the project which was described in the previous EIR. The proposed amendment improperly relies on one factor in the court decision, and the factor is taken out of context.

Proposed amendments to section 15168(c)(2) also exclude many other factors that are relevant to an agency's determination and relied on by agencies, but not litigated. Therefore, including a list of "relevant factors" in the CEQA Guidelines may lead to agencies arbitrarily relying on one or more factors even where the later activity was not properly analyzed in the program EIR. For example, a City could

[9] *Santa Teresa Citizen Action Group v. City of San Jose* (2003) 114 Cal.App.4th 689, 704.

argue that a previously planned residential project in the suburbs covers a later proposed industrial project in the same geographical area merely because the same geographical area was already analyzed for an entirely different project. This would violate the plain language and intent of CEQA and case law.

It should be kept in mind that a program EIR is "a type of tiered EIR authorized by the Guidelines but not by the statute."[10] Once the agency makes a "within the scope" determination, no further review will be conducted and the courts provide deference to an agency's decision. Hence, it is especially crucial that the agency be guided by both the plain language of CEQA and the CEQA Guidelines and the Legislature's intent to afford the fullest possible protection to public health and the environment.

The limited list of "relevant factors" in proposed amendments to section 15168(c)(2) violate the plain language and intent of CEQA. We recommend the list be deleted. In the alternative, the Agency must add a sentence clarifying that "one or more of the factors in this subdivision will not create a presumption that the agency's decision is supported by substantial evidence where other factors show that the later activity's effects were not sufficiently examined in the program EIR."

C. Project Description

Proposed amendments to section 15168(c)(2) violate CEQA by allowing a public agency to rely on elements presented "in the project description or elsewhere in the program EIR" in order to decide if a project is "within the scope" of a program EIR. The proposed amendment is inconsistent with relevant case law, as well the objective of the proposed amendment itself.

The CEQA Guidelines explicitly require a project description to include the information required for evaluation and review of a project.[11] The courts have repeatedly stressed that "an accurate, stable and finite project description" is a basic requirement for a sufficient EIR.[12] Allowing an agency to look for elements of the activity not in the project description, but "elsewhere in the program EIR,"

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[10] *Friends of Mammoth v. Town of Mammoth Lakes Redevelopment Agency* (2000) 82 Cal.App.4th 511, 531.
[11] CEQA Guidelines §15124.
[12] See, for example, *County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 192–193.

violates CEQA's longstanding principle regarding the necessity of an accurate, stable and finite project description.

Also, the proposed amendment directly contradicts another proposed amendment. The Agency proposes to amend the second sentence in section 15168(c)(5) so it will read "with a good and detailed project description (...) many later activities could be found to be within the scope of the project described in the program EIR (...)." The amendment thus rightfully stresses the importance of a good and detailed project description on the one hand, but undermines it with the amendment "elsewhere in the program EIR." This makes the amendments internally inconsistent.

The phrase "or elsewhere in the program EIR" violates CEQA and results in internally inconsistent CEQA Guidelines. We recommend that "or elsewhere in the program EIR" be deleted. At a minimum, the Agency must revise the language so the factors can be presented "in the project description *and* elsewhere in the EIR."

D. Preparing a New Initial Study for an Activity Outside the Scope of a Program EIR

Proposed amendments to section 15168(c)(1) violate CEQA by failing to require an initial study when a later activity would have effects that were not examined in a program EIR and, hence, not within the scope of a program EIR.

CEQA Guidelines section 15168(c)(1) states, "[i]f a later activity would have effects that were not examined in the program EIR, a new Initial Study would need to be prepared leading to either an EIR or a Negative Declaration." The Agency proposes to add a sentence to "clarify that even if a project is not 'within the scope' of a program EIR," the lead agency may still use tiering to streamline environmental review of the project. The Agency fails to include the statutory requirement to prepare an initial study.

Public Resources Code section 21094, which sets forth the tiering process, explicitly states that a lead agency "shall" prepare an initial study to comply with the requirement of the section. Public agencies and the courts, including the court in *Sierra Club v. County of Sonoma,*[13] which the Agency cites as the authority for

[13] *Sierra Club v. County of Sonoma* (1992) 6 Cal.App.4th 1307, 1320-1321.

the proposed amendment, consistently implement section 21094 by requiring an initial study when a later activity is not within the scope of a prior program EIR.[14]

The proposed amendment to section 15168(c)(1) violates CEQA and court holdings implementing CEQA. The Agency must revise the section to clarify that, if a project is not within the scope of a program EIR, an agency must prepare an initial study leading to either an EIR or a Negative Declaration.

III. The Existing Facilities Exemption (§15301)

The proposed amendment to section 15301 violates CEQA and is consistent with case law. The proposed amendments would allow agencies to use the existing facilities exemption where there is "negligible or no expansion of existing or former use," even when the use is "beyond that existing at the time of the lead agency's determination." In the draft proposed amendments, OPR claimed that the change would reflect the decision in *Communities for a Better Environment,*[15] which OPR misrepresents "found that a lead agency may look back to historic conditions to establish a baseline where existing conditions fluctuate..."[16] This reasoning is flawed for two reasons:

First, in *Communities for a Better Environment*, the Supreme Court addressed the question of "how the *existing* physical conditions without the project can most realistically be measured,"[17] and discussed how, in some cases, it might be necessary to consider conditions over a range of time periods.[18] The Court held

> We conclude neither the statute of limitations, nor principles of vested rights, nor the CEQA case law...justifies employing as an analytical baseline for a new project the maximum capacity allowed under prior

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[14] See also, *Friends of the Coll. of San Mateo Gardens v. San Mateo Cty. Cmty. Coll.* Dist., 1 Cal. 5th 937, 960.
[15] *Communities for a Better Environment v. South Coast Air Quality Management Dist.* (2010) 48 Cal.4th 310.
[16] OPR draft, p. 27.
[17] *Communities for a Better Environment v. South Coast Air Quality Management Dist*, Id, at 328.
[18] *Id.* at p. 327-328, quoting *Save Our Peninsula Committee v. Monterey County Bd. of Supervisors*, 87 Cal.App.4th at p. 125.

> equipment permits, rather than the physical conditions actually existing at the time of analysis.[19]

The court did not allow the agency to use historic or previous conditions *in lieu* of existing conditions for the baseline setting. Therefore, the Agency's proposed amendment allowing agencies to look at "former" *instead of* existing use is inconsistent with the Supreme Court's holding.

Second, the Supreme Court in *Communities for a Better Environment* made clear that the purpose of setting the baseline is to reflect the "real conditions on the ground."[20] In contrast, the Agency's proposed amendment would reflect "previous" conditions without any need or explanation. Therefore, the Agency's proposed amendment reflecting "previous" instead of "real" conditions is inconsistent with the Supreme Court's holding.

OPR's reliance on *Bloom v. McGurk*[21] is also without merit, and the amendment would conflict with the explicit language of the case. The court in *Bloom* concluded that the term "existing facility" in the Class 1 exemption does not mean the use "existing at the time CEQA was enacted," but rather *"as it exists at the time of the agency's determination."*[22] OPR's suggestion that *Bloom* can be relied on to delete the phrase "beyond that existing at the time of the lead agency's determination," (which is essentially the same language the court relied on when reviewing the exemption), is actually inconsistent with the court's holding in *Bloom*.

It should also be noted that the *Communities for a Better Environment* case was about setting the baseline during the process of conducting environmental review under CEQA. However, the legislature explicitly instructed OPR to use exemptions under the guidelines for "projects that have been determined not to have a significant effect on the environment" *prior* to any environmental review. Therefore, OPR's application of principles from court decisions where CEQA review occurred to the Agency's proposed CEQA Guidelines exemptions is inconsistent with the Legislature's directive and inapplicable.

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[19] *Id.* at p. 316
[20] *Id.* at p. 321.
[21] *Bloom v. McGurk* (1994) 26 Cal.App.4th 1307.
[22] *Id.* at p. 1315.

Finally, the concern raised in OPR's proposed draft that use of a vacant building would always be considered an expansion of use is inapposite because CEQA requires agencies to determine whether *any* direct or indirect physical change in the environment from current conditions is significant.[23] A change from a vacant building to a new use involves direct and indirect physical changes with potentially significant public health and environmental impacts. Therefore, the proposed amendment would lead to significant unanalyzed and unmitigated impacts in violation of CEQA.

IV. Updating the Environmental Checklist - Aesthetics (Appendix G)

In the proposed amendment to CEQA Guidelines Appendix G for aesthetics impacts, an agency would consider whether a project in an urbanized area conflicts with "applicable zoning and other regulations governing scenic quality." There are at least two issues of concern with the proposed amendment.

First, the language in subdivision (c) may be read as if the analysis should turn *solely* on whether the project is in conflict with zoning and other regulations, not whether it *also* degrades public views as compared to the current baseline. In *Friends of the College of San Mateo Gardens v. San Mateo Community College District*, the court applied the fair argument standard to determine whether the project would result in potentially significant aesthetics impacts.[24] The court stressed that "[t]he significance of an environmental impact is...'measured in light of the context where it occurs.'"[25] Limiting the aesthetics consideration to interference with regulations is contrary to the court's directive. Therefore, the proposed amendment fails to reflect that the fair argument standard still applies to a determination of impacts regardless of compliance with local zoning and regulations.

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[23] A project is defined as "an activity which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment..." (Pub. Res. Code §21065); a project's effects are defined as "...all the direct or indirect environmental effects of a project..." (Pub. Res. Code §21065.3); and a significant effect is defined as a "...substantial, or potentially substantial, adverse change in the environment" (Pub. Res. Code §21068).

[24] *Friends of the Coll. of San Mateo Gardens v. San Mateo Cty. Cmty. Coll. Dist.*, 11 Cal. App. 5th 596, 218 Cal. Rptr. 3d 91, 102 (Ct. App. 2017).

[25] *Id.* at p. 610, quoting *San Francisco Beautiful v. City and County of San Francisco* (2014) 226 Cal.App.4th 1012, 1026.

In addition, while conflict with zoning is a reasonable consideration, the policy considerations of aesthetics are largely found in other planning documents, such as local guidelines or in the general plan. The proposed amendment does not clearly include such other planning documents.

To the extent the proposed amendment precludes consideration of a fair argument regarding significant aesthetic impacts, the proposed amendment violates CEQA. Also, the language must be revised to include "whether the project would conflict with applicable policies, which can be found in, but not limited to, applicable zoning, regulations, plans and guidelines."

V. Updating the Environmental Checklist - Noise (Appendix G)

In the proposed amendment to CEQA Guidelines, Appendix G for noise impacts, a public agency would consider whether a project will result in "a substantial temporary or permanent increase in ambient noise levels...in excess of the standards established in the local general plan or noise ordinance, or applicable standards of other agencies." The Agency's use of the word "substantial" violates CEQA.

The heightened standard of a "substantial" increase beyond applicable standards prematurely establishes a new threshold of significance that is undefined and would result in inconsistent application. If a project noise level would exceed the noise standards, then the project would result in a potentially significant impact at the "initial study" stage of an agency's evaluation.

The proposed addition of the word "substantially" is inconsistent with CEQA's requirement that a public agency's threshold of significance be supported by substantial evidence.

VI. Baseline (§15125)

The proposed amendments to section 15125 governing the existing environmental setting fail to comply with CEQA and case law and would result in increased litigation and subversion of the public process.

First, the proposed amendment to section 15125(a)(1) states, in part, "a lead agency may define existing conditions by referencing historic conditions, or

conditions expected when the project becomes operational, that are supported with substantial evidence." OPR argues that the second sentence in section 15125(a)(1) "provides that a lead agency may look back to historic conditions to establish a baseline where existing conditions fluctuate."[26]

Despite OPR's explanation, the proposed amendment does not stop at including a reference to "historic" conditions. The proposed amendment also allows a lead agency to look towards "conditions expected when the project becomes operational." However, there is no basis in CEQA or case law to allow agencies to look only at conditions expected when the project becomes *operational*. In *Communities for a Better Environment v. South Coast Air Quality Management Dist*, the Supreme Court explained that in some circumstances the existing setting could be when the project is *approved*, not when the project becomes *operational*:

> In some circumstances, peak impacts or recurring periods of resource scarcity may be as important environmentally as average conditions. Where environmental conditions are expected to change quickly during the period of environmental review for reasons other than the proposed project, project effects might reasonably be compared to predicted conditions at the expected date of approval, rather than to conditions at the time analysis is begun (...)Whatever method the District uses, however, the comparison must be between existing physical conditions without the [project] and the conditions expected to be produced by the project. Without such a comparison, the EIR will not inform decision makers and the public of the project's significant environmental impacts, as CEQA mandates.[27]

Thus, the proposed amendments' use of the word "operational" is unsupported by the case law. The option to analyze impacts compared to future conditions is properly discussed in the third proposed sentence of the subdivision, as a separate baseline that can be used *in addition* to the existing baseline.

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[26] OPR draft, p. 92-93.
[27] *Communities for a Better Environment v. South Coast Air Quality Management Dist.* (2010) 48 Cal.4th 310, 328.

Second, proposed section 15125(a)(2) states, a "lead agency may use either a historic conditions baseline or a projected future conditions baseline as the sole baseline for analysis only if it demonstrates with substantial evidence that use of existing conditions would be either misleading or without informative value to decision-makers and the public." However, there is no basis in CEQA or case law to allow agencies to look at historic conditions as *sole* baseline.[28] Also, while the Supreme Court in *Neighbors for Smart Rail v. Exposition Metro Line Const. Auth.* recognized the possibility of comparing a project's impacts to future conditions, the proposed amendment fails to ensure that using future conditions *in lieu* of existing conditions is the exception rather than the rule. Specifically, the proposed amendment ignores the Supreme Court's conclusion that using projected future conditions must be "justified by unusual aspects of the project or the surrounding conditions."[29] By omitting these Supreme Court factors, the proposed amendment violates CEQA and is inconsistent with case law.

Allowing agencies to compare impacts to future conditions would result in a public agency ignoring potentially significant impacts to public health and the environment during construction. This includes risks to the health of construction workers, nearby school children and residents, which may be significant and are required to be and routinely analyzed under CEQA.

The proposed amendments to section 15162 violate CEQA and case law and would result in unanalyzed, potentially significant, unmitigated impacts on public health and the environment.

VII. Common Sense Exemption (§15061)

The phrase "common sense exemption" in the proposed amendment is misplaced. The proposed amendment includes the phrase in the first sentence, which is the general rule of CEQA; whereas it is the second sentence that is the "common sense exemption." As drafted, the proposed amendment is inconsistent

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[28] The most recent decision on the issue, *Association of Irritated Residents v. Kern County Board of Supervisors, et al.* (2017) 17 Cal.App.5th 708) dealt with a situation where existing conditions were defined by referencing historic conditions, *not* where historic conditions were used as the *sole* baseline. "[T]he baseline for purposes of environmental review is considered to be the physical environmental conditions as of 2013, adjusted where necessary to include refinery operations and related activities in 2007." (p. 727).

[29] *Neighbors for Smart Rail v. Exposition Metro Line Const. Auth.* (2013) 57 Cal. 4th 439.

with CEQA. Therefore, we recommend the language be revised to address this discrepancy.

VIII. Citations in Environmental Documents (§15072 and §15087)

CEQA is designed to inform decision makers and the public about the potential, significant environmental effects of a project.[30] "Its purpose is to inform the public and its responsible officials of the environmental consequences of their decisions before they are made. Thus, the [environmental review document] protects not only the environment but also informed self-government."[31] Public Resources Code section 21092(b)(1) requires that documents referenced in an environmental document be made available to the public during the public review period. Public Resources Code section 21061 similarly requires documents cited in an EIR be made available to the public.

The proposed amendments to section 15072 and 15087 violate CEQA by only requiring that documents "incorporated by reference" be made available for public review. However, documents may already be incorporated by reference, pursuant to section 15150 of the CEQA Guidelines. Section 15150 is, by its plain language, different and applicable to documents that are readily available to the public, such as regulations, ordinances, general plans, or other documents that are, for example, posted on agency websites or otherwise easily accessible. Sections 15072 and 15087, on the other hand, provide for public review of other types of documents that are clearly described in the statute – those referenced in or cited in an environmental review document.

The proposed amendments to sections 15072 and 15087 violate the plain language and intent of CEQA and subvert the public process.

IX. Discretionary Project (§15357)

The proposed amendment to section 15357 states: "[t]he key question is whether the approval process involved allows the public agency to shape the project in any way that could *materially* respond to any of the concerns which might be

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[30] CEQA Guidelines §15002(a)(1).
[31] *Citizens of Goleta Valley v. Bd. of Supervisors* (1990) 52 Cal.3d 553, 564.

raised in an environmental impact report."[32] The proposed addition of the word "materially" to section 15357 completely changes the well-accepted definition of when an action is discretionary, violates CEQA and is inconsistent with Supreme Court case law.

Proposed section 15357 misstates the "key question." OPR refers to the Court of Appeal decision in *Friends of Westwood, Inc. v. City of Los Angeles.*[33] In determining whether an action is discretionary, the court in *Friends of Westwood, Inc.* held that "the touchstone is whether the approval process involved allows the government to shape the project in any way which could respond to any of the concerns which might be identified in an environmental impact report."[34] The court then explained *when* the government is "foreclosed from influencing the shape of the project."[35] A public agency is foreclosed from influencing the shape of a project "[o]nly when a private party can *legally compel* approval without any changes in the design of its project which might alleviate adverse environmental consequences."[36]

By unjustifiably forcing the word "materially" into the court's language, the proposed amendment adds a new requirement that completely changes the definition of when an action is discretionary. The court never intended or authorized such change. The *Friends of Westwood* court stated that "[i]t is enough the city possesses discretion to require changes which would mitigate in whole or in part one or more of the environmental consequences an EIR might conceivably uncover."[37] The same language was used later by other courts, including the Supreme Court.[38] Clearly, there is no "materiality" requirement in any court decision.

The proposed addition of the word "materially" to section 15357 completely changes the well-accepted definition of when an action is discretionary, violates CEQA and is inconsistent with Supreme Court case law.

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[32] Emphasis added.
[33] *Friends of Westwood, Inc. v. City of Los Angeles,* 191 Cal. App. 3d 259, 235 Cal. Rptr. 788 (Ct. App. 1987).
[34] *Id.* at p. 267.
[35] *Id.*
[36] *Id.*
[37] *Id.* at p.273.
[38] *Mountain Lion Found. v. Fish & Game Com.*, 16 Cal. 4th 105, 117, 939 P.2d 1280 (1997), 117.

X. CONCLUSION

As explained above, several of the Agency's proposed amendments to the CEQA Guidelines violate the plain language of the statute, are inconsistent with court decisions, would result in increased litigation and would subvert the public process. Therefore, we urge the Agency not to approve the amendments specifically addressed in these comments.

Thank you for your consideration.

Sincerely,

Tanya A. Gulesserian
Nirit Lotan

NL:acp