PLANNING AND CONSERVATION LEAGUE

March 15, 2018

Secretary John Laird
California Natural Resources Agency
1416 Ninth Street, Suite 1311
Sacramento, CA 95814

RE: Comments on Amendments and Addition to the California Environmental Quality Act (CEQA) Guidelines on the Evaluation of Transportation Impacts

Dear Secretary Laird,

The Planning and Conservation League would like to complement and thank the Governor's Office of Planning and Research for its continuing efforts to help clarify and streamline the CEQA process. PCL has worked in recent weeks with a number of groups to help focus and refine comments on a number of specific, proposed update provisions. In addition to these efforts, we would like, in this correspondence, to commend OPR for its guideline proposals which reflect a continuing and fundamental focus upon and thoughtful adherence to state policies and laws that encourage, incentivize and facilitate infill development near public transit. We enclose with this letter a letter previously sent on our organizations behalf to OPR by the law firm Chatten-Brown & Carstens in 2015 regarding comments to revisions to CEQA.

PCL remains firmly committed to Transit Oriented Development ("TOD") as the essential key to addressing not only climate change, wildfire and water supply problems, but also our state's affordable housing crisis. Please follow these links for articles discussing TOD development:

http://www.transformca.org/sites/default/files/CHPC%20TF%20Affordable%20TOD%20Climate%20Strategy%20BOOKLET%20FORMAT.pdf

https://www.curbed.com/2017/12/5/16738120/google-san-jose-campus-silicon-valley

PCL is aware of course that some "stakeholders" would like to see laws and guidelines encouraging "greenfield" development under the rational that such development would help solve the affordable housing crisis in the State. In effect, these interest seek a short term solution for housing at the multi-generational expense of exacerbating our challenges with climate change, wildfire and water supply.

Thank you again for your continuing work on behalf of the State of California.

Sincerely,

Howard Penn
Executive Director

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October 12, 2015

Christopher Calfee, Senior Counsel
Governor's Office of Planning and Research
1400 Tenth Street
Sacramento, CA 95814

Dear Mr. Calfee:

On behalf of Planning & Conservation League, whose mission is to protect California's environment and its people[1], we thank you for the opportunity to comment on revisions to the California Environmental Quality Act (CEQA) Guidelines and submit the following comments.

There are many areas in which the proposed amendments to the guidelines would improve the clarity of their guidance, promote public involvement in the environmental review process, and help lead to the fullest possible protection of the environment within the statutory mandates, as the Supreme Court has directed must be done in *Friends of Mammoth v. Board of Supervisors* (1972) 8 Cal.3d 247, 259 and other cases. However, there a few areas where the opposite is true, and we attempt to identify these, as well as the potentialy beneficial changes, below.

- **GENERAL COMMENTS ON DISCUSSION DRAFT OF GUIDELINE AMENDMENTS**

The Proposed Guidelines ask a number of questions for reviewers. (Proposal, p. 44.) Among other responses, we identify below how we support the use of internet links and electronic access. To the extent we have answers to the below questions, we provide them below:

[1] Among other activities related to CEQA, PCL has published "Everyday Heroes Protect the Air We Breathe, the Water We Drink, and the Natural Areas We Prize" at http://www.pcl.org/projects/everydayheroes.html

1. **Do any of the proposed revisions conflict with CEQA or cases interpreting CEQA?** For the most part, the proposed changes are consistent with CEQA cases. However, there are a few areas in which the proposal is only consistent with one line of CEQA cases on contentious issues, but fails to incorporate guidance from a separate but equally valid line. For example, with regard to section 15004, it is true that some courts have advised public agencies to avoid making a irreversible commitment to a certain course of action prior to environmental review. But it is also true that courts of have advised agencies not to approve an "essential step" prior to performing environmental review. (*Fullerton Joint Union High School Dist. v. State Bd. of Education* (1982) 32 Cal.3d 779, 797.) Therefore, in order to promote balance and seek to ensure protection of the environment to the fullest possible extent, we suggest some areas where additional clarity is necessary.

2. **Will any of the proposed revisions raise any concerns about practical application?** Yes, particularly with regard to the proposed changes on remand. Also, it is not appropriate for OPR to make a decision that the aesthetic impacts discussed in *Bowman v. City of Berkeley* (2006) 122 Cal.App.4th 572 (Proposal, p. 40) are more appropriately addressed by a design review board rather than under CEQA. Furthermore, some of the changes to Appendix G, while meant to streamline and consolidate, will likely prove less helpful to agencies and the public.

3. **Are there revisions (that are consistent with CEQA and the cases interpreting it) that you think would lead to a more efficient process?** There should be more encouragement to public agencies to use electronic postings and data bases. **Or better substantive outcomes?** Better substantive decisions could be achieved by requiring the use of the most protective regulation for a threshold of significance; assuring that any illegal acts by the applicant cannot be used to create an easier baseline to show compliance; and preventing pre-commitment that is disguised as an open process by simply stating that an EIR will be required in the future.

4. **Could the format of Appendix G be improved to be more user-friendly (i.e., by adding internet links to data resources)?** YES. This will reduce costs to agencies and provide easier access to the public to valuable information.

- **SPECIFIC COMMENTS**

Please note that there are a number of sections that we do not comment upon because we have no objections to the proposed changes but also do not feel that they warrant being called out for the positive contribution they make.

- **Regulatory standards.**

The Proposal amends 15064 to add (b)(2) and a new (d) in 15064.7 re use of thresholds of significance. (Proposal, pp. 15 and 18.) We commend the manner in which these proposed additions are very specific in terms of being standards adopted through a public process for purposes of environmental protection and clearly state that the fair argument test will still apply.

To make the proposals even better, we suggest the addition of guidance that addresses a situation where there are two or more regulatory standards available. At the end of 15064.7 (d), prior to the phrase "For the purposes of this subdivision. . . .," we suggest the following addition:

"Where two or more environmental standards have been adopted by different public agencies, these should be identified and the standard which is more protective of the environment should be identified as the environmentally superior standard. If the environmentally superior standard is not adopted, the reasons for the use of an alternative standard should be explained."

The proposal for Program EIRs, Guidelines section 15168 (c)(1) (Proposal, p. 23) makes it clear that if a project is not within the scope of a program EIR a public agency may still tier off the EIR. This change is fine. Proposed section (c)(2) makes it clear that whether a project is within the scope is a factual question based upon substantial evidence. Action on this section should not be taken at this time because the issue is currently before the California Supreme Court in the *San Mateo College* case. Further, the San Diego Climate Action Plan case (*Sierra Club v. County of San Diego* (2014) 231 Cal.App.4th 1152) is a good example of where the agency found the project within the scope of the original EIR and the Court of Appeal (and trial court) disagreed. The proposed language might inappropriately induce agencies to feel they have rather unlimited discretion, when in fact they do not.

- **Proposed Guidelines section 15182 TOD exemptions.**

The proposed language extends complete exemption (not just from preparing an EIR) when consistent with Specific Plan to include commercial and mixed use in addition to residential, claiming that it implements SB 743. One addition that is not based upon SB 743 is that (b)(1)(A) exempts projects when *planned* transit is within the planning horizon of the Regional Transportation Plan. "Planned" transit is too vague a term to allow exemption.

- **Proposed Guidelines section 15301 amendment.**

  This proposal would switch a baseline for "existing" uses to no expansion of use beyond "historic" use at the time of lead agency's determination. We believe this is inconsistent with applicable caselaw- specifically *CBE v. SCAQMD* and *Neighbors for Smart Rail (cites)*, and would fail to provide the fullest possible protection to the environment within the statutory mandates. For example, one problem with addressing the "historic" use of a building is that it may be vacant for a long time prior to a public agency's determination rather than briefly. Similarly, an area used for mining in the 19th century might be regarded as a "historic" mining area but if it has been idle for the past 50-100 years, the existing use would clearly be the relevant baseline. Defining what an "historic use" rather than an "existing use" would be difficult. This proposed change of "historic" instead of "existing" use could lead to confusion and could be inconsistent with caselaw.

Proposed Appendix G Changes.

- **Appendix G- Aesthetics.**

  The aesthetic impact change (Proposal, p. 50) restricts the analysis to impacts reflected in zoning or regulations related to visual impacts, saying that aesthetic issues should be covered by design review and not CEQA. (Proposal, p. 41.) However, it is not the purview of OPR to make these kinds of judgments. Public Resources Code section 21001 (b) specifically calls out protection of "aesthetic. . . environmental qualities" as within the purview and policies of CEQA protection. Clearly, aesthetic impacts are environmental impacts and unless the Legislature determines that it wishes to legislatively restrict the analysis of such impacts, it cannot be done by regulation. Further, not all jurisdictions have design review procedures. This change would shut the public out of the review process compared to the current provisions of CEQA. The type of development proposed and its compatibility with other developments in an area is important to the quality of people's lives, especially in highly developed areas. If there are adverse impacts, a public agency may consider if they should be overridden based upon other benefits. However, consideration of adverse aesthetic impacts outside of the context of compatibility with zoning or regulations related to visual impacts should not be eliminated.

  We also question why aesthetic impacts would be limited to designated scenic highways and only public views (Proposal, p. 51). Many areas of the state have visual character worthy of protection, and the CEQA statute does not limit consideration to whether views are public or private.

The emphasis on "public views" on visual impacts and the addition of "substantially" is inappropriate. The question is whether there may be a significant impact. It would be better to make a determination based upon a substantial number of persons being affected, even if the viewsite is not "public."

- **Appendix G- Geology and Soils**. (Proposal, p. 55).

We do not understand why all checklist questions relating to exposure of persons or structures to loss, injury, or death from earthquake faults, seismic shaking, liquefaction, or landslides would be eliminated. This would be contrary to CEQA's intention to protect human beings as well as the natural environment. This also would be inconsistent with Guidelines section 15126 (a), which gives placement of structures on earthquake faults as an example of a potentially significant impact, and rightfully so. Especially because the Supreme Court is currently considering a case regarding whether impacts from the environment to those who may live or work at a proposed project, we do not believe it is advisable to propose eliminating consideration of geological, landslide, or liquefaction impacts on project siting decisions reviewed under CEQA. Perhaps OPR believes that the issues will be considered elsewhere, but this is an example of where specificity is particularly helpful to agencies.

- **Appendix G- Surface and Groundwater.** (Proposal, p. 68-69.)

The additions re impervious surfaces and groundwater promote clarity and environmental protection.

- **Appendix G- Utilities and Service System-**

The proposal includes good additions about adequate service in dry and multiple dry years. (Proposal p. 69.)

- **Appendix G- Water Supply.**

The change regarding water supply consideration is also desirable. (Proposal p. 69.)

- **Appendix G-Wildfires.** (Proposal, p. 69.)

The changes regarding wildfires are helpful in reminding agencies to address an important potential impact. However, the examination should not be limited to addressing wildfire only "If located in or near state responsibility areas or lands

classified as very highfire hazard severity zones." Wildfire hazards should be considered whether or not lands are located near SRAs or lands "classified" as VHHSZs.

These issues should be covered regardless of whose responsibility the nearby area is, or whether an area is classified or not.
The potential aesthetic impacts of a project requiring a new fire-roads or breaks should be made clearer in subdivision (c).

- **Appendix G-Energy Efficiency.** (Proposal, p. 56-57.)

  The proposed consideration of energy efficiency strategies are positive changes that should be made to the guidelines. These changes would be helpful in addressing the modern environmental challenge of greenhouse gas generation and reduction.

- **Appendix G-Recreation Impacts** (Proposal, p. 66.)

  We do not understand, and are opposed to, the deletion of recreation impacts from the checklist. This proposed change would be contrary to the intent of CEQA to provide the fullest possible protection within statutory mandates.

  While we approve of the additional of consideration of recreation to the "Open Space" section (Proposal, p. 64), not all recreational opportunities occur in "open space." For example, forests would not likely be considered open space. It is good to note the possible impact of increasing demand to a degree that substantial physical deterioration would occur but the part about whether it would be accelerated should not be deleted. Further, the part about whether the project would require the construction or expansion of recreational facilities that might have an adverse effect should not be deleted.

- **Appendix G- Elimination of Agriculture and Forest Resources from Checklist.** (Proposal, pp. 51-52.)

  The impacts on prime, unique, or important farmland should not be eliminated from consideration.

  The impacts on forests are diminished by lumping them in with "Open Space, Managed Resources and Working Landscapes."

- **Appendix G- Air Quality.** (Proposal, p. 52-53.)

  Undefined terms such as "frequent and substantial" are used in discussing odor, dust or haze impacts on p. 53. With regard to diesel impacts, acute adverse health effects may be suffered from exposure within a matter of hours or days.

- **Appendix G- Biological Resources.** (Proposal, p. 54.)

  Including state as well as federal wetlands in item (c) is a good addition.

- **Appendix G- Cultural Resources.** (Proposal, p. 55.)

  The new sections to comply with recently passed cultural resource bills are positive additions that will aid in achieving CEQA's mandates.

- **Appendix G- Land use-** (Proposal, p. 61.)

  The changes to this section would limit the description of causing a significant environmental impact due to a conflict with a land use plan, policy or regulation to those "adopted for the purpose of avoiding or mitigating an environmental effect." It should not be so limited because determining what the purposes of adoption was is overly difficult and complicated, and there would no doubt be other, likely primary, purposes.

  There is an emphasis in land use impacts that the focus should be on impacts rather than conflicts with plans but it should explicitly require identification of *potential* conflicts with plans.

  The Guidelines require determination of whether impacts are from planned growth rather than population growth. But population projections and plans for an increased number of housing units often are not sufficiently specific to determine what the impacts will be of growth in a particular area.

- **Appendix G- Noise-** (Proposal pp. 61-62.)

  If the violation of a standard is established, the public should not also have to show that it is a "substantial temporary or permanent increase in ambient noise in the vicinity of the project."

Furthermore, noise impacts can be severe even without established standards. Items (c) and (d) should not be deleted because they address noise changes above the existing environment, even where no standards have been set.

- **Appendix G- Managed Resources and Working Landscapes-** (Proposal pp. 62-65.)

  Forests should not be viewed as landscapes or open space. There should be a separate section on forests, especially because of their importance for Greenhouse Gas sequestration and water supply and quality. For example, the headwaters of various rivers in the Sierra Nevada Mountains account for over 60% of California's water supply. Converting forest land to non-forest uses is certainly an adverse impact as noted, but there are adverse impacts to forests even without total conversion. Such impactful uses include resource extraction or rezoning that allows non-forest use. Also, while it is a positive change to spell out conversion of oak woodlands, there are other types of woodlands that also should be protected by CEQA.

- **Jobs/Housing Balance-** (Proposal p. 65.)
  We are concerned that agencies may too often inappropriately determine that there is a "fit" between jobs and housing even where housing is located far from jobs, and encourage development that will generate long term jobs without sufficiently ensuring there is affordable housing available nearby. More specificity should be provided in this section.

- **Transportation-** (Proposal, p. 67). We support the addition of bikes and pedestrian paths when considering transportation impacts.
  We note the addition of vehicles miles traveled (VMT) and the deletion of Levels of Service (LOS) consideration despite the fact that OPR has not yet adopted its transportation guideline amendments. We suggest that some consideration be made for where local jurisdictions or transportation authorities have incorporated LOS in their general plans or regional congestion management plans. Furthermore, we believe public safety considerations are paramount and must specifically be considered.

- **Mandatory Findings of Significance.** (Proposal p. 70.) The addition of the word "substantially" throughout would be contrary to the environmental protection purposes of CEQA for at least two reasons. First, this examination of significant impacts would be conducted at a time when an initial study (IS) is being prepared and public agency staff is first deciding whether the issue should be studied. At such a time, if there are any potential impacts, a study should be conducted. Furthermore, by adding "substantially" as a modifier before the phrase "reduce the

number or restrict the range of rare or endangered plant or animal. . . " the guideline would improperly introduce an element of gradations of reductions in rare or endangered plants or animals that would be deemed acceptable. The Endangered Species Act at state and federal levels has already determined all endangered plants and animals should be protected. CEQA should not be watered down to provide less protection.

- **Proposed New Section Addressing Remand- Section 15234.** (Proposal, pp. 73-74.)

The text proposing the addition of a new section 15234 is extremely problematic for both CEQA's purpose of environmental protection and public involvement, and is in our view, the most serious flaw in the Discussion Draft. The emphasis of the new section is contrary to CEQA's spirit, starting with the pronouncement that not every violation of CEQA will require rescission of project approval. Instead, where CEQA's mandates are violated, the violations are presumptively prejudicial to public involvement. (*Sierra Club v. State Bd. of Forestry* (1994) 7 Cal.4th 1215, 1236.) Courts must scrupulously enforce CEQA's mandates in order to ensure it purposes of environmental protection and public involvement in the decisionmaking process are fulfilled.

This section should start by stating that project approval normally must be set aside when the violation of CEQA deprived decision makers and the public of information necessary for reasoned decision making. There are certain limited special cases, such as where the underlying project promotes environmental protection, where courts have allowed less than an entire project approval to be set aside. This is addressed in (c). But this limited exception should not be presented as if it were a universal principle.

Also, the (d) needs to be modified so that if there is new information or a change of circumstances, the agency needs to address that even if it is not in the court's original order. Under Public Resources Code section 21092.1, recirculation is required when new information becomes available before certification.

Furthermore, section 15088.5 should not imply that the public is limited to submitting comments on only the recirculated sections of a draft EIR. The public is entitled to submit comments on any sections of an EIR that are of concern. We have known public agencies that discourage or refuse to accept public comments on matters of concern on the theory that they were addressed prior to recirculation. However, with recirculation, the public agency must address the impacts of a project as a whole, not just certain limited impact areas.

We propose that section 15234 be amended as follows:

New Section 15234. Remand

(a) If a court determines that a public agency has not complied with CEQA, absent extraordinary circumstances that noncompliance shall be deemed a prejudicial abuse of discretion, and the court shall render judgment and issue a peremptory writ of mandate requiring the agency to:

(1) void the project approval: in whole, or in extraordinary circumstances in part;

(2) except as provided in subparagraph (b) suspend any project activities; and

(3) take specific action necessary to bring the agency's consideration of the project into compliance with CEQA.

(b) In extraordinary circumstances courts may fashion equitable relief under CEQA. Following a determination described in subdivision (a), an agency may proceed with those portions of the challenged determinations, findings, or decisions for the project or those project activities that the court finds:

(1) are severable;

(2) will not prejudice the agency's compliance with CEQA as described in the court's peremptory writ of mandate;

(3) will not foreclose the consideration of alternatives to the proposed project;

(4) will not adversely affect the environment; and

(5) otherwise comply with CEQA.

(c) An agency may also proceed with a project, or individual project activities, during the remand period where the court has exercised its equitable discretion in extraordinary circumstances where the environment will be given a greater level of protection if the project is allowed to remain operative than if it were inoperative during that period.

AUTHORITY:

Note: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21005, 21168.9; *Neighbors for Smart Rail v. Exposition Metro Line Construction Authority* (2013) 57 Cal. 4th 439; *Laurel Heights Improvement Ass'n v. Regents* (1988) 47 Cal.3d 376; *Preserve Wild Santee v. City of Santee* (2012) 210 Cal. App. 4th 260; *Golden Gate Land Holdings, LLC v. East Bay Regional Park Dist.* (2013) 215 Cal. App. 4th 353; *POET, LLC v. State Air Resources Board* (2013) 218 Cal. App. 4th 681; *Silverado Modjeska Recreation and Parks Dist. v. County of Orange* (2011) 197 Cal. App. 4th 282; *County of Inyo v. City of Los Angeles* (1976) 61 Cal.App.3d 91.

In general, only this formulation honors separation of powers and ensures jurisdictional boundaries remain clear. A court must issue a writ of mandate to the agency to return jurisdiction to the agency, and cannot do that without a judgment ordering (or in the case of return to a writ, sustaining) a writ of mandate. That also protects the agency and real party in interest, as well as the petitioner, so that if any party does not agree with the issuance of the writ, it has the power of appeal.

- **Energy, proposed changes to section 15126.2.** (Proposal, pp. 78-79.)

The Guidelines should define "wasteful, inefficient, and unnecessary consumption of energy". A definition of such terms should be developed, such as requiring a comparison to best management practices, or best available technologies. To ease the burden on individual agencies, OPR or another state office should maintain list of such practices and update it periodically.

- **Guidelines section 15125 Changes-Baseline.** (Proposal, p. 94.)

The baseline discussion is very good and specifically prohibits the use of hypothetical conditions.

The one thing that it does not address that should be added is what happens when an applicant has illegally modified the conditions earlier. Because courts presume public agencies, and the public, will follow legal requirements, and should have been following them in the past, it is bad public policy to condone a situation where violation of laws is not accounted for. Even if CEQA does not require the remedying of prior existing violations because some courts considering this question have assumed other statutory schemes would remedy the violations, CEQA requires the full disclosure of existing conditions, including illegally-created baselines. It should also require how the conditions came to be, and how they will be fixed. We propose the following be added to 15125 (a):

> "(4) **The lead agency should account for existing conditions that have been created illegally or without a required permit. The lead agency should explain what the illegal or unpermitted activity was; what the environmental setting would be if the illegal activity had not occurred; and provide a comparison of the project's proposed impacts to a legally compliant baseline. The public agency should explain what steps are being taken to remedy the illegal conditions, who is responsible for ensuring they are remedied, and when they are expected to be resolved."**

- **Notice.** (Proposal, p. 131.)

  In order to promote public participation, it would be desirable to encourage use of all three forms of notice--publication, posting, and mailing to those nearby. This change should be made with regard not only the notice of preparation of an EIR (section 15082), but also the notice of its availability, and the public agency's notice of determination. We have many times not been provided with notice of a notice of determination even though we have asked for such notice pursuant to Public Resources Code section 21092.2.

  There should be a requirement for electronic notice on the agency's existing website under a section clearly identified as CEQA Notices in addition to notice by one of the other forms. Alternatively, we would suggest the OPR provide a clearinghouse for notices for all projects, not just those of regional or statewide significance, as electronic posting of notices with modern technology is not difficult. This would be superior to relying on posting with county clerks, as counties often post such notices on clipboards or other devices that do not reflect modern technology.

- **Changes to Guidelines section 15004, "Time of Preparation," or Pre-Commitment.** (Proposal, p. 111.)

  This proposed addition is not a minor change, despite it being described as a "Minor Technical Improvement." We represented successful petitioner Save Tara in the seminal case on this issue of *Save Tara v. City of West Hollywood*, so we have a very detailed experience working with this section.

  The proposed change deletes the following language in the prohibition on pre-commitment, which is good: "except that agencies may designate a preferred site for CEQA review and may enter into land acquisition agreements when the agency has conditioned the agency's future use of the site on CEQA compliance." This is fine.

  However, there is a proposal to add a new subsection:

  (4) While mere interest in, or inclination to support, a project does not constitute approval, a public agency entering into preliminary agreements regarding a project prior to approval shall not, as a practical matter, commit the agency to the project. For example, it shall not grant any vested rights prior to compliance with CEQA. Further, any such agreement should:

  (A) Condition the agreement on compliance with CEQA;

(B) Not bind any party, or commit to any definite course of action, prior to CEQA compliance; and

(C) Not restrict the lead agency from considering any feasible mitigation measures and alternatives, including the "no project" alternative.
This seems consistent with existing law. However, we note that this is only one aspect of public agency avoidance of improper precommitment to approval of a project prior to conducting environmental review.

This proposed new addition provides incomplete guidance and must be clarified. In *Fullerton Joint Union High School Dist. v. State Bd. of Education* (1982) 32 Cal.3d 779, 797, the Supreme Court stated public agencies must avoid approving an "essential step" for a project prior to conducting environmental review. This "essential step" language is not apparent in the *Save Tara* decision. However, as a Supreme Court decision, *Fullerton* remains controlling law. Furthermore, *Save Tara* provided strong cautions against public agencies creating bureaucratic and financial momentum for projects before approval. Therefore, the proposed addition to guidelines section 15004 should also caution public agencies as follows. We suggest the following additions to the currently proposed section 15004 (b):

(5) A public agency shall not approve an essential step necessary for project approval prior to compliance with CEQA.
(6) A public agency must avoid creating bureaucratic and financial momentum for a Project prior to CEQA compliance.
(7) A public agency should avoid providing substantial financial assistance to a project prior to CEQA compliance.

***Authority:* *Save Tara v. City of West Hollywood* (2008) 45 Cal.4th 116, 130. *Fullerton Joint Union High School Dist. v. State Bd. of Education* (1982) 32 Cal.3d 779, 797**

- **Incorporation by reference. Section 15072** (Proposal, pp. 125-126 and 129.)

The requirement to provide access to documents referenced by an ND or MND now would only apply to documents "incorporated by reference" instead of just referenced. That change would reduce the public's ability to participate in environmental review. If access is not provided to a document, it should not be relied upon by a public agency as substantial evidence or in support of its decision. The same principle applies to an EIR in section 15087.

- **Emergency repairs. 15269.** (Proposal, pp. 140-141.)
  This change would add that emergency repairs include those that require a reasonable amount of planning. If there is planning it appears to us that environmental review could be conducted. On the exemption, the new language would add the underlined language: (c) Specific actions necessary to prevent or mitigate an emergency. This does not include long-term projects undertaken for the purpose of preventing or mitigating a situation that has a low probability of occurrence in the short-term, but this exclusion does not apply (i) if the anticipated period of time to conduct an environmental review of such a long-term project would create a risk to public health, safety or welfare, or (ii) if activities (such as fire or catastrophic risk mitigation or modifications to improve facility integrity) are proposed for existing facilities in response to an emergency at a similar existing facility. On 1), it should be limited to a significant risk, because there is always some risk; and 2) seems to give the agency way to much latitude. The proposal should at least be limited to where there is a serious risk of the emergency occurring at the facility at issue. Otherwise, one real emergency could justify repairs at numerous facilities around the state whether there was a serious threat or not.

- **Discretionary Project, section 15357.** (Proposal, p. 142-143.)

  This changes adds to the list of statutes and ordinance or regulations where determining conformity that are ministerial acts "other fixed standards." It is unclear what is intended but this is a problematic change. If there is not an ordinance, statute or regulation, then a public agency would have overly broad discretion as to whether it will require compliance with applicable rules. We object to this change because it is vague.

- **Conservation Easements as Mitigation, Changes to section15370.**
  (Proposal, p. 144.) We support this positive addition.

Thank you for consideration of the Planning and Conservation League's comments. We look forward to seeing a revised proposal.

Very truly yours,

Jan Chatten-Brown
Douglas P. Carstens