July 20, 2018

Via Email and Overnight Mail

Christopher Calfee,
Deputy Secretary and General Counsel
California Natural Resources Agency
1416 Ninth Street, Suite 1311
Sacramento, CA 95814
CEQA.Guidelines@resources.ca.gov.

Re: Comments on Additions and Amendments to the State CEQA Guidelines – Proposed 15-day Revisions

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 modifications to the originally-proposed changes to Title 14, Division 6, Chapter 3 of the California Code of Regulations, the Guidelines for implementation of the California Environmental Quality Act (“CEQA”) (“Proposed Revisions”).

On March 15, 2018, we filed detailed comments on the originally-proposed amendments to the CEQA Guidelines. With the exception of modifications to proposed section 15357, none of the Proposed Revisions resolve the inconsistencies with the CEQA that we described in our prior comments. Therefore, we incorporate our March 15, 2018 comments here by reference.

1 Pub. Resources Code § 21000, et seq.
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The following comments are on the Proposed Revisions. In sum, we reiterate our comment that some of the proposed amendments are inconsistent with the CEQA statute and would 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.

I. BASELINE (§15125)

In our March Comments, we explained that there is no support in CEQA or case law for allowing agencies to look at historic conditions as the sole baseline upon which to measure impacts as originally proposed in section 15125(a)(2). In the Proposed Revisions, the reference to “historic conditions” was removed. However, in the notice of the Proposed Revisions, the Agency states:

In response to comments received on the proposal, the Agency proposes to clarify that the procedural requirement to justify a baseline other than existing conditions does not apply to reliance on historic conditions. Rather, that requirement only applies only [sic] to use of future conditions as a sole baseline.¹

This summary suggests the Agency interprets the CEQA Guidelines as allowing “reliance” on historic conditions as the sole baseline, rather than allowing “reference” to historic conditions, as described in section 15125(a)(1). However, nothing in CEQA or in the case law allows for reliance on historic conditions as the sole baseline. As explained in the March Comments, the most recent decision on the issue, Association of Irritated Residents v. Kern County Board of Supervisors,¹ 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.”⁵

If the Agency's interpretation of the proposed amendment is that agencies can rely on historic conditions as the sole baseline, contrary to the plain language of the CEQA Guidelines and controlling case law, then proposed amendment must be revised to clarify that CEQA only authorizes referencing historic conditions, and only under specific and limited circumstances. The Agency should also clarify that its Proposed Revisions mean that the procedural requirement to justify a baseline other than existing conditions does not apply to referencing historic conditions.

II. REGULATORY STANDARDS AS THRESHOLDS OF SIGNIFICANCE (§15064 AND §15064.7)

Proposed amendments to sections 15064 and 15064.7 would allow public agencies to use environmental standards as thresholds of significance. The Agency's Proposed Revisions propose to delete the requirement to describe the substantial evidence supporting a conclusion that compliance with a threshold means a project's impacts are less than significant. The Agency explains that this requirement is "too burdensome."

We urge the Agency to keep the proposed requirement, consistent with CEQA's purpose to promote informed decision-making and enable public participation. Moreover, since the agency is required to support its decision to rely on a specific threshold of significance with substantial evidence, it is not "too burdensome" to describe (disclose) that evidence.

III. RULES ON TIERING (15152)

The proposed amendment to section 15152 gives agencies discretion to determine which streamline method to use without a concomitant requirement to disclose that determination to the public. In practice, not disclosing which streamline method applies results in uncertainty for the agency, the applicants and the public regarding how to provide the agency with the necessary information to meet the legal standards for the chosen streamline method. It also results in

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6 Proposed 15-day revision, p. 7.
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inefficiencies in processing and unnecessary litigation over compliance with
streamlining provisions that do not apply.

We recommend that the Agency add language requiring agencies to disclose
which streamline method the agency is using in order to eliminate these
uncertainties, inefficiencies and unnecessary litigation. This disclosure must be
done at the earliest possible stage of environmental review in order to better
streamline the information exchange and eliminate inefficiencies (and unnecessary
responses to comments) during the environmental review process. By adding
language, all of the stakeholders will avoid unnecessary work and uncertainty,
thereby truly “streamlining” the environmental review process.

IV. CONCLUSION

As explained in our March Comments, 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. The Proposed Revisions do not resolve those issues and
create new ones. In addition, the Agency has an opportunity to add language to
truly eliminate uncertainties, inefficiencies and unnecessary litigation. Therefore,
we urge the Agency not to approve the amendments specifically addressed in our
March Comments and in this letter until it meaningfully addresses and resolves the
issues mentioned in both comment letters.

Thank you for your consideration.

Sincerely,

Tanya A. Gulessarian
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