Case No. S213478

IN THE SUPREME COURT OF CALIFORNIA

CALIFORNIA BUILDING INDUSTRY ASSOCIATION
Plaintiff and Respondent,
v.
BAY AREA AIR QUALITY MANAGEMENT DISTRICT
Defendant and Appellant.

After a Decision by the Court Of Appeal
First Appellate District, Division One
Case No. A135335 & A136212

Appeal from the Alameda County Superior Court, Case No. RG10548693
The Honorable Frank Roesch, Judge Presiding

BAY AREA AIR QUALITY MANAGEMENT DISTRICT'S MOTION FOR JUDICIAL NOTICE; DECLARATION OF ELLISON FOLK & [PROPOSED] ORDER

---

*Ellison Folk (SBN 149232)
Erin B. Chalmers (SBN 245907)
Shute, Mihaly & Weinberger LLP
396 Hayes Street
San Francisco, CA 94102

Tel: (415) 552-7272
Fax: (415) 552-5816
Email: folk@smwlaw.com

Brian C. Bunger (SBN 142001)
Randi L. Wallach (SBN 241171)
Bay Area Air Quality
Management District
939 Ellis Street
San Francisco, CA 94901

Tel: (415) 749-4797
Fax: (415) 928-8560
Email: bbunger@baaqmd.gov

Attorneys for Defendant and Appellant
BAY AREA AIR QUALITY MANAGEMENT DISTRICT

Case No. S213478

IN THE SUPREME COURT OF CALIFORNIA

CALIFORNIA BUILDING INDUSTRY ASSOCIATION
Plaintiff and Respondent,
v.
BAY AREA AIR QUALITY MANAGEMENT DISTRICT
Defendant and Appellant.

After a Decision by the Court Of Appeal
First Appellate District, Division One
Case No. A135335 & A136212

Appeal from the Alameda County Superior Court, Case No. RG10548693
The Honorable Frank Roesch, Judge Presiding

BAY AREA AIR QUALITY MANAGEMENT DISTRICT'S MOTION FOR JUDICIAL NOTICE; DECLARATION OF ELLISON FOLK & [PROPOSED] ORDER

---

*Ellison Folk (SBN 149232)
Erin B. Chalmers (SBN 245907)
Shute, Mihaly & Weinberger LLP
396 Hayes Street
San Francisco, CA 94102

Tel: (415) 552-7272
Fax: (415) 552-5816
Email: folk@smwlaw.com

Brian C. Bunger (SBN 142001)
Randi L. Wallach (SBN 241171)
Bay Area Air Quality
Management District
939 Ellis Street
San Francisco, CA 94901

Tel: (415) 749-4797
Fax: (415) 928-8560
Email: bbunger@baaqmd.gov

Attorneys for Defendant and Appellant
BAY AREA AIR QUALITY MANAGEMENT DISTRICT

Pursuant to California Evidence Code Sections 452, 453 and 459, and California Rules of Court 8.520(g) and 8.252(a), Defendant and Appellant Bay Area Air Quality Management District requests that the Court take judicial notice of the exhibits identified below, which the Air District offers in support of its Answering Brief. The declaration of Ellison Folk, attached as Exhibit T, establishes the authenticity of the exhibits.

Exhibits A – S consist of (1) prior versions of particular sections of Title 14 of the California Code of Regulations ("CEQA Guidelines"); (2) bill reports and other legislative history for various bills that amended or sought to amend the California Environmental Quality Act ("CEQA"); and (3) files from state regulatory agencies pertaining to those agencies' modification of the CEQA Guidelines.

These materials are relevant because they demonstrate that the Legislature intended for CEQA to require agencies to analyze the environmental impacts caused by attracting project residents or users to adverse environmental conditions. They also demonstrate that the agency tasked with carrying out CEQA has long interpreted the law to require that agencies undertake this analysis. With the exception of Exhibit Q, the documents do not relate to proceedings occurring after the trial court's judgment. The Air District did not present these documents to the trial court because that court did not need to reach the issue now before this Court to rule on the claims before it. However, this Court has asked the

parties to address the broad issue of CEQA's scope, and this Court is not bound by prior Court of Appeal decisions (e.g., *Baird v. County of Contra Costa* (1995) 32 Cal.App.4th 1464) that pertain to the question presented. Accordingly, the legislative and regulatory history documents attached to this motion are now relevant to the case and are the subject of proper judicial notice.

Pursuant to Evidence Code sections 452(b) and (c), courts may take judicial notice of the official acts of the legislative, executive and judicial departments of any State of the United States, as well as "[r]egulations and legislative enactments issued by . . . any public entity in the United States." A court may also take judicial notice of official acts including records and files of state administrative agencies. *Id.*; *Harris v. Alcoholic Beverage Control Appeals Bd.* (1965) 62 Cal.2d 589, 595-96; *Fowler v. Howell* (1996) 42 Cal.App.4th 1746, 1750. In particular, courts have taken judicial notice of a wide variety of legislative history material, including enrolled bill reports, reports of the Legislative Analyst, Legislative committee reports, Legislative Counsel's Digest reports, official commission reports (*e.g.*, California Law Revision Commission), and statements by bill proponents, opponents and sponsors communicated to the Legislature as a whole. *Kaufman & Broad Communities, Inc. v. Performance Plastering, Inc.* (2005) 133 Cal.App.4th 26, 31-39 (providing comprehensive list of cases that took judicial notice of various types of legislative history

material); *Communities for Green Foothills v. Santa Clara County Board of Supervisors* (2010) 48 Cal.4th 32, 49-50 (the Court will take judicial notice of enrolled bill reports when interpreting CEQA and will rely in particular on material "prepared by the Governor's Office of Planning and Research, which has special expertise in interpreting the CEQA statutes").

The Air District seeks notice of the following specific documents:

Exhibit A: Relevant sections of the CEQA Guidelines as they existed in 1979. Judicial notice of this document is appropriate under Evidence Code section 452, subsection (b) as "[r]egulations and legislative enactments issued by . . . any public entity in the United States."

Exhibit B: Relevant sections of two Appendices to the CEQA Guidelines as they existed in 1979. Judicial notice of this document is appropriate under Evidence Code section 452, subsection (b) as "[r]egulations and legislative enactments issued by . . . any public entity in the United States."

Exhibit C: Text of 1982 amendments to the CEQA Guidelines, along with the California Natural Resources Agency's discussion of the revisions. Judicial notice of this document is appropriate under Evidence Code section 452, subsection (b) as "[r]egulations and legislative

enactments issued by . . . any public entity in the United States." Judicial notice is also appropriate under Evidence Code section 452, subsections (c) and (h) because it constitutes an official act of a state agency and because it is not reasonably subject to dispute.

Exhibit D: Relevant sections of the CEQA Guidelines as they existed in in 1997 (prior to 1998 amendments). Judicial notice of this document is appropriate under Evidence Code section 452, subsection (b) as "[r]egulations and legislative enactments issued by . . . any public entity in the United States."

Exhibit E: Relevant sections of the CEQA Guidelines as they were amended in 1998 and published in 1999. Judicial notice of this document is appropriate under Evidence Code section 452, subsection (b) as "[r]egulations and legislative enactments issued by . . . any public entity in the United States."

Exhibit F: A document from the California Natural Resources Agency's rulemaking file containing the Agency's response to a comment related to its 1982 revisions to the CEQA Guidelines. Judicial notice of this document is appropriate under Evidence Code section 452, subsections (c)

and (h) because it constitutes an official act of a state agency and because it is not reasonably subject to dispute.

Exhibit G: Department of General Services Bill Analysis, Assembly Bill No. 2583, Stats. 1984 (Reg. Sess.). Judicial notice of this document is appropriate under Evidence Code section 452, subsections (c) and (h) because it constitutes an official act of a state agency and because it is not reasonably subject to dispute.

Exhibit H: Relevant excerpts from A Report to the Assembly Committee on Natural Resources by the Committee on the Environment of the State Bar of California, entitled "The California Environmental Quality Act: Recommendations for Legislative and Administrative Change," Dec., 1983. Judicial notice of this document is appropriate under Evidence Code section 452, subsections (c) and (h) because it constitutes an official act of a state judicial agency and because it is not reasonably subject to dispute. The report was drafted by the Committee on the Environment of the State Bar of California, and the State Bar is a public corporation within the judicial branch of California's government, serving as an arm of the California Supreme Court. *See* http://www.calbar.ca.gov/AboutUs/StateBarOverview.aspx. Courts routinely take judicial notice of official Commission reports such as this

which form the basis for enacted legislation. *Kaufman & Broad Communities, Inc. v. Performance Plastering, Inc.* (2005) 133 Cal.App.4th 26, 36 (citing numerous cases).

Exhibit I: Final chaptered language of Assembly Bill No. 2583, Stats. 1984 (Reg. Sess.). Judicial notice of this document is appropriate under Evidence Code section 452, subsection (b) as "[r]egulations and legislative enactments issued by . . . any public entity in the United States."

Exhibit J: Governor's Office of Planning and Research, Enrolled Bill Report, Senate Bill No. 1453, Stats. 1994 (Reg. Sess.). Judicial notice of this document is appropriate under Evidence Code section 452, subsections (c) and (h) because it constitutes an official act of a state agency and because it is not reasonably subject to dispute.

Exhibit K: Resources Agency, Enrolled Bill Report, Senate Bill No. 1453, Stats. 1994 (Reg. Sess.). Judicial notice of this document is appropriate under Evidence Code section 452, subsections (c) and (h) because it constitutes an official act of a state agency and because it is not reasonably subject to dispute.

Exhibit L: Department of Finance, Bill Analysis, Enrolled Bill Report, Senate Bill No. 1453, Stats. 1994 (Reg. Sess.). Judicial notice of this document is appropriate under Evidence Code section 452, subsections (c) and (h) because it constitutes an official act of a state agency and because it is not reasonably subject to dispute.

Exhibit M: Legislative Counsel's Digest, Senate Bill No. 1453, Stats. 1994 (Reg. Sess.). Judicial notice of this document is appropriate under Evidence Code section 452, subsections (c) and (h) because it constitutes an official act of a state agency and because it is not reasonably subject to dispute.

Exhibit N: Enrolled Bill Report, Senate Bill No. 2262, Stats. 1990 (Reg. Sess.). Judicial notice of this document is appropriate under Evidence Code section 452, subsections (c) and (h) because it constitutes an official act of a state agency and because it is not reasonably subject to dispute.

Exhibit O: Senate Transportation & Housing Committee Bill Analysis, Senate Bill No. 375, Stats 1997 (Reg. Sess.). Available at http://leginfo.ca.gov/pub/07-08/bill/sen/sb_0351-0400/sb_375_cfa_20070425_115133_sen_comm.html. Judicial notice of

this document is appropriate under Evidence Code section 452, subsections (c) and (h) because it constitutes an official act of a state agency and because it is not reasonably subject to dispute.

Exhibit P: Assembly Committee on Agriculture Bill Analysis, Senate Bill No. 226, Stats 2011 (Reg. Sess.). Available at http://leginfo.ca.gov/pub/11-12/bill/sen/sb_0201-0250/sb_226_cfa_20110824_123735_asm_comm.html. Judicial notice of this document is appropriate under Evidence Code section 452, subsections (c) and (h) because it constitutes an official act of a state agency and because it is not reasonably subject to dispute.

Exhibit Q: Senate Rules Committee Bill Analysis, Senate Bill 617, Stats 2013 (Reg. Sess.). Available at http://www.leginfo.ca.gov/pub/13-14/bill/sen/sb_0601-0650/sb_617_cfa_20130528_210612_sen_floor.html. Judicial notice of this document is appropriate under Evidence Code section 452, subsections (c) and (h) because it constitutes an official act of a state agency and because it is not reasonably subject to dispute.

Exhibit R: California Natural Resources Agency, Final Statement of Reasons for Regulatory Action, Amendments to the State CEQA

Guidelines Addressing Analysis and Mitigation of Greenhouse Gas Emissions Pursuant to SB 97, December, 2009. Available at www.ceres.ca.gov/ceqa/docs/Final_Statement_of_Reasons.pdf. Judicial notice of this document is appropriate under Evidence Code section 452, subsections (c) and (h) because it constitutes an official act of a state agency and because it is not reasonably subject to dispute.

Exhibit S: California Natural Resources Agency, Responses to Public Comments pertaining to its regulatory amendments to the State CEQA Guidelines Addressing Analysis and Mitigation of Greenhouse Gas Emissions Pursuant to SB 97, August, 2009. Available at http://ceres.ca.gov/ceqa/docs/summaries_and_responses_to_public_comments_july-august/Letter_13_-_American_Planning_Association_CA_Chapter_-_Response.pdf. Judicial notice of this document is appropriate under Evidence Code section 452, subsections (c) and (h) because it constitutes an official act of a state agency and because it is not reasonably subject to dispute.

Because all of the attached exhibits are subject to judicial notice, we request that the Court grant this motion.

DATED: February 24, 2014 SHUTE, MIHALY & WEINBERGER LLP

By: _____

ELLISON FOLK
ERIN B. CHALMERS

Attorneys for Defendant and Appellant
BAY AREA AIR QUALITY
MANAGEMENT DISTRICT

567177.2

I, Ellison Folk, declare as follows:

1. I am a member of the State Bar of California, and I am an attorney with the law firm of Shute, Mihaly & Weinberger, attorneys for Defendant and Appellant Bay Area Air Quality Management District. I make this declaration in support of the Air District's attached Motion for Judicial Notice.

2. I have personal knowledge of the matters set forth in this declaration, and if called upon to testify to those matters, I could and would so testify.

3. True and correct copies of the following documents for which the Air District

is requesting judicial notice are attached to this motion as follows:

(a) Exhibit A: Relevant sections of the CEQA Guidelines as they existed in 1979.

(b) Exhibit B: Appendix G and Appendix I to the CEQA Guidelines as they existed in 1979.

(c) Exhibit C: A document issued by the California Natural Resources Agency that includes the final regulatory language from the Agency's 1982 amendments to the CEQA Guidelines, along with the Agency's discussion of the revisions.

(d) Exhibit D: Relevant sections of the CEQA Guidelines as they existed in in 1997 (prior to 1998 amendments).

(e) Exhibit E: Relevant sections of the CEQA Guidelines as they were amended in 1998 and published in 1999.

(f) Exhibit F: A document from the California Natural Resources Agency's rulemaking file containing the Agency's response to a comment related to its 1982 revisions to the CEQA Guidelines.

(g) Exhibit G: Department of General Services Bill Analysis, Assembly Bill No. 2583, Stats. 1984 (Reg. Sess.).

(h) Exhibit H: Relevant Excerpts from A Report to the Assembly Committee on Natural Resources by the Committee on the Environment of the State Bar of California entitled "The California Environmental Quality Act: Recommendations for Legislative and Administrative Change," Dec., 1983.

(i) Exhibit I: Final chaptered language of Assembly Bill No. 2583, Stats. 1984 (Reg. Sess.).

(j) Exhibit J: Governor's Office of Planning and Research, Enrolled Bill Report, Senate Bill No. 1453, Stats. 1994 (Reg. Sess.).

(k) Exhibit K: Resources Agency, Enrolled Bill Report, Senate Bill No. 1453, Stats. 1994 (Reg. Sess.).

(l) Exhibit L: Department of Finance, Bill Analysis, Enrolled Bill Report, Senate Bill No. 1453, Stats. 1994 (Reg. Sess.).

(m) Exhibit M: Legislative Counsel's Digest, Senate Bill No. 1453, Stats. 1994 (Reg. Sess.).

(n) Exhibit N: Enrolled Bill Report, Senate Bill No. 2262, Stats. 1990 (Reg. Sess.).

(o) Exhibit O: Senate Transportation & Housing Committee Bill Analysis, Senate Bill No. 375, Stats 1997 (Reg. Sess.).

(p) Exhibit P: Assembly Committee on Agriculture Bill Analysis, Senate Bill No. 226, Stats 2011 (Reg. Sess.).

(q) Exhibit Q: Senate Rules Committee Bill Analysis, Senate Bill 617, Stats 2013 (Reg. Sess.).

(r) Exhibit R: California Natural Resources Agency, Final Statement of Reasons for Regulatory Action, Amendments to the State CEQA Guidelines Addressing Analysis and Mitigation of Greenhouse Gas Emissions Pursuant to SB 97, December, 2009.

(s) Exhibit S: California Natural Resources Agency, Responses to Public Comments pertaining to its regulatory amendments to the State CEQA Guidelines Addressing Analysis and Mitigation of Greenhouse Gas Emissions Pursuant to SB 97, August, 2009.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on February 24, 2014.

ELLISON FOLK

EXHIBIT A

CHAPTER 3. GUIDELINES FOR IMPLEMENTATION OF THE CALIFORNIA ENVIRONMENTAL QUALITY ACT OF 1970

(State EIR Guidelines)
(Originally printed 2-10-73)

Detailed Analysis

Article 1. General

Article 2. Purpose

Article 3. Policy

Article 4. Definitions

(d) **Uses.** (1) The Initial Study shall be used to provide a written determination of whether a Negative Declaration or an EIR shall be prepared for a project.

(2) Where a project is revised in response to an Initial Study so that potential adverse effects are mitigated to a point where no significant environmental effects would occur, a Negative Declaration shall be prepared instead of an EIR. If the project would still result in one or more significant effects on the environment after mitigation measures are added to the project, an EIR shall be prepared.

(3) The EIR shall emphasize study of the impacts determined to be significant and can omit further examination of those impacts found to be clearly insignificant in the Initial Study.

(e) **Submission of Data.** If the project is to be carried out by a private person or private organization, the Lead Agency may require such person or organization to submit data and information which will enable the Lead Agency to prepare the Initial Study.

(f) **Format.** Sample forms for an applicant's project description and a review form for use by the Lead Agency are contained in Appendices H and I. When used together, these forms would meet the requirements for an Initial Study. These forms are only suggested, and public agencies are free to devise their own format for an Initial Study.

(g) **Consultation.** As soon as a Lead Agency has determined that a project is not exempt and that an initial study will be required to determine whether a Negative Declaration or an EIR is required, the Lead Agency shall consult with all Responsible Agencies as required by Section 15066(b).

History: 1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).
2. Amendment filed 1-3-75; designated effective 4-1-75 (Register 75, No. 1).
3. Amendment filed 10-8-76; effective thirtieth day thereafter (Register 76, No. 41). Note: Order designated that compliance with this amendment is authorized but not mandatory before 1-1-77.
4. New subsection (g) filed 2-2-78; effective thirtieth day thereafter (Register 78, No. 5).

15081. Determining Significant Effect. (a) The determination of whether a project may have a significant effect on the environment calls for careful judgment on the part of the public agency involved, based to the extent possible on scientific and factual data. An iron clad definition of significant effect is not possible because the significance of an activity may vary with the setting. For example, an activity which may not be significant in an urban area may be significant in a rural area. There may be a difference of opinion on whether a particular effect should be considered adverse or beneficial, but where there is, or anticipated to be, a substantial body of opinion that considers or will consider the effect to be adverse, the lead agency should prepare an EIR to explore the environmental effects involved.

(b) In evaluating the significance of the environmental effect of a project, the Lead Agency shall consider both primary or direct and secondary or indirect consequences. Primary consequences are immediately related to the project (the construction of a new treatment plant may facilitate population growth in a particular area), while secondary consequences are related more to primary consequences than to the project itself (an impact upon the resource base, including land, air, water and energy use of the area in question may result from the population growth).

(c) Some examples of consequences which may be deemed to be a significant effect on the environment are contained in Appendix G.

History: 1. Amendment of subsection (c) filed 10-8-76; effective thirtieth day thereafter (Register 76, No 41). Note: Order designated that compliance with this amendment is authorized but not mandatory before 1-1-77. For prior history, see Register 75, No. 44.

15082. Mandatory Findings of Significance. A project shall be found to have a significant effect on the environment if:

(a) The project has the potential to degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of a rare or endangered plant or animal, or eliminate important examples of the major periods of California history or prehistory.

(b) The project has the potential to achieve short-term environmental goals to the disadvantage of long-term environmental goals.

(c) The project has possible environmental effects which are individually limited but cumulatively considerable. As used in the subsection, "cumulatively considerable" means that the incremental effects of an individual project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.

(d) The environmental effects of a project will cause substantial adverse effects on human beings, either directly or indirectly.

History: 1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).
2. Amendment filed 10-8-76; effective thirtieth day thereafter (Register 76, No. 41). Note: Order designated that compliance with this amendment is authorized but not mandatory before 1-1-77.

15083. Negative Declaration. (a) **General.** A Negative Declaration shall be prepared for a project which could potentially have a significant effect on the environment, but which the Lead Agency finds on the basis of an Initial Study will not have a significant effect on the environment.

(b) **Consultation.** Before completing a Negative Declaration, the Lead Agency shall consult with all Responsible Agencies pursuant to Section 15066. This consultation may take place during the public review period required by Subsection (e) of this section.

EXHIBIT B

Appendix G

SIGNIFICANT EFFECTS

A project will normally have a significant effect on the environment if it will:

(a) Conflict with adopted environmental plans and goals of the community where it is located;

(b) Have a substantial, demonstrable negative aesthetic effect;

(c) Substantially affect a rare or endangered species of animal or plant or the habitat of the species;

(d) Interfere substantially with the movement of any resident or migratory fish or wildlife species;

(e) Breach published national, state, or local standards relating to solid waste or litter control;

(f) Substantially degrade water quality;

(g) Contaminate a public water supply;

(h) Substantially degrade or deplete ground water resources;

(i) Interfere substantially with ground water recharge;

(j) Disrupt or alter an archaeological site over 200 years old, an historic site or a paleontological site except as part of a scientific study of the site;

(k) Induce substantial growth or concentration of population;

(l) Cause an increase in traffic which is substantial in relation to the existing traffic load and capacity of the street system;

(m) Displace a large number of people;

(n) Encourage activities which result in the use of large amounts of fuel, water, or energy;

(o) Use fuel, water, or energy in a wasteful manner;

(p) Increase substantially the ambient noise levels for adjoining areas;

(q) Cause substantial flooding, erosion or siltation;

(r) Expose people or structures to major geologic hazards;

(s) Extend a sewer trunk line with capacity to serve new development;

(t) Substantially diminish habitat for fish, wildlife or plants;

(u) Disrupt or divide the physical arrangement of an established community;

(v) Create a public health hazard or a potential public health hazard;

(w) Conflict with established recreational, educational, religious or scientific uses of the area;

(x) Violate any ambient air quality standard, contribute substantially to an existing or projected air quality violation, or expose sensitive receptors to substantial pollutant concentrations.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21000–21176, Public Resources Code.

History: 1. New Appendix G filed 10-8-76; effective thirtieth day thereafter (Register 76, No 41). Note: Order designated that compliance with this appendix is authorized but not mandatory before 1-1-77.

2. Amendment of subsections (n) and (o) filed 2-2-78; effective thirtieth day thereafter (Register 78, No. 5).

Appendix I

ENVIRONMENTAL CHECKLIST FORM

(To be completed by Lead Agency)

I. BACKGROUND.

1. Name of Proponent _____
2. Address and Phone Number of Proponent:

_____

_____

_____

3. Date of Checklist Submitted _____
4. Agency Requiring Checklist _____
5. Name of Proposal, if applicable _____

_____

II. ENVIRONMENTAL IMPACTS

(Explanations of all "yes" and "maybe" answers are required on attached sheets.)

	YES	MAYBE	NO
1. **Earth.** Will the proposal result in:			
a. Unstable earth conditions or in changes in geologic substructures?	___	___	___
b. Disruptions, displacements, compaction or overcovering of the soil?	___	___	___
c. Change in topography or ground surface relief features?	___	___	___
d. The destruction, covering or modification of any unique geologic or physical features?	___	___	___
e. Any increase in wind or water erosion of soils, either on or off the site?	___	___	___
f. Changes in deposition or erosion of beach sands, or changes in siltation, deposition or erosion which may modify the channel of a river or stream or the bed of the ocean or any bay, inlet or lake?	___	___	___
g. Exposure of people or property to geologic hazards such as earthquakes, [illegible], mudslides, ground failure, or similar hazards?			
2. **Air.** Will the proposal result in:			
a. Substantial air emissions or deterioration of ambient air quality?	___	___	___
b. The creation of objectionable odors?	___	___	___
c. Alteration of air movement, moisture or temperature, or any change in climate, either locally or regionally?	___	___	___
3. **Water.** Will the proposal result in:			
a. Changes in currents, or the course or direction of water movements, in either marine or fresh waters?	___	___	___
b. Changes in absorption rates, drainage patterns or the rate and amount of surface water runoff?	___	___	___
c. Alterations to the course or flow of flood waters?	___	___	___
d. Change in the amount of surface water in any water body?	___	___	___

	YES	MAYBE	NO
e. Discharge into surface waters, or in any alteration of surface water quality, including but not limited to temperature, dissolved oxygen or turbidity?	___	___	___
f. Alteration of the direction or rate of flow of ground waters?	___	___	___
g. Change in the quantity of ground waters, either through direct additions or withdrawals, or through interception of an aquifer by cuts or excavations?	___	___	___
h. Substantial reduction in the amount of water otherwise available for public water supplies?	___	___	___
i. Exposure of people or property to water related hazards such as flooding or tidal waves?	___	___	___
4. **Plant Life.** Will the proposal result in:			
a. Change in the diversity of species, or number of any species of plants (including trees, shrubs, grass, crops, and aquatic plants)?	___	___	___
b. Reduction of the numbers of any unique, rare or endangered species of plants?	___	___	___
c. Introduction of new species of plants into an area, or in a barrier to the normal replenishment of existing species?	___	___	___
d. Reduction in acreage of any agricultural crop?	___	___	___
5. **Animal Life.** Will the proposal result in:			
a. Change in the diversity of species, or numbers of any species of animals (birds, land animals including reptiles, fish and shellfish, benthic organisms or insects)?	___	___	___
b. Reduction of the numbers of any unique, rare or endangered species of animals?	___	___	___
c. Introduction of new species of animals into an area, or result in a barrier to the migration or movement of animals?	___	___	___
d. Deterioration to existing fish or wildlife habitat?	___	___	___
6. **Noise.** Will the proposal result in:			
a. Increases in existing noise levels?	___	___	___
b. Exposure of people to severe noise levels?	___	___	___
7. **Light and Glare.** Will the proposal produce new light or glare?	___	___	___
8. **Land Use.** Will the proposal result in a substantial alteration of the present or planned land use of an area?	___	___	___
9. **Natural Resources.** Will the proposal result in:			
a. Increase in the rate of use of any natural resources?	___	___	___
b. Substantial depletion of any nonrenewable natural resource?	___	___	___
10. **Risk of Upset.** Does the proposal involve a risk of an explosion or the release of hazardous substances (including, but not limited to, oil, pesticides, chemicals or radiation) in the event of an accident or upset conditions?	___	___	___

	YES	MAYBE	NO
11. **Population.** Will the proposal alter the location, distribution, density, or growth rate of the human population of an area?	___	___	___
12. **Housing.** Will the proposal affect existing housing, or create a demand for additional housing?	___	___	___
13. **Transportation/Circulation.** Will the proposal result in:			
a. Generation of substantial additional vehicular movement?	___	___	___
b. Effects on existing parking facilities, or demand for new parking?	___	___	___
c. Substantial impact upon existing transportation systems?	___	___	___
d. Alterations to present patterns of circulation or movement of people and/or goods?	___	___	___
e. Alterations to waterborne, rail or air traffic?	___	___	___
f. Increase in traffic hazards to motor vehicles, bicyclists or pedestrians?			
14. **Public Services.** Will the proposal have an effect upon, or result in a need for new or altered governmental services in any of the following areas:			
a. Fire protection?	___	___	___
b. Police protection?	___	___	___
c. Schools?	___	___	___
d. Parks or other recreational facilities?	___	___	___
e. Maintenance of public facilities, including roads?			
f. Other governmental services?	___	___	___
15. **Energy.** Will the proposal result in:			
a. Use of substantial amounts of fuel or energy?	___	___	___
b. Substantial increase in demand upon existing sources of energy, or require the development of new sources of energy?	___	___	___
16. **Utilities.** Will the proposal result in a need for new systems, or substantial alterations to the following utilities:			
a. Power or natural gas?	___	___	___
b. Communications systems?	___	___	___
c. Water?	___	___	___
d. Sewer or septic tanks?	___	___	___
e. Storm water drainage?	___	___	___
f. Solid waste and disposal?	___	___	___
17. **Human Health.** Will the proposal result in:			
a. Creation of any health hazard or potential health hazard (excluding mental health)?	___	___	___
b. Exposure of people to potential health hazards?	___	___	___
18. **Aesthetics.** Will the proposal result in the obstruction of any scenic vista or view open to the public, or will the proposal result in the creation of an aesthetically offensive site open to public view?	___	___	___

	YES	MAYBE	NO
19. **Recreation.** Will the proposal result in an impact upon the quality or quantity of existing recreational opportunities?	___	___	___
20. **Archeological/Historical.** Will the proposal result in an alteration of a significant archeological or historical site, structure, object or building?	___	___	___
21. **Mandatory Findings of Significance.**			
(a) Does the project have the potential to degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of a rare or endangered plant or animal or eliminate important examples of the major periods of California history or prehistory?	___	___	___
b. Does the project have the potential to achieve short-term, to the disadvantage of long-term, environmental goals? (A short-term impact on the environment is one which occurs in a relatively brief, definitive period of time while long-term impacts will endure well into the future.)	___	___	___
c. Does the project have impacts which are individually limited, but cumulatively considerable? (A project may impact on two or more separate resources where the impact on each resource is relatively small, but where the effect of the total of those impacts on the environment is significant.)	___	___	___
d. Does the project have environmental effects which will cause substantial adverse effects on human beings, either directly or indirectly?	___	___	___

III. DISCUSSION OF ENVIRONMENTAL EVALUATION

IV. DETERMINATION
(To be completed by the Lead Agency)

On the basis of this initial evaluation:

☐ I find the proposed project COULD NOT have a significant effect on the environment, and a NEGATIVE DECLARATION will be prepared.

☐ I find that although the proposed project could have a significant effect on the environment, there will not be a significant effect in this case because the mitigation measures described on an attached sheet have been added to the project. A NEGATIVE DECLARATION WILL BE PREPARED.

☐ I find the proposed project MAY have a significant effect on the environment, and an ENVIRONMENTAL IMPACT REPORT is required.

Date _____ _____
(Signature)

For _____

(Note: This is only a suggested form. Public agencies are free to devise their own format for initial studies.)

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21000-21176, Public Resources Code.

History: 1. New Appendix I filed 10-8-76; effective thirtieth day thereafter (Register 76, No. 41). Note: Order designated that compliance with this appendix is authorized but not mandatory before 1-1-77.
2. Amendment filed 2-2-78; effective thirtieth day thereafter (Register 78, No. 5).

EXHIBIT C

Text of Adopted Amendments with Statement of Reasons

Amendments to the State CEQA Guidelines

1. The title of Chapter 3, Division 6, Title 14 of the California Administrative Code is amended to read:

CHAPTER 3. GUIDELINES FOR IMPLEMENTATION OF THE CALIFORNIA ENVIRONMENTAL QUALITY ACT OF 1970.

Discussion of Change in Title

The change in the title is a technical change to match the change in the title of the statute. Originally, the name given to the CEQA statute was the "Environmental Quality Act of 1970". This was still the name of the Act when the guidelines were first adopted in 1973. The name of the statute was changed by the Legislature in 1976 to the "California Environmental Quality Act" to match the commonly used name for the statute. This amendment brings the title of the guidelines into conformity with the title of the statute.

2. Article 1 of Chapter 3 is amended to read:

Article 1. General

15000. AUTHORITY. The regulations contained in this chapter herein are prescribed by the Secretary for Resources pursuant to authority granted in Public Resources Sections 21083 and 21087 to be followed by all state agencies, boards and commissions in the implementation of the California Environmental Quality Act. of 1970 declaring it the policy and the preparation and evaluation of environmental impact reports These Guidelines have been developed by the Office of Planning and Research for adoption by the Secretary for Resources in accordance with Section 21083. Additional information may be obtained by writing:

Secretary for Resources
Room 1311, 1416 Ninth Street
Sacramento, CA 95814

These Guidelines are binding on all public agencies in California.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code; Reference: Sections 21082, 21083, and 21087, Public Resources Code; City of Santa Ana v. City of Garden Grove, (1979) 100 Cal. App. 3d 521.

NOTE TO REVIEWERS: A vertical line in the margin indicates a change in or an addition to the draft of proposed amendments that accompanied the July 9, 1982 notice. A check in the margin indicates a deletion.

Subsection (c) is added to codify the latest addition to the case law concerning the environmental setting. The decision in Environmental Information and Planning Council v. County of El Dorado (1982) 131 Cal. App. 3d 350, said that in comparing an old general plan with a new county general plan that would allow less growth than the old plan, the EIR had to address the existing level of actual physical development in the county as the base line for the comparison. The two plans could not be compared with each other without showing how they would relate to the existing level of development. Adding this provision will help other agencies take an approach consistent with case law and protected from legal challenge.

15126. ENVIRONMENTAL IMPACT. All phases of a project must be considered when evaluating its impact on the environment: planning, acquisition, development, and operation. The following subjects shall be discussed, preferably in separate sections or paragraphs. If they are not discussed separately, the EIR shall include a table showing where each of the subjects is discussed.

(a) THE SIGNIFICANT ENVIRONMENTAL EFFECTS OF THE PROPOSED PROJECT. An EIR shall identify and focus on the significant environmental effects of the proposed project. Direct and indirect significant effects of the project on the environment shall be clearly identified and described, giving due consideration to both the short-term and long-term effects. The discussion should include relevant specifics of the area, the resources involved, physical changes, alterations to ecological systems, and changes induced in population distribution, population concentration, the human use of the land (including commercial and residential development), health and safety problems caused by the physical changes, and other aspects of the resource base such as water, scenic quality, and public services. The EIR shall also analyze any significant environmental effects the project might cause by bringing development and people into the area affected. For example, an EIR on a subdivision astride an active fault line should identify as a significant effect the seismic hazard to future occupants of the subdivision. The subdivision would have the effect of attracting people to the location and exposing them to the hazards found there.

(b) ANY SIGNIFICANT ENVIRONMENTAL EFFECTS WHICH CANNOT BE AVOIDED IF THE PROPOSAL IS IMPLEMENTED. Describe any significant impacts, including those which can be mitigated but not reduced to a level of insignificance. Where there are impacts that cannot be alleviated without imposing an alternative design, their implications and the reasons why the project is being proposed, notwithstanding their effect, should be described.

(c) MITIGATION MEASURES PROPOSED TO MINIMIZE THE SIGNIFICANT EFFECTS. Describe measures which could minimize significant adverse impacts, including where relevant, inefficient and unnecessary consumption of energy. The discussion of mitigation measures shall distinguish between the measures which are proposed by project proponents to be included in the project and other measures that are not included but could reasonably be expected to reduce adverse impacts if required as conditions of approving the project. This discussion shall identify mitigation measures for each significant environmental effect identified in the EIR. Where several measures are available to mitigate an impact, each should be discussed and the basis for

selecting a particular measure should be identified if one has been selected. Energy conservation measures, as well as other appropriate mitigation measures, shall be discussed when relevant. Examples of energy conservation measures are provided in Appendix F. If a mitigation measure would cause one or more significant effects in addition to those that would be caused by the project as proposed, the effects of the mitigation measure shall be discussed but in less detail than the significant effects of the project as proposed. (Stevens v. City of Glendale, 125 Cal. App. 3d 986).

(d) ALTERNATIVES TO THE PROPOSED ACTION. Describe a range of reasonable alternatives to the project, or to the location of the project, which could feasibly attain the basic objectives of the project and evaluate the comparative merits of the alternatives.

(1) If there is a specific proposed project or a preferred alternative, explain why the other alternatives were rejected in favor of the proposal if they were considered in developing the proposal.

(2) The specific alternative of "no project" shall also be evaluated along with the impact. If the environmentally superior alternative is the "no project" alternative, the EIR shall also identify an environmentally superior alternative among the other alternatives.

(3) The discussion of alternatives shall focus on alternatives capable of eliminating any significant adverse environmental effects or reducing them to a level of insignificance, even if these alternatives would impede to some degree the attainment of the project objectives, or would be more costly.

(4) If an alternative would cause one or more significant effects in addition to those that would be caused by the project as proposed, the significant effects of the alternative shall be discussed but in less detail than the significant effects of the project as proposed. (County of Inyo v. City of Los Angeles, 124 Cal. App. 3d 1).

(5) The range of alternatives required in an EIR is governed by "rule of reason" that requires the EIR to set forth only those alternatives necessary to permit a reasoned choice. The key issue is whether the selection and discussion of alternatives fosters informed decision-making and informed public participation. An EIR need not consider an alternative whose effect cannot be reasonably ascertained and whose implementation is remote and speculative. (Residents Ad Hoc Stadium Committee v. Board of Trustees (1979) 89 Cal. App. 3d 274).

(e) THE RELATIONSHIP BETWEEN LOCAL SHORT-TERM USES OF MAN'S ENVIRONMENT AND THE MAINTENANCE AND ENHANCEMENT OF LONG-TERM PRODUCTIVITY. Describe the cumulative and long-term effects of the proposed project which adversely affect the state of the environment. Special attention should be given to impacts which narrow the range of beneficial uses of the environment or pose long-term risks to health or safety. In addition, the reasons why the proposed project is believed by the sponsor to be justified now, rather than reserving an option for further alternatives, should be explained.

(f) ANY SIGNIFICANT IRREVERSIBLE ENVIRONMENTAL CHANGES WHICH WOULD BE INVOLVED IN THE PROPOSED ACTION SHOULD IT BE IMPLEMENTED. Uses of nonrenewable resources during the initial and continued phases of the project may be irreversible since a large commitment of such resources makes removal or nonuse thereafter unlikely. Primary impacts and, particularly, secondary impacts (such as highway improvement which provides access to a previously inaccessible area) generally commit future generations to similar uses. Also irreversible damage can result from environmental accidents associated with the project. Irretrievable commitments of resources should be evaluated to assure that such current consumption is justified.

(g) THE GROWTH-INDUCING IMPACT OF THE PROPOSED ACTION. Discuss the ways in which the proposed project could foster economic or population growth, or the construction of additional housing, either directly or indirectly, in the surrounding environment. Included in this are projects which would remove obstacles to population growth (a major expansion of a waste water treatment plant might, for example, allow for more construction in service areas). Increases in the population may further tax existing community service facilities so consideration must be given to this impact. Also discuss the characteristic of some projects which may encourage and facilitate other activities that could significantly affect the environment, either individually or cumulatively. It must not be assumed that growth in any area is necessarily beneficial, detrimental, or of little significance to the environment.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code; Reference: Section 21100, Public Resources Code.
Formerly Section 15143.

Discussion of Section 15126

This section is necessary to provide guidance on how to deal with the seven points of analysis in the EIR. Subsection (a) is modified from the existing section to require both the draft and final EIRs to identify significant effects. This change to the existing regulations is necessary because some agencies have directed their EIR writers not to label effects as significant. These agencies have believed that the determination of significance is the exclusive role of the decision-making body. That approach appears to be mistaken because the Legislature requires the EIR to discuss the significant effects of the project. Because CEQA requires an EIR to analyze the significant effects of a project, the selection of an impact for analysis is at least by implication an identification as significant. This selection and identification occurs long before the EIR reaches the decision-makers. Further, the lead agency is required to make a finding on each significant effect identified in the EIR. The decision-making body is not necessarily bound by the designation of an effect as significant in the EIR. The decision-making body can rule that an effect is not significant, but the decision-makers would need to have a reason in the record to support their change. As shown in the case of Cleary v. County of Stanislaus, 118 Cal. App. 3d 327, if the decision-making body does not make a change in the designation of an effect as significant in the EIR, the decision-makers will be bound by that designation and will need to make a finding on the feasibility of mitigating that effect.

A second change to Subsection (a) shows that the EIR must analyze effects on future developments built as part of the project and the effects on people who would occupy the project. This language responds to the ongoing debate over whether the EIR should be limited to examining effects on the pre-existing environment. The Resources Agency has maintained that the EIR should not be limited to examining only the pre-existing environment. As shown in Public Resources Code Section 21083(c), the Legislature had a concern about adverse effects which projects may have on human beings. Accordingly, the guidelines declare that if a project would have the effect of attracting people to a location where the people would be exposed to environmental hazards, or disagreeable conditions, that attraction and the resulting exposure must be seen as a significant effect of the project. An example would be building a residential project in a low lying area of the coast exposed to tsunamis. The residential project would not cause an adverse effect on the tsunamis. Locating the project there would expose the new residents to dangers of death and property damage if a tsunami were to hit the area. This exposure would probably be found to be a significant effect and would require analysis in an EIR. This interpretation should lay to rest the artificial distinction which some people have tried to draw between the effects of the project on the environment, which they say should be examined, and the effects of the environment on the project which they maintain should not be examined. The Resources Agency believes that the artificial distinction should be abandoned and that the EIR should examine environmental effects in both situations.

The discussion of mitigation measures is modified so that it is not limited to dealing with avoidable significant effects. The discussion may include mitigation measures that could minimize but not completely avoid significant effects. Further, discussion is not limited to mitigation measures which would substantially reduce a significant effect. This will leave agencies with the ability to select mitigation measures from the EIR to minimize effects even if individual measures do not make a substantial reduction. Several minor mitigation measures together could possibly make a substantial reduction in a significant effect. This change in the discussion of mitigation measures does not alter the basic requirement to make substantial reductions in the adverse effects of the project where it is feasible to do so.

The discussion of mitigation measures is also modified to require a discussion of significant effects that would be caused by the mitigation. This change responds to the recent court decision of Stevens v. City of Glendale. That case required further public review of an EIR where a mitigation measure adopted by the city had significant effects which had not been analyzed in the draft EIR. The effects of the mitigation could be discussed in less detail than is provided in the analysis of the significant effects that would result from the project as proposed.

A similar change is made with the discussion of alternatives. Again, significant effects which would be caused by the choice of an alternative would need to be discussed to the extent that the effects are different from the project as proposed. This discussion, however, could be provided in less detail than the discussion of the significant effects of the proposal. This change corresponds to requirements in the federal system for a discussion of the environmental effects of alternatives. These federal requirements are part of the legislative history of CEQA. Further, because many projects are subject to both CEQA and NEPA, the requirements of the two acts should be made compatible where possible.

The discussion of alternatives has been expanded to identify standards for an adequate selection analysis of alternatives. The standards were developed in federal court decisions interpreting NEPA and have been followed by California courts interpreting CEQA. Including this information is part of the effort to provide guidance for safe navigation through the CEQA process.

Other parts of this section are continued unchanged from their form in the previous set of guidelines.

15127. LIMITATIONS ON DISCUSSION OF ENVIRONMENTAL IMPACT. The information required by Section 15126(e) concerning short-term uses versus long-term productivity, and (f) concerning irreversible changes, need be included only in EIRs prepared in connection with any of the following activities:

(a) The adoption, amendment, or enactment of a plan, policy, or ordinance of a public agency;

(b) The adoption by a local agency formation commission of a resolution making determinations; or

(c) A project which will be subject to the requirement for preparing an environmental impact statement pursuant to the requirements of the National Environmental Policy Act of 1969.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code; Reference: Section 21100.1, Public Resources Code; 42 U.S.C. 4321-4347. Formerly Section 15143.1.

Discussion of Section 15127

This section identifies the statutory authorization for most EIRs to omit the discussion of short-term uses versus long-term productivity and irreversible environmental changes. The section also identifies the three kinds of activities which must still include those two points of analysis in their EIRs. Although this section repeats a statutory requirement without significant interpretation, it is included here in the interest of completeness of this article and EIR content. If this section were not included many agencies would not find this limitation on EIR contents and would spend unnecessary time and money in conducting the additional two points of analysis.

15128. EFFECTS NOT FOUND TO BE SIGNIFICANT. An EIR shall contain a statement briefly indicating the reasons that various possible significant effects of a project were determined not to be significant and were therefore not discussed in detail in the EIR. Such a statement may be contained in an attached copy of an initial study.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code; Reference: Section 21100, Public Resources Code.
Formerly Section 15143.5.

EXHIBIT D

1998

California Environmental Quality Act

CEQA Guidelines

CELSOC
CONSULTING ENGINEERS AND
LAND SURVEYORS OF CALIFORNIA

protection of the coastal zone, Lake Tahoe Basin, San Francisco Bay, and Santa Monica Mountains.

(c) Where a proposed project is compared with an adopted plan, the analysis shall examine the existing physical conditions as well as the potential future conditions discussed in the plan.

15126. *Consideration and Discussion of* Environmental Impacts.

All phases of a project must be considered when evaluating its impact on the environment: planning, acquisition, development, and operation. The following subjects shall be discussed, preferably in separate sections or paragraphs. If they are not discussed separately, the EIR shall include a table showing where each of the subjects is discussed.

(*a*) The Significant Environmental Effects of the Proposed Project. An EIR shall identify and focus on the significant environmental effects of the proposed project. Direct and indirect significant effects of the project on the environment shall be clearly identified and described, giving due consideration to both the short-term and long-term effects. The discussion should include relevant specifics of the area, the resources involved, physical changes, alterations to ecological systems, and changes induced in population distribution, population concentration, the human use of the land (including commercial and residential development), health and safety problems caused by the physical changes, and other aspects of the resource base such as water, scenic quality, and public services. The EIR shall also analyze any significant environmental effects the project might cause by bringing development and people into the area affected. For example, an EIR on a subdivision astride an active fault line should identify as a significant effect the seismic hazard to future occupants of the subdivision. The subdivision would have the effect of attracting people to the location and exposing them to the hazards found there.

(b) Any Significant Environmental Effects Which Cannot be Avoided if the Proposal is Implemented. Describe any significant impacts, including those which can be mitigated but not reduced to a level of insignificance. Where there are impacts that cannot be alleviated without imposing an alternative design, their implications and the reasons why the project is being proposed, notwithstanding their effect, should be described.

(c) Mitigation Measures Proposed to Minimize the Significant Effects. Describe measures which could minimize significant adverse impacts, including where relevant, inefficient and unnecessary consumption of energy. The discussion of mitigation measures shall distinguish between the measures which are proposed by project proponents to be included in the project and other measures that are not included but could reasonably be expected to reduce adverse impacts if required as conditions of approving the project. This discussion shall identify mitigation measures for each significant environmental effect identified in the EIR. Where several measures are available to mitigate an impact, each should be discussed and the basis for selecting a particular measure should be identified if one has been selected. Energy conservation measures, as well as other appropriate mitigation measures, shall be discussed when relevant. Examples of energy conservation measures are provided in Appendix F. If a mitigation measure would cause one or more significant effects in addition to those that would be caused by the project as proposed, the effects of the mitigation measure shall be discussed but in less detail than the significant effects of the project as proposed. ***(Stevens v. City of Glendale, 125 Cal. App. 3d 986).***

(d) Alternatives to the Proposed Action. Describe a range of reasonable alternatives to the project, or to the location of the project, which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives.

(1) Purpose. Because an EIR must identify ways to mitigate or avoid the significant effects that a project may have on the environment (Public Resources Code Section 21002.1), the discussion of alternatives shall focus on alternatives to the project

Appendix I

Environmental Checklist Form

1. Project Title: _____
2. Lead Agency Name and Address:
_____
_____
_____
3. Contact Person and Phone Number: _____
4. Project Location: _____
5. Project Sponsor's Name and Address: _____
6. General Plan Designation: _____ 7. Zoning: _____
8. Description of Project: (Describe the whole action involved, including but not limited to later phases of the project, and any secondary, support, or off-site features necessary for its implementation. Attach additional sheets if necessary)
_____
_____
_____

9. Surrounding Land Uses and Setting: Briefly describe the project's surroundings:
_____
_____
_____

10. Other public agencies whose approval is required (e.g., permits, financing approval, or participation agreement.)
_____
_____
_____

ENVIRONMENTAL FACTORS POTENTIALLY AFFECTED:

The environmental factors checked below would be potentially affected by this project, involving at least one impact that is a "Potentially Significant Impact" as indicated by the checklist on the following pages.

☐ Land Use and Planning	☐ Transportation/Circulation	☐ Public Services
☐ Population and Housing	☐ Biological Resources	☐ Utilities & Service Systems
☐ Geological Problems	☐ Energy & Mineral Resources	☐ Aesthetics
☐ Water	☐ Hazards	☐ Cultural Resources
☐ Air Quality	☐ Noise	☐ Recreation
☐ Mandatory Findings of Significance		

DETERMINATION

(To be completed by the Lead Agency.)

On the basis of this initial evaluation:

☐ I find that the proposed project COULD NOT have a significant effect on the environment, and a NEGATIVE DECLARATION will be prepared.

☐ I find that although the proposed project could have a significant effect on the environment, there will not be a significant effect in this case because the mitigation measures described on an attached sheet have been added to the project. A NEGATIVE DECLARATION will be prepared.

☐ I find that the proposed project MAY have a significant effect on the environment, and an ENVIRONMENTAL IMPACT REPORT is required.

☐ I find that the proposed project MAY have a significant effect(s) on the environment, but at least one effect 1) has been adequately analyzed in an earlier document pursuant to applicable legal standards, and 2) has been addressed by mitigation measures based on the earlier analysis as described on attached sheets, if the effect is a "potentially significant impact" or "potentially significant unless mitigated." An ENVIRONMENTAL IMPACT REPORT is required, but it must analyze only the effects that remain to be addressed.

☐ I find that although the proposed project could have a significant effect on the environment, there WILL NOT be a significant effect in this case because all potentially significant effects (a) have been analyzed adequately in an earlier EIR pursuant to applicable standards and (b) have been avoided or mitigated pursuant to that earlier EIR, including revisions or mitigation measures that are imposed upon the proposed project.

_____ _____

Signature Date

_____ _____

Printed Name For

EVALUATION OF ENVIRONMENTAL IMPACTS:

1) A brief explanation is required for all answers except "No Impact" answers that are adequately supported by the information sources a lead agency cites in the parentheses following each question. A "No Impact" answer is adequately supported if the referenced information sources show that the impact simply does not apply to projects like the one involved (e.g. the project falls outside a fault rupture zone). A "No Impact" answer should be explained where it is based on project-specific factors as well as general standards (e.g. the project will not expose sensitive receptors to pollutants, based on a project-specific screening analysis).

2) All answers must take account of the whole action involved, including off-site as well as on-site, cumulative as well as project-level, indirect as well as direct, and construction as well as operational impacts.

3) "Potentially Significant Impact" is appropriate if there is substantial evidence that an effect is significant. If there are one or more "Potentially Significant Impact" entries when the determination is made, an EIR is required.

4) "Potentially Significant Unless Mitigation Incorporated" applies where the incorporation of mitigation measures has reduced an effect from "Potentially Significant Impact" to a "Less than Significant Impact." The lead agency must describe the mitigation measures, and briefly explain how they reduce the effect to a less than significant level (mitigation measures from Section XVII, "Earlier Analysis," may be cross-referenced).

5) Earlier analyses may be used where, pursuant to the tiering, program EIR, or other CEQA process, an effect has been adequately analyzed in an earlier EIR or negative declaration. Section 15063 (c)(3)(D). Earlier analyses are discussed in Section XVII at the end of the checklist.

6) Lead agencies are encouraged to incorporate into the checklist references to information sources for potential impacts (e.g. general plans, zoning ordinances). Reference to a previously prepared or outside document should, where appropriate, include a reference to the page or pages where the statement is substantiated. See the sample question below. A source list should be attached, and other sources used or individuals contacted should be cited in the discussion.

7) This is only a suggested form, and lead agencies are free to use different ones.

SAMPLE QUESTION:

Issues (and Supporting Information Sources):

	Potentially Significant Impact	Potentially Significant Unless Mitigation Incorporation	Less Than Significant Impact	No Impact
Would the proposal result in potential impacts involving:				
Landslides or mudslides? (1, 6) (Attach source list explains that is the general plan, and 6 is a USGS topo map. This answer would probably not need further explanation.)	☐	☐	☐	☐
I. LAND USE AND PLANNING. Would the proposal:				
a) Conflict with general plan designation or zoning? (source #(s):)	☐	☐	☐	☐
b) Conflict with applicable environmental plans or policies adopted by agencies with jurisdiction over the project? ( )	☐	☐	☐	☐
c) Be incompatible with existing land use in the vicinity? ( )	☐	☐	☐	☐
d) Affect agricultural resources or operations (e.g. impacts to soils or farmlands, or impacts from incompatible land uses)? ( )	☐	☐	☐	☐
e) Disrupt or divide the physical arrangement of an established community (including a low-income or minority community)? ( )	☐	☐	☐	☐

II. POPULATION AND HOUSING. Would the proposal:

a) Cumulatively exceed official regional or local population projections? ( )

b) Induce substantial growth in an area either directly or indirectly (e.g. through projects in an undeveloped area or extension of major infrastructure)? ( )

c) Displace existing housing, especially affordable housing? ( )

III. GEOLOGICAL PROBLEMS. Would the proposal result in or expose people to potential impacts involving:

a) Fault rupture? ( )

b) Seismic ground shaking? ( )

c) Seismic ground failure, including liquefaction? ( )

d) Seiche, tsunami, or volcanic hazard? ( )

e) Landslides or mudflows? ( )

f) Erosion, changes in topography or unstable soil conditions from excavation, grading, or fill? ( )

g) Subsidence of the land? ( )

h) Expansive soils? ( )

i) Unique geologic or physical features? ( )

IV. WATER. Would the proposal result in:

a) Changes in absorption rates, drainage patterns, or the rate and amount of surface runoff? ( )

b) Exposure of people or property to water related hazards such as flooding? ( )

c) Discharge into surface water or other alteration of surface water quality (e.g. temperature, dissolved oxygen or turbidity)? ( )

d) Changes in the amount of surface water in any water body? ( )

e) Changes in currents, or the course or direction of water movements? ( )

f) Change in the quantity of ground waters, either through direct additions or withdrawals, or through interception of an aquifer by cuts or excavations or through substantial loss of groundwater recharge capability? ( )

g) Altered direction or rate of flow of groundwater? ( )

h) Impacts to groundwater quality? ( )

i) Substantial reduction in the amount of groundwater otherwise available for public water supplies? ( ) ☐ ☐ ☐ ☐

V. AIR QUALITY. Would the proposal:

a) Violate any air quality standard or contribute to an existing or projected air quality violation? ( ) ☐ ☐ ☐ ☐

b) Expose sensitive receptors to pollutants? ( ) ☐ ☐ ☐ ☐

c) Alter air movement, moisture, or temperature, or cause any change in climate? ( ) ☐ ☐ ☐ ☐

d) Create objectionable odors? ( ) ☐ ☐ ☐ ☐

VI. TRANSPORTATION/CIRCULATION. Would the proposal result in:

a) Increased vehicle trips or traffic congestion? ( ) ☐ ☐ ☐ ☐

b) Hazards to safety from design features (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment)? ( ) ☐ ☐ ☐ ☐

c) Inadequate emergency access or access to nearby uses? ( ) ☐ ☐ ☐ ☐

d) Insufficient parking capacity on-site or off-site? ( ) ☐ ☐ ☐ ☐

e) Hazards or barriers for pedestrians or bicyclists? ( ) ☐ ☐ ☐ ☐

f) Conflicts with adopted policies supporting transportation (e.g., bus turnouts, bicycle racks)? ( ) ☐ ☐ ☐ ☐

g) Rail, waterborne or air traffic impacts? ( ) ☐ ☐ ☐ ☐

VII. BIOLOGICAL RESOURCES. Would the proposal result in impacts to:

a) Endangered, threatened or rare species or their habitats (including but not limited to plants, fish, insects, animals, and birds)? ( ) ☐ ☐ ☐ ☐

b) Locally designated species (e.g., heritage trees)? ( ) ☐ ☐ ☐ ☐

c) Locally designated natural communities (e.g., oak forest, coastal habitat, etc.)? ( ) ☐ ☐ ☐ ☐

d) Wetland habitat (e.g., marsh, riparian and vernal pool)? ( ) ☐ ☐ ☐ ☐

e) Wildlife dispersal or migration corridors? ( ) ☐ ☐ ☐ ☐

VIII. ENERGY AND MINERAL RESOURCES. Would the proposal:

a) Conflict with adopted energy conservation plans? ( ) ☐ ☐ ☐ ☐

b) Use non-renewable resources in a wasteful and inefficient manner? ( ) ☐ ☐ ☐ ☐

c) Result in the loss of availability of a known mineral resource that would be of future value to the region and the residents of the State? ( ) ☐ ☐ ☐ ☐

IX. HAZARDS. Would the proposal involve:

a) A risk of accidental explosion or release of hazardous substances (including, but not limited to: oil, pesticides, chemicals or radiation)? ( )

b) Possible interference with an emergency response plan or emergency evacuation plan? ( )

c) The creation of any health hazard or potential health hazard? ( )

d) Exposure of people to existing sources of potential health hazards? ( )

e) Increased fire hazard in areas with flammable brush, grass, or trees? ( )

X. NOISE. Would the proposal result in:

a) Increases in existing noise levels? ( )

b) Exposure of people to severe noise levels? ( )

XI. PUBLIC SERVICES. Would the proposal have an effect upon, or result in a need for new or altered government services in any of the following areas:

a) Fire protection? ( )

b) Police protection? ( )

c) Schools? ( )

d) Maintenance of public facilities, including roads? ( )

e) Other governmental services? ( )

XII. UTILITIES AND SERVICE SYSTEMS. Would the proposal result in a need for new systems or supplies, or substantial alterations to the following utilities:

a) Power or natural gas? ( )

b) Communications systems? ( )

c) Local or regional water treatment or distribution facilities? ( )

d) Sewer or septic tanks? ( )

e) Storm water drainage? ( )

f) Solid waste disposal? ( )

g) Local or regional water supplies? ( )

XIII. AESTHETICS. Would the proposal:

a) Affect a scenic vista or scenic highway? ( )

b) Have a demonstrable negative aesthetic effect? ( )

c) Create light or glare? ( )

XIV. CULTURAL RESOURCES. Would the proposal:

a) Disturb paleontological resources? ( )

b) Disturb archaeological resources? ( )

c) Affect historical resources? ( )

d) Have the potential to cause a physical change which would affect unique ethnic cultural values? ( )

e) Restrict existing religious or sacred uses within the potential impact area? ( )

XV. RECREATION. Would the proposal:

a) Increases the demand for neighborhood or regional parks or other recreational facilities? ( )

b) Affect existing recreational opportunities? ( )

XVI. MANDATORY FINDINGS OF SIGNIFICANCE.

a) Does the project have the potential to degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of a rare or endangered plant or animal or eliminate important examples of the major periods of California history or pre-history?

b) Does the project have the potential to achieve short-term, to the disadvantage of long-term, environmental goals?

c) Does the project have impacts that are individually limited, but cumulatively considerable? ("Cumulatively considerable" means that the incremental effects of a project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects)

d) Does the project have environmental effects which will cause substantial adverse effects on human beings, either directly or indirectly?

XVII. EARLIER ANALYSES.

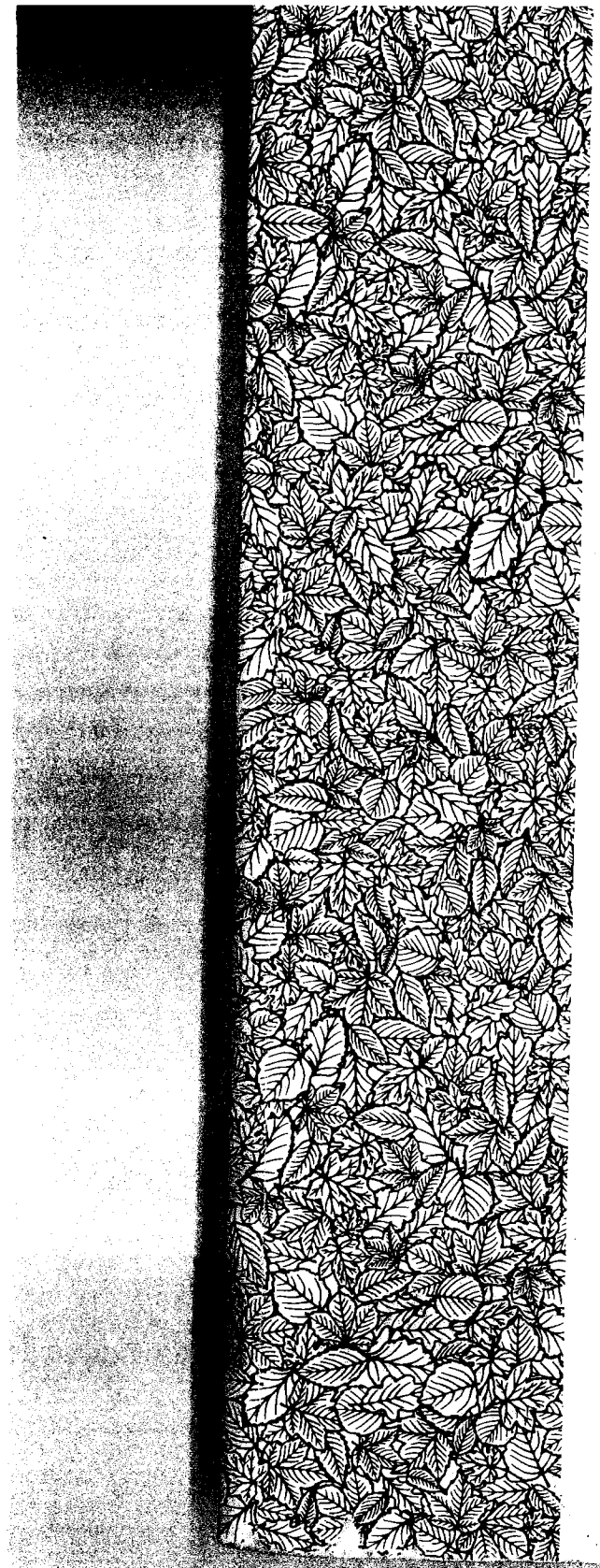
Earlier analyses may be used where, pursuant to the tiering, program EIR, or other CEQA process, one or more effects have been adequately analyzed in an earlier EIR or negative declaration. Section 15063(c)(3)(D). In this case a discussion should identify the following on attached sheets:

a) Earlier analyses used. Identify earlier analyses and state where they are available for review.

b) Impacts adequately addressed. Identify which effects from the above checklist were within the scope of and adequately analyzed in an earlier document pursuant to applicable legal standards, and state whether such effects were addressed by mitigation measures based on the earlier analysis.

c) Mitigation measures. For effects that are "Less than Significant with Mitigation Incorporated," describe the mitigation measures which were incorporated or refined from the earlier document and the extent to which they address site-specific conditions for the project.

EXHIBIT E



1999

California Environmental Quality Act

CEQA Guidelines

CELSOC
CONSULTING ENGINEERS AND
LAND SURVEYORS OF CALIFORNIA

(1) This statement shall include, to the extent that the information is known to the lead agency,

(A) A list of the agencies that are expected to use the EIR in their decision-making, and

(B) A list of ***permits and other*** approvals ***required to implement the project.***

(C) A list of related environmental review and consultation requirements required by federal, state, or local laws, regulations, or policies. To the fullest extent possible, the lead agency should integrate CEQA review with these related environmental review and consultation requirements.

(2) If a public agency must make more than one decision on a project, all its decisions subject to CEQA should be listed, preferably in the order in which they will occur. On request, the Office of Planning and Research will provide assistance in identifying state permits for a project.

15125. Environmental Setting.

(a) An EIR must include a description of the ***physical*** environmental ***conditions*** in the vicinity of the project, as ***they exist at the time the notice of preparation is published, or if no notice of preparation is published, at the time environmental analysis is commenced,*** from both a local and regional perspective. ***This environmental setting will normally constitute the baseline physical conditions by which a lead agency determines whether an impact is significant.*** The description ***of the environmental setting*** shall be no longer than is necessary to an understanding of the significant effects of the proposed project and its alternatives.

(b) When preparing an EIR for a plan for the reuse of a military base, lead agencies should refer to the special application of the principle of baseline conditions for determining significant impacts contained in Section 15229.

(c) Knowledge of the regional setting is critical to the assessment of environmental impacts. Special emphasis should be placed on environmental resources that are rare or unique to that region and would be affected by the project. ***The EIR must demonstrate that the significant environmental impacts of the proposed project were adequately investigated and discussed and it must permit the significant effects of the project to be considered in the full environmental context.***

(d) The EIR shall discuss any inconsistencies between the proposed project and applicable general plans and regional plans. Such regional plans include, but are not limited to, the applicable ***air quality attainment or maintenance plan*** (or State Implementation Plan), area-wide waste treatment and water quality control plans, regional transportation plans, regional housing allocation plans, ***habitat conservation plans, natural community conservation plans*** and regional land use plans for the protection of the coastal zone, Lake Tahoe Basin, San Francisco Bay, and Santa Monica Mountains.

(e) Where a proposed project is compared with an adopted plan, the analysis shall examine the existing physical conditions ***at the time the notice of preparation is published, or if no notice of preparation is published, at the time environmental analysis is commenced*** as well as the potential future conditions discussed in the plan.

15126. Consideration and Discussion of Environmental Impacts.

All phases of a project must be considered when evaluating its impact on the environment: planning, acquisition, development, and operation. The subjects ***listed below*** shall be discussed ***as directed in Sections 15126.2, 15126.4 and***

15126.6, preferably in separate sections or paragraphs *of the EIR*. If they are not discussed separately, the EIR shall include a table showing where each of the subjects is discussed.

(a) Significant Environmental Effects of the Proposed Project.

(b) Significant Environmental Effects Which Cannot be Avoided if the Proposed Project is Implemented.

(c) Significant Irreversible Environmental Changes Which Would be Involved in the Proposed Project Should it be Implemented.

(d) Growth-Inducing Impact of the Proposed Project.

(e) The Mitigation Measures Proposed to Minimize the Significant Effects.

(f) Alternatives to the Proposed Project.

15126.2 Consideration and Discussion of Significant Environmental Impacts.

(a) The Significant Environmental Effects of the Proposed Project. An EIR shall identify and focus on the significant environmental effects of the proposed project. In assessing the impact of a proposed project on the environment, the lead agency should normally limit its examination to changes in the existing physical conditions in the affected area as they exist at the time the notice of preparation is published, or where no notice of preparation is published, at the time environmental analysis is commenced. Direct and indirect significant effects of the project on the environment shall be clearly identified and described, giving due consideration to both the short-term and long-term effects. The discussion should include relevant specifics of the area, the resources involved, physical changes, alterations to ecological systems, and changes induced in population distribution, population concentration, the human use of the land (including commercial and residential development), health and safety problems caused by the physical changes, and other aspects of the resource base such as water, historical resources, scenic quality, and public services. The EIR shall also analyze any significant environmental effects the project might cause by bringing development and people into the area affected. For example, an EIR on a subdivision astride an active fault line should identify as a significant effect the seismic hazard to future occupants of the subdivision. The subdivision would have the effect of attracting people to the location and exposing them to the hazards found there.

(b) Significant Environmental Effects Which Cannot be Avoided if the Proposed Project is Implemented. Describe any significant impacts, including those which can be mitigated but not reduced to a level of insignificance. Where there are impacts that cannot be alleviated without imposing an alternative design, their implications and the reasons why the project is being proposed, notwithstanding their effect, should be described.

(c) Significant Irreversible Environmental Changes Which Would be Caused by the Proposed Project Should it be Implemented. Uses of nonrenewable resources during the initial and continued phases of the project may be irreversible since a large commitment of such resources makes removal or nonuse thereafter unlikely. Primary impacts and, particularly, secondary impacts (such as highway improvement which provides access to a previously inaccessible area) generally commit future generations to similar uses. Also irreversible damage can result from environmental accidents associated with the project. Irretrievable commitments of resources should be evaluated to assure that such current consumption is justified.

Appendix G

Environmental Checklist Form

1. Project Title: _____
2. Lead Agency Name and Address:

_____

_____

_____

3. Contact Person and Phone Number: _____
4. Project Location: _____
5. Project Sponsor's Name and Address: _____

_____

_____

_____

6. General Plan Designation: _____ 7. Zoning: _____
8. Description of Project: (Describe the whole action involved, including but not limited to later phases of the project, and any secondary, support, or off-site features necessary for its implementation. Attach additional sheets if necessary.)

_____

_____

_____

9. Surrounding Land Uses and Setting: Briefly describe the project's surroundings:

_____

_____

_____

10. Other public agencies whose approval is required (e.g., permits, financing approval, or participation agreement.)

_____

_____

_____

ENVIRONMENTAL FACTORS POTENTIALLY AFFECTED:

The environmental factors checked below would be potentially affected by this project, involving at least one impact that is a "Potentially Significant Impact" as indicated by the checklist on the following pages.

☐ Aesthetics	☐ Agriculture Resources	☐ Air Quality
☐ Biological Resources	☐ Cultural Resources	☐ Geology/Soils
☐ Hazards & Hazardous Materials	☐ Hydrology/Water Quality	☐ Land Use/Planning
☐ Mineral Resources	☐ Noise	☐ Population/Housing
☐ Public Services	☐ Recreation	☐ Transportation/Traffic
☐ Utilities/Service Systems	☐ Mandatory Findings of Significance	

DETERMINATION: (To be completed by the Lead Agency.)

On the basis of this initial evaluation:

☐ I find that the proposed project COULD NOT have a significant effect on the environment, and a NEGATIVE DECLARATION will be prepared.

☐ I find that although the proposed project could have a significant effect on the environment, there will not be a significant effect in this case because revisions in the project have been made by or agreed to by the project proponent. A MITIGATED NEGATIVE DECLARATION will be prepared.

☐ I find that the proposed project MAY have a significant effect on the environment, and an ENVIRONMENTAL IMPACT REPORT is required.

☐ I find that the proposed project MAY have a "potentially significant impact" or "potentially significant unless mitigated" impact on the environment, but at least one effect 1) has been adequately analyzed in an earlier document pursuant to applicable legal standards, and 2) has been addressed by mitigation measures based on the earlier analysis as described on attached sheets. An ENVIRONMENTAL IMPACT REPORT is required, but it must analyze only the effects that remain to be addressed.

☐ I find that although the proposed project could have a significant effect on the environment, because all potentially significant effects (a) have been analyzed adequately in an earlier EIR or NEGATIVE DECLARATION pursuant to applicable standards, and (b) have been avoided or mitigated pursuant to that earlier EIR or NEGATIVE DECLARATION, including revisions or mitigation measures that are imposed upon the proposed project, nothing further is required.

_____ _____

Signature Date

_____ _____

Printed Name For

EVALUATION OF ENVIRONMENTAL IMPACTS:

1) A brief explanation is required for all answers except "No Impact" answers that are adequately supported by the information sources a lead agency cites in the parentheses following each question. A "No Impact" answer is adequately supported if the referenced information sources show that the impact simply does not apply to projects like the one involved (e.g., the project falls outside a fault rupture zone). A "No Impact" answer should be explained where it is based on project-specific factors as well as general standards (e.g., the project will not expose sensitive receptors to pollutants, based on a project-specific screening analysis).

2) All answers must take account of the whole action involved, including off-site as well as on-site, cumulative as well as project-level, indirect as well as direct, and construction as well as operational impacts.

3) Once the lead agency has determined that a particular physical impact may occur, then the checklist answers must indicate whether the impact is potentially significant, less than significant with mitigation, or less than significant. "Potentially Significant Impact" is

appropriate if there is substantial evidence that an effect may be significant. If there are one or more "Potentially Significant Impact" entries when the determination is made, an EIR is required.

4) "Negative Declaration: Less Than Significant With Mitigation Incorporated" applies where the incorporation of mitigation measures has reduced an effect from "Potentially Significant Impact" to a "Less than Significant Impact." The lead agency must describe the mitigation measures, and briefly explain how they reduce the effect to a less than significant level (mitigation measures from Section XVII, "Earlier Analysis," may be cross-referenced).

5) Earlier analyses may be used where, pursuant to the tiering, program EIR, or other CEQA process, an effect has been adequately analyzed in an earlier EIR or negative declaration. Section 15063 (c)(3)(D). In this case, a brief discussion should identify the following:

a) Earlier Analysis Used. Identify and state where they are available for review.

b) Impacts Adequately Addressed. Identify which effects from the above checklist were within the scope of and adequately analyzed in an earlier document pursuant to applicable legal standards, and state whether such effects were addressed by mitigation measures based on the earlier analysis.

c) Mitigation Measures. For effects that are "Less than Significant with Mitigation Measures Incorporated," describe the mitigation measures which were incorporated or refined from the earlier document and the extent to which they address site-specific conditions for the project.

6) Lead agencies are encouraged to incorporate into the checklist references to information sources for potential impacts (e.g., general plans, zoning ordinances). Reference to a previously prepared or outside document should, where appropriate, include a reference to the page or pages where the statement is substantiated.

7) Supporting Information Sources: A source list should be attached, and other sources used or individuals contacted should be cited in the discussion.

8) This is only a suggested form, and lead agencies are free to use different formats; however, lead agencies should normally address the questions from this checklist that are relevant to a project's environmental effects in whatever format is selected.

9) The explanation of each issue should identify:

a) the significance criteria or threshold, if any, used to evaluate each question; and

b) the mitigation measure identified, if any, to reduce the impact to less than significance

SAMPLE QUESTION:

Issues:

	Potentially Significant Impact	Potentially Significant Unless Mitigation Incorporation	Less Than Significant Impact	No Impact
I. AESTHETICS -- Would the project:				
a) Have a substantial adverse effect on a scenic vista?	☐	☐	☐	☐
b) Substantially damage scenic resources, including, but not limited to, trees, rock outcroppings, and historic buildings within a state scenic highway?	☐	☐	☐	☐
c) Substantially degrade the existing visual character or quality of the site and its surroundings?	☐	☐	☐	☐
d) Create a new source of substantial light or glare which would adversely affect day or nighttime views in the area?	☐	☐	☐	☐
II. AGRICULTURE RESOURCES: In determining whether impacts to agricultural resources are significant environmental effects, lead agencies may refer to the California Agricultural Land Evaluation and Site Assessment Model (1997) prepared by the California Dept. of Conservation as an optional model to use in assessing impacts on agriculture and farmland. Would the project:				
a) Convert Prime Farmland, Unique Farmland, or Farmland of Statewide Importance (Farmland), as shown on the maps prepared pursuant to the Farmland Mapping and Monitoring Program of the California Resources Agency, to non-agricultural use?	☐	☐	☐	☐
b) Conflict with existing zoning for agricultural use, or a Williamson Act contract?	☐	☐	☐	☐
c) Involve other changes in the existing environment which, due to their location or nature, could result in conversion of Farmland, to non-agricultural use?	☐	☐	☐	☐
III. AIR QUALITY -- Where available, the significance criteria established by the applicable air quality management or air pollution control district may be relied upon to make the following determinations. Would the project:				
a) Conflict with or obstruct implementation of the applicable air quality plan?	☐	☐	☐	☐

b) Violate any air quality standard or contribute substantially to an existing or projected air quality violation? ☐ ☐ ☐ ☐

c) Result in a cumulatively considerable net increase of any criteria pollutant for which the project region is non-attainment under an applicable federal or state ambient air quality standard (including releasing emissions which exceed quantitative thresholds for ozone precursors)? ☐ ☐ ☐ ☐

d) Expose sensitive receptors to substantial pollutant concentrations? ☐ ☐ ☐ ☐

e) Create objectionable odors affecting a substantial number of people? ☐ ☐ ☐ ☐

IV. BIOLOGICAL RESOURCES -- Would the project:

a) Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service? ☐ ☐ ☐ ☐

b) Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations or by the California Department of Fish and Game or US Fish and Wildlife Service? ☐ ☐ ☐ ☐

c) Have a substantial adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means? ☐ ☐ ☐ ☐

d) Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites? ☐ ☐ ☐ ☐

e) Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance? ☐ ☐ ☐ ☐

f) Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan? ☐ ☐ ☐ ☐

V. CULTURAL RESOURCES -- Would the project:

a) Cause a substantial adverse change in the significance of a historical resource as defined in §15064.5? ☐ ☐ ☐ ☐

b) Cause a substantial adverse change in the significance of an archaeological resource pursuant to §15064.5? ☐ ☐ ☐ ☐

c) Directly or indirectly destroy a unique paleontological resource or site or unique geologic feature? ☐ ☐ ☐ ☐

d) Disturb any human remains, including those interred outside of formal cemeteries? ☐ ☐ ☐ ☐

VI. GEOLOGY AND SOILS -- Would the project:

a) Expose people or structures to potential substantial adverse effects, including the risk of loss, injury, or death involving: ☐ ☐ ☐ ☐

i) Rupture of a known earthquake fault, as delineated on the most recent Alquist-Priolo Earthquake Fault Zoning Map issued by the State Geologist for the area or based on other substantial evidence of a known fault? Refer to Division of Mines and Geology Special Publication 42. ☐ ☐ ☐ ☐

ii) Strong seismic ground shaking? ☐ ☐ ☐ ☐

iii) Seismic-related ground failure, including liquefaction? ☐ ☐ ☐ ☐

iv) Landslides? ☐ ☐ ☐ ☐

b) Result in substantial soil erosion or the loss of topsoil? ☐ ☐ ☐ ☐

c) Be located on a geologic unit or soil that is unstable, or that would become unstable as a result of the project, and potentially result in on- or off-site landslide, lateral spreading, subsidence, liquefaction or collapse? ☐ ☐ ☐ ☐

d) Be located on expansive soil, as defined in Table 18- 1-B of the Uniform Building Code (1994), creating substantial risks to life or property? ☐ ☐ ☐ ☐

e) Have soils incapable of adequately supporting the use of septic tanks or alternative waste water disposal systems where sewers are not available for the disposal of waste water? ☐ ☐ ☐ ☐

VII. HAZARDS AND HAZARDOUS MATERIALS -- Would the project:

a) Create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials? ☐ ☐ ☐ ☐

b) Create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment? ☐ ☐ ☐ ☐

c) Emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing or proposed school? ☐ ☐ ☐ ☐

d) Be located on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5 and, as a result, would it create a significant hazard to the public or the environment? ☐ ☐ ☐ ☐

e) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project result in a safety hazard for people residing or working in the project area? ☐ ☐ ☐ ☐

f) For a project within the vicinity of a private airstrip, would the project result in a safety hazard for people residing or working in the project area? ☐ ☐ ☐ ☐

g) Impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan? ☐ ☐ ☐ ☐

h) Expose people or structures to a significant risk of loss, injury or death involving wildland fires, including where wildlands are adjacent to urbanized areas or where residences are intermixed with wildlands? ☐ ☐ ☐ ☐

VIII. HYDROLOGY AND WATER QUALITY -- Would the project:

a) Violate any water quality standards or waste discharge requirements? ☐ ☐ ☐ ☐

b) Substantially deplete groundwater supplies or interfere substantially with groundwater recharge such that there would be a net deficit in aquifer volume or a lowering of the local groundwater table level (e.g., the production rate of pre- ☐ ☐ ☐ ☐

existing nearby wells would drop to a level which would not support existing land uses or planned uses for which permits have been granted)?

c) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, in a manner which would result in substantial erosion or siltation on- or off-site? ☐ ☐ ☐ ☐

d) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, or substantially increase the rate or amount of surface runoff in a manner which would result in flooding on- or off-site? ☐ ☐ ☐ ☐

e) Create or contribute runoff water which would exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff? ☐ ☐ ☐ ☐

f) Otherwise substantially degrade water quality? ☐ ☐ ☐ ☐

g) Place housing within a 100-year flood hazard area as mapped on a federal Flood Hazard Boundary or Flood Insurance Rate Map or other flood hazard delineation map? ☐ ☐ ☐ ☐

h) Place within a 100-year flood hazard area structures which would impede or redirect flood flows? ☐ ☐ ☐ ☐

i) Expose people or structures to a significant risk of loss, injury or death involving flooding, including flooding as a result of the failure of a levee or dam? ☐ ☐ ☐ ☐

j) Inundation by seiche, tsunami, or mudflow? ☐ ☐ ☐ ☐

IX. LAND USE AND PLANNING - Would the project:

a) Physically divide an established community? ☐ ☐ ☐ ☐

b) Conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project (including, but not limited to the general plan, specific plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect? ☐ ☐ ☐ ☐

c) Conflict with any applicable habitat conservation plan or natural community conservation plan? ☐ ☐ ☐ ☐

X. MINERAL RESOURCES -- Would the project:

a) Result in the loss of availability of a known mineral resource that would be of value to the region and the residents of the state? ☐ ☐ ☐ ☐

b) Result in the loss of availability of a locally-important mineral resource recovery site delineated on a local general plan, specific plan or other land use plan? ☐ ☐ ☐ ☐

XI. NOISE -- Would the project result in:

a) Exposure of persons to or generation of noise levels in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies? ☐ ☐ ☐ ☐

b) Exposure of persons to or generation of excessive groundborne vibration or groundborne noise levels? ☐ ☐ ☐ ☐

c) A substantial permanent increase in ambient noise levels in the project vicinity above levels existing without the project? ☐ ☐ ☐ ☐

d) A substantial temporary or periodic increase in ambient noise levels in the project vicinity above levels existing without the project? ☐ ☐ ☐ ☐

e) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project expose people residing or working in the project area to excessive noise levels? ☐ ☐ ☐ ☐

f) For a project within the vicinity of a private airstrip, would the project expose people residing or working in the project area to excessive noise levels? ☐ ☐ ☐ ☐

XII. POPULATION AND HOUSING -- Would the project:

a) Induce substantial population growth in an area, either directly (for example, by proposing new homes and businesses) or indirectly (for example, through extension of roads or other infrastructure)? ☐ ☐ ☐ ☐

b) Displace substantial numbers of existing housing, necessitating the construction of replacement housing elsewhere? ☐ ☐ ☐ ☐

c) Displace substantial numbers of people, necessitating he construction of replacement housing elsewhere? ☐ ☐ ☐ ☐

XIII. PUBLIC SERVICES

a) Would the project result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities, need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times or other performance objectives for any of the public services:

Fire protection?

Police protection?

Schools?

Parks?

Other public facilities?

XIV. RECREATION

a) Would the project increase the use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated?

b) Does the project include recreational facilities or require the construction or expansion of recreational facilities which might have an adverse physical effect on the environment?

XV. TRANSPORTATION/TRAFFIC -- Would the project:

a) Cause an increase in traffic which is substantial in relation to the existing traffic load and capacity of the street system (i.e., result in a substantial increase in either the number of vehicle trips, the volume to capacity ratio on roads, or congestion at intersections)?

b) Exceed, either individually or cumulatively, a level of service standard established by the county congestion \management agency for designated roads or highways?

c) Result in a change in air traffic patterns, including either an increase in traffic levels or a change in location that results in substantial safety risks?

d) Substantially increase hazards due to a design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment)?

e) Result in inadequate emergency access? ☐ ☐ ☐ ☐

f) Result in inadequate parking capacity? ☐ ☐ ☐ ☐

g) Conflict with adopted policies, plans, or programs supporting alternative transportation (e.g., bus turnouts, bicycle racks)? ☐ ☐ ☐ ☐

XVI. UTILITIES AND SERVICE SYSTEMS -- Would the project:

a) Exceed wastewater treatment requirements of the applicable Regional Water Quality Control Board? ☐ ☐ ☐ ☐

b) Require or result in the construction of new water or wastewater treatment facilities or expansion of existing facilities, the construction of which could cause significant environmental effects? ☐ ☐ ☐ ☐

c) Require or result in the construction of new storm water drainage facilities or expansion of existing facilities, the construction of which could cause significant environmental effects? ☐ ☐ ☐ ☐

d) Have sufficient water supplies available to serve the project from existing entitlements and resources, or are new or expanded entitlements needed? ☐ ☐ ☐ ☐

e) Result in a determination by the wastewater treatment provider which serves or may serve the project that it has adequate capacity to serve the project's projected demand in addition to the provider's existing commitments? ☐ ☐ ☐ ☐

f) Be served by a landfill with sufficient permitted capacity to accommodate the project's solid waste disposal needs? ☐ ☐ ☐ ☐

g) Comply with federal, state, and local statutes and regulations related to solid waste? ☐ ☐ ☐ ☐

XVII. MANDATORY FINDINGS OF SIGNIFICANCE

a) Does the project have the potential to degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of a rare or endangered plant or animal or eliminate important examples of the major periods of California history or prehistory? ☐ ☐ ☐ ☐

b) Does the project have impacts that are individually limited, but cumulatively considerable? ("Cumulatively considerable" ☐ ☐ ☐ ☐

EXHIBIT F

Summary of and Response to Comments
State CEQA Guidelines
Allen M. Jones, Deputy Director
City Planning Department, City of San Diego

Comment:

Allen Jones said he concurred personally with Section 15126 as drafted, but thought the Resources Agency should be aware of the implication of a court decision in San Diego that ruled that an effect of the environment on a project, in this case aircraft noise impacting a residential development, is not a proper subject for an EIR. In footnote one of the Statement of Decision, the judge declared that, as provided in Section 21002.1(a) of CEQA, the purpose of an EIR is to identify the significant effects of a project on the environment. He noted that Section 21068 defines the term "significant effect on the environment" as meaning a substantial or potentially substantial adverse change in the environment. He further noted that in Section 15002(g) of the guidelines, a "significant effect on the environment" is defined as meaning a substantial adverse change in the physical conditions which exist in the area affected by the proposed project. He said the noise from aircraft is not a change in the environment generated by the project. He said the noise is already in the environment where the project will be built.

Response:

We believe that a critical shortcoming in the judge's analysis is the failure to consider Public Resources Code Section 21083(c) which provides that a project shall be found to have a significant effect on the environment if it will cause adverse effects on human beings directly or indirectly. This section was enacted by the same bill that defined the term "environment" as meaning the physical conditions existing in the area affected (AB 889 of 1972, Ch. 1154 of the Statutes of 1972). Accordingly, we believe they must be construed together rather than independently. One must not be seen as taking precedence over the other because they are both part of the same legislative enactment.

Applying Section 21083(c) to the situation in San Diego, we believe that it could be shown that building residential dwellings in an area exposed to high levels of noise from aircraft would involve a change in the environment. Obviously, the building of the residential project would be a change in the environment. That change would attract people to the area as buyers or renters of the residential units. As a result, the project would cause the exposure of people to the unusually high noise levels generated by the aircraft. This would be an adverse effect on human beings resulting indirectly from the construction of the residential units in that particular location. Accordingly, we believe there would be a significant effect on the environment, and an EIR should have been prepared.

The judge's ruling in this particular case applies only to the one situation involved. A superior court judgment does not constitute precedent for other courts in California. As a result, we do not feel bound to follow the analysis in the judge's decision. We believe the judgment merely reflects the

problems which can result from a limited mechanical application of CEQA without a comprehensive review of the way in which many different parts of CEQA work together. We believe this decision underscores the importance of providing the interpretation in Subsection (a) so that people will be made aware of the way that a number of different parts of CEQA work together.

EXHIBIT G

STATE OF CALIFORNIA — STATE AND CONSUMER SERVICES AGENCY

BILL ANALYSIS

39.4 (REV. 4/83)

OFFICE CHIEF	BUS. TELEPHONE	HOME TELEPHONE
Loren C. Smith	445-0780	383-9477
ANALYST	**BUS. TELEPHONE**	**HOME TELEPHONE**
Loren C. Smith	445-0780	383-9477

DEPARTMENT	AUTHOR	BILL NUMBER
Department of General Services	Goggin	AB 2503
SPONSORED BY	**RELATED BILLS**	**DATE LAST AMENDED**
State Bar Committee on the Environment	AB 3949	3-6-84

SUMMARY
1 Description
BACKGROUND
2 History
3 Purpose
4 Sponsor
5 Current Practice
6 Implementation
7 Justification
8 Alternatives
9 Responsibility
10 Other Agencies
11 Future Impact
12 Termination
FISCAL IMPACT ON STATE BUDGET
13 Budget
14 Future Budget
15 Other Agencies
16 Federal
17 Tax Impact
18 Governor's Budget
19 Continuous Appropriation
20 Assumptions
21 Deficiency Measure
22 Deficiency Resolution
23 Absorption of Costs
24 Personnel Changes
25 Organizational Changes
26 Funds Transfer
27 Tax Revenue
28 Other Fiscal
SOCIO-ECONOMIC IMPACT
29 Rights Effect
30 Monetary
31 Consumer Choice
32 Competition
33 Employment
34 Economic Development
INTERESTED PARTIES
35 Proponents
36 Opponents
37 Pro/Con Arguments
RECOMMENDATION
JUSTIFICATION
38 Support
39 Oppose
40 Neutral
41 No Position
42 If Amended

SUMMARY

1. Description - This bill is the response by the State Bar Committee on the Environment to a request by Assemblyman Goggin, to review the California Environmental Quality Act (CEQA) and make recommendations with respect to areas that ambiguities which now exist could be clarified and procedures for processing environmental documents and resolving disputes under CEQA could be streamlined. This particular bill has several portions to it and I will attempt to summarize them by proposed Public Resources Code section.

Section 21001.1 - This section declares that the Legislature intends for public projects to be reviewed and considered under CEQA with the same level of consideration that private projects are now considered.

Section 21002.1 - This section has been amended to include the Legislature's intent that noncompliance with the requirements of CEQA constitute a prejudical abuse of discretion regardless of whether a different outcome would have resulted because of that noncompliance. (This section is very similar to that carried in AB 3949, this section is added for the purpose of making statutory law consistent with the existing case law.)

Section 21065.1 - This section has been added to indicate that if there are two or more departments or agencies within the lead agency responsible for approving a project, the first department or agency responsible for approving the project shall certify the environmental document. The purpose of this amendment is to clarify agency responsible for certifying an environmental document where two or more departments have discretionary control over a project.

Section 21080.6 - This section was added to clarify action the public agencies may take with respect to emergencies. Basically this section says that in the event of an emergency, a public agency does not have to comply with CEQA unless it is an action which is long enduring or if a public agency becomes aware of a potential emergency. Then the agency shall immediately initiate compliance with the substantive requirements of CEQA. This section also indicates that a public agency should make findings that an emergency exist and identify alternatives and mitigation measures to any action it proposes to take to meet the emergency.

STATE-MANDATED PROGRAM ☐ YES ☐ NO

DEPARTMENT DIRECTOR POSITION	AGENCY SECRETARY POSITION	GOVERNOR'S OFFICE USE
☐ S ☒ NO POSITION	☐ S ☐ NO POSITION	POSITION NOTED
☐ O ☐ S IF AMENDED	☐ O ☐ S IF AMENDED	POSITION APPROVED
☐ N ☐ O UNLESS AMENDED	☐ N ☐ O UNLESS AMENDED	POSITION DISAPPROVED
		BY _____ DATE 6/7

DEPARTMENT DIRECTOR: Original signed — DATE: JUN [illegible]84

AGENCY SECRETARY: [illegible] — DATE: JUN 05 1984

Section 21082.2 - This section is added to clarify the significance with respect to projects which have a public controversy but not necessarily a significant impact on the environment. This section indicates that public controversy in and of itself does not constitute substantial evidence that a project may have a significant affect.

Section 21092.1 - This section is added for the purpose of requiring public agencies that revise environmental impact report to give notice on any revisions to the environmental impact report.

Section 21104 - This section has been amended limiting responsible state agencies or other public agencies to only make comments regarding activities involved in a project which are within their area of expertise. Comments are to be supported by specific documentation. This section applies to those projects where a state agency is lead agency.

Section 21153 - Same type of amendment as in Section 21104 above, except that this particular section applies to those local agencies which act as lead agency.

Section 21167.6 - This section sets forth the procedure and time lines for public agencies when upon request of any claimant or petitioner to provide a record of any proceedings relating to any action taken on any project which is the subject of an environmental document. This section is very similar to that amendment proposed in AB 3949.

Section 21167.8 - This section is added for the purposes of setting forth the criterion procedure for a settlement conference where there is a dispute under CEQA between a public agency and applicant or petitioner. This section is also very similar to an amendment proposed in AB 3949.

Section 21177 - This section is added for the purpose of limiting any action or procedure to attack, review or set aside any finding of the public agency with respect to any project to those persons who have participated in a public review process.

BACKGROUND

2. History - The history of this legislation stems from a request by Assemblyman Goggin to the State Bar Committee on the Environment to review the California Environmental Quality Act and more specifically those areas which would assist applicants as well as public agencies in determining the legislative intent of this Act. He also requested the committee to come up with specific recommendations for clarifying this Act as well as streamlining the process. This is one of a number of CEQA bills introduced in Legislature this year either by the task force set up by the Republican Caucus, the Governor and the State Bar Committee on the Environment.

3. Purpose - The purpose of this legislation can best be summarized by indicating the underlying purpose for each particular section. These are as follows: Section 21001.1 - Purpose of this legislation is to give private projects the same scrutiny as public projects under CEQA. Section 21002.1 - Purpose of this section is to have statutory law reflect the current status

of existing case law with respect to compliance of CEQA. Section 21065.1 - Purpose of this section is to eliminate ambiguities where two or more departments or agencies are responsible for approving a project or a portion of that project. Section 21080.6 - Purpose of this section is to show legislative intent for a public agencies having to deal with emergency situtations and how they must relate to CEQA. Section 21082.2 - Purpose of this legislation is to overturn a court case whereby it was held that public controversy in and of itself requires an environmental impact report. This sets up the presumption that it shows the legislative intent that in the event that there is public controversy over a project, this does not not necessarily constitute evidence that it has a significant affect on the environment as far as CEQA is concerned. Section 21092.1 - Purpose of this is to require public agencies to give new notices when the environmental impact reports are subsequently revised. Section 21104 and 21153 - Requires state and local agencies completing environmental impact reports to only solicit information from responsible agencies in their particular area of expertise. Section 2167.6 - Purpose of this is to set forth procedures and time requirements for public agencies to respond to applicants, claimants or petitioners and provide records of proceedings carried out by this public agency's in taking any action under CEQA. Section 2167.8 - Sets up the procedures and time lines for settlement conferences with respect to disputes under CEQA. Section 21177 - Sets up requirements for standing to sue under CEQA.

4. Sponsor - Sponsor is the State Bar Committee on the Environment.

5. Current Practice - N/A.

6. Implementation - Implementation of this provisions will be by the state or local agencies who act as lead agency under CEQA on any particular project.

7. Justification - Hopefully, these amendments and addition to the Public Resources Code will result in clarifying many of the ambiguities under CEQA, the discreptancies between existing statutory law and case law, and finally, delineate procedures and processes for carrying out appeals and/or litigation under CEQA.

8. Alternatives - Let the Public Resources Code remain as is and allow the courts to set the guidelines and define CEQA as it currently exists under the Codes. This would mean that the courts would be the ones giving the delineation and definition to many areas of CEQA rather than the Legislature.

9. Responsibility - Responsibility for this will be local and public agencies acting as lead agencies on projects subject to CEQA.

10. Other Agencies - N/A.

11. Future Impact - Hopefully, the future impact of legislation of this type will be to eliminate ambiguities in CEQA and streamline the environmental process.

12. Termination - N/A.

EXHIBIT H

THE COMMITTEE ON
THE ENVIRONMENT
OF THE STATE BAR OF CALIFORNIA

555 FRANKLIN STREET
SAN FRANCISCO, CALIFORNIA 94102
TELEPHONE (415) 561-8220

[A032583]

Robert E. Lutz
Chair
Committee on the Environment
c/o Southwestern University
School of Law
675 South Westmoreland Avenue
Los Angeles, California 90005

December 29, 1983

The Honorable Terry Goggin
Chairman
Assembly Committee on Natural Resources
State Capitol
Sacramento, California 95814

Dear Assemblyman Goggin:

I herewith transmit to you and the Assembly Committee on Natural Resources the Report, "The California Environmental Quality Act: Recommendations for Legislative and Administrative Change," prepared by the State Bar Committee on the Environment. Please let me know if the Committee on the Environment may be of additional assistance.

I must emphasize that this Report represents the views of the Committee on the Environment only; it has not been acted on by the Board of Governors of the State Bar and does not necessarily reflect the views of the Board or of the State Bar.

Sincerely,

Robert E. Lutz

Robert E. Lutz
Chair

REL/sm

Enclosure

THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

RECOMMENDATIONS FOR LEGISLATIVE AND ADMINISTRATIVE CHANGE

A Report to

the Assembly Committee on Natural Resources

by the Committee on the

Environment of the State Bar of California

December 1983

TABLE OF CONTENTS

I

INTRODUCTION

The State Bar Committee on the Environment has prepared this Report on the California Environmental Quality Act (CEQA) at the request of Assemblyman Terry Goggin, Chairman of the Assembly Committee on Natural Resources of the California Legislature. The report was undertaken by the Committee on the Environment pursuant to its general competence to comment on legislation, regulations and procedures in its area of expertise and its "blanket authority" for CEQA conferred by the State Bar's Board Committee on Legislation. The Committee on the Environment is composed of attorneys representing development, conservation, public agency, and academic perspectives. This Report represents the view of the Committee on the Environment only; it has not been acted on by the Board of Governors of the State Bar and does not necessarily reflect the views of the Board or of the State Bar.

In order to carry out the study, a CEQA Subcommittee of the Committee was formed, which was composed of the same spectrum of interests represented on the Committee as a whole. The full Committee has read and endorses this report.

A. Conduct of the CEQA Study

The Subcommittee determined to carry out its study in three phases. First, groups of CEQA experts would be consulted in order to identify particular problem areas that should be addressed. The second phase would involve analysis of and research on these issues in order to formulate recommendations. Finally, a report would be prepared and adopted by the full Committee.

1. Phase One: Testimony by Panels of Experts

The Committee convened two hearings under the auspices of the Assembly Committe on Natural Resources. Those hearings were held on July 15 and September 16, 1983, in the State Capitol. Groups of CEQA experts -- both critical observers and participants in the CEQA process -- were invited and asked to address the application of CEQA in specific factual situation. (See Appendix A.) Each speaker was asked to make a presentation regarding one or more instances in which CEQA has worked well or poorly. The participants were further requested to bring or forward to the Subcommittee documentation for each of these instances.

The approach of the Subcommittee was to focus on actual problems and successes in implementing CEQA. This "case study" approach appeared to be the best way of sorting out whether legislative reforms were necessary and, if so, what form they should take. Additionally, use of concrete examples made it easier for the Subcommittee members and the panelists to discuss CEQA, both during the hearings as well as through subsequent communications.

2. Phase Two: Subcommittee Research and Analysis

Following these meetings, the members of the Subcommittee met to consider the information presented and formulate the specific issues to be the subject of further analysis. The Subcommittee divided the issues into general categories and agreed to research further the problems identified. In some instances, panelists were contacted for additional information.

After completing their research, the Subcommittee members drafted initial recommendations which the members met to discuss. Those recommendations ranged from possible changes in the statute or CEQA Guidelines to suggestions concerning how the CEQA process could be made to work better through more efficient administration under existing law. In some instances the Subcommittee declined to make any recommendation if the change involved a fundamental policy change in the scope or function of the Act.

3. Phase Three: Adoption of a Final Report

Once the Subcommittee reached a consensus on its recommendations and completed work on its draft report, the draft was circulated to the entire State Bar Committee on the Environment for comment and recommendations were finalized. This report is the product of the full State Bar Committee on the Environment.

B. Overview: CEQA Benefits

The report which follows focuses specifically on problem areas identified by the speakers and the Subcommittee. The principal charge of the Subcommittee was to determine whether any

changes were needed in the current law and administration of CEQA. Accordingly, the report makes no attempt to focus on the benefits which accrue from CEQA's implementation.

Nonetheless, the Subcommittee wishes to note that a number of speakers commented that there are significant public benefits which arise from the CEQA process. These include the availability of a detailed description of a project as it proceeds through the permit process as well as the identification and evaluation of alternatives to the project. Also important is the measure of public involvement in decision-making which CEQA assures. This enhanced level of public participation was lauded as a significant contribution to open and democratic participation in government. Several observers stressed that these are important aspects of the CEQA process, apart from the Act's procedural requirements and environmental protection function, which should be preserved. The Committee concurs in this assessment.

Additional benefits were identified by other speakers. Chief among these was the ability of CEQA to serve as a catalyst that promotes interaction among agencies, applicants and the general public. The Act ensures that all affected parties are consulted and included in the decision making process -- a result which did not occur prior to CEQA. Speakers also noted that since the advent of CEQA projects are designed better, largely because of the modifications in the project and mitigation measures undertaken to meet the concerns identified in the CEQA documentation. Better project design also results from the use of environmental documents to provide information early in the

any technical defect can invalidate a decision, an issue that is discussed in the section of this report on judicial review.

E. Reverse Environmental Impacts

1. Concern Raised

CEQA should not be used to discuss "reverse impacts" (i.e., effects felt when the project is proposed where impacts already exist, such as housing located next to an existing freeway or dumpsite).*

2. Analysis

It is clear under existing law that the impacts associated with locating adjacent to an area which produces adverse environmental effects must be discussed (Guidelines § 15126). The law provides that where a project will result in public health problems, the project causes environmental effects by bringing people into an area that exposes them to public health problems. (Id.)

The policy underlying the application of this principle under the Environmental Quality Act and also as a general rule under planning and zoning decisions is that, without addressing these concerns at the time a project is built, we are allowing incompatible uses to be located adjacent to one another and

---

* Ted Fairfield

inviting potential lawsuits complaining about the adjacent freeway or dumpsite.

The real concern may be whether it is equitable to require the person proposing the facility adjacent to the freeway or the dumpsite to pay for the cost of mitigating those impacts or to be precluded from using their property based on something that is caused by development on another piece of property. This could be addressed in terms of liability, compensation and funding mechanisms for mitigation measures.

Under existing law, where it is established that one property owner's use unreasonably interferes with another property owner's use of his or her property, a cause of action in nuisance lies. Where the property owner causing the interference is a government agency, a similar cause of action in inverse condemnation is also available.

3. Recommendation

It is a broad policy issue to determine whether or not statutes should be amended to specify that where mitigation measures have been required of a property owner because of impacts caused by an adjacent property owner, that property owner may recover those costs from the owner of the property causing the impact. Similarly, it is also a policy issue to consider a non-judicial process allowing the government agency making the decision to assess the owner of the property responsible for the

impact (which may be a government agency which the public agency making the decision does not ordinarily have jurisdiction over) through some type of assessment. This may affect other areas of tort liability and is beyond the scope of the study.

F. Authority to Determine Whether Impacts are Significant

1. Concern Raised

The author of the EIR determines what are the project's significant effects, which shifts the burden to the applicant or others to prove the effect is not significant.*

2. Analysis

The statute provides that the decision-making body shall determine which effects are significant. However, most EIRs list and discuss those effects found by the preparer of the EIR to be significant. The court in Environmental Council v. Board of Supervisors, 135 Cal. App. 3d 428 (1983), interprets Public Resources Code § 21081 to require that a public agency must mitigate or avoid significant effects identified in the EIR, or make findings of overriding significance, even if that agency disagrees with the conclusion in the EIR that the impacts are significant.

---

* Don Collin

EXHIBIT I

CROSS REFERENCE TABLES

Bill to Chapter Number

ASSEMBLY BILLS

Assembly Bill	Chapter	Assembly Bill	Chapter	Assembly Bill	Chapter
40	45	770	1005	1247	1373
43	1242	781	19	1252	118
62	421	796	103	1268	70
82	1641	804	163	1274	1676
84	11	809	365	1275	1374
85	1354	810	20	1285	252
88	116	815	843	1301	848
94	32	830	1356	1309	40
139	1471	832	1515	1336	89
178	1655	834	67	1342	12
191	1402	837	33	1346	1082
203	147	838	1224	1367	35
207	274	839	846	1381	110
232	311	844	185	1399	114
247	46	848	1437	1426	41
281	1663	861	522	1427	423
286	181	862	1225	1428	38
294	766	870	422	1439	468
390	16	888	78	1453	88
392	68	894	102	1455	13
401	1261	899	17	1458	87
437	52	910	631	1460	1671
448	235	915	93	1478	204
469	1486	943	139	1483	65
470	3	990	1444	1498	849
479	1189	1021	184	1511	53
484	104	1031	1422	1512	2
501	1724	1047	760	1515	1509
504	96	1051	146	1522	10
507	1485	1073	1226	1527	1605
511	1040	1078	1491	1539	1375
514	44	1107	1561	1557	1447
517	1262	1110	254	1562	1618
521	1197	1111	51	1567	779
526	844	1144	81	1568	229
529	674	1153	540	1569	135
578	588	1154	59	1592	1721
611	69	1155	1324	1597	1684
621	778	1166	1006	1609	1094
626	60	1172	1650	1614	107
628	659	1190	292	1617	232
630	1372	1220	450	1618	850
633	642	1225	227	1619	23
669	27	1230	1740	1620	36
690	117	1232	1648	1621	61
697	289	1235	1735	1630	569
705	39	1239	394	1657	1686
727	248	1244	847	1659	1550
737	1748	1245	521	1663	1063
744	788	1246	242	1676	310

Assembly Bill	Chapter	Assembly Bill	Chapter	Assembly Bill	Chapter
1681	1007	2191	84	2297	1707
1689	1463	2192	805	2298	706
1714	308	2194	610	2299	246
1716	1168	2196	596	2301	601
1732	377	2198	266	2304	201
1739	1551	2201	995	2305	996
1763	1263	2202	71	2306	1576
1768	1653	2204	851	2307	1264
1772	63	2205	481	2308	628
1786	1347	2206	1321	2309	937
1787	338	2207	467	2311	277
1797	520	2208	655	2312	1669
1798	21	2211	936	2313	258
1800	55	2212	548	2315	563
1813	1469	2213	677	2318	673
1828	34	2215	1458	2321	633
1833	29	2217	125	2325	283
1836	30	2218	400	2330	99
1837	42	2219	1496	2331	587
1848	80	2223	361	2332	360
1849	448	2224	97	2333	1535
1872	392	2225	1601	2335	119
1873	380	2226	1637	2337	115
1878	1670	2227	1468	2338	425
1895	82	2228	832	2340	126
1904	424	2229	853	2341	564
1914	599	2234	656	2343	241
1916	137	2236	854	2345	946
1954	14	2238	1397	2347	947
1981	994	2242	789	2348	582
1991	1169	2248	403	2349	855
1992	101	2249	362	2350	1127
1995	47	2252	113	2352	295
1999	86	2253	1415	2354	391
2001	259	2254	290	2356	105
2002	1008	2255	527	2357	426
2008	22	2256	155	2358	281
2027	1632	2257	1625	2359	707
2033	763	2264	1629	2361	997
2038	1009	2268	477	2363	1229
2047	1068	2270	451	2366	1465
2089	28	2274	1733	2367	638
2099	5	2275	757	2368	972
2104	142	2276	519	2372	913
2106	611	2277	1243	2373	647
2110	43	2278	240	2374	298
2122	37	2279	971	2376	1069
2131	85	2280	562	2377	1751
2132	48	2281	100	2378	914
2164	18	2282	493	2379	485
2165	24	2283	621	2380	938
2167	245	2284	1227	2381	1327
2172	8	2285	1228	2382	134
2179	54	2286	156	2383	565
2182	7	2287	1346	2384	627
2183	378	2290	892	2386	279
2185	1594	2292	74	2389	486
2189	56	2295	538	2392	247

Assembly Bill	Chapter
2393	213
2396	856
2397	453
2398	620
2400	1719
2401	150
2402	1265
2408	239
2409	1744
2410	1345
2411	637
2412	973
2416	200
2417	478
2419	1464
2420	217
2421	420
2422	559
2424	1378
2427	1420
2429	127
2431	708
2432	930
2433	678
2434	1230
2435	287
2436	1467
2438	484
2440	1610
2441	205
2443	1638
2445	893
2446	133
2447	790
2448	614
2452	1083
2454	570
2456	709
2458	359
2462	128
2464	237
2465	1231
2466	1315
2468	1266
2474	306
2475	894
2476	1575
2477	857
2480	483
2481	1011
2482	300
2483	1607
2484	395
2487	645
2488	233
2490	1103
2491	216
2492	243
2493	288
2494	1538
2495	90
2496	199
2497	987
2501	1430
2503	1476
2504	1511
2505	1198
2509	427
2511	1232
2512	1483
2514	1602
2515	419
2516	470
2518	518
2519	358
2520	988
2522	644
2523	143
2525	931
2526	148
2527	571
2529	122
2532	230
2533	194
2534	428
2535	495
2536	445
2537	1095
2539	858
2540	1084
2541	161
2542	429
2544	859
2546	206
2547	619
2548	710
2549	948
2551	949
2553	1267
2556	1128
2558	397
2559	430
2565	335
2566	895
2571	915
2573	411
2575	382
2576	930
2577	381
2578	896
2579	1691
2580	1689
2583	1514
2585	860
2591	466
2594	383
2595	861
2597	862
2598	1291
2601	472
2602	526
2603	431
2604	357
2605	785
2606	951
2608	679
2612	454
2613	1199
2614	1620
2615	1518
2616	293
2619	1268
2622	1723
2623	618
2626	1418
2629	525
2633	863
2634	1012
2635	1386
2637	1013
2639	1695
2640	791
2642	1525
2644	415
2646	1377
2648	1722
2650	432
2654	864
2655	1622
2656	433
2657	1434
2658	129
2659	631
2661	517
2662	313
2663	1481
2666	304
2668	1041
2669	479
2672	178
2674	865
2675	1479
2677	192
2681	1685
2682	476
2687	1269
2688	1352
2691	356
2692	866
2693	524
2695	636
2696	792
2697	1679
2698	1712

meet the costs of dental care plan coverage authorized by Section 22953 of the Government Code.

SEC. 2. There is hereby appropriated from the General Fund the sum of two hundred ten thousand dollars ($210,000) to the Regents of the University of California to meet the costs of dental plan coverage for annuitants who have retired from university service who are not enrolled in a health insurance plan or a dental care plan but were eligible for enrollment in a health insurance plan or dental care plan at the time of separation for retirement, and who retired within 120 days of separation.

SEC. 3. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order that the provisions authorizing dental care plans for annuitants may become operative on July 1, 1984, as provided under existing law, and to provide the necessary funding for the 1984–85 fiscal year, it is necessary that this act take effect immediately.

CHAPTER 1514

An act to amend Sections 21002.1, 21104, and 21153 of, and to add Sections 21001.1, 21005, 21081.5, 21082.2, 21092.1, 21094, 21166.1, 21167.6, 21167.8, and 21177 to, the Public Resources Code, relating to environmental control.

[Approved by Governor September 28, 1984. Filed with Secretary of State September 28, 1984.]

The people of the State of California do enact as follows:

SECTION 1. Section 21001.1 is added to the Public Resources Code, to read:

21001.1. The Legislature further finds and declares that it is the policy of the state that projects to be carried out by public agencies be subject to the same level of review and consideration under this division as that of private projects required to be approved by public agencies.

SEC. 2. Section 21002.1 of the Public Resources Code is amended to read:

21002.1. In order to achieve the objectives set forth in Section 21002, the Legislature finds and declares that the following policy shall apply to the use of environmental impact reports prepared pursuant to this division:

(a) The purpose of an environmental impact report is to identify the significant effects of a project on the environment, to identify alternatives to the project, and to indicate the manner in which those significant effects can be mitigated or avoided.

(b) Each public agency shall mitigate or avoid the significant effects on the environment of projects it approves or carries out whenever it is feasible to do so.

(c) In the event that economic, social, or other conditions make it infeasible to mitigate one or more significant effects of a project on the environment, the project may nonetheless be approved or carried out at the discretion of a public agency, provided that the project is otherwise permissible under applicable laws and regulations.

(d) In applying the policies of subdivisions (b) and (c) to individual projects, the responsibility of a public agency which is functioning as a lead agency shall differ from that of a public agency which is functioning as a responsible agency. A public agency functioning as a lead agency shall have responsibility for considering the effects, both individual and collective, of all activities involved in a project. A public agency functioning as a responsible agency shall have responsibility for considering only the effects of those activities involved in a project, which it is required by law to carry out or approve. This subdivision applies only to decisions by a public agency to carry out or approve a project and does not otherwise affect the scope of the comments the agency may wish to make pursuant to Section 21104 or 21153.

SEC. 3. Section 21005 is added to the Public Resources Code, to read:

21005. The Legislature finds and declares that it is the policy of the state that noncompliance with the information disclosure provisions of this division which precludes relevant information from being presented to the public agency or with substantive requirements of this division may constitute a prejudicial abuse of discretion within the meaning of Sections 21168 and 21168.5, regardless of whether a different outcome would have resulted if the public agency had complied with those provisions.

The Legislature further finds and declares that in undertaking judicial review pursuant to Sections 21168 and 21168.5, courts shall continue to follow the established principle that there is no presumption that error is prejudicial.

SEC. 5. Section 21081.5 is added to the Public Resources Code, to read:

21081.5. In making the findings required by subdivision (c) of Section 21081, the public agency shall base its findings on substantial evidence in the record.

SEC. 6. Section 21082.2 is added to the Public Resources Code, to read:

21082.2. (a) The lead agency shall determine whether a project may have a significant effect on the environment based on substantial evidence in the record. The existence of public controversy over the environmental effects of a project shall not require preparation of an environmental impact report if there is no substantial evidence before the agency that the project may have a

significant effect on the environment.

(b) Statements in an environmental impact report and comments with respect to an environmental impact report shall not be deemed determinative of whether the project may have a significant effect on the environment.

SEC. 7. Section 21092.1 is added to the Public Resources Code, to read:

21092.1. When significant new information is added to an environmental impact report after notice has been given pursuant to Section 21092 and consultation has occurred pursuant to Sections 21104 and 21153, but prior to certification, the public agency shall give notice again pursuant to Section 21092, and consult again pursuant to Sections 21104 and 21153 before certifying the environmental impact report.

SEC. 8. Section 21094 is added to the Public Resources Code, to read:

21094. (a) Where a prior environmental impact report has been prepared for a program, plan, policy, or ordinance, the lead agency for a later project that meets the requirements of this section may examine significant effects of the later project upon the environment by using a tiered environmental impact report, except that the report need not examine those effects which the lead agency determines were either (1) mitigated or avoided pursuant to subdivision (a) of Section 21081 as a result of the prior environmental impact report, or (2) examined at a sufficient level of detail in the prior environmental impact report to enable those effects to be mitigated or avoided by site specific revisions, the imposition of conditions, or by other means in connection with the approval of the later project.

(b) This section applies only to a later project which the lead agency finds (1) is consistent with the previously approved program, plan, policy, or ordinance, (2) is consistent with any applicable local land use plan and zoning of the city and county in which the later project would be located, and (3) is not subject to Section 21166.

(c) For purposes of compliance with this section, an initial study shall be prepared to assist the agency in making the determinations and findings required by this section. The initial study shall analyze whether the later project may cause significant effects on the environment that were not examined in the prior environmental impact report.

(d) All public agencies which propose to carry out or approve the later project may utilize the prior environmental impact report and the environmental impact report on the later project to fulfill the requirements of Section 21081.

(e) When tiering is used pursuant to this section, an environmental impact report prepared for a later project shall refer to the prior environmental impact report and state where a copy of the prior environmental impact report may be examined.

SEC. 9. Section 21104 of the Public Resources Code is amended

to read:

21104. Prior to completing an environmental impact report, the state lead agency shall consult with, and obtain comments from, each responsible agency and any public agency which has jurisdiction by law with respect to the project, and may consult with any person who has special expertise with respect to any environmental impact involved.

The state lead agency shall consult with, and obtain comments from, the State Air Resources Board in preparing an environmental impact report on a highway or freeway project, as to the air pollution impact of the potential vehicular use of the highway or freeway.

A responsible agency or other public agency shall only make substantive comments regarding those activities involved in a project which are within an area of expertise of the agency or which are required to be carried out or approved by the agency. Those comments shall be supported by specific documentation.

SEC. 9.5. Section 21104 of the Public Resources Code is amended to read:

21104. Prior to completing an environmental impact report, the state lead agency shall consult with, and obtain comments from, each responsible agency and any public agency which has jurisdiction by law with respect to the project, and may consult with any person who has special expertise with respect to any environmental impact involved. In the case of a project described in subdivision (c) of Section 21065, the state lead agency shall, upon the request of the applicant, provide for early consultation to identify the range of actions, alternatives, mitigation measures, and significant effects to be analyzed in depth in the environmental impact report. The state lead agency may consult with persons identified by the applicant which the applicant believes will be concerned with the environmental effects of the project and may consult with members of the public who have made a written request to be consulted on the project. A request by the applicant for early consultation shall be made not later than 30 days after the determination required by Section 21080.1 with respect to the project.

The state lead agency shall consult with, and obtain comments from, the State Air Resources Board in preparing an environmental impact report on a highway or freeway project, as to the air pollution impact of the potential vehicular use of the highway or freeway.

A responsible agency or other public agency shall only make substantive comments regarding those activities involved in a project which are within an area of expertise of the agency or which are required to be carried out or approved by the agency. Those comments shall be supported by specific documentation.

SEC. 10. Section 21153 of the Public Resources Code is amended to read:

21153. Prior to completing an environmental impact report, every local lead agency shall consult with, and obtain comments from, each responsible agency and any public agency which has

jurisdiction by law with respect to the project, and may consult with any person who has special expertise with respect to any environmental impact involved.

A responsible agency or other public agency shall only make substantive comments regarding those activities involved in a project which are within an area of expertise of the agency or which are required to be carried out or approved by the agency. Those comments shall be supported by specific documentation.

SEC. 10.5. Section 21153 of the Public Resources Code is amended to read:

21153. Prior to completing an environmental impact report, every local lead agency shall consult with, and obtain comments from, each responsible agency and any public agency which has jurisdiction by law with respect to the project, and may consult with any person who has special expertise with respect to any environmental impact involved. In the case of a project described in subdivision (c) of Section 21065, the local lead agency shall, upon the request of the applicant, provide for early consultation to identify the range of actions, alternatives, mitigation measures, and significant effects to be analyzed in depth in the environmental impact report. The local lead agency may consult with persons identified by the applicant which the applicant believes will be concerned with the environmental effects of the project and may consult with members of the public who have made written request to be consulted on the project. A request by the applicant for early consultation shall be made not later than 30 days after the determination required by Section 21080.1 with respect to the project. The local lead agency may charge and collect from the applicant a fee not to exceed the actual costs of the consultations.

A responsible agency or other public agency shall only make substantive comments regarding those activities involved in a project which are within an area of expertise of the agency or which are required to be carried out or approved by the agency. Those comments shall be supported by specific documentation.

SEC. 11. Section 21166.1 is added to the Public Resources Code, to read:

21166.1. The decision of a lead agency to prepare an environmental impact report with respect to environmental impacts within a geographic area or for a group of projects shall not be a basis for determining that an environmental document prepared for an individual project within that area or group is inadequate.

SEC. 12. Section 21167.6 is added to the Public Resources Code, to read:

21167.6. Notwithstanding any other provision of law, in all actions brought pursuant to Section 21167, except those involving the Public Utilities Commission:

(a) At the time the action is filed, the petitioner shall file a request that the respondent public agency prepare the record of proceedings relating to the subject of the action. The request, together with the

petition, shall be served upon the public agency not later than 10 business days after the action is filed.

(b) The public agency shall prepare and certify the record of proceedings not later than 60 days after the request specified in subdivision (a) is served upon the public agency. The parties shall pay any costs or fees imposed for the preparation of the record of proceedings in conformance with any law or rule of court. The petitioner may elect to prepare the record of proceedings or the parties may agree to an alternative method of preparation of the record of proceedings, subject to certification of its accuracy by the public agency, within the time limit specified in this subdivision.

(c) The time limit established by subdivision (b) may be extended only upon stipulation of all parties who have been properly served in the action or upon order of the court. Extensions shall be liberally granted by the court when the size of the record of proceedings renders infeasible compliance with the time limit specified in subdivision (b). There is no limit on the number of extensions which may be granted by the court, but no single extension shall exceed 60 days unless the court determines that a longer extension is in the public interest.

(d) The clerk of the superior court shall prepare and certify the clerk's transcript on appeal not later than 60 days after the notice designating the papers or records to be included in the clerk's transcript is filed with the superior court, provided that the party or parties pay any costs or fees for preparation of the clerk's transcript imposed in conformance with any law or rules of court. Nothing contained in this subdivision shall preclude election to proceed pursuant to Rule 5.1 of the California Rules of Court.

(e) Extensions of the period for the filing of any brief on appeal may be allowed only by stipulation of the parties or by order of the court for good cause shown. Extensions shall be limited to one 30-day extension for the preparation of an opening brief, and one 30-day extension for the preparation of a responding brief, except that the court may grant a longer extension or additional extensions if it determines that there is a substantial likelihood of settlement that would avoid the necessity of completing the appeal.

(f) At the completion of the filing of briefs, the appellant shall notify the court of completion of the filing of briefs, whereupon the clerk of the reviewing court shall set the appeal for hearing on the first available calendar date.

SEC. 13. Section 21167.8 is added to the Public Resources Code, to read:

21167.8. (a) Not later than 20 days after service upon a public agency of a petition or complaint brought to pursuant to Section 21167, the public agency shall file with the court a notice setting forth the time and place at which all parties shall meet and attempt to settle the litigation. The meeting shall be scheduled and held not later than 45 days after the date of service of the petition or complaint upon the public agency. The notice of the settlement

meeting shall be served by mail upon the counsel for each party. If the public agency does not know the identity of counsel for any party, the notice shall be served by mail upon the party for whom counsel is not known.

(b) The petitioner or plaintiff shall serve by mail on all parties a presettlement statement not less than five days in advance of the meeting. The statement shall include, but not be limited to, both of the following:

(1) A concise description of the case, including a brief procedural history, and all the facts material to consideration of the issues presented by the litigation.

(2) The anticipated issues to be raised in the litigation. Counsel shall confer with their clients in advance regarding settlement and shall be prepared to negotiate a settlement whenever reasonably possible.

(c) At the time and place specified in the notice filed with the court, the parties shall meet and attempt in good faith to settle the litigation and the dispute which forms the basis of the litigation. The settlement meeting discussions shall be comprehensive in nature and shall focus on the legal issues raised by the parties concerning the project that is the subject of the litigation.

(d) The settlement meeting may be continued from time to time without postponing or otherwise delaying other applicable time limits in the litigation. The settlement meeting is intended to be conducted concurrently with any judicial proceedings.

(e) After the settlement procedure is completed, the parties shall jointly prepare, sign, and file with the court a settlement statement including, but not limited to, all of the following:

(1) The legal and factual contentions raised by each party.

(2) The contentions that were settled or otherwise agreed upon and the nature of that agreement.

(3) The efforts made by each party to settle the unresolved issues.

(4) The list of participants in the settlement proceedings.

(f) If the litigation is not settled, the court, in its discretion, may, or at the request of any party shall, schedule a further settlement conference before a judge of the superior court. If the petition or complaint is later heard on its merits, the judge hearing the matter shall not be the same judge conducting the settlement conference, except in counties with only one judge of the superior court.

(g) Failure of any party who was notified pursuant to subdivision (a) to participate in the process described in this section, without good cause, may result in an imposition of sanctions by the court. The failure of the petitioner or plaintiff to participate in the process described in this section, without good cause, shall result in dismissal with prejudice of the action.

SEC. 14. Section 21177 is added to the Public Resources Code, to read:

21177. (a) No action may be brought pursuant to Section 21167 unless the alleged grounds for noncompliance with this division were

presented to the public agency orally or in writing by any person.

(b) No person shall maintain an action or proceeding unless that person objected to the approval of the project orally or in writing.

(c) This section does not preclude any organization formed after the approval of a project from maintaining an action pursuant to Section 21167 if a member of that organization has complied with subdivision (b).

(d) This section does not apply to the Attorney General.

(e) This section does not apply when there was no public hearing or other opportunity for members of the public to raise objections prior to the approval of the project or when the public agency failed to give the notice required by law.

SEC. 14.5. It is the intent of the Legislature in adding Section 21177 to the Public Resources Code in Section 14 of this act to codify the exhaustion of administrative remedies doctrine. It is not the intent to limit or modify any exception to the doctrine of administrative remedies contained in case law.

SEC. 15. Section 9.5 of this bill incorporates amendments to Section 21104 of the Public Resources Code proposed by both this bill and AB 2411. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1985, (2) each bill amends Section 21104 of the Public Resources Code, and (3) this bill is enacted after AB 2411, in which case Section 9 of this bill shall not become operative.

SEC. 16. Section 10.5 of this bill incorporates amendments to Section 21153 of the Public Resources Code proposed by both this bill and AB 2411. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1985, (2) each bill amends Section 21153 of the Public Resources Code, and (3) this bill is enacted after AB 2411, in which case Section 10 of this bill shall not become operative.

SEC. 17. Notwithstanding Section 6 of Article XIII B of the California Constitution and Section 2231 or 2234 of the Revenue and Taxation Code, no appropriation is made by this act for the purpose of making reimbursement pursuant to these sections. It is recognized, however, that a local agency or school district may pursue any remedies to obtain reimbursement available to it under Chapter 3 (commencing with Section 2201) of Part 4 of Division 1 of that code.

SEC. 18. Notwithstanding Section 2231.5 of the Revenue and Taxation Code, this act does not contain a repealer, as required by that section; therefore, the provisions of this act shall remain in effect unless and until they are amended or repealed by a later enacted act.

EXHIBIT J

[redacted]

Bill Report

Bill Number	Author	As Amended
SB 1453	ROGERS	5/22/94

Subject: ENVIRONMENTAL QUALITY: AIRPORTS

SUMMARY

This bill would require a lead agency preparing an environmental impact report for a project situated within airport comprehensive land use plan boundaries, or within two nautical miles of a public airport or public use airport when no plan has been adopted, to utilize the Airport Land Use Planning Handbook and other documents as technical resources for airport-related safety hazards and noise problems.

ANALYSIS

Under the California Environmental Quality Act (CEQA), public agencies must consider the potential environmental effects of certain activities or projects prior to commencing those projects or approving permits.

When a project is determined to have no significant impact on the environment, a negative declaration may be prepared. For projects where evidence indicates there would be a significant or adverse impact on the environment, but where the applicant can modify the project to eliminate or reduce the impact below the level of significance, preparation of a mitigated negative declaration is appropriate. Projects that have the potential to result in a "significant effect on the environment" require the preparation of an environmental impact report (EIR).

Current law authorizes counties which have public use airports located in them to establish airport land use commissions. Current law requires each commission to formulate a comprehensive land use plan to provide for the orderly growth of each public airport and the area surrounding the airport within its jurisdiction to safeguard the general welfare of the inhabitants within the vicinity of the airport and the public in general.

Recommendation: SIGN

By: Lee Grissom /ca — Date: 6/23/94

Title: LEE GRISSOM
DIRECTOR

Printed on recycled paper

Current law requires the Department of Transportation (Caltrans) to develop and implement a program or programs to assist in the training and development of the staff of airport commissions, including providing and making written material.

SB 1453 would require a lead agency preparing an EIR for a project situated within airport comprehensive land use plan boundaries, or within two nautical miles of a public airport or public use airport when no plan has been adopted, to utilize the Airport Land Use Planning Handbook published by Caltrans and other documents, as technical resources for airport-related safety hazards and noise problems.

SB 1453 would also prohibit a lead agency from adopting a negative declaration for such a project unless it considers whether the project will result in a safety hazard or noise problem for the persons using the airport or persons residing or working in the project area.

COST

No appropriation. SB 1453 would create a state-mandated local program by imposing new planning requirements upon lead agencies. No reimbursement would be provided.

ECONOMIC IMPACT

This bill would not appear to adversely affect the state's business or economic climate.

LEGAL IMPACT

This bill would not appear to conflict with existing state or federal law or increase the state's liability.

LEGISLATIVE HISTORY

SB 1453 is sponsored by the California Pilots Association (CPA).

The sponsor explains that it introduced SB 1453 to ensure that local planning agencies consider the noise and safety effects of an airport on a proposed project. Although the sponsor recognizes that CEQA currently requires local agencies to consider any significant effects on the environment and that the agencies should already consider the effect of airports on a proposed project, there have been three lawsuits in the past decade (in Jackson, Ceres, and Clear Lake) where the court determined that a local agency failed to adequately consider an airport's effects. The sponsor argues that in each case a planner did not have significant experience in land use planning near airports, and had no knowledge that the Airport Land Use Planning Handbook existed or should be used in preparing the EIR.

The sponsor believes that SB 1453 would address this problem by directing planners to use the Handbook as a technical resource for EIRs on proposed projects within airport comprehensive land use boundaries or within two nautical miles when there is not a land use plan.

SB 1453 is supported by the League of California Cities, the Metropolitan Transportation Commission, Solano County, and the City of Concord. There is no known opposition to SB 1453.

OPR recommended an oppose position on the bill in its original version, because we believed the Handbook was out-of-date. We talked with the author's staff and learned that the Handbook has been updated. Therefore, we removed our opposition.

VOTE:

Senate - 12 May 1994	Assembly - 11 August 1994
Ayes - 39	Ayes - 77
Noes - 0	Noes - 0

Concurrence - 19 August 1994
Ayes - 37
Noes - 0

RECOMMENDATION

The Governor's Office of Planning and Research recommends the Governor SIGN SB 1453.

This bill would require a lead agency preparing an environmental impact report for a project situated within airport comprehensive land use plan boundaries, or within two nautical miles of a public airport or public use airport when no plan has been adopted, to utilize the Airport Land Use Planning Handbook and other documents as technical resources for airport-related safety hazards and noise problems.

CEQA and CEQA guidelines currently require lead agencies to consider any significant effects, including noise. This bill would simply reaffirm the Airport Land Use Planning Handbook and other documents as available resources for analyzing noise and safety issues, and encourage lead agencies to use these materials for technical support.

Courtney J. Sakai, Analyst
Nancy Patton, Assistant Deputy Director, Legislation

EXHIBIT K

ENROLLED BILL REPORT

AGENCY	BILL NUMBER
RESOURCES	SB 1453
DEPARTMENT, BOARD OR COMMISSION	AUTHOR
Office of the Secretary	Rogers

BILL SUMMARY

This bill adds a new section to the California Environmental Quality Act (CEQA). It would require a lead agency to use a specific state-issued handbook and other documents in the preparation of those sections of EIRs pertaining to airport-related safety hazards and noise problems for projects within a specified distance from an airport, and would prohibit the adoption of a negative declaration for such a project unless the lead agency considers whether safety hazards or noise problems might impact specified persons.

HISTORY

This measure is sponsored by the California Pilot's Association.

CEQA requires state and local government agencies (lead agencies) to prepare an environmental impact report (EIR) for any public or private project which may have a significant impact on the physical environment. The agencies are required to consider, document, and work to mitigate or avoid those impacts before they occur. Certain specified projects and programs are exempt from CEQA. Lead agencies are required to prepare and issue negative declarations for projects subject to CEQA which are determined not to result in significant environmental impacts.

IMPACT ASSESSMENT

This bill would specify the use of the Airport Land Use Planning Handbook published by the Division of Aeronautics of the Department of Transportation, and other documents, as technical resources for the preparation of EIRs as they relate to airport-related safety and noise issues. Projects to which the bill would apply would either be within airport comprehensive land use plan boundaries or, if no such plan has been adopted, within 2 nautical miles of a public or public-use airport.

The bill would also prohibit a lead agency from adopting a negative declaration for a project within the specified geographical area unless the agency considers whether the project will result in a safety hazard or noise problems for persons using the airport or residing or working in the project area.

RECOMMENDATION: Sign		
DEPARTMENT HEAD	DATE	AGENCY HEAD: Shannon Ward

ARGUMENTS IN FAVOR OF THIS BILL

The bill would establish a standardized authority to be used in all relevant CEQA situations. This simplifies the CEQA process by removing uncertainty for local agencies in the determination of what standards to apply in their analyses. The inclusion of language allowing for other documents to be used in addition to the handbook provides the flexibility needed by agencies to tailor EIRs to particular circumstances while still using a common base for analysis. The adoption of broad-based standardized authorities for CEQA analysis can serve as a valuable tool in the effort to streamline the statute.

ARGUMENTS IN OPPOSITION TO THIS BILL

The use of a single handbook for all airport-vicinity projects may lead to inadequate, "boilerplate" analysis of unique, site-specific impacts.

The provision dealing with safety hazards and noise analysis restates requirements already substantially addressed in the CEQA statute and guidelines. The 1994 revisions to Appendix I of the CEQA Guidelines, the environmental checklist for use in preparing an initial study, include specific sections addressing both safety hazards and noise. While the use of Appendix I is not mandatory, any negative declaration adopted for a project in the immediate vicinity of an airport that did not consider noise and safety issues could be easily overturned based on current case law (Sundstrom et al.). The bill's provision adds a small degree of clarity in the specific situation it addresses, and for that reason is not entirely duplicative, but its real effect will be minor at best.

RECOMMENDED POSITION

Sign.

REASON FOR RECOMMENDATION

The establishment of a standard reference for all EIRs in the specific area covered by the bill is a move in the right direction towards the goal of CEQA streamlining. The provision regarding safety and noise analysis basically restates preexisting requirements but provides some degree of clarification.

FINAL VOTES

Senate (5/12/94)
Ayes 39
Noes 0

Assembly (8/11/94)
Ayes 77
Noes 0

Concurrence (8/19/94)
Ayes 37
Noes 0

Contact: Jim Burroughs
653-5481 (Office)
443-3942 (Home)

EXHIBIT L

DEPARTMENT OF FINANCE BILL ANALYSIS

AMENDMENT DATE: June 22, 1994 BILL NUMBER: SB 1453
POSITION: NEUTRAL FISCALLY; DEFER TO RESOURCES AUTHOR: Rogers
AGENCY ON POLICY
SPONSOR: California Pilot's Association

BILL SUMMARY

SB 1453 would amend the California Environmental Quality Act (CEQA) by requiring local and state CEQA lead agencies to use as technical resources, the Airport Land Use Planning Handbook published by the Division of Aeronautics of the Department of Transportation and other documents, when preparing a land use plan and Environmental Impact Report (EIR) relating to safety hazards and noise issues for a project within two nautical miles of an airport. In addition, this bill would not allow a negative declaration for an EIR near an airport unless the impact of safety hazards and noise have been considered by a lead agency in the environmental review.

FISCAL SUMMARY

Code/Department Agency or Revenue Type	SO LA CO RV	PROP 98	(Fiscal Impact by Fiscal Year) (Dollars in Thousands) FC 1993-94	FC 1994-95	FC 1995-96	Code Fund
0540/Resources	SO	No	--------No/Minor Fiscal Impact----------			001/GF
0650/OPR	SO	No	--------No/Minor Fiscal Impact----------			001/GF
2660/Transportation	SO	No	--------No/Minor Fiscal Impact----------			001/GF

COMMENTS

This proposal is intended to establish standardized guidelines for CEQA lead agency environmental reviews of safety and noise issues for construction projects near airports.

According to the Resources Agency, the Office of Planning and Research, and the Department of Transportation, this bill will have no fiscal impact on the State. Finance staff concur. Therefore, the Department of Finance defers to the Resources Agency regarding the policies and merits of the proposed changes.

Since local and state government lead agencies currently follow CEQA requirements and this bill only proposes standardized guidelines for review of projects near airports, there are no added costs associated with this bill. In addition, there is no reimbursable mandate because the bill would not mandate a new program or higher level of service and existing law provides authority for the collection of fees to offset any costs.

SUMMARY OF CHANGES

Amendments to this bill since our analysis of the April 18, 1994 version are minor and do not alter our previous position.

Analyst/Principal Date Program Budget Manager Date
(632) Porter Meroney Fred Klass

Porter Meroney 6-24-94 for Fred Klass 6/24/94

Department Deputy Director Date

6.24.94

Governor's Office: By: Date: Position Noted
Position Approved
Position Disapproved

RL:BA-SB\SB1453-4.632

EXHIBIT M

SENATE BILL No. 1453

Introduced by Senator Rogers

February 10, 1994

An act to add Section 21096 to the Public Resources Code, relating to environmental quality.

LEGISLATIVE COUNSEL'S DIGEST

SB 1453, as introduced, Rogers. Environmental quality: airports.

(1) Existing law, the California Environmental Quality Act, requires a public lead agency, as defined, to prepare an environmental impact report on a project which it proposes to carry out or approve that may have a significant effect on the environment, as defined, or, if the project would not have that effect, to prepare a negative declaration, unless the project is exempt from the act.

This bill would require a lead agency to follow specified procedures relative to safety hazards and noise problems in preparing an environmental impact report or adopting a negative declaration for a project situated within 2 nautical miles of a public, or public use, airport. The bill would impose a state-mandated local program by imposing new duties on local lead agencies.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

99 90

EXHIBIT N

MEMORANDUM

DATE: September 6, 1990

TO: Karen Morgan

FROM: Peter Mehas

RE: SB 2262 (Torres)

ENROLLED BILL REPORT

SUMMARY: This proposal provides that no school shall be constructed on a site that is found to have hazardous substances, as specified.

BACKGROUND AND LEGISLATIVE HISTORY: Current law requires school districts to investigate and evaluate potential school sites based upon specified public interest factors. If a potential site is located within a special studies zone, a geologically hazardous area or near an airport, the district is required to conduct special assessments.

An environmental impact report (EIR) shall not be approved for a school site unless a determination and identification is made regarding any facility within ¼ mile of the site that could emit hazardous air emissions, as specified.

In Senate interim hearings for the Toxics and Public Safety Management Committee, it was found that a number of schools have been built over old dump sites. One school that was constructed over an old dump site is the Park Avenue Elementary School, in the LAUSD. When the weather gets warm and the ground heats up, oil and tar begin to seep from the playgrounds. Exposure to the tar has been identified as the cause for children's headaches and illnesses.

Currently, the district is in the process of cleaning up the school. Costs for the actual cleanup are not available at this time. Costs to house the Park Avenue pupils at other schools this year are estimated to be $850,000.

FISCAL IMPACT: According to DOF, this proposal would result in no additional costs to the state.

ARGUMENTS PRO: Provides greater specification, in statute, regarding the sites that cannot be used for school construction and what must be included in the EIR.

Conforms definitions for hazardous substances, acutely hazardous materials, hazardous waste and hazardous waste disposal sites to the terms contained in the Health and Safety Code.

Sponsor: Senator Torres

Approve: ACSA

Neutral: DOF

ARGUMENTS CON: No known arguments.

RECOMMENDATION: We recommend that you sign SB 2262.

EXHIBIT O

BILL ANALYSIS

SENATE TRANSPORTATION & HOUSING COMMITTEE
SENATOR ALAN LOWENTHAL, CHAIRMAN

BILL NO: sb 375
AUTHOR: steinberg
VERSION: 4/17/07
FISCAL: yes

Analysis by: Mark Stivers
Hearing date: April 26, 2007

SUBJECT:

Transportation, land use, and the California Environmental Quality Act (CEQA)

DESCRIPTION:

This bill has three separate provisions: 1) it requires regional transportation planning agencies (RTPAs) to adopt preferred growth scenarios that reduce vehicle miles traveled per household; 2) it requires the California Transportation Commission (CTC) to adopt guidelines for the use of travel demand models by RTPAs that meet specified standards; and 3) it provides for various forms of CEQA relief in communities that conform their general plans to the preferred growth scenario.

ANALYSIS:

Regional transportation plans

Current law requires the Department of Transportation (Caltrans) to prepare various transportation plans, including the California Transportation Plan and the Federal Transportation Improvement Plan.

Current law also requires CTC to adopt the State Transportation Improvement Plan (STIP), which lists all capital improvement projects that are expected to receive an allocation of state transportation funds from CTC during the following five fiscal years. The STIP includes both the Interregional Transportation Improvement Program (ITIP) and the Regional Transportation

Improvement Programs (RTIPs) developed by regional transportation planning agencies (RTPAs). Seventy-five percent of STIP funding is programmed by the regions through the RTIPs. Twenty-five percent of STIP funding is programmed by Caltrans through the ITIP.

Current law also requires the RTPAs to adopt regional transportation plans (RTPs) directed at achieving a coordinated and balanced regional transportation system, including, but not limited to, mass transportation, highway, railroad, maritime, bicycle, pedestrian, goods movement, and aviation facilities and services. The RTP must contain a policy element, an action element, and a financial element and is the source for projects programmed in the RTIP.

This bill:

Requires that regional transportation plans include a preferred growth scenario that:

? Identifies areas sufficient to house all the population of the region, including all economic segments, over the course of the planning period.

? Identifies significant resource land and significant farmland and excludes these lands from the scenario to the greatest extent feasible.

? Allows the RTP to comply with the federal Clean Air Act. Requires that the preferred growth scenario in regions with a population of more than 200,000 identify locations for development and transit projects that will achieve a 10% reduction in vehicle miles traveled per household by 2020 and a ___ reduction by 2050.

Requires that the preferred growth scenario in regions with a population of less than 200,000 identify locations for development and transit projects that will prevent any increase in vehicle miles traveled over the life of the RTP.

Requires Caltrans, when preparing RTPs for smaller regions, to prepare the plan in a manner consistent with the preferred growth scenario for the region.

Limits RTPAs, when designating corridors of statewide or regional priority for long-term right-of-way preservation, to designating corridors that are consistent with the regional preferred growth scenario.

Requires that projects and improvements programmed for funding in the RTIP be consistent with the preferred growth scenario.

Prohibits Caltrans from preparing project studies reports for capacity-increasing state highway projects unless those projects are consistent with a preferred growth scenario.

Requires Caltrans to include within its guidelines for project studies reports a requirement that all projects studied be consistent with a preferred growth scenario.

Requires that an infill opportunity zone designated by a city or county under the Congestion Management Law be consistent with the region's preferred growth scenario.

Requires that the strategies element of the California Transportation Plan be consistent with the preferred growth scenarios adopted in regional transportation plans.

Requires that projects included in the federal transportation improvement program be consistent with the preferred growth scenarios adopted in RTPs.

Declares the intent of the Legislature that the preparation of state and regional transportation plans involve members of the public.

Travel demand models

Travel demand models are statistical and algorithmic attempts to model human travel behavior. They endeavor to forecast potential outcomes of various transportation and land use policy options. The factors that are included in the models are a region's demographic profile, land uses, personal income data, existing travel, and other similar characteristics. The models are used to evaluate alternative development patterns and their travel implications before a regional plan is adopted. The models are used to conduct special studies, such as corridor studies that would assess the potential impacts of a new freeway or transit line. Depending on the policy direction, the impacts may include, for example, the implication for land use changes at transit stations or at freeway interchanges. In the larger regions, the federal government periodically reviews the policies and practices of the regional agencies, including an assessment of the travel demand models used in the development of the regional transportation plans.

This bill:

Requires CTC to adopt guidelines for the use of travel demand models used in development or regional transportation plans by RTPAs that require, to the extent practicable, that the models account for all of the following:

? Travel demands during at least four time intervals during the day.
? Induced travel and land development resulting from highway or passenger rail expansion.
? Mode split models that allocate trips among automobile, transit, carpool, bicycle, and pedestrian trips.
? Residential land use densification.
? The proximity of residential areas to centers of employment.
? The relationship between land use density and household vehicle ownership and use.
? The Impact of enhanced transit service levels on vehicle ownership and use.
? Mixed land uses.
? Parking charges and parking cashout.
? Peak-period freeway tolls.
? 24-hour freeway tolls.

Applies the guidelines to RTPAs in regions with a population of 800,000 or more and makes them permissive for RTPAs with a lower population.

Requires Caltrans to develop standards for disseminating the methodology, results, and key assumptions of travel demand models such that the models are useable and understandable to the public.

Requires Caltrans to meet at least annually with CTC and the larger RTPAs to determine whether the models meet the requirements of the guidelines or need additional revisions.

Requires a RTPA to demonstrate in its regional transportation plan the extent to which its regional travel demand models assist other public agencies to evaluate large development projects, including impacts of density and mixed land uses on travel. The RTPA must report to CTC on how the regional travel demand model supports certain types of planning.

California Environmental Quality Act

CEQA requires that local government conduct an analysis of the environmental impacts associated with projects, including private housing developments subject to a discretionary review. In cases where a full analysis is required, the local government must certify an environmental impact report (EIR).

CEQA provides, among others, for a limited statutory exemption for qualified infill housing or mixed-use housing developments. To qualify for the exemption, a project must meet all of the

following criteria:

Be on an infill site in an urbanized area within mile of a major transit stop,

Be consistent with any applicable general plan, specific plan, and local coastal program.

Be on a site for which a community-level EIR has been certified within the previous five years.

Meet various criteria intended to ensure that the project has no apparent significant environmental impacts.

Include specified percentages of affordable housing.

Be on sites of no more than 4 acres or include no more than 100 units.

Attain a density of at least 20 units per acre, or 10 units per acre if that is greater than the average density of other housing within 1500 feet.

CEQA regulations also provide for a categorical exemption for infill housing unless the project creates a reasonable possibility of a project-specific impact or leads to a significant cumulative impact. To qualify for the exemption, the project must be located within city limits, be substantially surrounded by urban uses, and meet the following criteria:

Be consistent with the general plan and zoning.

Can be adequately served by all utilities and services, has no value as habitat for endangered, rare or threatened species, is not a brownfield, would not result in any significant effects relating to traffic, noise, air quality, or water quality, and does not affect historical resources.

Be no more than five acres.

Current law allows local governments to adopt specific plans, which identify the distribution, location, and extent of the uses of land within the area covered by the plan and to establish standards and criteria by which development will proceed. Within a specific plan area, any residential development project that is consistent with a specific plan for which an EIR has been certified is exempt from further review under CEQA unless substantial changes have occurred or new information has become available since the EIR was certified.

This bill creates the Implementation of the Preferred Growth Scenario (PGS) Law that:
Applies within a local jurisdiction that has amended its

general plan so that the land use, circulation, housing, and open space elements are consistent with the PGS.

Authorizes an environmental document to only examine the significant or potentially significant project specific impacts (or certify a so-called "short-form EIR") of a residential or mixed-use residential project on an infill site located in an eligible jurisdiction in an urbanized area, if an EIR has been certified on the PGS and on general plan amendments to conform to the PGS.

Authorizes an eligible jurisdiction to adopt a neighborhood plan if the plan meets certain requirements, such as access to a major transit stop and mitigates displacement of low-income and very low-income persons, and uses a planning process that complies with certain requirements.

Provides that if a legislative body of an eligible local jurisdiction finds that a residential or mixed-use residential project meets the following requirements, then the project is declared to be a sustainable communities project and no additional review is required:

? The project is on an infill site in an urbanized area.
? The project is on a site of no more than 8 acres and includes no more than 200 units.
? The project attains a density greater than the Mullin densities established in housing element law (30 units per acre for jurisdictions in metropolitan counties, 20 units per acre in "suburban" jurisdictions, 15 units per acre in cities in non-metropolitan counties, and 10 units per acre in unincorporated areas in non-metropolitan counties).
? The project meets various criteria, similar but not identical to those required for the statutory infill exemption described above, intended to ensure that the project has no apparent significant environmental impacts.
? The project does not result in any loss in the number of affordable housing units.
? The project meets one of the following four conditions:

1) includes 5% very-low income housing, 10% low-income housing; or 20% moderate-income housing; 2) has paid in-lieu fees that would result in the same number of units specified in paragraph 1; 3) is located with mile of a major transit stop; or 4) provides five acres of public open space per 1000 residents.

Authorizes an eligible local legislative body within an urbanized area to adopt traffic mitigation policies that would apply to future residential projects of at least 10 units per

acre. A project seeking a land use approval that complies with these traffic mitigation policies is not required to mitigate impacts on intersections, streets, highways, freeways, or mass transit that might otherwise be required under CEQA.

AB 32 and greenhouse gas emission reductions

Last year the Legislature enacted AB 32 (Nu?ez), Chapter 488, Statutes of 2006, the Global Warming Act of 2006, which requires the Air Resources Board (ARB) to establish a statewide greenhouse gas emissions limit such that by 2020 California reduces its greenhouse gas emissions to the level they were in 1990. Thereafter, ARB must adopt the maximum feasible and cost-effective reductions in greenhouse gas emissions for sources subject to the Act. One of the potential strategies for reducing greenhouse gas emissions is to promote more compact land use that reduces the number and length of vehicle trips.

COMMENTS:

1.Purpose of the bill . According to the author, "Current planning models used for transportation decisions and air quality planning must be improved to assess policy choices. This includes encouraging more compact development patterns, expanding transit service, creating walkable communities, and providing incentives. It is also necessary to achieve significant greenhouse gas reductions from changed land use patterns and improved transportation to meet AB 32 standards." The author notes that "transportation and CEQA incentives are needed for greater housing choices, shorter commutes, reduced climate emissions, less air pollution, less fossil fuel consumption, and greater conservation of farmlands and habitat."

2.Seeking a comprehensive transportation, land use, and CEQA link . This bill seeks to establish a comprehensive link between transportation, land use, and CEQA by requiring RTPAs to develop a preferred growth scenario, by linking funding of transportation projects to the growth scenario, by requiring that transportation modeling account for land use impacts on transportation, and by revising CEQA for local governments that conform their general plans to the preferred growth scenario.

3.Should a strict VMT standard by imposed ? The bill requires

that in larger regions the preferred growth scenarios, together with transit improvement, achieve a 10% reduction in vehicle miles traveled (VMT) per household by 2020. Smaller regions would be required to prevent any increase in VMT over the life of the plan. These requirements are intended to help meet the greenhouse gas emission reduction targets required by AB 32. These VMT requirements, however, may not be achievable in some or many regions. In addition, by applying the requirement to the preferred growth scenario, it precludes RTPAs from achieving greenhouse gas reductions through other means. The committee may wish to consider an alternative approach that requires the ARB to assign greenhouse gas emission reduction targets to each RTPA and then require the RTPAs to adopt measures, including land use strategies, to reduce emissions by an amount consistent with the targets. Under the provisions of AB 32, the targets adopted by the ARB must be "feasible and cost-effective."

4.Prescriptive model guidelines . This bill requires CTC to adopt guidelines for the use of travel demand models by RTPAs that require the models, to the extent practicable, to be capable of evaluating numerous specific policy choices. Some of these policy choices concern big-picture issues, such as how changes in regional land use density or investments in mass transit affect vehicle ownership and use. Others are quite specific, including the impacts of parking charges and freeway tolls. The committee may wish to consider whether it is more appropriate to allow CTC, in conjunction with the regions and other stakeholders, to determine the necessary elements of a travel demand model.

5.Changes to CEQA . Within cities and counties that conform their general plans to the region's preferred growth strategy, this bill provides for various forms of CEQA relief. First, the bill authorizes the use of a short-form EIR for residential or mixed-use residential project on infill sites within such jurisdictions. Second, the bill allows local governments to adopt traffic mitigation policies that allow infill housing developments to address local impacts without having to address regional transportation impacts. Third, the bill effectively expands the existing statutory exemption for infill housing developments by defining "sustainable communities projects" for which no further environmental review is required. Fourth, the bill allows local governments to adopt a new "neighborhood plan."

It is worth noting that while the sustainable communities project provisions of the bill do expand slightly on the existing statutory exemption for infill housing, many local governments reviewing infill housing developments already use the categorical exemption in CEQA regulations that is much broader in scope and provides similar benefits. In addition, the conditions for using the neighborhood plan proposed in this bill are more restrictive than those that currently exist for using specific plans, while the neighborhood plan provides no specific CEQA benefit to project applicants. The committee may wish to consider deleting the neighborhood plan provisions of the bill.

6.Correcting references to the PGS . The bill requires that various transportation plans and projects lists developed by Caltrans and the RTPAs be consistent with the preferred growth scenarios adopted by the RTPAs. To the extent that that the PGS is just one element of the regional transportation plan and that the action element of the RTP, which includes future projects, must be consistent with the PGS, it may be more appropriate to change the references in the bill to require that the various plans and projects lists be consistent with the relevant RTPs.

7.Amendments taken in the Environmental Quality Committee . When this bill was heard in the Senate Environmental Committee earlier this week, the author committed to take three amendments in the Transportation and Housing Committee as follows:

On page 10, line 38, strike out "and (iii)" and insert "(iii) is consistent with the state planning priorities pursuant to Section 65041.1; and (iv)"
On page 15, line 27, strike "Projects" and insert "On and after January 1, 2009, projects"
On page 24, line 12, strike out "no"

1.Support and concerns . Supporters note that SB 375 provides a new vision for growth in California and "would establish needed policies to implement AB 32 and to reduce greenhouse gasses from light vehicles." They argue that the bill would also integrate transportation and land use planning and help "achieve greater housing choices, shorter commutes, reduced climate emissions, less air pollution and fossil fuel consumption, and greater conservation of farmlands and habitat."

The Planning and Conservation League and Sierra Club California believe that the bill will not work because the processes involved are lengthy, because results of such local transportation planning efforts usually achieve the "lowest common denominator" in regional land use, and a more standards-based approach is needed. These organizations outline several concerns with SB 375, such as: a) the lack of needed policy statements; b) the absence of any entity to determine if general plans or amendments are consistent with the preferred growth scenario; c) the possible weakening of current CEQA exemptions; d) the fact that local governments are not required to implement the land use strategies of the preferred growth scenario; e) the lack of a requirement for the preferred growth scenario to direct growth to existing areas; f) the lack of specific protection for resource lands or farmlands; g) the lack of an enforceable standard to counteract sprawl; h) the lack of clarity about how SB 375 will accomplish reductions in vehicle miles traveled; and i) the "opportunity cost" associated with spending money and time on a very indirect approach.

PREVIOUS ACTIONS:

Senate Environmental Quality Committee: 5-2

RELATED LEGISLATION

AB 842 (Jones) restricts access to certain Proposition 1B and 1C programs to projects that are consistent with a regional land use and transportation planning document that will reduce the growth increment of vehicles miles traveled for the region by a specified amount. This bill is in the Assembly Housing and Community Development Committee.

POSITIONS: (Communicated to the Committee before 5 PM on Tuesday, April 24, 2007)

SUPPORT: California League of Conservation Voters (co-sponsor)

Natural Resources Defense Council (co-sponsor)

Sacramento Area Council of Governments (in concept)

Southern California Association of Governments

CONCERN: Planning and Conservation League

Sierra Club California

OPPOSED: None received.

EXHIBIT P

BILL ANALYSIS

Date of Hearing: August 25, 2011

ASSEMBLY COMMITTEE ON AGRICULTURE
Cathleen Galgiani, Chair
SB 226 (Simitian) - As Amended: August 23, 2011

SENATE VOTE : 36-0

NATURAL RESOURCES (6-1)

Ayes:	Chesbro, Brownley, Dickinson, Huffman, Monning, Skinner	Noes:	Halderman

SUBJECT : Environmental quality.

SUMMARY : This bill streamlines the California Environmental Quality Act (CEQA) and adds exemptions from CEQA for specific types of projects, including solar projecs on Agriculture land. Specifically, this bill :

1)Authorizes referral of a proposed action to adopt or substantially amend a general plan to an adjacent city or county to be conducted concurrently with the scoping meeting required by CEQA for a project of statewide, regional or area-wide significance, and authorizes the city or county to submit its comments on the proposed general plan action at the CEQA scoping meeting.

2)Exempts from CEQA review the installation of a solar energy system on the roof of an existing building.

a) Defines a solar energy system to include solar electric (photovoltaic) and solar hot water projects, and associated equipment not located on the roof, including connections to the electric grid adjacent to the parcel, but excludes a substation.

3)Provides that a project's greenhouse gas emissions (GHE) shall not by itself cause the project to be ineligible for a categorical exemption from CEQA review if the project complies with regulations adopted to implement related statewide, regional, or local plans as provided in the CEQA guidelines.

4)Requires the Natural Resources Secretary (Secretary), by March 1, 2012, to amend the CEQA guidelines to exempt from CEQA review solar photovoltaic projects not more than 10 megawatts/100 acres located on disturbed agricultural lands, as defined. This provision sunsets January 1, 2015.

a) Requires eligible land to have been used for agricultural production for at least five years and has been mechanically disturbed or converted from native vegetation as specified.

b) Requires eligible land to be determined by a qualified biologist to have no significant habitat value.

c) Requires projects to not be located on prime farmland or other farmland designated as important or unique farmlands by the Department of Conservation (DOC).

i) Requires lands designated as important farmland not to be reclassified due to irrigation status.

d) Requires the Secretary's amendments to take into consideration potential for impacts on agricultural and natural resources.

e) Allows the Secretary to impose additional conditions on CEQA exemptions to avoid significant impacts on the environment, including effects associated with the decommissioning of the solar project.

f) Requires the Secretary to prevent the repeated use on exemptions in the same vicinity or ownership.

5)Establishes interim abbreviated CEQA review procedures for specified transit proximity projects, as specified.

6)Provides that CEQA does not require a public agency to consider written materials submitted after the close of the public comment period, with specified exceptions for materials addressing new information released after the close of the public comment period, and permits a lead agency to elect to ignore written materials submitted after the close of the public comment period, and provides that such material shall not be raised in judicial review. This provision sunsets

January 1, 2016.

7)Contains an urgency clause allowing the bill to take effect immediately upon enactment.

EXISTING LAW:

1)Requires lead agencies with the principal responsibility for carrying out or approving a proposed project to prepare a negative declaration, mitigated negative declaration, or environmental impact report (EIR) for this action, unless the project is exempt from CEQA.

2)Requires the Office of Planning and Research and the Natural Resources Agency to prepare, adopt and periodically update CEQA guidelines, including identifying classes of projects determined to have no significant effect on the environment and therefore eligible for a categorical exemption, as well as guidelines for the mitigation of greenhouse gas (GHG) emissions.

3)Exempts from CEQA specified residential housing projects which meet criteria established to ensure the project does not have a significant effect on the environment, including urban infill housing projects of not more than 100 units on a site not more than four acres in size which is within one-half mile of a major transit stop.

4)Requires a lead agency to have at least one scoping meeting for a proposed project of statewide, regional, or area-wide significance with public notice as specified. Requires a planning agency to refer a proposed action to adopt or substantially amend a general plan to other entities for comment as specified, prior to action on that general plan.

FISCAL EFFECT : This bill has been keyed fiscal by Legislative Counsel.

COMMENTS : CEQA provides a process for evaluating the environmental effects of projects undertaken or approved by public agencies. Projects not exempt from CEQA undergo an initial study to determine whether the project may have a significant effect on the environment. Depending on if the initial study shows that there would or would not be a significant effect on the environment, the lead agency must

prepare an EIR or a negative declaration. A lead agency must base its determination of significant effects on substantial evidence.

According to the author, SB 226 responds to concerns relating to scoping meetings for certain projects, use of categorical exemptions for projects resulting in GHE, environmental review for infill and solar projects, and late public comments on environmental documents.

According to the DOC's Farmland Mapping & Monitoring Program, one of the criteria for land to be designated prime or important, the land must have been used for irrigated agricultural production at some time during the four years prior to the mapping date. Mapping cycles take place every two years, thus creating an up to 6 year cycle that lands might not be irrigated and still be considered prime or important. The most recent amendment address a concern that an entity might adjust irrigation and farming practices to force land out of the prime or important classification for the purpose of obtaining a CEQA exemption for a solar project.

The CEQA exemptions for solar projects on agricultural land, as defined in this bill, are pointedly narrow. To qualify for a CEQA exemption, the land needs to have been previously used for agriculture production for five years and needs to have been mechanically disturbed or converted from native vegetation. Furthermore, it cannot be land that is designated by DOC as prime, important, unique or locally important.

One portion of the definition for disturbed agriculture land, lands previously used for agricultural production for at least five years that have been mechanically disturbed or converted from native vegetation through plowing, bulldozing, or other similar means, raises two questions:

1) The requirement that the lands be previously used for agricultural production for at least five years raises the question of how far to go back and what if the land is currently used for a different purpose. Technically, this could include agricultural land converted to other purposes such as housing.

2) The requirement of mechanically disturbed or converted from native vegetation by mechanical means, raises

questions for range/grazing lands. Does this definition exclude range/grazing land from the CEQA exemptions? What kind of mechanically disturbances would qualify range/grazing land for the CEQA exemptions for solar projects?

The committee may wish to consider if the definition of disturbed agricultural land is adequate to pursue the stated purpose of creating CEQA exemptions for solar projects on agricultural land.

If range/grazing land does not qualify for a CEQA exemption in this bill, it raises the question of what land does qualify. According to the DOC's 2008 map of Important Farmland in California, which includes prime, important, unique and grazing farm land, at least 31,564,315 acres of useable agricultural land in California will not qualify for the CEQA solar exemption allowed under this bill. Furthermore, any land that might be allowed has the added restriction of having no significant value as habitat for sensitive species and provides no significant habitat/wildlife corridors. This begs the question of what agricultural land would benefit from a CEQA exemption for solar projects envisioned by this bill.

Qualified support and opposition : There are several organizations that have expressed a support if the bill is amended status and oppose unless the bill amended.

1) The California Chamber of Commerce, California Building Industry Association, California Business Properties Association and the American Council of Engineering Companies have an oppose unless amends position. These organizations objected to provisions of the bill dealing with late documents and infill projects, both of which are policy areas out of the purview of this committee.

2) The American Planning Association - California Chapter, League of California Cities and Regional Council of Rural Counties have a support if amended position. These organizations support amendments to clarify where the "disturbed agriculture land" would typically be located and a balance of agricultural land and urban environments acquiring CEQA exemptions for solar projects.

3) The Association of Environmental Professional (AEP) has a

support in principle with suggested amendments position. AEP would like to see amendments that remove the portion of this bill that deal with CEQA exemptions for solar projects on agricultural land and replace it with directing the Office of Planning and Research to make new guidelines for the Natural Resources Agency to improve the CEQA review process for renewable energy projects, including the possibility of categorical exemptions.

REGISTERED SUPPORT / OPPOSITION :

Support

None on file.

Opposition

Center for Biological Diversity

Analysis Prepared by : Victor Francovich / AGRI. / (916) 319-2084

EXHIBIT Q

BILL ANALYSIS

SENATE RULES COMMITTEE
Office of Senate Floor Analyses
1020 N Street, Suite 524
(916) 651-1520 Fax: (916)
327-4478

SB 617

THIRD READING

Bill No: SB 617
Author: Evans (D), et al.
Amended: 5/28/13
Vote: 21

SENATE ENVIRONMENTAL QUALITY COMMITTEE : 7-2, 5/1/13
AYES: Hill, Calderon, Corbett, Hancock, Jackson, Leno, Pavley
NOES: Gaines, Fuller

SENATE APPROPRIATIONS COMMITTEE : 5-2, 5/23/13
AYES: De León, Hill, Lara, Padilla, Steinberg
NOES: Walters, Gaines

SUBJECT : California Environmental Quality Act

SOURCE : Author

DIGEST : This bill requires assessments under the California Environmental Quality Act (CEQA) to consider the exposure of people to natural hazards or adverse environmental conditions; makes various changes to CEQA reporting requirements; requires the Office of Planning and Research (OPR) to make CEQA notices publically available on an online database; and repeals obsolete exemptions.

ANALYSIS :

Existing law, under CEQA:

1.Requires lead agencies with the principal responsibility for

CONTINUED

carrying out or approving a proposed discretionary project to prepare a negative declaration, mitigated negative declaration, or environmental impact report (EIR) for this action, unless the project is exempt from CEQA (CEQA includes various statutory exemptions, as well as categorical exemptions in the CEQA guidelines).

2.Provides exemptions from the requirements of CEQA for the California Men's Colony West Facility, a prison facility at or in the vicinity of Corcoran, a prison facility in the County of King, and the Napa Valley Wine Train.

3.Requires a lead agency preparing an EIR or negative declaration to provide public notice specifying the period during which comments will be received on the draft EIR or negative declaration; the date, time, and place of any public meetings or hearings on the proposed project; a brief description of the proposed project and its location; the significant effects on the environment, if any, anticipated by the project; and the address where copies of the draft EIR or negative declaration, and all documents referenced in the draft EIR or negative declaration, are available for review.

4.Requires a lead agency to call at least one scoping meeting for specific types of projects.

5. Requires a state lead agency to file a notice of approval or determination with OPR, and requires a local lead agency to file a notice of approval or determination with the county clerk in which the project is located. Requires a public agency to file a notice of completion for an EIR with OPR.

This bill:

1.Adds to the definition of "environment" to include "the health and safety of people affected by the physical conditions at the location of a project."

2.Adds to the definition of "significant effect on the environment" to include "exposure of people, either directly or indirectly, to substantial existing or reasonably foreseeable natural hazard or adverse condition of the environment."

CONTINUED

3.Requires a notice of determination be filed with both the OPR and the county clerk where the project is located. Requires OPR and the county clerk to return the notice to the filing agency with a notation showing the period of time the notice was posted.

4.Requires a lead agency to post a notice of a public scoping meeting and provide copies of the notice to specified entities, including tribal governments.

5.Expands the requirements for posting of notices to include electronic posting of notices by OPR, requires OPR to retain a physical copy of the notice for a specified period of time, and return the notice to the filing agency with a notation of the period it was posted. Authorizes OPR to require the filing agency to pay an administrative fee not to exceed $10 per notice.

6.Requires an EIR to include a statement on "any significant effects that may result from locating the proposed project near, or attracting people to, existing or reasonably foreseeable natural hazards or adverse environmental conditions."

7.Requires lead agencies, both state and local, to file a notice of approval or determination and notice of completion with the county clerk of each county the project is located in and OPR.

Background

Brief background on CEQA . CEQA provides a process for evaluating the environmental effects of a project, and includes statutory exemptions as well as categorical exemptions in the CEQA guidelines. If a project is not exempt from CEQA, an initial study is prepared to determine whether a project may have a significant effect on the environment. If the initial study shows that there would not be a significant effect on the environment, the lead agency must prepare a negative declaration. If the initial study shows that the project may have a significant effect on the environment, then the lead agency must prepare an EIR.

Generally, an EIR must accurately describe the proposed project, identify and analyze each significant environmental impact

CONTINUED

expected to result from the proposed project, identify mitigation measures to reduce those impacts to the extent feasible, and evaluate a range of reasonable alternatives to the proposed project. Prior to approving any project that has received an environmental review an agency must make certain findings. If mitigation measures are required or incorporated into a project, the agency must adopt a reporting or monitoring program to ensure compliance with those measures.

If a mitigation measure would cause one or more significant effects in addition to those that would be caused by the proposed project, the effects of the mitigation measure must be discussed but in less detail than the significant effects of the proposed project.

Ballona Wetlands . In the case of Ballona Wetlands Land Trust et al. v. City of Los Angeles (Ballona Wetlands), the petitioners alleged that the revised EIR failed to adequately analyze the impacts of potential sea level rise from global warming on the project under CEQA Guidelines. The appellate court held that CEQA does not require analysis of the effects on a project caused by the environment. On March 21, 2012, the California Supreme Court denied the petition for review and requests for depublication of the Second District Court of Appeal's opinion in Ballona Wetlands. Some have referred to this as a converse CEQA analysis.

The provision at issue is in the CEQA Guidelines, and states:

The EIR shall also analyze any significant environmental effects the project might cause by bringing development and people in to the area affected. For example, an EIR on a subdivision astride an active fault line should identify as a significant effect the seismic hazard to future occupants of the subdivision. The subdivision would have the effect of attracting people to the location and exposing them to the hazards found there. Similarly, the EIR should evaluate any potentially significant impacts of locating development in other areas susceptible to hazardous conditions (e.g., floodplains, coastlines, wildfire risk areas) as identified in authoritative hazard maps, risk assessments or in land use plans addressing such hazard areas.

CONTINUED

It should be noted that although the Second District Court of Appeals held that CEQA does not require analysis of the effects on a project caused by the environment and may be considered persuasive in the other district courts of appeal, the holding is not necessarily binding on those other appellate districts. Also, it is unknown whether California Supreme Court's decision not to hear the case is an endorsement of the holding in Ballona Wetlands.

OPR and the Natural Resources Agency have kept the provision in Section 15126.2(a) in place after previous decisions with similar conclusions. For example, in 1995, the First District Court of Appeals in Baird v. County of Contra Costa, 32 Cal.App.4th 1464, held that the effect of the environment on the project is "beyond the scope of CEQA." It appears that OPR is not currently planning on repealing the challenged language and may be relying on footnote 9 in Ballona Wetlands to support its position. Footnote 9 states: the statement in Guidelines Section 15126.2, subdivision (a) that 'the EIR should evaluate any potentially significant impacts of locating development in other areas susceptible to hazardous conditions (e.g. floodplains, coastlines, wildfire risk areas) as identified in authoritative hazard maps, risk assessments or in land use plans addressing such hazard areas' is consistent with CEQA only to the extent that such impacts constitute impacts on the environment caused by the development rather than impacts on the project caused by the environment.

SB 617 addresses Ballona Wetlands by requiring an EIR to include "any significant effects that may result from locating development near, or attracting people to, existing or reasonably foreseeable natural hazards or adverse environmental conditions."

Related /Prior Legislation

SB 436 (Jackson), clarifies the entities that must receive public notice regarding the period to comment on an environmental document. Each bill amends different provisions of the same section. If SB 436 and SB 617 are both approved by the Senate, double-jointing language will be necessary to amend each bill in the Assembly.

CONTINUED

AB 209 (Ammiano, Chapter 171, Statutes of 2011), requires a lead agency preparing an EIR or negative declaration under CEQA to include a description of how the draft EIR or negative declaration could be provided in an electronic format

FISCAL EFFECT : Appropriation: No Fiscal Com.: Yes
Local: Yes

According to the Senate Appropriations Committee:

Ongoing costs, varying annually in the hundreds of thousands of dollars, from the General Fund and special funds, depending on the project, for additional analysis under CEQA with some costs being recovered through fees.

Possible one-time costs, likely in the high tens of thousands to low hundreds of thousands of dollars from the General Fund for OPR to create an expanded database for CEQA notices.

SUPPORT : (Verified 5/28/13)

California Coastkeeper Alliance
Center on Race, Poverty & the Environment
Clean Water Action
Endangered Habitats League
Environmental Protection Information Center
Laguna Greenbelt, Inc.
League of Women Voters of California
Nichols Berman Environmental Planning
Planning and Conservation League
Santa Clarita Organization for Planning and the Environment
Sierra Club California

OPPOSITION : (Verified 5/28/13)

American Council of Engineering Companies, California
Associated Builders and Contractors of California
Association of California Water Agencies
California Apartment Association
California Association of Realtors
California Chamber of Commerce
California Grocers Association
California League of Food Processors

CONTINUED

California Manufacturers and Technology Association
California Special Districts Association
Chemical Industry Council of California
Civil Justice Association of California
Large-Scale Solar Association
Rural Counties Representatives of California
South Coast Air Quality Management District

ARGUMENTS IN SUPPORT : According to supporters, "SB 617 updates CEQA and uses available technology to ensure public access to the CEQA process."

"CEQA is meant to be an environmental bill of rights, allowing people to comment on projects that may affect their communities. This bill ensures that the law can actually function as it is intended, by making four critical changes:

1.This bill fixes the misguided decision in Ballona Wetlands Trust, in which a court decided that environmental review could not take into account the effects of the physical environment on the project. That decision could lead to projects being built on floodplains, areas of high seismic activity, or areas of high wildlife risk - without these risks even being permitted to be discussed in the environmental review.

2.This bill consolidates and clarifies the confusing notice-posting requirements of CEQA. These notices are critical to the process, since they alert the public to short periods to comment on projects. SB 617 will ensure that notices are timely posted and are available both electronically and in a physical copy.

3.SB 617 provides that a record of the entire proceedings will be prepared, and made available electronically, as soon as a case is filed, minimizing delays in project review.

4.Finally, with all the changes made to CEQA over the years, a number of now mooted or repealed provisions remain in Code, making it more difficult to read. SB 617 will delete these mooted or repealed provisions."

"SB 617 (Evans) is a logical step towards keeping the state's

CONTINUED

cornerstone environmental review functional and accessible."

ARGUMENTS IN OPPOSITION : Opponents write, "SB 617 is an attack on the core of the CEQA, namely that CEQA requires consideration of the impacts of a project on the environment, not the other way around. A variety of other California laws already address issues such as floods, fire hazards, and earthquakes (eg., natural issues that may impact projects). SB 617 ignores these robust bodies of law and injects into CEQA further uncertainty and increased litigation costs for projects ranging from affordable housing and hospitals to schools and infrastructure."

"Compliance with CEQA imposes considerable costs on project proponents, and the state is one of the largest project proponents. By expanding the range of factors that must be considered under a CEQA analysis, AB 953 increases the cost to the state for performing those analyses. In addition, AB 953 would provide new opportunities for litigation, allowing project opponents to challenge the adequacy of an EIR for a host of reasons."

They continue, "The natural hazards SB 617 seeks to address are already addressed in a myriad of substantive laws in California." [These include flood hazards, fire hazards, and seismic hazards.] "All three of these are covered in the Natural Hazards Disclosure Statement and many more are covered in other disclosure laws. These are a myriad of potential impacts of the existing environment on a project that are required to be addressed in substantive ways outside of, and more effectively than by injecting them into CEQA, in order to protect the occupants of new development."
"Furthermore, this issue has been litigated multiple times and courts have repeatedly held that CEQA is not concerned with the effect of the environment on proposed projects. Consideration of the effect of the environment on the project is beyond the scope of CEQA."

"The review and approval of proposed projects in California are governed by a host of laws to ensure the health, safety, and environmental protection of our citizens and the communities in which we live. SB 617 ignores these laws and assumes CEQA is the only law in the land. Ironically, one of the results of SB 617 would be to drive development away from infill sites and

CONTINUED

towards the urban fringe- a dynamic that flies in the face of SB 375 and a host of smart growth policies throughout the state."

"SB 617's requirements duplicate existing laws that are more effective than CEQA. Finally, SB 617 also imposes additional requirements to file notices of approval and notices of determination with both the Governor's Office of Planning and Research and the county clerk's office. While public notice is important, there is no need to have both posted. These notices are issued after the CEQA process is complete and no further public comment is possible. The notice serves only to begin the running statute of limitations to file a lawsuit. Dual public notification could act to delay litigation over projects rather than streamline the process. If it makes sense to post these notices on OPR's Internet Web site, then the requirement to post at the county clerk's office should be deleted."

RM:ej 5/28/13 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

**** END ****

EXHIBIT R

CALIFORNIA NATURAL RESOURCES AGENCY

FINAL STATEMENT OF REASONS FOR REGULATORY ACTION

Amendments to the State CEQA Guidelines Addressing Analysis and Mitigation of Greenhouse Gas Emissions Pursuant to SB97

December 2009

SECTION 15126.2. CONSIDERATION AND DISCUSSION OF SIGNIFICANT ENVIRONMENTAL EFFECTS.

Amendments are proposed to two subdivisions of the existing section 15126.2. The first, to subdivision (c), adds a cross-reference to the Public Resources Code and another section of the State CEQA Guidelines. This revision, therefore, qualifies as a "change without regulatory effect" pursuant to section 100(a)(4) of the Office of Administrative Law's regulations governing the rulemaking process. (Cal. Code Regs., tit. 1, § 100(a)(4).) The second change, made in response to public comments, adds a sentence to the end of existing subdivision (a). That change is described in greater detail below.

Specific Purposes of the Amendment

Several comments submitted as part of the Natural Resources Agency's SB97 rulemaking process urged it to develop guidance addressing the analysis of the impacts of climate change on a project. These comments similarly suggested that such guidance was appropriate in light of the release of the draft California Climate Adaptation Strategy (Adaptation Strategy), developed pursuant to Executive Order S-13-2008. In considering such comments, it is important to understand several key differences between the Adaptation Strategy and the California Environmental Quality Act. First, the Adaptation Strategy is a policy statement that contains recommendations; it is not a binding regulatory document. Second, the Adaptation Strategy focuses on how the State can plan for the effects of climate change. CEQA's focus, on the other hand, is the analysis of a particular project's greenhouse gas emissions on the environment, and mitigation of those emissions if impacts from those emissions are significant. Given these differences, CEQA should not be viewed as the tool to implement the Adaptation Strategy; rather, as indicated in the Strategy's key recommendations, advanced programmatic planning is the primary method to implement the Adaptation Strategies.

There is some overlap between CEQA and the Adaptation Strategy, however. As explained in both the Initial Statement of Reasons and in the Adaptation Strategy, section 15126.2 may require the analysis of the effects of a changing climate under certain circumstances. (Initial Statement of Reasons, at pp. 68-69.) In particular, Section 15126.2 already requires an analysis of placing a project in a potentially hazardous location. Further, several questions in the Appendix G checklist already ask about wildfire and flooding risks. Many comments on the proposed amendments asked for additional guidance, however.

Having reviewed all of the comments addressing the effects of climate change, the Natural Resources Agency revised the proposed amendments to include a new sentence in Section 15126.2 clarifying the type of analysis that would be required. Existing section 15126.2(a) provides an example of a potential hazard requiring analysis: placing a subdivision on a fault line. The new sentence adds further examples, as follows:

> Similarly, the EIR should evaluate any potentially significant impacts of locating development in other areas susceptible to hazardous conditions (e.g., floodplains, coastlines, wildfire risk areas) as identified in authoritative hazard maps, risk assessments or in land use plans addressing such hazards areas.

According to the Office of Planning and Research, at least sixty lead agencies already require this type of analysis. (California Governor's Office of Planning and Research, State Clearinghouse, The California Planners' Book of Lists (January, 2009), at p. 109.) This addition is reasonably necessary to guide lead agencies as to the scope of analysis of a changing climate that is appropriate under CEQA.

As revised, section 15126.2 would provide that a lead agency should analyze the effects of bringing development to an area that is susceptible to hazards such as flooding and wildfire, both as such hazards currently exist or may occur in the future. Several limitations apply to the analysis of future hazards, however. For example, such an analysis may not be relevant if the potential hazard would likely occur sometime after the projected life of the project (i.e., if sea-level projections only project changes 50 years in the future, a five-year project may not be affected by such changes). Additionally, the degree of analysis should correspond to the probability of the potential hazard. (State CEQA Guidelines, § 15143 ("significant effects should be discussed with emphasis in proportion to their severity and probability of occurrence").) Thus, for example, where there is a great degree of certainty that sea-levels may rise between 3 and 6 feet at a specific location within 30 years, and the project would involve placing a wastewater treatment plant with a 50 year life at 2 feet above current sea level, the potential effects that may result from inundation of that plant should be addressed. On the other extreme, while there may be consensus that temperatures may rise, but the magnitude of the increase is not known with any degree of certainty, effects associated with temperature rise would not need to be examined. (State CEQA Guidelines, § 15145 ("If, after thorough investigation, a lead agency finds that a particular impact is too speculative for evaluation, the agency should note its conclusion and terminate the discussion of the impact").) Lead agencies are not required to generate their own original research on potential future changes; however, where specific information is currently available, the analysis should address that information. (State CEQA Guidelines, § 15144 (environmental analysis "necessarily involves some degree of forecasting. While seeing the unforeseeable is not possible, an agency must use its best efforts to find out and disclose all that it reasonably can").)

The decision in *Baird v. County of Contra Costa* (1995) 32 Cal.App.4th 1464, does not preclude this analysis. In that case, the First District Court of Appeal held that a county was not required to prepare an EIR due solely to pre-existing soil contamination that the project would not change in any way. (Id. at 1468.) No evidence supported the petitioner's claim that the project would "expose or exacerbate" the pre-existing contamination, which was located several hundred to several thousand feet from the project site. (Id. at n. 1.) Moreover, the project would have no other significant effects on the environment, and other statutes exist to protect residents from contaminated soils. Thus, the question confronting that court was whether pre-existing contamination near the project was, by itself, enough to require preparation of an EIR. It held that, in those circumstances, an EIR was not required. That court also acknowledged, however, that where there is a potential for ultimately changing the environment, an EIR could be required. (Id. at p. 1469.) Thus, unlike the circumstances in the *Baird* case, the analysis required in section 15126.2(a) would occur if an EIR was otherwise required. Similarly, the addition to that section contemplates hazards which the presence of a project could exacerbate (i.e., potential upset of hazardous materials in a flood, increased need for firefighting services, etc.).

This revision was described in the Natural Resources Agency's Notice of Proposed Changes and the public was invited to present comments on that change. The Natural Resources Agency determined that the change was sufficiently related to the original proposal described in the Notice of Proposed Action, so a fifteen day comment period was appropriate. It is sufficiently related because the Notice of Proposed Action explained that the rulemaking activity was intended to address the directive in SB97 to provide guidelines on the analysis of the "effects of greenhouse gas emissions." As explained in the Initial Statement of Reasons, the Natural Resources Agency initially chose not to provide specific guidance on the analysis of the effects of placing development in an area subject to the effects of climate change because the Agency interpreted existing section 15126.2(a) to already require that analysis under certain circumstances. As indicated above, however, many comments on the proposed amendments suggested revisions to section 15126.2(a) to provide additional guidance. The areas susceptible to hazards include those that may result from a changing climate. Thus, the change is sufficiently related that a reasonable person would be put on notice that such a change could occur as a result of the rulemaking activity described in the Notice of Proposed Action.

Finally, following review of comments on this revision, the Natural Resources Agency clarified that this analysis applies only to "potentially significant" effects of locating developing in areas susceptible to hazards. Because this revision clarifies the last sentence in section 15126.2(a), consistent with the Public Resources Code, and does not alter the requirements, rights, responsibilities, conditions, or prescriptions contained in the originally proposed text, this revision is nonsubstantial and need not be circulated for additional public review. (Government Code, § 11346.8(c); Cal. Code Regs., tit. 1, § 40.)

Necessity

The Legislature directed OPR and the Resources Agency to develop guidelines addressing the analysis of the effects of GHG emissions. (Pub. Resources Code, § 21083.05.) As explained above, the effects of GHG emissions include flooding, sea-level rise and wildfires. Thus, the addition of a clarifying sentence to existing section 15126.2(a), requiring analysis of the effects of placing developing in hazardous locations, is reasonably necessary to ensure that such analysis occurs with respect to areas subject to potential hazards resulting from climate change.

Reasonable Alternatives to the Regulation, Including Alternatives that Would Lessen Any Adverse Impact on Small Business, and the Resources Agency's Reasons for Rejecting Those Alternatives

The Resources Agency considered reasonable alternatives to the Amendments and determined that no reasonable alternative would be more effective in carrying out the purpose for which the action is proposed or would be as effective as, and less burdensome to affected private persons than, the Amendments. This conclusion is based on the Resources Agency's determination that the Amendments are necessary to implement the Legislature's directive in SB97 in a manner consistent with existing statutes and case law, and the Amendments add no new substantive requirements. The Resources Agency rejected the no action alternative because it would not achieve the objectives of the Amendments. There are no alternatives available that would lessen any adverse impacts on small businesses, as any impacts would result from the implementation of existing law.

Evidence Supporting an Initial Determination That the Action Will Not Have a Significant Adverse Economic Impact on Business

The Amendments interpret and make specific statutory CEQA provisions and/or case law interpreting CEQA for analyzing the effects of GHG emissions that may result from proposed projects. Many lead agencies, and some trial courts, have already determined that CEQA requires analysis and mitigation of GHG emissions independent of the SB97 CEQA Guidelines amendments. The Office of Planning and Research, for example, has cataloged over 1,000 examples of CEQA documents, prepared between July 2006 and June 2009, analyzing and mitigating GHG emissions. (Office of Planning and Research, Environmental Assessment Documents Containing a Discussion of Climate Change (Revised June 1, 2009).) Further, several trial courts have found that existing CEQA law requires analysis and mitigation of GHG emissions. (See, e.g., *Muriettans for Smart Growth v. City of Murrieta et al.*, Riverside Co. Sup. Ct. Case No. RIC463320 (November 21, 2007); *Env. Council of Sac. et al v. Cal. Dept. of Trans.*, Sacramento Sup. Ct. Case No. 07CS00967 (July 15, 2008) (citing *Berkeley Keep Jets Over the Bay Committee v. Board of Commissions* (2001) 91 Cal.App. 4th 1344, 1370-1371 and State CEQA Guidelines section 15144 as requiring a lead agency to "meaningfully attempt to quantify the Project's potential impacts on GHG emissions and determine their significance" or at least to explain what steps were undertaken to

investigate the issue before concluding that the impact would be speculative).) Finally, federal courts have interpreted the National Environmental Policy Act ("NEPA") to require an analysis of potential impacts of GHG emissions. (*See, e.g., Ctr. for Biological Diversity v. Nat'l Highway Traffic Safety Ad.*, 538 F.3d 1172, 1215-1217 (9th Cir. 2008).) Thus, the amendments to the CEQA Guidelines developed pursuant to SB97 do not create new requirements; rather, they interpret and clarify existing CEQA law.

Because the Amendments do not add any substantive requirements, they will not result in an adverse impact on businesses in California. On the contrary, by providing greater certainty to lead agencies regarding the analysis that may be required of the potential effects of climate change on a project, the cost of environmental analysis, and potential litigation, may be reduced.

Projects That Implement AB32 or Otherwise Assist in Achieving the State's Emissions Reductions Goals

Finally, some comments noted that projects implementing AB32, or that would somehow assist the State in achieving a low-carbon future, should not be considered significant under CEQA, and that requiring such projects to mitigate their emissions would frustrate implementation of AB32. CEQA requires analysis and mitigation of a project's significant adverse environmental impacts, even if that project may be considered environmentally beneficial overall. As the Third District Court of Appeal recently explained:

> "[I]t cannot be assumed that activities intended to protect or preserve the environment are immune from environmental review. [Citations.]" .... There may be environmental costs to an environmentally beneficial project, which must be considered and assessed.

(*Cal. Farm Bureau Fed. v. Cal. Wildlife Cons. Bd.* (2006) 143 Cal. App. 4th 173, 196.) Nothing in SB97 altered this rule. Thus, lead agencies must consider whether the greenhouse gas emissions resulting from beneficial projects may be significant, and if so, whether any feasible measures exist to mitigate those emissions. If such emissions are found to be significant and unavoidable, proposed amendments to section 15093 would expressly allow lead agencies to consider the region-wide and statewide environmental benefits of a project in determining whether project benefits outweigh its adverse environmental impacts.

"Adaptation" and Analysis of the Effects of Climate Change on a Project

Several comments submitted as part of the Natural Resources Agency's SB97 rulemaking process urged it to incorporate the California Climate Adaptation Strategy (Adaptation Strategy) into the CEQA Guidelines. In considering such comments, it is important to understand several key differences between the Adaptation Strategy and the California Environmental Quality Act. First, the Adaptation Strategy is a policy statement that contains recommendations; it is not a binding regulatory document. Second, the Adaptation Strategy focuses on how the State can plan for the effects of climate change. CEQA's focus, on the other hand, is the analysis of a particular project's greenhouse gas emissions on the environment, and mitigation of those emissions if impacts from those emissions are significant. Given these differences, CEQA should not be viewed as the tool to implement the Adaptation Strategy; rather, as indicated in the Strategy's key recommendations, advanced programmatic planning is the primary method to implement the Adaptation Strategies.

There is some overlap between CEQA and the Adaptation Strategy, however. As explained in both the Initial Statement of Reasons and in the Adaptation Strategy, section 15126.2 may require the analysis of the effects of a changing climate under certain circumstances. (Initial Statement of Reasons, at pp. 68-69.) In particular,

Section 15126.2 already requires an analysis of placing a project in a potentially hazardous location. Further, several questions in the Appendix G checklist already ask about wildfire and flooding risks. Many comments on the proposed amendments asked for additional guidance, however.

Having reviewed all of the comments addressing the effects of climate change, the Natural Resources Agency revised the proposed amendments to include a new sentence in Section 15126.2 clarifying the type of analysis that would be required. Existing section 15126.2(a) provides an example of a potential hazard requiring analysis: placing a subdivision on a fault line. The new sentence adds further examples, as follows:

> Similarly, the EIR should evaluate any potentially significant impacts of locating development in other areas susceptible to hazardous conditions (e.g., floodplains, coastlines, wildfire risk areas) as identified in authoritative hazard maps, risk assessments or in land use plans addressing such hazards areas.

According to the Office of Planning and Research, at least sixty lead agencies already require this type of analysis. (California Governor's Office of Planning and Research, State Clearinghouse, The California Planners' Book of Lists (January, 2009), at p. 109.) This addition is reasonably necessary to guide lead agencies as to the scope of analysis of a changing climate that is appropriate under CEQA.

As revised, section 15126.2 would provide that a lead agency should analyze the effects of bringing development to an area that is susceptible to hazards such as flooding and wildfire, both as such hazards currently exist or may occur in the future. Several limitations apply to the analysis of future hazards, however. For example, such an analysis may not be relevant if the potential hazard would likely occur sometime after the projected life of the project (i.e., if sea-level projections only project changes 50 years in the future, a five-year project may not be affected by such changes). Additionally, the degree of analysis should correspond to the probability of the potential hazard. (State CEQA Guidelines, § 15143 ("significant effects should be discussed with emphasis in proportion to their severity and probability of occurrence").) Thus, for example, where there is a great degree of certainty that sea-levels may rise between 3 and 6 feet at a specific location within 30 years, and the project would involve placing a wastewater treatment plant with a 50 year life at 2 feet above current sea level, the potential effects that may result from inundation of that plant should be addressed. On the other extreme, while there may be consensus that temperatures may rise, but the magnitude of the increase is not known with any degree of certainty, effects associated with temperature rise would not need to be examined. (State CEQA Guidelines, § 15145 ("If, after thorough investigation, a lead agency finds that a particular impact is too speculative for evaluation, the agency should note its conclusion and terminate the discussion of the impact").) Lead agencies are not required to generate their own original research on potential future changes; however, where specific information is currently available, the analysis should address that information. (State CEQA

Guidelines, § 15144 (environmental analysis "necessarily involves some degree of forecasting. While seeing the unforeseeable is not possible, an agency must use its best efforts to find out and disclose all that it reasonably can").)

The decision in *Baird v. County of Contra Costa* (1995) 32 Cal.App.4th 1464, does not preclude this analysis. In that case, the First District Court of Appeal held that a county was not required to prepare an EIR due solely to pre-existing soil contamination that the project would not change in any way. (*Id.* at 1468.) No evidence supported the petitioner's claim that the project would "expose or exacerbate" the pre-existing contamination, which was located several hundred to several thousand feet from the project site. (*Id.* at n. 1.) Moreover, the project would have no other significant effects on the environment, and other statutes exist to protect residents from contaminated soils. Thus, the question confronting that court was whether pre-existing contamination near the project was, by itself, enough to require preparation of an EIR. It held that, in those circumstances, an EIR was not required. That court also acknowledged, however, that where there is a potential for ultimately changing the environment, an EIR could be required. (*Id.* at p. 1469.) Thus, unlike the circumstances in the *Baird* case, the analysis required in section 15126.2(a) would occur if an EIR was otherwise required. Similarly, the addition to that section contemplates hazards which the presence of a project could exacerbate (i.e., potential upset of hazardous materials in a flood, increased need for firefighting services, etc.).

Finally, while the revision in section 15126.2 is consistent with the general objective of the Adaptation Strategy and is consistent with the limits of CEQA, not all issues addressed in the Adaptation Strategy are necessarily appropriate in a CEQA analysis. Thus, the revision in section 15126.2 should not be read as implementation of the entire Adaptation Strategy. Unlike hazards that can be mapped, other issues in the Adaptation Strategy, such as the health risks associated with higher temperatures, are not capable of an analysis that links a project to an ultimate impact. Habitat modification and changes in agriculture and forestry resulting from climate change similarly do not appear to be issues that can be addressed on a project-by-project basis in CEQA documents. Water supply variability is an issue that has already been addressed in depth in recent CEQA cases. (*See, e.g., Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 434-435 ("If the uncertainties inherent in long-term land use and water planning make it impossible to confidently identify the future water sources, an EIR may satisfy CEQA if it acknowledges the degree of uncertainty involved, discusses the reasonably foreseeable alternatives—including alternative water sources and the option of curtailing the development if sufficient water is not available for later phases—and discloses the significant foreseeable environmental effects of each alternative, as well as mitigation measures to minimize each adverse impact.").) Further, legislation has been developed to ensure that lead agencies identify adequate water supplies to serve projects many years in the future under variable water conditions. (See, e.g., Water Code, § 10910 *et seq.*; Government Code, § 66473.7.) Thus, the analysis called for in section 15126.2(a) should be directed primarily at hazards, and not all aspects of the Adaptation Strategy.

EXHIBIT S

Letter 13

Pete Parkinson, AICP
Vice President, Policy and Legislation
American Planning Association, Cal Chapter

August 18, 2009

Comment 13-1

The CEQA Guidelines should address adaptation to climate change. Commenter does not find the explanation given in the Initial Statement of Reasons to be convincing given the California Natural Resources Agency, on August 3, 2009, released the California Climate Adaptation Strategy.

Response 13-1

Several comments submitted as part of the Natural Resources Agency's SB97 rulemaking process urged it to incorporate the draft California Climate Adaptation Strategy ("Adaptation Strategy") into the CEQA Guidelines. In considering such comments, it is important to understand several key differences between the Adaptation Strategy and the California Environmental Quality Act. First, the Adaptation Strategy is a policy statement that contains recommendations; it is not a binding regulatory document. Second, the focus of the Adaptation Strategy is on how we can change in response to climate change. CEQA's focus, on the other hand, is the analysis of greenhouse gas emissions from a particular project, and mitigation of those emissions if they are significant. Given these differences, CEQA should not be viewed as the tool to implement the Adaptation Strategy; rather, as indicated in the Strategy's key recommendations, advanced programmatic planning is the primary method to implement the Adaptation Strategies.

There is some overlap between CEQA and the Adaptation Strategy, however. As explained in both the Initial Statement of Reasons and in the draft Adaptation Strategy, section 15126.2 may require the analysis of the effects of a changing climate under certain circumstances. Having reviewed all of the comments addressing the effects of climate change, the Natural Resources Agency revised the proposed amendments to include a new sentence in Section 15126.2 clarifying the type of analysis that would be required.

Specifically, the new sentence calls for analysis of placing projects in areas susceptible to hazards, such as floodplains, coastlines, and wildfire risk areas. Such analysis would be appropriate where the risk is identified in authoritative maps, risk assessments or land use plans. According to the Office of Planning and Research, at least sixty lead agencies already require this type of analysis. (California Governor's Office of Planning and Research. (January, 2009). The California Planners' Book of Lists 2009. State Clearinghouse. Sacramento, California, at p. 109.) This addition is reasonably necessary to guide lead agencies as to the scope of analysis of a changing climate that is appropriate under CEQA.

As revised, section 15126.2 would provide that a lead agency should analyze the effects of bringing development to an area that is susceptible to hazards such as flooding and wildfire (i.e., potential upset of hazardous materials in a flood, increased need for firefighting services, etc.), both as such hazards currently exist or may occur in the future. Several limitations on the analysis of future hazards, however, should apply. For example, such an analysis may not be relevant if the potential hazard would likely occur sometime after the projected life of the project (i.e., if sea-level projections only project changes 50 years in the future, a five-year project may not be affected by such changes). Additionally, the degree of analysis should correspond to the probability of the potential hazard. (State CEQA Guidelines, § 15143 ("significant effects should be discussed with emphasis in proportion to their severity and probability of occurrence").) Thus, for example, where there is a great degree of certainty that sea-levels may rise between 3 and 6 feet at a specific location within 30 years, and the project would involve placing a wastewater treatment plant with a 50 year life at 2 feet above current sea level, the potential effects that may result from inundation of that plant should be addressed. On the other extreme, while there may be consensus that temperatures may rise, but the magnitude of the increase is not known with any degree of certainty, effects associated with temperature rise would not need to be examined. (State CEQA Guidelines, § 15145 ("If, after thorough investigation, a lead agency finds that a particular impact is too speculative for evaluation, the agency should note its conclusion and terminate the discussion of the impact").) Lead agencies are not required to generate their own original research on potential future changes; however, where specific information is currently available, the analysis should address that information. (State CEQA Guidelines, § 15144 (environmental analysis "necessarily involves some degree of forecasting. While seeing the unforeseeable is not possible, an agency must use its best efforts to find out and disclose all that it reasonably can") (emphasis added).)

The revision in section 15126.2 is consistent with the general objective of the Adaptation Strategy and is consistent with the limits of CEQA. Not all issues addressed in the Adaptation Strategy are necessarily appropriate in a CEQA analysis, however. Thus, the revision in section 15126.2 should not be read as implementation of the entire Adaptation Strategy. Unlike hazards that can be mapped, for example, other effects associated with climate change, such as the health risks associated with higher temperatures, may not allow a link between a project and an ultimate impact. Habitat modification and changes in agriculture and forestry resulting from climate change similarly do not appear to be issues that can be addressed on a project-by-project basis in CEQA documents. Water supply variability is an issue that has already been addressed in depth in recent CEQA cases. (See, e.g., *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 434-435 ("If the uncertainties inherent in long-term land use and water planning make it impossible to confidently identify the future water sources, an EIR may satisfy CEQA if it acknowledges the degree of uncertainty involved, discusses the reasonably foreseeable alternatives—including alternative water sources and the option of curtailing the development if sufficient water is not available for later phases—and discloses the significant foreseeable environmental effects of each alternative, as well as mitigation measures to minimize each adverse impact.").) Further, legislation has been developed to ensure that lead agencies identify adequate water supplies to serve projects many years in the future under variable water conditions. (See, e.g., Water Code, § 10910 et seq.,; Government Code, § 66473.7.) The Natural

Resources Agency finds that the revised text of section 15126.2 provides the guidance suggested in this comment. No further changes to the text are required to respond to this comment.

Comment 13-2

Revise Appendix G to include the recommendations made by the Adaptation Strategy to local agencies to analyze and adapt climate impacts.

Response 13-2

The Natural Resources Agency declines to revise Appendix G to address adaptation specifically. Several questions in Appendix G already ask about flooding and wildfire risks. Further, as explained above, section 15126.2 has been revised to provide specific guidance on when such analysis should occur.

Comment 13-3

Revise Section 15126.2(a) so that when EIR is prepared, the lead agency is directed to evaluate how the project's environmental setting may be modified or impacted in the future by climate change.

Response 13-3

Section 15126.2 has been revised in response to this and similar comments. The revision is substantially similar to the text suggested in this comment. The revised text focuses on areas that are susceptible to hazards, but does not specifically focus on changes that may result from climate change. The word "susceptible" is used to signal that hazards existing today and those that are reasonably expected to occur in the future should be included in the analysis. Such hazards may include hazards that result from the effects of climate change or other causes. The appropriate focus in this section, however, is on the potential interaction between the project and the hazard, and not the cause of the hazard. Because the revised text addresses the concerns raised by the commenter, the Natural Resources Agency declines to further revise the text in response to this comment.

Comment 13-4

Revise Section 15126.4(c)(5) to express a preference for on-site mitigation and ensure offsite measures and offsets be effective, verifiable, and enforceable.

Response 13-4

CEQA does not grant lead agencies authority to mitigate a project's significant impacts; rather, the statute allows lead agencies to use the authority they already have pursuant to some other source of law for the purpose of mitigating significant impacts. (Public Resources Code, § 21004.) With certain

limited exceptions, CEQA has not limited the discretion of a lead agency to choose the most appropriate mitigation for a particular project. The existing CEQA Guidelines do already contain provisions that recognize a lead agency's obligation to balance various factors in determining how or whether to carry out a project. (State CEQA Guidelines, § 15021(d).) Further, the Guidelines already require that "[w]here several measures are available to mitigate an impact, each should be discussed and the basis for selecting a particular measure should be identified." (State CEQA Guidelines, § 15126.4(a)(1)(B).) The Natural Resources Agency cannot, however, state in the Guidelines that all lead agencies have the authority to prioritize types of mitigation measures. Each lead agency must determine the scope of its own authority based on its own statutory or constitutional authorization. Because the Guidelines already state that a lead agency should balance various factors in deciding how to carry out a project, no further clarification is necessary. The Natural Resources Agency, therefore, rejects the suggestion to revise the Guidelines to express a preference for on-site mitigation measures.

The comment further asks that the Guidelines require that off-site mitigation be effective, verifiable, and enforceable. The text of section 15126.4(c) already requires that lead agencies consider "feasible" means of mitigating greenhouse gas emissions. Use of the word "feasible" requires the lead agency to find that any measure, including offsets, would be "capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social, and technological factors." (State CEQA Guidelines, § 15364.) The text of section 15126.4(c) has been further revised in response to comments to clarify that mitigation must be "supported by substantial evidence and subject to monitoring or reporting[.]" This revision addresses the commenter's concern regarding verifiability. Finally, all mitigation must be enforceable as stated in existing section 15126.4(a)(2). Therefore, it is not necessary to further state that off-site measures must be "enforceable." For the reasons stated above, the Natural Resources Agency finds that the concerns raised in this comment are addressed by the proposed revisions and the existing language in the Guidelines.

Comment 13-5

Revise the CEQA Guidelines to include the reasoning given in the Initial Statement of Reasons for preferring on-site mitigation. This would add language to remind lead agencies that all mitigation measures must be effective and enforceable, encompassing offsite measures, offsets, and credits.

Response 13-5

This comment raises two issues. First, on-site measures may be preferable because they are easier to enforce. As explained in Response 13-4, above, existing section 15021(d) allows lead agencies to consider a variety of factors in determining how to carry out a project. Further, section 15126.4(a)(1)(B) recognizes a lead agency's ability to choose between mitigation measures. Thus, existing authority already allows a lead agency, within the scope of its authority, to consider enforceability issues.

Second, the comment suggests that language regarding enforceability should be specifically added to the subdivision recognizing off-site mitigation. The Natural Resources Agency declines that suggestion for several reasons. Adding that language only to the section on off-site could mistakenly signal that on-site mitigation need not be enforceable. Further, a principle of drafting regulatory text is to only use necessary words. If all mitigation must be enforceable, it is not necessary to state again that off-site mitigation must also be enforceable. Thus, this suggestion is rejected.

Comment 13-6

Revise Section 15130(b)(1)(B) to be more specific in identifying information from regional modeling programs.

Response 13-6

The Natural Resources Agency finds that adding the phrase "information from" would be redundant because the sentence already states that "additional information" may be used in determining a summary of projections for a cumulative impacts analysis. Thus, this suggestion is rejected.

Comment 13-7

Revise Section 15183.5(c) to be more specific in identifying "CEQA documents" for a finding of consistency with certain projects.

Response 13-7

The Natural Resources Agency has revised the text of section 15183.5(c) with substantially similar language. It refers to "environmental documents" because that term is defined in section 15361, and is more inclusive than the phrase "CEQA document".

Comment 13-8

Revise Appendix F (II)(D)(4) to emphasize the use of renewable fuels as mitigation.

Response 13-8

The Natural Resources Agency appreciates the suggested addition, but finds that it would be redundant of both the first parenthetical in the subject sentence and the Introduction to Appendix F which already states the goal of "increasing reliance on renewable energy sources." Thus, this suggestion is not adopted.

EXHIBIT T

I, Ellison Folk, declare as follows:

1. I am a member of the State Bar of California, and I am an attorney with the law firm of Shute, Mihaly & Weinberger, attorneys for Defendant and Appellant Bay Area Air Quality Management District. I make this declaration in support of the Air District's attached Motion for Judicial Notice.

2. I have personal knowledge of the matters set forth in this declaration, and if called upon to testify to those matters, I could and would so testify.

3. True and correct copies of the following documents for which the Air District

is requesting judicial notice are attached to this motion as follows:

(a) Exhibit A: Relevant sections of the CEQA Guidelines as they existed in 1979.

(b) Exhibit B: Appendix G and Appendix I to the CEQA Guidelines as they existed in 1979.

(c) Exhibit C: A document issued by the California Natural Resources Agency that includes the final regulatory language from the Agency's 1982 amendments to the CEQA Guidelines, along with the Agency's discussion of the revisions.

(d) Exhibit D: Relevant sections of the CEQA Guidelines as they existed in in 1997 (prior to 1998 amendments).

(e) Exhibit E: Relevant sections of the CEQA Guidelines as they were amended in 1998 and published in 1999.

(f) Exhibit F: A document from the California Natural Resources Agency's rulemaking file containing the Agency's response to a comment related to its 1982 revisions to the CEQA Guidelines.

(g) Exhibit G: Department of General Services Bill Analysis, Assembly Bill No. 2583, Stats. 1984 (Reg. Sess.).

(h) Exhibit H: Relevant Excerpts from A Report to the Assembly Committee on Natural Resources by the Committee on the Environment of the State Bar of California entitled "The California Environmental Quality Act: Recommendations for Legislative and Administrative Change," Dec., 1983.

(i) Exhibit I: Final chaptered language of Assembly Bill No. 2583, Stats. 1984 (Reg. Sess.).

(j) Exhibit J: Governor's Office of Planning and Research, Enrolled Bill Report, Senate Bill No. 1453, Stats. 1994 (Reg. Sess.).

(k) Exhibit K: Resources Agency, Enrolled Bill Report, Senate Bill No. 1453, Stats. 1994 (Reg. Sess.).

(l) Exhibit L: Department of Finance, Bill Analysis, Enrolled Bill Report, Senate Bill No. 1453, Stats. 1994 (Reg. Sess.).

(m) Exhibit M: Legislative Counsel's Digest, Senate Bill No. 1453, Stats. 1994 (Reg. Sess.).

(n) Exhibit N: Enrolled Bill Report, Senate Bill No. 2262, Stats. 1990 (Reg. Sess.).

(o) Exhibit O: Senate Transportation & Housing Committee Bill Analysis, Senate Bill No. 375, Stats 1997 (Reg. Sess.).

(p) Exhibit P: Assembly Committee on Agriculture Bill Analysis, Senate Bill No. 226, Stats 2011 (Reg. Sess.).

(q) Exhibit Q: Senate Rules Committee Bill Analysis, Senate Bill 617, Stats 2013 (Reg. Sess.).

(r) Exhibit R: California Natural Resources Agency, Final Statement of Reasons for Regulatory Action, Amendments to the State CEQA Guidelines Addressing Analysis and Mitigation of Greenhouse Gas Emissions Pursuant to SB 97, December, 2009.

(s) Exhibit S: California Natural Resources Agency, Responses to Public Comments pertaining to its regulatory amendments to the State CEQA Guidelines Addressing Analysis and Mitigation of Greenhouse Gas Emissions Pursuant to SB 97, August, 2009.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on February 24, 2014.

ELLISON FOLK

PROOF OF SERVICE

California Building Industry Association, et al. v. Bay Area Air Quality Management District; Supreme Court of California Case No. S213478

At the time of service, I was over 18 years of age and **not a party to this action**. I am employed in the City and County of San Francisco, State of California. My business address is 396 Hayes Street, San Francisco, CA 94102.

On February 25, 2014, I served true copies of the following document(s) described as:

BAY AREA AIR QUALITY MANAGEMENT DISTRICT'S MOTION FOR JUDICIAL NOTICE; DECLARATION OF ELLISON FOLK & [PROPOSED] ORDER

on the parties in this action as follows:

SEE ATTACHED SERVICE LIST

BY FEDEX: I enclosed said document(s) in an envelope or package provided by FedEx and addressed to the persons at the addresses listed in the Service List. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of FedEx or delivered such document(s) to a courier or driver authorized by FedEx to receive documents.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on February 25, 2014, at San Francisco, California.

P Spencer

Patricia A. Spencer

SERVICE LIST
California Building Industry Association, et al. v. Bay Area Air Quality Management District; Supreme Court of California
Case No. S213478

Michael H. Zischke
Andrew B. Sabey
Christian H.Cebrian
Cox, Castle & Nicholson LLP
555 California Street, 10th Floor
San Francisco, CA 94104

Tel: (415) 392-4200
Fax: (415) 392-4250

mzischke@coxcastle.com
asabey@coxcastle.com
ccebrian@coxcastle.com

Attorneys for Plaintiff and Respondent
CALIFORNIA BUILDING INDUSTRY ASSOCIATION

Court of Appeal
First Appellate District
350 McAllister Street
San Francisco, CA 94102

The Honorable Frank Roesch
Alameda Superior Court
1225 Fallon Street
Oakland, CA 94612