



ASSOCIATION OF
ENVIRONMENTAL
PROFESSIONALS

November 21, 2016

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

Re: AEP Support and Comments to OPR Discussion Draft of Proposed Amendments to CEQA Guidelines Section 15126.2(a) and *Consideration of Significant Effects and Hazards in the CEQA Guidelines*

Dear Mr. Calfee:

On behalf of the Association of Environmental Professionals (AEP), we appreciate the opportunity to provide input on OPR's Discussion Draft of Proposed Amendments to CEQA Guidelines Section 15126.2(a) and *Consideration of Significant Effects and Hazards in the CEQA Guidelines*. AEP recognizes the complexities of these changes as a result of the *California Building Industry Association v. Bay Area Air Quality Management District* decision. AEP wishes to first note that we are largely supportive of OPR's proposal, and offer a few amendments to clarify certain of the proposed changes.

AEP is a non-profit organization of California's environmental professionals. AEP members are involved in every stage of the evaluation, analysis, assessment, and litigation of projects subject to CEQA. For over thirty years, AEP has dedicated itself to improving the technical expertise and professional qualifications of its membership, as well as educating the public on the value of California's laws protecting the environment, managing our natural resources, and promoting responsible land use and urban growth. AEP's membership is broad and diverse, incorporating environmental and legal professionals from public agencies, the private sector and non-governmental organizations.

AEP supports OPR's Discussion Draft. AEP provides some specific comments on the Discussion Draft below, as well as recommended edits to the Proposed Amendments. Generally speaking, AEP believes OPR should consider additional changes to the CEQA Guidelines that sync with the court's direction. Changes could be made to the CEQA guidelines, but there may be some other areas that could benefit as well.

Thank you for the continued opportunity to play an active role in this process. We hope that you will find our suggestions constructive and helpful.

Should you have any questions or need additional information regarding our comments, please do not hesitate to contact me or our lobbyists, Will Gonzalez and Matt Klopfenstein, at (916) 930-0796 or will@gqhlobby.com / matt@gqhlobby.com.

Sincerely,

A handwritten signature in black ink, appearing to read 'Devon Muto', with a long horizontal flourish extending to the right.

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AEP's Suggested Edits to Proposed Amendment to Guidelines

Below, AEP has provided suggested edits in **Highlight** to OPR's Proposed Amendments. Below each edit, in **Red**, AEP has provided our reasoning for the change. Following these specific edits, AEP has provided additional comments on OPR's Discussion Draft. We hope that OPR finds these suggestions constructive.

Proposed Amendment To Guidelines Section 15126.2.

15126.2. Consideration and Discussion of Significant Environmental Impacts

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 or~~ **risk exacerbating** 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. Similarly,~~ the EIR should evaluate any potentially significant **direct, indirect or cumulative environmental** impacts of locating development in ~~other~~ areas susceptible to hazardous conditions (e.g., floodplains, coastlines, wildfire risk areas), **including both short-term and long-term conditions**, as identified in authoritative hazard maps, risk assessments or in land use plans addressing such hazards areas. **An impact caused solely by bringing residents or users to a location with an existing or future environmental hazard that is not caused or exacerbated by the project need not be considered under CEQA. "[O]rdinary CEQA analysis is concerned with a project's impact on the environment, rather than with the environment's impact on a project and its users or residents." (California Building Industry Assoc. v. Bay Area Air Quality Management District (2015) 62 Cal.4th 369)**

Reasons for suggested revision: The deletion of "cause or" is proposed in order to avoid confusion over the Supreme Court's holding in CBIA v. BAAQMD. The Court did not state that CEQA applies broadly to significant effects the project might cause by bringing development and

people into the area affected. It limited those situations to specific exceptions and, as a general rule, to projects that might exacerbate an existing condition. We suggest adding the quotes from the opinion to further reinforce this concept and provide as much clarity as possible.

AEP Proposed Amendment to Appendix G:

Add the following item (10)¹ to the discussion EVALUATION OF ENVIRONMENTAL IMPACTS:

(10) “[A]gencies subject to CEQA are generally not required to analyze the impact of existing environmental conditions on a project’s future users or residents. But when a proposed project risks exacerbating those environmental hazards or conditions that already exist, an agency must analyze the potential impact of such hazards on future residents or users. In those specific instances, it is the *project’s* impact on the environment — and not the *environment’s* impact on the project — that compels an evaluation of how future residents or users could be affected by exacerbated conditions.” (California Building Industry Assoc. v. Bay Area Air Quality Management District (2015) 62 Cal.4th 369) This may be particularly pertinent when analyzing impacts under checklist items III. Air Quality; VI. Geology and Soils; XIII. Hazards and Hazardous Materials; and XII. Noise.

Reasons for suggested revision: This suggestion would remind preparers of initial studies of the limitations on consideration of impacts of the environment on the project. The purpose is to ensure that this important requirement is in an obvious place for practitioners to run across it.

Additional AEP Comments on OPR Discussion Draft:

First, AEP recommends that OPR provide a technical guidance on ways a lead agency may define whether a project “exacerbates” an existing environmental effect with relation to the addition of the word “exacerbating” into the Guidelines. AEP does not believe a definition in the Guidelines is necessarily appropriate, but that some suggested guidance and approach would be a very position addition.

Below are several specific comments and recommendations regarding OPR’s discussion and of the Proposed Amendments. We have provided the quotation and page reference, followed by our comments.

OPR, page 3:

“Hazards associated with flooding, wildfire and climate change require special consideration. (Id. at subd. (g)(2)-(g)(4).)”

¹ Note that the recent AB 52 update to the CEQA Guidelines has added item (11). However, there does not appear to be an item (10) in the current Appendix G.

AEP Comment:

This statement should be amended to read: “Hazards associated with flooding, wildfire and climate change are also required special considerations in the safety element.”

OPR, page 3:

“Lead agencies must “discuss any inconsistencies between the proposed project and applicable general plans” related to a project’s potential environmental impacts in a project’s environmental review. (State CEQA Guidelines § 15125(d).)”

AEP Comment:

Unclear purpose of this statement. It seems like this is stating that regardless of the court’s decision, one must still address impacts of the environment on the project in the EIR if there are relevant general plan policies and the project is inconsistent with them. If so, some additional rationale should be provided as this appears to ignore the court’s direction. If not, this sentence should be removed.

OPR, page 4:

“Such a development might also lead to indirect effects such as dispersion of pollutants from inundation, increased maintenance and repair-related construction, impedance of evacuation routes, increased demand on emergency services, etc. Thus, harm to the project would not mandate a finding of a significant effect; however, any environmental effects that might result from the harm to the project, and predictable responses to that harm, are properly evaluated in a CEQA evaluation.”

AEP Comment:

While AEP understands that OPR is attempting to describe a scenario where more analysis may be necessary, AEP does not believe there is much value in asserting potential effects that have a limited likelihood of occurring.

For example, in the statement, “dispersion of pollutants from inundation,” it is unclear whether the project will be inundated or the sea wall is causing the inundation. Further, if protected from a sea wall, would there be an issue? Additionally, with the phrase, “increased maintenance and repair-related construction,” if this is construction of the sea wall, is the construction “increased” or just new? Furthermore, if references like, “impedance of evacuation routes” and “increased demand on emergency services,” are included, there should be some elaboration on what the environmental impact is.

AEP believes that a different scenario may be better for this explanation, as the shoreline scenario does not occur very frequently. AEP would recommend using an example such as wildfires that may be easier to explain and relate.