

CENTER FOR BIOLOGICAL DIVERSITY
COMMUNITIES FOR A BETTER ENVIRONMENT
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WILD EQUITY INSTITUTE
CITIZENS COALITION FOR A SAFE COMMUNITY
ENVIRONMENTAL WORKING GROUP
MOMS ADVOCATING FOR SUSTAINABILITY
CALIFORNIANS FOR ALTERNATIVES TO TOXICS
CALIFORNIA ENVIRONMENTAL HEALTH INITIATIVE

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RE: CalEnviroScreen Draft, Guidance, and Applicability for CEQA Analysis

On behalf of the undersigned groups and our tens of thousands of members, supporting the protection of public health, wildlife, and environmental concerns, we urge the California Environmental Protection Agency (“Cal EPA”) to emphasize the importance of the information derived from the California Communities Environmental Health Screening Tool (“CalEnviroScreen”) in a full and accurate environmental analysis under the California Environmental Quality Act (“CEQA”). Public Resources Code §§ 21000 *et seq.*

We are concerned with Cal EPA’s comment that “results generated by CalEnviroScreen are not intended to be used for [CEQA] purposes.”¹ The importance of CalEnviroScreen in properly informing the environmental setting for a proposed project, identifying potentially significant impacts, and identifying mitigation measures and alternatives was properly noted in previous agency memoranda.² CalEnviroScreen data and scores provide valuable information regarding a project’s potential environmental impacts, furthering CEQA’s fundamental requirement that significant environmental effects be disclosed, analyzed, and mitigated or avoided where feasible. See Pub. Res. Code §§ 21002, 21002.1, 20181.

¹ A. Mataka & G. Alexeeff, Memorandum to the Cumulative Impacts and Precautionary Approaches Work Group RE: Second Public Review Draft California Communities Environmental Health Screening Tool (CalEnviroScreen) & Draft Guidance (January 3, 2013) p. 2, available at <http://www.oehha.ca.gov/ej/pdf/CalEnviroScreenGuidanceMemo010313.pdf>

² A. Mataka & G. Alexeeff, Memorandum to the Cumulative Impacts and Precautionary Approaches Work Group RE: Draft California Communities Environmental Health Screening Tool (Cal-ENVIROSCREEN) (July 30, 2012) p. 4, available at <http://www.oehha.ca.gov/ej/pdf/CIPAmemo073012.pdf>

Information Provided by CalEnviroScreen

CalEnviroScreen uses existing environmental, health and socioeconomic data to create a score for communities across the state. The science-based tool presents a broad picture of the burdens different areas and communities experience from environmental pollutants and their vulnerability or ability to respond to these burdens. The analysis relies upon pollution indicators related to air quality, pesticides, chemical toxins, and water quality and correlates that data against characteristics related to sensitive populations and socioeconomic indicators. CalEnviroScreen shows in quantitative terms which geographic areas of the state have higher vulnerabilities and burdens as compared to other areas.

CalEnviroScreen Properly Informs CEQA Analysis

Information generated by CalEnviroScreen supports the core purpose and requirements of CEQA. CEQA requires public agencies to fully disclose environmental impacts and ensure that any significant environmental impacts are mitigated or avoided wherever feasible. In enacting CEQA it was “the intent of the Legislature that the government of [California] take immediate steps to identify any critical thresholds for the health and safety of the people of the state and take all coordinated actions necessary to prevent such thresholds being reached.” Pub. Res. Code § 21000(d). In order to “maintain a high quality environment now and in the future” CEQA’s purpose is to encourage lead agencies to “take all action necessary to protect, rehabilitate, and enhance the environmental quality of the state” and “provide the people [] with clean air and water.” Pub. Res. Code §§ 21001(a), 21001(b).

CalEnviroScreen provides valuable information related to sensitive populations where critical environmental thresholds for the health and safety of people of the state have been reached or exceeded. It also provides data about environmental factors that contribute to worsening the violation of those thresholds in the context of socioeconomic factors that may also contribute to impairing the health and safety of the people when projects are approved under CEQA.

Precluding the use in CEQA documents of CalEnviroScreen data regarding the potentially significant health impacts of a project would violate CEQA’s requirement that a lead agency “use its best efforts to find out and disclose all that it reasonably can.” CEQA Guidelines § 15144.³ Courts have been clear that attempting to avoid collecting information about a project’s significant impacts outlined by state agencies violates CEQA. *Sierra Club v. State Bd. of Forestry* (1994) 7 Cal. 4th 1215, 1236. This obligation is particularly important in the public health context where a lead agency is required to acknowledge and address credible information regarding the health impacts of a project’s contribution to air pollution. *Berkeley Keep Jets Over the Bay v. Board of Port Commissioners* (2001) 91 Cal.App.4th 1344, 1371; See also *Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal. App. 4th 1184, 1219-1220. Lead

³ The CEQA Guidelines can be found at California Code of Regulations title 14 sections 15000 *et seq.*

agencies must ensure that CalEnviroScreen data provided by Cal EPA properly informs environmental analysis.

CalEnviroScreen Informs the Environmental Setting

CalEnviroScreen analysis regarding existing local and regional environmental conditions properly informs the environmental setting in a CEQA analysis. CEQA requires that environmental analysis “include a description of the physical environmental conditions in the vicinity of the project... at the time environmental analysis is commenced, from both a local and regional perspective.” CEQA Guidelines § 15125(a). It is well established that “[t]he significance of an activity depends upon the setting,” *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 718 (citing CEQA Guidelines § 15064(b)), and an accurate description of the environmental setting is an essential prerequisite to proper analysis of a project’s impacts. See, e.g., *San Joaquin Raptor/Wildlife Rescue Ctr. v. County of Stanislaus* (1994) 27 Cal. App. 4th 713, 729. The environmental setting also normally establishes “the baseline physical conditions” for determining the significance of environmental impacts. CEQA Guidelines § 15125(a).

CalEnviroScreen provides information regarding air pollution, toxic releases, surface and groundwater contamination, pesticides, and waste facilities that contribute to the existing environmental setting and baseline physical conditions. Importantly CalEnviroScreen helps provide “[k]nowledge of the regional setting [that] is critical to the assessment of environmental impacts” in order to “permit the significant effects of the project to be considered in the full environmental context.” CEQA Guidelines § 15125(c). CEQA further requires a broad analysis of a project’s “inconsistencies between the project and... regional plans.” CEQA Guidelines § 15125(d). If a project would be inconsistent with plans to minimize harms to disadvantaged communities that are disclosed through the CalEnviroScreen process then those inconsistencies must be disclosed.

CalEnviroScreen Informs the Analysis of a Project’s Impacts

CEQA requires an analysis of whether “[t]he environmental effects of a project will cause substantial adverse effects on human beings, either directly or indirectly.” Pub. Res. Code, § 21083(b)(3). The analysis of whether environmental impacts are significant upon human beings and the environment varies depending on the context of the analysis. CEQA Guidelines § 15064(b). Impacts that in other contexts might be insignificant may be very significant in a particularly sensitive environment. CEQA Guidelines § 15300.2(a).

CalEnviroScreen helps inform whether the existing pollution burden in a community may increase the sensitivity of that community to a project’s impacts under CEQA. Where there already is a high pollution burden on a community, the “relevant question” is “whether any additional amount” of pollution “should be considered significant in light of the serious nature” of the existing problem. *Kings County Farm*

Bureau v. City of Hanford (1990) 221 Cal.App.3d 692, 718; see also *Los Angeles Unified School Dist. v. City of Los Angeles* (1997) 58 Cal.App.4th 1019, 1025. In other words, “the greater the existing environmental problems are, the lower the threshold should be for treating a project's contribution to cumulative impacts as significant.” *Communities for a Better Environment v. California Resources Agency* (2002) 103 Cal.App.4th 98, 120.

Minor contributions to existing environmental problems that may appear *de minimis* become significant in a community that shows high CalEnviroScreen scores. As explained by the California Attorney General’s Office, “a proposed project’s particulate emissions might not be significant if the project will be located far from populated areas, but may be significant if the project will be located in the air shed of a community whose residents may be particularly sensitive to this type of pollution, or already are experiencing higher-than-average asthma rates.”⁴

Socioeconomic information, as well as geographic context, also drives the analysis of whether impacts are significant. As noted by Cal EPA:

[A] number of studies have reported increased sensitivity to pollution, for communities with low income levels, low education levels, and other biological and social factors. This combination of multiple pollutants and increased sensitivity in these communities can result in a higher cumulative pollution impact.⁵

For example, if the impacts of a past or future projects are worsened by the lack of access by communities to full health care due to economic, linguistic, or geographic constraints those factors could exacerbate the significance of a project’s contribution to air or water pollution. The California Attorney General’s Office has emphasized the importance of accounting for social and economic factors in analyzing environmental impacts to assure that the environmental burden on disadvantaged communities is properly accounted for.⁶ The economic and social effects of physical changes to the environment are proper factors to consider in determining whether that physical change is significant. CEQA Guidelines §§ 15064(e), 15131(b).

We agree with Cal EPA’s recognition that CalEnviroScreen cannot substitute for the site-specific analysis of a project’s cumulative impacts under CEQA.⁷ “[F]ocused risk assessment for a given community or site [under CEQA]” is the appropriate tool to

⁴ Office of the California Attorney General, *Environmental Justice at the Local and Regional Level- Legal Background* (July 2012) p 3, available at http://oag.ca.gov/sites/all/files/pdfs/environment/ej_fact_sheet.pdf.

⁵ Office of Environmental Health Hazard Assessment (“OEHHA”), *Cumulative Impacts: Building a Scientific Foundation* (Dec. 2010), Exec. Summary, p. ix, available at <http://oehha.ca.gov/ej/cipa123110.html>

⁶ California Attorney General, *Environmental Justice at the Local and Regional Level*, p 4.

⁷ Cal EPA & OEHHA, *Draft California Communities Environmental Health Screening Tool (CalEnviroScreen)- 2nd Public Review Draft* (Jan. 2013), p. 2, available at <http://www.oehha.ca.gov/ej/pdf/CalEnviroScreen2ndPublicReviewDraft010313.pdf>

“precisely predict or quantify specific health risks or effects associated with cumulative exposures identified for a given community or individual.”⁸ However, that does not diminish CalEnviroScreen’s value for informing the decision making process regarding the environmental setting and significance of environmental impacts. As recognized by the California Attorney General’s Office, OEHHA, and the CEQA Guidelines socio-economic factors play an important role in CEQA review.

CalEnviroScreen Informs the Analysis of Mitigation and Alternatives

CEQA requires lead agencies to analyze and adopt feasible mitigation measures and alternatives that can avoid or reduce a project’s significant impacts to the environment. Pub. Res. Code §§ 21002, 21081. “Where a lead agency has determined that a project may cause significant impacts to a particular community or sensitive subgroup, the alternative and mitigation analyses should address ways to reduce or eliminate the project’s impacts to that community or subgroup.”⁹

CalEnviroScreen helps inform mitigation measures and alternatives that avoid impacts to sensitive communities, subgroups, or environmental settings. One clear example is by focusing alternative project locations (*see Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 404) or alternative project designs (*see Citizens of Goleta Valley v. Board of Supervisors* (1988) 197 Cal.App.3d 1167, 1183) that could reduce or eliminate the effects of the project on the affected community.

Conclusion

We urge Cal EPA to emphasize the importance of CalEnviroScreen in the CEQA decision making context, which will help ensure a full and thorough disclosure of a project’s impacts under CEQA. As noted by the California Attorney General’s office, “environmental justice requires an ongoing commitment to identifying existing and potential problems, and to finding solutions, both in approving specific projects and planning future development.”¹⁰ CEQA provides a crucial tool in finding solutions to environmental justice problems when analyzing projects that may have impacts on our shared environment.

Sincerely,

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⁸ *Id.* at p. 2.

⁹ California Attorney General, *Environmental Justice at the Local and Regional Level*, p 4.

¹⁰ *Id.* p 1.

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