

Comments on CalEnviroScreen Guidance Memorandum

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To: CalEnviroScreen, CalEnviroScreen@OEHHA; Faust, John@OEHHA

Dear Dr. Faust:

I am writing to express my views about the use of the California Communities Environmental Health Screening Tool ("CalEnviroScreen") in environmental analysis under the California Environmental Quality Act ("CEQA"), Public Resources Code §§ 21000 et seq. (These comments are my own, and do not reflect official views of UCLA School of Law or any affiliated centers or programs.)

The recently-circulated draft Guidance Memorandum, dated January 3, 2013, includes a discussion of the potential use of the CalEnviroScreen tool in CEQA review. I am concerned that this discussion provides an inaccurate or misleading impression of the proper role of results generated by CalEnviroScreen in informing CEQA review.

As an initial matter, the guidance document correctly makes clear that the information from CalEnviroScreen may not be used as a substitute for the required site-specific cumulative impact analysis under CEQA. This conclusion is legally correct and scientifically sound. This tool may not be used as a substitute for real, site-specific cumulative impacts analysis.

But the guidance also states more broadly that "the results generated by CalEnviroScreen are not intended to be used for California Environmental Quality Act (CEQA) purposes." This language is far too broad, and contrary to CEQA's requirements. The guidance might lead state and local agencies to believe they may not use information generated by this tool as an input in properly understanding and disclosing public health impacts. On the contrary, the tool may provide information that is useful or even crucial in describing the environmental setting, determining the significance of impacts, or evaluating potential mitigation measures under CEQA. Lead agencies should consider that information. Ignoring the information would be inconsistent with CEQA's requirement that a lead agency employ "best efforts to find out and disclose all that it reasonably can" about potentially significant impacts. CEQA Guidelines § 15144.

First, CalEnviroScreen results may inform a proper discussion of the environmental setting of a proposed project. CEQA analysis must "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). The environmental setting also normally establishes "the baseline physical conditions" for determining the significance of environmental impacts. CEQA Guidelines § 15125(a). See *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 718 (citing CEQA Guidelines § 15064(b)). Moreover, an accurate description of the environmental setting is an essential prerequisite to proper analysis of a project's impacts. *San Joaquin Raptor/Wildlife Rescue Ctr. v. County of Stanislaus* (1994) 27 Cal. App. 4th 713, 729. This is true because, among other reasons, "[a]n ironclad definition of significant effect is not always possible because the significance of an activity may vary with the setting." CEQA Guidelines § 15064(b). CalEnviroScreen may be an important tool to describe accurately the environmental setting of a proposed project. For example, the screening tool reflects conditions including existing air pollution, toxic releases, surface and groundwater contamination, pesticides, and waste facilities, all of which must be understood as components of the environmental context of projects. If results generated by CalEnviroScreen are pertinent to the environmental setting, lead agencies must disclose and consider them in describing that setting.

Second, CEQA requires assessment of the significance of impacts in light of the body of evidence available to the lead agency. A lead agency's determination whether a project may have a significant effect on the environment must be supported by "substantial evidence in light of the whole record." Pub. Res. Code §

21082.2(a). If the record includes results generated by CalEnviroScreen, those results necessarily figure into that determination, and may not simply be ignored. Moreover, a lead agency must find that a project may have a significant effect on the environment if the project's possible effects are "cumulatively considerable," or "will cause substantial adverse effects on human beings, either directly or indirectly," or if the "project has the potential to degrade the quality of the environment." Pub. Res. Code § 21083(b). Finally, economic and social aspects of environmental risk, which the CalEnviroScreen tool takes into account, are directly relevant to assessment of impacts under CEQA:

Where a physical change is caused by economic or social effects of a project, the physical change may be regarded as a significant effect in the same manner as any other physical change resulting from the project. Alternatively, economic and social effects of a physical change may be used to determine that the physical change is a significant effect on the environment. If the physical change causes adverse economic or social effects on people, those adverse effects may be used as a factor in determining whether the physical change is significant.

CEQA Guidelines § 15064(e).

The information generated by CalEnviroScreen can thus inform the analysis of the nature and magnitude of environmental effects on communities.

Finally, CalEnviroScreen's results may be helpful in crafting appropriate mitigation measures and alternatives to proposed projects, since the screening tool may assist with the identification of sensitive communities or subgroups for whom mitigation is necessary or appropriate.

I appreciate the opportunity to comment on this guidance document. I believe that the CalEnviroScreen tool can play an important role in CEQA's application to address impacts in our most heavily-impacted communities.

Sincerely,

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