

BURHENN & GEST LLP
624 SOUTH GRAND AVENUE
SUITE 2200
LOS ANGELES, CALIFORNIA 90017-3321
(213) 688-7715
FACSIMILE (213) 688-7716

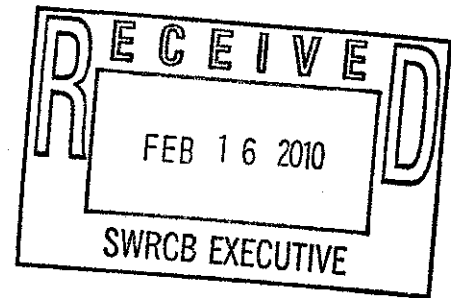
WRITER'S DIRECT NUMBER
(213) 629-8788

WRITER'S E-MAIL ADDRESS
dburhenn@burhennigest.com

February 15, 2010

Via E-Mail

Ms. Jeannette Townsend
Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, CA 95814



Re: Comments on Proposed CEQA Regulations

Dear Ms. Townsend:

These comments are made on behalf of our clients, the County of Los Angeles ("County") and the Los Angeles County Flood Control District ("District"), regarding amendments to the CEQA regulations applicable to the water boards.

The County and the District support the updating of the CEQA regulations to comport with applicable statutory and case law changes. The importance of adequate CEQA review cannot be overemphasized. As the water boards undertake significant new programs, such as Total Maximum Daily Load programs which may involve significant public works projects, the identification of potentially significant adverse environmental impacts and reasonably foreseeable mitigation measures is key to ensuring that the requirements of CEQA are met and environmental impacts are addressed and either avoided or minimized. Also, while the review undertaken by the water boards may be the equivalent of a "Tier I" non project-specific review, the mitigation measures and alternative means of compliance identified by the water boards will provide guidance to the implementing responsible parties and will allow those parties to rely on the Tier I analysis in further, project-specific analyses that may be required under CEQA.

The County and the District also support and refer the Board to the comments of the California Stormwater Quality Association, which are being made under separate cover.

Ms. Jeannette Townsend

February 15, 2010

Page 2

In terms of specific comments on the proposed CEQA regulations, the County and District first note that mitigation measures intended to minimize the environmental impacts of a project may themselves create environmental impacts. For example, mitigation for traffic interference may involve night work, when traffic flow is lighter. However, night work both creates noise when people may be attempting to rest and must be accomplished using strong lights, which create light and glare conditions.

Under case law and the State CEQA Guidelines, environmental impacts of mitigation measures must themselves be analyzed and mitigated. *Sacramento Old City Ass'n v. City Council* (1991) 229 Cal.App.3d 1011, 1027; 14 Cal. Code Reg. § 15126.4(a)(1)(D) ("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.")

Thus, to be consistent with case law and guidance, we suggest the addition of subdivision (b)(8) to the revised section 3777, which would read as follows:

"(8) The analysis conducted of mitigation measures pursuant to subdivisions (b)(3) and (b)(7) shall include a discussion of any reasonably foreseeable significant environmental impacts associated with the identified mitigation measures."

Second, we note that new subsection 3779.5(a)(4) provides the authority for a board to add to the Final SED such "other documentation as the board may prescribe." Our concern is that such documentation must be identified to the public prior to the adoption of the Final SED. Otherwise, a board could add documentation that was not the subject of public review, thus cutting off the public's ability to comment on that documentation.

To address this concern, we suggest that the following language (shown in bold) be added at the end of proposed subdivision 3779.5(a)(4):

(4) Other documentation as the board may prescribe, provided that the documentation was identified and made available for public review pursuant to subsection 3777(a)(3).

Third, we note that section 3742 provides that a board, when acting either as a responsible or a lead agency, may "prohibit, postpone, or condition" a waste discharge, water recycling requirements or other activities to protect against environmental damage, prevent nuisance or otherwise protect the environment. One of the two statutes cited as references for this section, Pub. Res. Code section 21002.1, also provides that a responsible or lead agency may determine that "[i]f economic, social, or other conditions make it infeasible to mitigate one or more significant effects on the environment of a

BURHENN & GEST LLP

Ms. Jeannette Townsend
February 15, 2010
Page 3

project, the project may nonetheless be carried out or approved at the discretion of a public agency if the project is otherwise permissible under applicable laws and regulations.”

This authority is absent from the language of proposed amended section 3742. To ensure that the section is consistent with the underlying statute, we suggest the following amendments:

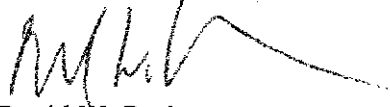
For subdivision 3742(a), addition of the following sentence before the last sentence of the subdivision: **“The board also shall have authority to make findings authorized by Public Resources Code section 21002.1(c).”**

For subdivision 3742(b), addition of the following sentence at the end of the subdivision: **“The board also shall have authority to make findings authorized by Public Resources Code section 21002.1(c).”**

* * *

On behalf of the County and the District, we appreciate this opportunity to comment on the proposed CEQA regulations. If staff has any questions concerning these comments, they may contact the undersigned at the phone number and e-mail address noted above.

Very truly yours,



David W. Burhenn

cc: Gail Farber, P.E., Director of Public Works
Judith Fries, Esq., Office of the County Counsel
Lauren Dods, Esq., Office of the County Counsel