

Memorandum

To: CHAIR AND COMMISSIONERS

Date: May 22, 2009

From: BIMLA G. RHINEHART
Executive Director

File: Book Item 4.14
Action

Ref: Delegation of Commission Comments - Notices of Preparation and Draft Environmental Impact Reports (Resolution G-09-08)

ISSUE: Should the Commission delegate to the Executive Director the authority to provide comments to routine notices of preparation (NOP) and draft environmental impact reports (DEIR) prepared in accordance with the provisions of the California Environmental Quality Act (CEQA)?

RECOMMENDATION: Staff recommends that the Commission authorize the Executive Director to review and provide comments on behalf of the Commission in response to NOPs and DEIRs prepared to comply with CEQA. On a quarterly basis, the Executive Director will report to the Commission the comments made in response to draft environmental documents.

BACKGROUND: In accordance with CEQA, a responsible agency includes an agency other than the lead agency which has discretionary approval power over a project. The California Code of Regulations requires that a lead agency submit to the Commission all NOPs, DEIRs, and final environmental documents for any projects for which the Commission will later be asked to allocate state or federal funds.

NOPs and DEIRs are currently presented formally by staff to the Commission for comment. Staff has assessed the extent to which the Commission can or should comment on routine draft environmental documents as it relates to the project alternatives, the nature of the work, the programmed scope of work, and the impacts of the alternatives. While the law does not limit the Commission's comments, the Commission's primary role relates to the programming and allocating of funding for transportation projects.

Based on this assessment, staff recommends that the Commission authorize the Executive Director to make one or more of the following comments in response to routine NOPs and DEIRs received:

- The Executive Director will include a comment that at the completion of the CEQA process, prior to approving a project for future consideration of funding, the Commission expects the lead and/or implementing agency to provide written assurance whether the selected alternative identified in the final environmental document is or is not consistent with the project programmed by the Commission and

included in the Regional Transportation Plan. In the absence of such assurance of consistency, staff will assume that the project is not consistent and will base its recommendations to the Commission on that fact. The Commission may deny funding to a project which is no longer eligible for funding due to scope modifications.

- Where financing is either not identified or not secured, the Executive Director will recommend that the necessary financing be identified and secured for the project.
- Where there are no concerns with respect to the alternatives under consideration, the Executive Director will advise the lead agency that the Commission has no comments on the environmental impacts of the proposed alternatives.
- In the event there are concerns with regard to potential impacts on traffic flows/circulation, public road connections, route adoptions or other impacts to transportation, the Executive Director may include such concerns in the letter.
- For Proposition 1B projects, the Executive Director will request that the lead agency and/or project sponsors include in their transmittal of a final environmental document the following information and confirmations:
 - Whether the preferred alternative includes a scope of work that is or is not consistent with the project scope programmed by the Commission in the Proposition 1B program. If there is a revised scope, the revised scope may require an amendment to the project baseline agreement.
 - Whether the preferred alternative results in an estimated cost above the current programmed amount. If this is the case, the project sponsor is responsible for securing necessary supplemental funds to ensure that the project is fully funded and delivered in a timely manner. The project sponsor's commitment, funding plan, and corresponding resolution should be included with the transmittal.
 - In its adopting resolution for the Trade Corridors Improvement Fund (TCIF), the Commission established its intention to monitor the outcomes of the environmental process with regard to air quality impacts due to emissions from diesel or other particulates and related mitigation strategies. The Commission will only allocate TCIF to projects that can demonstrate compliance with applicable environmental requirements, including the implementation of appropriate mitigation measures. Since staff will not know until the environmental process is complete whether mitigation measures will fail to reduce air quality impacts to a degree necessary to avoid a statement of overriding considerations, the Executive Director will request that the lead agency include, in the EIR, a discussion of how the proposed project satisfies the criteria in Government Code Section 8879.23. In addition, the project sponsor should

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commit in the letter to the implementation of these mitigation measures, if applicable, as part of its submittal of the final environmental document for approval for future funding consideration

Since the Commission cannot allocate funds to projects for design, right of way or construction until the final environmental document is complete and the Commission has approved the environmentally cleared project for consideration of future funding, staff recommends that final environmental documents continue to be presented to the Commission for formal action. To promote the timely processing of final environmental documents, the process for submitting environmental documents to the Commission was recently added to the California Transportation Commission Website.

Attachment - CEQA Related Criteria

**CEQA Related Criteria from the Public Resources Code
and the California Code of Regulations**

Environmental documents require Commission action as set forth in the Public Resources Code and the California Code of Regulations as follows:

Public Resources Code Section 21102

“No state agency, board, or commission shall request funds, nor shall any state agency, board, or commission which authorizes expenditures of funds, other than funds appropriated in the Budget Act, authorize funds for expenditure for any project, other than a project involving only feasibility or planning studies for possible future actions which the agency, board, or commission has not approved, adopted or funded, which may have a significant effect on the environment unless such request or authorization is accompanied by an environmental impact report. Feasibility and planning studies exempted by this section from the preparation of an environmental impact report shall nevertheless include consideration of environmental factors.”

Public Resources Code Section 21150

“State agencies, boards, and commissions, responsible for allocating state or federal funds on a project-by-project basis to local agencies for any project which may have a significant effect on the environment, shall require from the responsible local governmental agency a detailed statement setting forth the matters specified in Section 21100 prior to the allocation of any funds other than funds solely for projects involving only feasibility or planning studies for possible future actions which the agency, board, or commission has not approved, adopted, or funded.”

The California Code of Regulations, Title 21, Section 1505

“(a) Circulation to the Commission: A lead agency shall submit to the Commission all notices of preparation, draft environmental documents, and final environmental documents for any projects for which the Commission will later be asked to allocate state or federal funds; agencies submitting environmental documents for Commission review shall send the executive summary to each individual Commissioner and one copy of the complete document to Commission staff at its office in Sacramento for purposes of agenda calendaring, staff review, and transmittal of responses, and must send a copy of the complete document to any Commissioner who requests one. For all projects that are anticipated to be funded through a program under the purview of the Commission, full compliance with the California Environmental Quality Act (CEQA) is required. In addition, if federal requirements are applicable, compliance with the National Environmental Policy Act (NEPA) is also required.

(b) Commission review procedure: The Commission itself reviews environmental documents, and authorizes the Executive Director subsequently to send comments and file notices of determination; the Commission may receive and consider recommendations from its staff.”