

Philip A. Seymour  
Attorney at Law  
4894 Ogram Road  
Santa Barbara, CA 93105  
(805) 692-9335  
pseymour@silcom.com

March 1, 2019

Santa Barbara County Board of Supervisors  
105 E. Anapamu Street  
Santa Barbara, CA 93101

Re: CEQA Compliance, San Marcos Pass/Eastern Goleta Valley Mountainous Area CWPP  
Agenda Item # 4, March 5, 2019

Dear Chairman Lavagnino and Honorable Board Members:

I am writing this letter to address one minor point regarding approval of the San Marcos Pass/Eastern Goleta Valley Mountainous Area Community Wildfire Protection Plan (CWPP). With regard to CEQA compliance, staff has prepared a Notice of Exemption which cites CEQA Guidelines § 15378(b)(5) as the basis for finding that the CWPP is not a “project” for purposes of CEQA. There is an additional important reason the Board’s actions on the CWPP are exempt from CEQA. This should be reflected in the record.

Specifically, the need for CEQA review is triggered only by the “approval” of a project otherwise subject to CEQA. (Public Resources Code § 21151(a).) The CEQA Guidelines define “approval” as “the decision by a public agency *which commits the agency to a definite course of action* in regard to a project.” (Guidelines § 15352(a).) CEQA consequently distinguishes between true project “approvals” and preliminary approvals of planning studies or reports which merely provide information that may be used to formulate future projects. (Public Resources Code §§ 21102, 21150; CEQA Guidelines § 15262.) Guidelines § 15262, which is found in the Article of the CEQA Guidelines covering statutory exemptions,<sup>1</sup> codifies this distinction as follows:

Guidelines § 15262: “Feasibility and Planning Studies. A project involving only feasibility or planning studies for possible future actions which the agency, board, or commission has not approved, adopted, or funded does not require the preparation of an EIR or negative declaration but does require consideration of environmental factors. This section does not apply to the adoption of a plan that will have a legally binding effect on later activities.”

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<sup>1</sup> Guidelines § 15262 is derived from specific statutory exemptions found in Public Resources Code §§ 21102 and 21150.

This exemption for feasibility and planning studies is also well recognized in CEQA case law. (See, e.g., *Save Tara v City of West Hollywood* (2008) 45 Cal.4<sup>th</sup> 116.)

As the Board Letter correctly indicates, the CWPP does not commit the County to any particular future action, nor have any legally binding effect on future actions. The CWPP also contains extensive information as to how the potential adverse environmental effects of future vegetation management projects may be minimized or avoided, consistent with Guidelines § 15262.

I would suggest that the Notice of Exemption prepared for the CWPP be amended to include a citation to Guidelines § 15262. Technically this may not be necessary. If a project or project “approval” is exempt from CEQA, it is exempt and cannot be successfully challenged based on a simple wording discrepancy in the notice of exemption. Nevertheless, it would be useful to state all grounds for finding the Board’s decision exempt in the Notice of Exemption itself, against the event that this decision is challenged in court. Too many hundreds of hours and thousands of dollars have been spent on this CWPP to risk litigation due to a lack of clarity in the Notice of Exemption.

Sincerely,

*Philip A. Seymour*

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cc. SMP/EGVMA CWPP Development Team