APPEAL APPLICATION

Complete all portions of this application. If you believe that an item does not apply to your appeal, mark it "N/A". Do not leave any blank spaces.

You may attach additional pages or other documentation to this application.

Project Action Date: September 19, 2019 - Planning Commission

Project #: P 20170079/CUP; P 201900243/TPM

Building Permit No.: N/A

Project Applicant(s): Daggett Solar Power Facility 1, LLC

Appellant's Name (s): Newberry Community Services District

Appellant's Address: P.O. Box 206

City: NEWBERRY SPRINGS Zip: 92365

Phone: (760) 257-3613 FAX No.: N/A E-Mail: NewberryCSD@gmail.com

Assessor's Parcel No. of Subject Property: 0515-011-03 (multiple APNs)

General Location of Property: Along Valley Center Road and Minneola Road

Community/Area: Daggett and Newberry Springs

1. I/We hereby appeal to the San Bernardino County: (check one)

☐ **Planning Commission** from action by: (check one)

☐ Director of Land Use Services

☐ Division Chief of Environmental Health Services (EHS)

☐ Director of Transportation/Flood Control/Surveyor

☒ **Board of Supervisors** from action by the County Planning Commission.

☐ **Chief Executive Officer** from action by the Directors of Land Use Services and Public Works.
(Only for appeals of right-of-way dedication and/or street improvement waiver or modification decisions).

To be completed by County Staff: Filing Date: _____ Project No.: _____ JCS Project No.: _____

2. I/We are appealing the project action taken to:

☐ **DENY** the project/request	☐ **DENY** the project without prejudice
☒ **APPROVE** the project/request	☐ **APPROVE** the project with conditions. (Attached a copy of the conditions, if they are the subject of the appeal).
☐ **ADOPT** a Negative Declaration	☐ **OTHER** (specify) _____

3. Detail what is being appealed and what action or change you seek. Specifically address the findings, mitigation measure, conditions and/or policies with which you disagree. Also state exactly what action/changes you would favor. SEE ATTACHED LETTER AND EXHIBITS

4. State why you are appealing. Be specific. Reference any errors or omissions. Attach any supporting documentation, including any Conditions of Approval that are being appealed. SEE ATTACHED LETTER AND EXHIBITS

I/We certify that I/we are the:

☐ Legal Owner(s)

☒ Authorized Legal Agent(s)

☐ Other Interested Person(s)

Robert Lerner
[Signature of Appellant(s)]

_____
[Signature of Appellant(s)]

Date: _____

The Newberry Community Services District (CSD) represents the residents and property owners in the community of Newberry Springs, a disadvantaged community located downwind of Clearway Energy's (hereinafter "Clearway") proposed Daggett Solar Power Project. Clearway's Daggett Solar Power Project (hereinafter "the Project") is partially contained within Newberry Springs. The Newberry CSD provides oversight of the Newberry Fire Department, including protecting the community from fires, fire hazards, hazardous materials and hazardous material releases.

Clearway's Project contains much more than just 3500 acres of solar panels generating 650 million watts of electrical energy. The Project also contains 450 million watts of battery storage system (properly called Energy Storage Systems or "ESSs") energy. Clearway proposes to store 70 percent of the total captured solar energy directly on-site in lithion-ion ESSs. ESS technology is so new that the National Fire Protection Association's first standard for ESS safety, Publication 855 - Standard for the Installation of Stationary Energy Storage Systems - 2020 will not even come off the printing presses until October 4, 2019.

The Daggett Solar Power Project's Final Environmental Impact Report (FEIR) approved by the Planning Commission on September 19, 2019 contains multiple **defects** and **omissions** and must **not** be certified by the Board of Supervisors. In light of the following (and multiple other) deficiencies, omissions and hazards, San Bernardino County must direct Clearway to either **a) rewrite** the EIR (including compliance with NFPA Publication 855) and **resubmit** it for further review and evaluation or **b)** move the project to a new, more easterly location that is downwind from the communities of Newberry Springs, Daggett and Yermo and downwind from any inhabited communities or **c)** move the project to another alternative location where nearby communities won't be impacted and endangered.

In addition:

1. The FEIR is in violation of California CEQA law **including but not limited to** the following.

- **Hazards** - The amount of energy that Clearway proposes to store on-site in lithion-ion battery storage systems is staggering. At full power, the recently decommissioned San Onofre Nuclear Generating Station (SONGS) had the capacity to generate 2,150 million watts of electrical energy. Clearway proposes to store 450 million watts of electrical energy in lithium-ion batteries. This is almost one-quarter as much energy as the San Onofre Nuclear Generating Station produced. The FEIR fails to address (or even to mention) the hazardous and uncontrollable nature of lithium-ion battery fires. These fires are documented to have occurred worldwide in lithium-ion Energy Storage Systems (ESSs). The failure of even one internal ESS fire protection system among Clearway's proposed 16 acres of ESS storage poses entirely unacceptable risks to fire department and law enforcement first responders as well as to the people in the surrounding communities of Newberry Springs, Daggett, and Yermo. **See Exhibits A and B.**

- **Air Quality** - The health hazards and the damage to homes, property and property values from airborne dust are major concerns of local residents. CEQA mandates that the Planning Commission must not certify a Final EIR unless it is "adequate and complete". Further, the 2nd paragraph on page 22 of the Staff Report acknowledges that the EIR "must provide sufficient analysis to allow decisions to be made regarding the project in contemplation of it's environmental consequences". The 5th paragraph on page 22 of the Staff Report further states "The analysis (Appendices D1 and D2) of the EIR determine that operational emissions would

not exceed MDAQMD (Mojave Desert Air Quality Management District) thresholds and that operational impacts would be less than significant". Unfortunately for everyone concerned, MDAQMD's monitoring process falls flat on it's face with regard to being "adequate and complete". "Adequate and complete" monitoring of the Clearway project requires 1) UPSTREAM air quality monitoring data from at or near the proposed project's UPSTREAM (western) fence line **and** 2) DOWNSTREAM air quality monitoring data at (or near) the proposed DOWNSTREAM (eastern) fence line. MDAQMD's nearest UPSTREAM air quality monitor is in Barstow, approximately 10 miles UPSTREAM. **See Exhibit C.** MDAQMD has no (as in zero) DOWNSTREAM air quality monitors. Granted, site-specific DOWNSTREAM air quality monitoring can not begin until ground is broken for the project however Clearway has failed in their due diligence for the project. It's obvious that Clearway's preparation and planning for this project began several years ago. Did they begin air quality monitoring at or near their proposed western project boundary? If so, when? Where is their data? If not, why didn't they begin such monitoring? Did they think that if they just ignored the air quality issue that they could pull the wool over everybody's eyes, blame MDAQMD and "get away with it"? Land Use Services (LUS) also dropped the ball (to put it charitably) on this issue. Were they aware that MDAQMD's basin-wide air quality measurement process did not even remotely begin to address point-source air quality issues? If so, did they believe that they too could fool both concerned residents and elected officials by just ignoring the issue? If not, why weren't they aware that grading a proposed 3500 acre site would raise serious air quality issues? Why didn't they address this issue "adequately and completely" in their Staff Report? The FEIR can not be "adequate and complete" and can not be certified unless and until real-world data is available to provide an "adequate and complete analysis" of the environmental consequences of building and operating the proposed project. Further, oversight and enforcement for this project will not be "adequate and complete" without requiring both UPSTREAM and DOWNSTREAM data monitoring that continues not just during the lifetime of the project but after the project is decommissioned and until the land has been fully restored.

- **Social, Economic and Environmental Justice** - The FEIR fails to properly address multiple Social, Economic and Environmental Justice issues. California correctly recognizes ~~the~~ that human beings are a part of the environment. According to California Law, the EIR must properly consider and address these issues. One such example is the economic issue of the loss of property value of the owners of property in nearby, disadvantaged communities. **See Exhibits D and E.**

2. The FEIR contains multiple **violations** of the San Bernardino County Development Code **Section 84.29.035 (Required Findings for Approval of a Commercial Solar Energy Facility)**

'Reasons that are still unknown': 30 experts investigate Surprise battery explosion that injured 9

EXHIBIT A

Ryan Randazzo, Arizona Republic Published 5:58 p.m. MT April 23, 2019 | Updated 10:09 a.m. MT April 24, 2019

A team of about 30 experts is investigating the Friday night explosion at a large battery owned by Arizona Public Service Co. that sent eight firefighters and one police officer to hospitals, officials said Tuesday.

APS officials answered questions about the incident from the Arizona Corporation Commission, their first public comments since the fire.

Investigators have not determined the cause of the explosion, and APS has shut down two other large batteries in Arizona until the investigation is complete. Officials made no public estimate of how long that might take.

Four of the firefighters and the police officer, all from Surprise, were released Friday evening. Two Peoria firefighters were released the following day and two remain hospitalized, APS officials said.

"Our primary concern has been and continues to be with the well being of the first responders who were injured in this fire," APS President Jeff Guldner said. "Everyone at APS is praying for them and their safe recovery."

While APS officials and the commissioners all expressed remorse for the injured first responders, they also discussed the ramifications of the explosion on the Arizona energy supply.

After 3 hours, an explosion

Guldner said APS was alerted to the problem Friday at about 5 p.m., when APS and Fluence, the company that sold APS the battery and monitors it, both received alarms of something amiss at the battery.

A maintenance company dispatched a worker to the site in Surprise, and APS also sent workers there. The fire department also was called.

A hazardous-materials team began assessing the situation, cordoned off the area and shut down nearby streets, Guldner said.

"For reasons that are still unknown, at around 8 p.m., the system experienced a catastrophic failure,"Guldner said. "There was an explosion."

In addition to fire investigators, APS has sent its own experts, including specialists from Palo Verde Nuclear Generating Station and third-party experts, to figure out what went wrong.

"There is no doubt we will figure out the root cause and identify what happened," said Jacob Tetlow, vice president for transmission and distribution for APS.

Big plans for batteries unchanged

APS earlier this year announced plans to install about $1 billion in dozens more batteries like the one that exploded Friday. The batteries will capture and store surplus energy, mostly from solar power plants and rooftop solar panels, and use it in the evening when the sun sets and solar panels stop making electricity.

"This hasn't changed our determination to move forward on that," Guldner said. "It is very important we conduct this investigation and understand how we can safely operate this equipment. This is where the industry is going. What is happening here in Arizona ... we are at the leading edge on some of these technologies."

 ility (/story/money/business/energy/2019/02/21/aps-battery-cheapest-energy-option-

arizona-power-grid/2911299002/)near Grand Avenue and Deer Valley Road was a 2 megawatt battery. APS plans to install an additional 850 megawatts of batteries around the state.

The McMicken facility battery is one of two that APS installed two years ago (/story/money/business/energy/2017/04/20/power-grid-utilities-big-batteries-metro-phoenix-solar-srp-aps/100349564/) to help accommodate large amounts of rooftop solar power on the grid. The other battery is in the Festival Ranch neighborhood, about 10 miles west of the Loop 303 off Bell Road.

Energy Secretary Rick Perry visited the Festival Ranch (/story/money/business/energy/2019/02/22/rick-perry-visits-aps-battery-storage-project-phoenix-area-visit/2941991002/)site earlier this year following the announcement from APS. A national conference on energy storage in Phoenix last week featured multiple APS officials as speakers and offered a tour of the Festival Ranch site.

The conference ended the day before the explosion and fire.

Public concern about chemicals

Commissioner Sandra Kennedy asked APS officials about the threat to nearby homes from the explosion.

The battery is about a quarter mile from the nearest home, Guldner said. But explosions in lithium-ion batteries can produce cyanide and hydrofluoric acid, he said.

"Do you have an evacuation plan put in place for instances such as this where there are homes within a fourth of a mile and did you notify homeowners that they could be exposed to these chemicals?" Kennedy said.

Tetlow said there was no reason to believe the chemicals would migrate beyond the site.

"There would not have been an evacuation plan for that because of the limited nature of the release," Tetlow said. "But I want to commit the investigation will look at, are there any things we should be doing with pedestrians passing by or residents."

From left: Capt. Hunter Clare, Engineer Justin Lopez, firefighter Matt Cottini and firefighter Jake Ciulla. *(Photo: Peoria Fire-Medical)*

Batteries as big as houses

The McMicken and Festival Ranch batteries are identical. They each are about the size of a cargo container, packed wall to wall inside with batteries in cabinets that look like school lockers.

They require constant cooling to maintain a temperature of 75 degrees and prevent them from overheating. Workers can enter the facility, but the batteries do not require constant staffing. They are monitored remotely.

This is the second fire that APS has had at a battery installation. The other was in Flagstaff. APS installed that battery in 2010 and it ignited in 2012 and threatened to ignite a larger blaze.

Pri[illegible] Hawaii are the only incidents involving utility-scale batteries APS officials are aware of in t[illegible]

He said APS learned from the 2012 fire — the new batteries have large tanks of chemicals to extinguish fires, though Tetlow could not say whether that system worked properly Friday.

The Flagstaff battery was made by Canada-based Electrovaya Inc., and was under warranty, APS officials said at the time of the fire. The battery at McMicken that burned Friday night was made by AES Energy Storage. AES is now known as Fluence, following a merger.

"Fluence has dispatched a team of its top safety and technical leaders who are on site," the company said in a prepared statement to *The Arizona Republic*.

"Our top priority is the health and safety of the first responders, and thoughts are with them and their families. The Fluence team is working closely with Arizona Public Service and local officials, and offering any assistance needed to ensure safe conditions and to thoroughly investigate the cause of this incident."

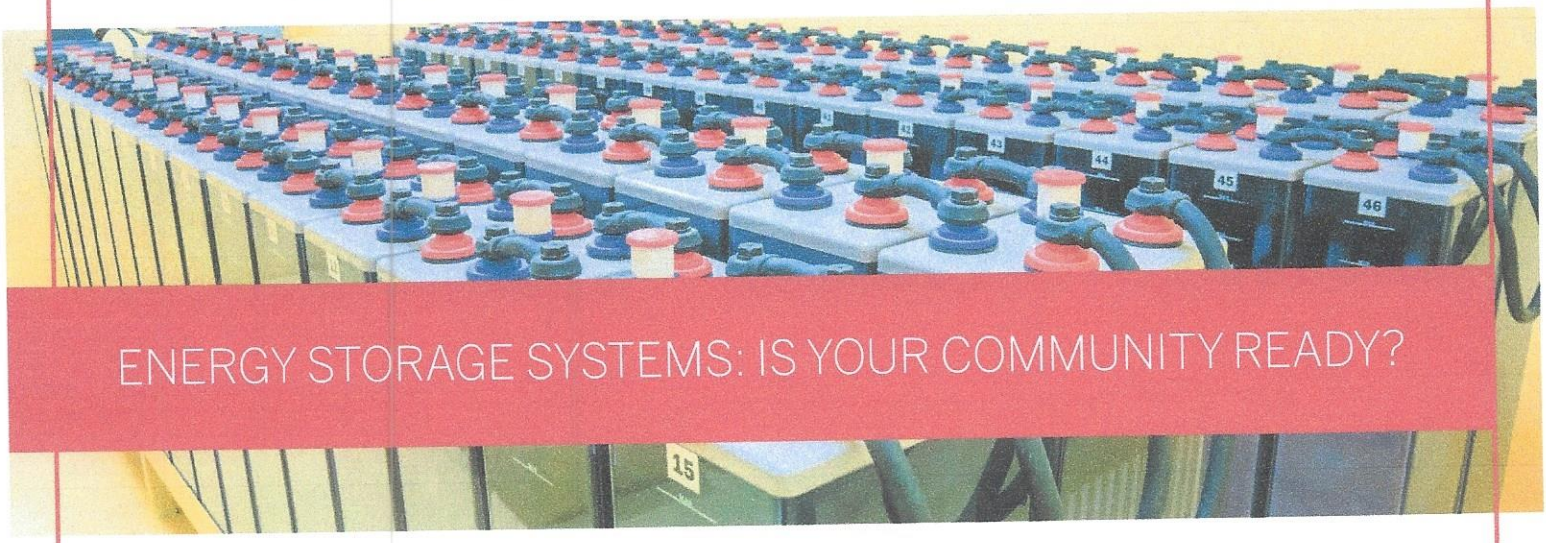
Tetlow said that Fluence has 760 megawatts of batteries installed at 80 sites either in service or soon to be, and this is the "first event of this nature they have had."

Reach reporter Ryan Randazzo at ryan.randazzo@arizonarepublic.com (mailto:ryan.randazzo@arizonarepublic.com) or 602-444-4331. Follow him on Twitter @UtilityReporter.

EXHIBIT B

NFPA | FIRE & LIFE SAFETY POLICY INSTITUTE

SAFETY THROUGH BETTER PUBLIC POLICY



ENERGY STORAGE SYSTEMS: IS YOUR COMMUNITY READY?

An explosion at a 4 megawatt battery energy storage systems (BESS) facility in April of 2019 is a reminder that this rapidly proliferating technology introduces new hazards into the community. The serious injury of several Arizona firefighters in that explosion highlights the pressing need to educate local officials and first responders on BESS.

New Technology, New Hazards

BESS technology is key to turning intermittent renewable energy sources into reliable power streams. As policymakers set more ambitious goals for sustainable energy, BESS is becoming an increasingly significant part of our power infrastructure. Industry analysts predict more than $600 billion will be invested in energy storage by 2040.

However, as the Arizona fire illustrates, this technology is not risk free. BESS technologies, which are typically large configurations of chemical batteries, can explode, catch fire, and release toxic gases under certain conditions. They are also subject to the phenomena of thermal runaway, which means they can burn intensely for significant periods of time.

These hazards are dangerous for firefighters and for anyone else nearby an emergency incident. Policymakers must make sure first responders and other officials have the tools necessary to deploy BESS safely.

Deploying BESS Safely

For anyone involved in permitting decisions or emergency response, education and staying current on evolving technologies is key. **If your community hasn't already prepared for BESS installations, the following are steps leaders can take to make sure BESS is deployed as safely as possible:**

1. **Create a permitting process** that will ensure those responsible for safety in the community know where BESS technologies are installed and that those installations meet safety requirements.
2. **Ensure first responders have the proper training** to help keep them safe when responding to an incident involving BESS technology.

Permitting Considerations

Regulations and permitting authorities may vary by jurisdiction or location of the installation. However, officials should ensure that the community's building, fire, and electrical codes are current and that permitting procedures minimize the risks associated with BESS technology. Considerations in a permitting process include the following:

- Whether the BESS equipment is listed by a qualified electrical testing laboratory;
- The safety of the installation (meeting pertinent requirements in the building, fire, and electrical codes);
- Guidelines for interconnection with the local utility;
- Planning for emergency response; and
- Zoning considerations, depending on the location and size of the installation.

ENERGY STORAGE SYSTEMS: IS YOUR COMMUNITY READY? *CONTINUED*

Permitting Resources

Communities developing their own BESS permitting programs can learn from the work of others at the local, state, and federal levels, including by using the following resources:

- Behind-the-Meter Solar + Storage Permitting and Interconnection Guide for Boulder, Colorado;
- Orange County Fire Authority: Stationary Storage Battery Systems, Guideline G-10;
- Energy Storage Permitting and Interconnection Process Guide for New York City: Lithium-Ion Outdoor Systems; and
- Energy Storage System Safety: Plan Review and Inspection Checklist.

In addition, the National Fire Protection Association (NFPA) will release NFPA 855, *Standard for the Installation of Stationary Energy Storage Systems*, in October of 2019. This new standard will address requirements to help minimize the safety risks associated with any type of energy storage system.

Emergency Response Considerations for BESS

First responders need to be aware of BESS technology deployed in the community and be ready to handle different types of systems and incidents. Training and preplanning are critical components to making sure the community's first responders are ready should an emergency arise.

The fire department should also engage in preplanning for events involving BESS or at a premise where BESS is present. If there is an event, firefighters should already know what type of system it is, who the facility manager is, which manufacturer to call for more information, and the tactics and procedures they will need to safely protect life and property.

Emergency Response Resources

NFPA offers training and resources, including the following:

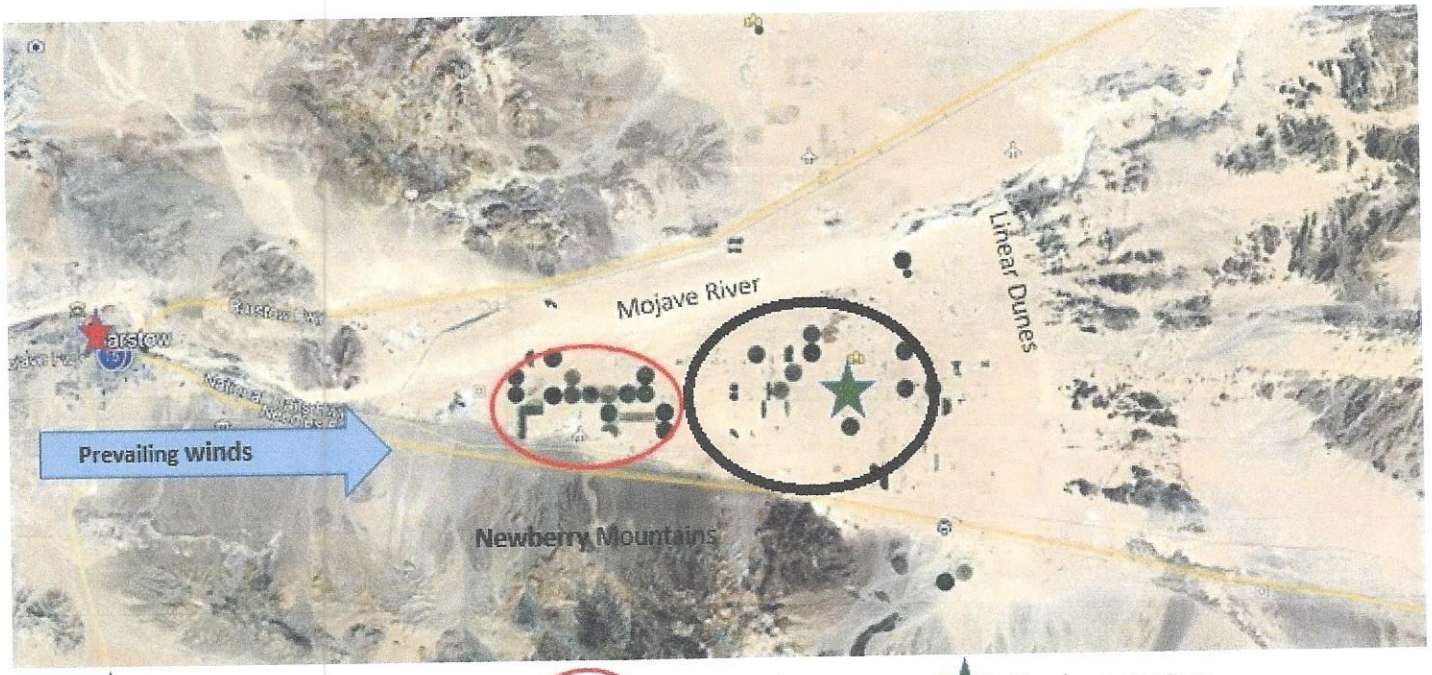
- Online and classroom training to prepare the fire service to respond to an incident involving BESS technology.
- NFPA 1620, *Standard for Pre-Incident Planning*, a document that guides fire departments through the pre-incident planning process and covers everything that should be in an incident plan.

Next Steps

Before deploying BESS, consider taking the following steps:

- ✔ Assess the readiness of permitting and emergency response resources in your community.
- ✔ Make sure there is a plan for how first responders and community officials will respond to an incident.
- ✔ Visit nfpa.org/ess to learn more and to access the latest research and resources.
- ✔ Visit nfpa.org/PolicyInstitute to view additional information from the NFPA Fire & Life Safety Policy Institute.

EXHIBIT C



Air Monitor for PM10 & Ozone Daggett Solar site area Newberry Springs

EXHIBIT D

KAMALA D. HARRIS
Attorney General

State of California
DEPARTMENT OF JUSTICE

Environmental Justice at the Local and Regional Level
Legal Background

Cities, counties, and other local governmental entities have an important role to play in ensuring environmental justice for all of California's residents. Under state law:

> "[E]nvironmental justice" means the fair treatment of people of all races, cultures, and incomes with respect to the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies.

(Gov. Code, § 65040.12, subd. (e).) Fairness in this context means that the *benefits* of a healthy environment should be available to everyone, and the *burdens* of pollution should not be focused on sensitive populations or on communities that already are experiencing its adverse effects.

Many local governments recognize the advantages of environmental justice; these include healthier children, fewer school days lost to illness and asthma, a more productive workforce, and a cleaner and more sustainable environment. Environmental justice cannot be achieved, however, simply by adopting generalized policies and goals. Instead, environmental justice requires an ongoing commitment to identifying existing and potential problems, and to finding and applying solutions, both in approving specific projects and planning for future development.

There are a number of state laws and programs relating to environmental justice. This document explains two sources of environmental justice-related responsibilities for local governments, which are contained in the Government Code and in the California Environmental Quality Act (CEQA).

Government Code

Government Code section 11135, subdivision (a) provides in relevant part:

> No person in the State of California shall, on the basis of race, national origin, ethnic group identification, religion, age, sex, sexual orientation, color, or disability, be unlawfully denied full and equal access to the benefits of, or be unlawfully subjected to discrimination under, any program or activity that is conducted, operated, or administered by the state or by any state agency, is funded directly by the state, or receives any financial assistance from the state….

While this provision does not include the words "environmental justice," in certain circumstances, it can require local agencies to undertake the same consideration of fairness in the distribution of environmental benefits and burdens discussed above. Where, for example, a general plan update is funded by or receives financial assistance from the state or a state agency, the local government should take special care to ensure that the plan's goals, objectives, policies

and implementation measures (a) foster equal access to a clean environment and public health benefits (such as parks, sidewalks, and public transportation); and (b) do not result in the unmitigated concentration of polluting activities near communities that fall into the categories defined in Government Code section 11135.[1] In addition, in formulating its public outreach for the general plan update, the local agency should evaluate whether regulations governing equal "opportunity to participate" and requiring "alternative communication services" (*e.g.*, translations) apply. (See Cal. Code Regs., tit. 22, §§ 98101, 98211.)

Government Code section 11136 provides for an administrative hearing by a state agency to decide whether a violation of Government Code section 11135 has occurred. If the state agency determines that the local government has violated the statute, it is required to take action to "curtail" state funding in whole or in part to the local agency. (Gov. Code, § 11137.) In addition, a civil action may be brought in state court to enforce section 11135. (Gov. Code, § 11139.)

California Environmental Quality Act (CEQA)

Under CEQA, "public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental effects of such projects ...." (Pub. Res. Code, § 21002.) Human beings are an integral part of the "environment." An agency is required to find that a "project may have a 'significant effect on the environment'" if, among other things, "[t]he environmental effects of a project will cause substantial adverse effects on human beings, either directly or indirectly[.]" (Pub. Res. Code, § 21083, subd. (b)(3); see also CEQA Guidelines,[2] § 15126.2 [noting that a project may cause a significant effect by bringing people to hazards].)

CEQA does not use the terms "fair treatment" or "environmental justice." Rather, CEQA centers on whether a project may have a significant effect on the physical environment. Still, as set out below, by following well-established CEQA principles, local governments can further environmental justice.

CEQA's Purposes

The importance of a healthy environment for all of California's residents is reflected in CEQA's purposes. In passing CEQA, the Legislature determined:

- "The maintenance of a quality environment for the people of this state now and in the future is a matter of statewide concern." (Pub. Res. Code, § 21000, subd. (a).)

- We must "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 from being reached." (*Id.* at subd. (d).)

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[1] To support a finding that such concentration will not occur, the local government likely will need to identity candidate communities and assess their current burdens.

[2] The CEQA Guidelines (Cal. Code Regs., tit. 14, §§ 15000, et seq.) are available at http://ceres.ca.gov/ceqa/.

- "[M]ajor consideration [must be] given to preventing environmental damage, while providing a decent home and satisfying living environment for every Californian." (*Id.* at subd. (g).)

- We must "[t]ake all action necessary to provide the people of this state with clean air and water, enjoyment of aesthetic, natural, scenic, and historic environmental qualities, and freedom from excessive noise." (Pub. Res. Code, § 21001, subd. (b).)

Specific provisions of CEQA and its Guidelines require that local lead agencies consider how the environmental and public health burdens of a project might specially affect certain communities. Several examples follow.

Environmental Setting and Cumulative Impacts

There are a number of different types of projects that have the potential to cause physical impacts to low-income communities and communities of color. One example is a project that will emit pollution. Where a project will cause pollution, the relevant question under CEQA is whether the environmental effect of the pollution is significant. In making this determination, two long-standing CEQA considerations that may relate to environmental justice are relevant – setting and cumulative impacts.

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, subd. (b)]; see also *id.* at 721; CEQA Guidelines, § 15300.2, subd. (a) [noting that availability of listed CEQA exceptions "are qualified by consideration of where the project is to be located – a project that is ordinarily insignificant in its impact on the environment may in a particularly sensitive environment be significant."]) For example, 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. A lead agency therefore should take special care to determine whether the project will expose "sensitive receptors" to pollution (see, e.g., CEQA Guidelines, App. G); if it will, the impacts of that pollution are more likely to be significant.[3]

In addition, CEQA requires a lead agency to consider whether a project's effects, while they might appear limited on their own, are "cumulatively considerable" and therefore significant. (Pub. Res. Code, § 21083, subd. (b)(3).) "'[C]umulatively considerable' means that the incremental effects of an individual project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future

[3] "[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." Office of Environmental Health Hazard Assessment, *Cumulative Impacts: Building a Scientific Foundation* (Dec. 2010), Exec. Summary, p. ix, available at http://oehha.ca.gov/ej/cipa123110.html.

projects." (*Id.*) This requires a local lead agency to determine whether pollution from a proposed project will have significant effects on any nearby communities, when considered together with any pollution burdens those communities already are bearing, or may bear from probable future projects. Accordingly, the fact that an area already is polluted makes it *more likely* that any additional, unmitigated pollution will be significant. 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. (*Hanford, supra*, 221 Cal.App.3d at 661; see also *Los Angeles Unified School Dist. v. City of Los Angeles* (1997) 58 Cal.App.4th 1019, 1025 [holding that "the relevant issue … is not the relative amount of traffic noise resulting from the project when compared to existing traffic noise, but whether any additional amount of traffic noise should be considered significant in light of the serious nature of the traffic noise problem already existing around the schools."])

The Role of Social and Economic Impacts Under CEQA

Although CEQA focuses on impacts to the physical environment, economic and social effects may be relevant in determining significance under CEQA in two ways. (See CEQA Guidelines, §§ 15064, subd. (e), 15131.) First, as the CEQA Guidelines note, social or economic impacts may lead to physical changes to the environment that are significant. (*Id.* at §§ 15064, subd. (e), 15131, subd. (a).) To illustrate, if a proposed development project may cause economic harm to a community's existing businesses, and if that could in turn "result in business closures and physical deterioration" of that community, then the agency "should consider these problems to the extent that potential is demonstrated to be an indirect environmental effect of the proposed project." (See *Citizens for Quality Growth v. City of Mt. Shasta* (1988) 198 Cal.App.3d 433, 446.)

Second, the economic and social effects of a physical change to the environment may be considered in determining whether that physical change is significant. (*Id.* at §§ 15064, subd. (e), 15131, subd. (b).) The CEQA Guidelines illustrate: "For example, if the construction of a new freeway or rail line divides an existing community, the construction would be the physical change, but the social effect on the community would be the basis for determining that the effect would be significant." (*Id.* at § 15131, subd. (b); see also *id.* at § 15382 ["A social or economic change related to a physical change may be considered in determining whether the physical change is significant."])

Alternatives and Mitigation

CEQA's "substantive mandate" prohibits agencies from approving projects with significant environmental effects if there are feasible alternatives or mitigation measures that would substantially lessen or avoid those effects. (*Mountain Lion Foundation v. Fish and Game Commission* (1997) 16 Cal.4th 105, 134.) Where a local 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. (See CEQA Guidelines, § 15041, subd. (a) [noting need for "nexus" between required changes and project's impacts].)

Depending on the circumstances of the project, the local agency may be required to consider 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.

The lead agency should discuss and develop mitigation in a process that is accessible to the public and the affected community. "Fundamentally, the development of mitigation measures, as envisioned by CEQA, is not meant to be a bilateral negotiation between a project proponent and the lead agency after project approval; but rather, an open process that also involves other interested agencies and the public." (*Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70, 93.) Further, "[m]itigation measures must be fully enforceable through permit conditions, agreements, or other legally binding instruments." (CEQA Guidelines, § 15126.4, subd. (a)(2).)

As part of the enforcement process, "[i]n order to ensure that the mitigation measures and project revisions identified in the EIR or negative declaration are implemented," the local agency must also adopt a program for mitigation monitoring or reporting. (CEQA Guidelines, § 15097, subd. (a).) "The purpose of these [monitoring and reporting] requirements is to ensure that feasible mitigation measures will actually be implemented as a condition of development, and not merely adopted and then neglected or disregarded." (*Federation of Hillside and Canyon Assns. v. City of Los Angeles* (2000) 83 Cal.App.4th 1252, 1261.) Where a local agency adopts a monitoring or reporting program related to the mitigation of impacts to a particular community or sensitive subgroup, its monitoring and reporting necessarily should focus on data from that community or subgroup.

Transparency in Statements of Overriding Consideration

Under CEQA, a local government is charged with the important task of "determining whether and how a project should be approved," and must exercise its own best judgment to "balance a variety of public objectives, including economic, environmental, and social factors and in particular the goal of providing a decent home and satisfying living environment for every Californian." (CEQA Guidelines, § 15021, subd. (d).) A local agency has discretion to approve a project even where, after application of all feasible mitigation, the project will have unavoidable adverse environmental impacts. (*Id.* at § 15093.) When the agency does so, however, it must be clear and transparent about the balance it has struck.

To satisfy CEQA's public information and informed decision making purposes, in making a statement of overriding considerations, the agency should clearly state not only the "specific economic, legal, social, technological, or other benefits, including region-wide or statewide environmental benefits" that, in its view, warrant approval of the project, but also the project's "unavoidable adverse environmental effects[.]" (*Id.* at subd. (a).) If, for example, the benefits of the project will be enjoyed widely, but the environmental burdens of a project will be felt particularly by the neighboring communities, this should be set out plainly in the statement of overriding considerations.

* * * *

The Attorney General's Office appreciates the leadership role that local governments have played, and will continue to play, in ensuring that environmental justice is achieved for all of California's residents. Additional information about environmental justice may be found on the Attorney General's website at http://oag.ca.gov/environment.

State *of* California Department *of* Justice

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SB 1000 - Environmental Justice in Local Land Use Planning

Low-income communities and communities of color often bear a disproportionate burden of pollution and associated health risks. Environmental justice seeks to correct this inequity by reducing the pollution experienced by these communities and ensuring their input is considered in decisions that affect them. "Environmental justice" is defined in California law as the fair treatment of people of all races, cultures, and incomes with respect to the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies. (Cal. Gov. Code, § 65040.12, subd. (e).)

California is a leader in enacting laws specific to environmental justice, including laws directing funding to environmental justice communities (SB 535 and AB 1550), a law creating a community air quality protection program (AB 617), and another that requires environmental justice to be addressed in local government planning (SB 1000). In addition, the California

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Environmental Justice in Local Land Use Planning

Environmental Protection Agency and its Office of Environmental Health Hazard Assessment have developed an easy to use web-based screening tool called CalEnviroScreen that the public and government can use to help identify communities that are disproportionally burdened by multiple sources of pollution. These agencies have also documented the disproportionate impacts of climate change on environmental justice communities.

In an effort to address the inequitable distribution of pollution and associated health effects in low-income communities and communities of color, the Legislature passed and Governor Brown signed SB 1000 in 2016, requiring local governments to identify environmental justice communities (called "disadvantaged communities") in their jurisdictions and address environmental justice in their general plans. This new law has several purposes, including to facilitate transparency and public engagement in local governments' planning and decision making processes, reduce harmful pollutants and the associated health risks in environmental justice communities, and promote equitable access to health-inducing benefits, such as healthy food options, housing, public facilities, and recreation.

Attorney General's Comment Letters

The Attorney General is working to ensure local governments comply with SB 1000. Below are the comments we have submitted in an effort to promote effective environmental justice planning at the local level.

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