



These guidelines are nonbinding recommendations intended to assist lead agencies with navigating the CEQA process. They may be updated as needed in the future, and any updates will likewise be nonbinding and advisory.

## 2 BEST PRACTICES FOR CENTERING ENVIRONMENTAL JUSTICE, HEALTH, AND EQUITY

### 2.1 OVERVIEW OF PURPOSE, TERMINOLOGY, AND BACKGROUND

#### 2.1.1 Purpose of Environmental Justice Chapter

The purpose of this chapter is to provide lead agencies with best practices on centering environmental justice (EJ), health, and equity in the siting, design, and development of projects under the California Environmental Quality Act (CEQA).

Because CEQA applies to discretionary projects, its information disclosure and mitigation process offers a singular and important opportunity to address both long-standing and emerging environmental injustices. Inherent in the concept of discretion is the presence of choice. A lead agency's analytical choices, both big and small, affect human health and welfare and, in turn, environmental justice outcomes. An overarching goal of this chapter is thus to encourage agencies to use their discretion to make analytical, technical, and legal choices that serve environmental justice in lieu of automatically defaulting to historical practice or the status quo.

The first step of the CEQA process is to determine whether environmental review will be applied to a particular project. When a lead agency has discretion to choose the level of environmental review for a project that threatens to increase pollution in an environmental justice community, the agency should use that discretion to maximize the agency's information disclosure and mitigation opportunities, both to protect public health and to prevent cumulative and disparate pollution impacts.

For context, under CEQA, a substantial adverse impact on human beings, whether direct or indirect, holds special legal status. (Cal. Code Regs, tit. 14, § 15065, Mandatory Findings of Significance). A disparate or discriminatory environmental impact is one such potential impact on human beings. Whether viewed from a civil rights disparate impact lens or from a conventional cumulative impact lens, lead agencies that receive state or federal funding should include a disparate impact analysis in their CEQA analysis under both state and federal law (Cal. Gov. Code § 11135; Title VI of the Civil Rights Act of 1964) and further include less discriminatory options in any alternatives analysis.

## 2.1.2 Foundational Equity Definitions

More broadly, this CEQA Guidelines chapter recognizes the policy imperative to address long-standing inequities in the siting, design, and development of residential, commercial, industrial, and other projects. This chapter also responds to the seventh EJ principle, which “demands the [community’s] right to participate as equal partners at every level of decision-making, including needs assessment, planning, implementation, enforcement and evaluation.”<sup>1</sup>

The following list includes definitions of “equity” and other important terms. Most terms are grounded in the U.S. Constitution, the laws of the United States of America, and in California law:

- ▶ AB 617<sup>2</sup> Community – An Assembly Bill (AB) 617 community is affected by a high cumulative exposure burden for toxic air contaminants and criteria air pollutants, selected by the California Air Resources Board (CARB) governing board, that works with the Bay Area Air Quality Management District (Air District) to develop and implement community air monitoring plans and emission reduction programs to reduce air pollution and the associated health impacts within the community.<sup>3</sup>
- ▶ Amendment XIV to the U.S. Constitution<sup>4</sup> – “All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”
- ▶ Antiracist Policy<sup>5</sup> – An antiracist policy is any measure that produces or sustains racial equity between racial groups.
- ▶ Environmental Justice – This term refers to the fair treatment and meaningful involvement of people of all races, cultures, incomes, and national origins, with respect to the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies. Gov. Code, § 65040.12(e)(1).

<sup>1</sup> The 17 *Principles of Environmental Justice* were drafted and adopted in 1991 by the Delegates at the First National People of Color Environmental Leadership Summit and serve as a defining document for the growing grassroots movement for environmental justice.

<sup>2</sup> AB 617, Cristina Garcia, *Nonvehicular air pollution: criteria air pollutants and toxic air contaminants*. [https://leginfo.ca.gov/faces/billTextClient.xhtml?bill\\_id=201720180AB617](https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=201720180AB617), Accessed April 29, 2022.

<sup>3</sup> California Air Resources Board, *Community Air Protection Program*, <https://ww2.arb.ca.gov/sites/default/files/2020-05/Community%20Air%20Protection%20Program%20-%20Overview%20-%20English.pdf>, Accessed March 18, 2022.

<sup>4</sup> U.S. Constitution, *Fourteenth Amendment Citizenship, Equal Protection, and Other Rights of Citizens*, <https://constitution.congress.gov/browse/amendment-14/section-1/>, Accessed August 1, 2022.

<sup>5</sup> Ibram X. Kendi, *How to Be an Antiracist*. New York: One World, 2019.

- “Environmental justice” includes, but is not limited to, all of the following:
  - (A) The availability of a healthy environment for all people.
  - (B) The deterrence, reduction, and elimination of pollution burdens for populations and communities experiencing the adverse effects of that pollution, so that the effects of the pollution are not disproportionately borne by those populations and communities.
  - (C) Governmental entities engaging and providing technical assistance to populations and communities most impacted by pollution to promote their meaningful participation in all phases of the environmental and land use decision making process.
  - (D) At a minimum, the meaningful consideration of recommendations from populations and communities most impacted by pollution into environmental and land use decisions.
- ▶ Equity – “Equity” means “increasing access to power, redistributing and providing additional resources, and eliminating barriers to opportunity, in order to empower low-income communities of color to thrive and reach full potential.”<sup>6</sup>
- ▶ Overburdened Community – This term refers to an area located within a census tract identified by the California Communities Environmental Health Screening Tool (CalEnviroScreen), Version 4.0, as having an overall CalEnviroScreen score at or above the 70<sup>th</sup> percentile, or located within 1,000 feet of any such census tract.<sup>7</sup>
- ▶ Procedural Equity – As stated in Environmental Justice Principle 7, “Environmental justice demands the right to participate as equal partners at every level of decision-making including needs assessment, planning, implementation, enforcement and evaluation.”<sup>8</sup>
- ▶ Racial Equity<sup>9</sup> – This term refers to “two or more racial groups standing on relatively equal footing.”
- ▶ Racist Policy<sup>10</sup> – A racist policy is “any measure that produces or sustains racial inequity between racial groups.” Racist policies produce inequities “through permanently assisting an overrepresented racial group into wealth and power.”
- ▶ Redlining – “Redlining” refers to the racist policies and practices that financing entities and government deployed to segregate communities of color in “declining” neighborhoods while reserving the “best” and most “desirable” neighborhoods for whites.<sup>11</sup>
- ▶ Title VI of the 1964 Civil Rights Act – No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance. [42 U.S.C. §§ 2000d et seq.](#)

<sup>6</sup> Greenlining Institute, Making Equity Real in Mobility Pilots, [http://greenlining.org/wp-content/uploads/2019/08/Toolkit\\_Making-Equity-Real-in-Mobility-Pilot-Projects\\_Final-1.pdf](http://greenlining.org/wp-content/uploads/2019/08/Toolkit_Making-Equity-Real-in-Mobility-Pilot-Projects_Final-1.pdf), Accessed March 25, 2022.

<sup>7</sup> Bay Area Air Quality Management District, *Regulation 2, Permits Rule 1, Section 2-1-243*, [https://www.baaqmd.gov/~media/dotgov/files/rules/reg-2-permits/2021-amendments/documents/20211215\\_rg0201-pdf.pdf?la=en&rev=103cc60e706947d3ad1e4f5a090483c1](https://www.baaqmd.gov/~media/dotgov/files/rules/reg-2-permits/2021-amendments/documents/20211215_rg0201-pdf.pdf?la=en&rev=103cc60e706947d3ad1e4f5a090483c1), December 15, 2021.

<sup>8</sup> *Principles of Environmental Justice* were developed by the Delegates to the First National People of Color Environmental Leadership Summit convened by the United Church of Christ Commission for Racial Justice in 1991.

<sup>9</sup> Ibram X. Kendi, *How to Be an Antiracist*. New York: One World, 2019.

<sup>10</sup> Ibid.

<sup>11</sup> California Environmental Protection Agency, *Pollution and Prejudice: Redlining and Environmental Injustice in California*, <https://storymaps.arcgis.com/stories/f167b251809c43778a2f9f040f43d2f5>, August 16, 2021.

### 2.1.3 Environmental Justice Background

Equal protection of the law held in the Amendment XIV to the U.S. Constitution is the foundation of environmental justice. EJ and Title VI of the 1964 Civil Rights Act are both rooted in the same basic principle—that no person should bear an unfair share of harm on account of their race, color, or national origin.<sup>12</sup> The EJ movement was galvanized in 1987, when the United Church of Christ Commission released a study demonstrating that across the country, toxic facilities were consistently located in Black and Brown communities.<sup>13</sup> In 1991, delegates to the First National People of Color Environmental Leadership Summit drafted and adopted *The Principles of Environmental Justice*, and it has served as a defining document for the growing EJ movement.<sup>14</sup>

The origins of environmental injustice and racist policies trace back through the history of the country, starting with the genocide of Native tribes and dispossession of their lands by white European settlers. “In 1491, Native people controlled all of the 2.4 billion acres that would become the United States. Now [Native people] control about 56 million acres, or roughly 2 percent.”<sup>15</sup> The environmental story of white settlement, which involved Europeans bringing diseases, weeds, vermin, and domesticated animals that opportunistically supported the devastation of Native peoples, is more complex than can be captured in this chapter.<sup>16</sup> European settlers institutionalized the othering and dehumanizing of Native Americans, the systematic erosion of their livelihoods, and removal of their rights to the land. Federal and state government–sanctioned militias killed Tribal men, women, and children, terrorized survivors, and forced them into reservations, often far removed from their homeland. In other instances, treaties were brokered with false promises of land access, including in what are now designated national parks.<sup>17</sup> These crimes were justified by characterizing Native people as savages not worthy of inhabiting the lands they tended for thousands of years. With John Muir and other conservationists designating natural cathedrals—wilderness areas preserved free of human intervention—Native Americans were pushed from their lands by white Americans enacting their exclusionary ideals with racist policies. Today, many Native people still lack access to their ancestral lands and are prevented by racist policies from gaining access. In some cases, access was provided only recently. For instance, in 2021, the San Diego County Board of Supervisors struck down a prohibition that for more than 20 years prevented 18 federally recognized tribes from expanding their landholdings.<sup>18</sup> As leaders, administrators, and planners become more cognizant of racial justice, the reversal of racist policies will be crucial to undo centuries of harm and begin to implement procedural equity and antiracist policy.

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<sup>12</sup> U.S. Department of Justice, *Federal Coordination of Title VI and Environmental Justice*, <https://www.justice.gov/crt/fcs/newsletter/Spring-2015/TitleVIandEJ>, Accessed July 7, 2022.

<sup>13</sup> United Church of Christ. A Movement is Born: Environmental Justice and the UCC, <https://www.ucc.org/what-we-do/justice-local-church-ministries/justice/faithful-action-ministries/environmental-justice/a-movement-is-born-environmental-justice-and-the-ucc/>, Accessed March 22, 2022.

<sup>14</sup> *Principles of Environmental Justice*, <https://www.ejnet.org/ej/principles.html>, Accessed July 27, 2022.

<sup>15</sup> David Treuer, *The Atlantic*, *Return the National Parks to the Tribes*, <https://www.theatlantic.com/magazine/archive/2021/05/return-the-national-parks-to-the-tribes/618395/>, May 2021.

<sup>16</sup> Carol Merchant, *Major Problems in American Environmental History*. UCB. D.C. Heath and Company.

<sup>17</sup> David Treuer, *The Atlantic*. *Return the National Parks to the Tribes*, <https://www.theatlantic.com/magazine/archive/2021/05/return-the-national-parks-to-the-tribes/618395/>, May 2021.

<sup>18</sup> Lauren Mapp, *The San Diego Union-Tribune*, *In historic move, county removes barrier to tribal land expansion*, <https://www.sandiegouniontribune.com/communities/north-county/story/2021-05-05/in-historical-move-county-board-removes-barrier-to-tribal-land-expansion>, May 5, 2021.

Discriminatory and racist land use and lending policies, commonly referred to as redlining, are another example of the roots of environmental injustice. In the 1930s, the federal government created lending practices and other policies that explicitly discriminated against Black and Brown people and led to the further siting of polluting industries near communities of color. In the 1930s, the Home Owners' Loan Act (HOLC), a component of the New Deal, provided low-interest mortgages backed by the federal government. Over nearly three decades, the federal government issued the vast majority (98 percent) of \$120 billion in loans to whites. To protect this investment, the government created HOLC assessment practices and color-coded "residential security" maps where green or "desirable" neighborhoods were deemed secure while red or "declining" neighborhoods were determined to be a high risk for lenders. The federal government explicitly assigned skin color—"inharmonious racial or nationality groups"—as a criterion considered risky. Local government similarly reinforced this racist practice through zoning, leading to the siting of industrial activity in communities of color—redlined areas. The California Environmental Protection Agency recently evaluated the relationship between HOLC practices and present-day environmental injustice and found that "for all eight of the California cities included in the HOLC assessments, neighborhoods that were redlined...are on average more disadvantaged by pollution burdens...."<sup>19</sup>

This section offers only a snippet of the history of racism in this country and environmental injustice in the Bay Area as it relates to land use. This section is not meant to be an all-inclusive history of the EJ movement but to highlight how past land use decisions and institutional injustices continue to have persistent negative consequences in the daily lives of people of color. The impacts of environmental injustice are found today in the health outcomes, or social determinants of health, of people in the most disproportionately affected EJ communities. Social determinants of health, as defined by the Bay Area Regional Health Inequities Initiative, are those factors that affect morbidity, mortality, and health behaviors but that are out of an individual's control, such as living conditions, institutional power, and social inequality.<sup>20</sup> A person's health outcomes, such as life expectancy at birth and premature mortality, can be predicted by educational attainment and neighborhood poverty. However, educational opportunities are largely out of the community members', families', or students' control and are largely determined by local, state, and federal governments. Similarly, the location of polluting sources is determined by those in power, and the "burden of breathing in unhealthy air is often disproportionately borne by low income and communities of color, many of which are situated closer to busy highways, ports, factories, and other pollution sources."<sup>21</sup> Environmental Justice Principle 12 "affirms the need for urban and rural ecological policies to clean up and rebuild our cities and rural areas in balance with nature, honoring the cultural integrity of all our communities, and providing fair access for all to the full range of resources."<sup>22</sup>

Recent research on fine particulate matter (PM<sub>2.5</sub>) concentrations in the United States found that the most polluted areas studied have remained polluted with "the most exposed subpopulations in 1981 remain[ing] the most exposed in 2016."<sup>23</sup> Environmentally overburdened, underserved, and economically distressed

<sup>19</sup> California Environmental Protection Agency, *Pollution and Prejudice: Redlining and Environmental Injustice in California*. <https://storymaps.arcgis.com/stories/f167b251809c43778a2f9f040f43d2f5>, August 16, 2021.

<sup>20</sup> Bay Area Regional Health Inequities Initiative, *Applying Social Determinants of Health Indicators to Advance Health Equity: A Guide for Local Health Department Epidemiologists and Public Health Professionals*. Oakland, CA., 2015.

<sup>21</sup> Bay Area Regional Health Inequities Initiative 2015, <https://www.barhii.org/>, Accessed April 23, 2021.

<sup>22</sup> *Principles of Environmental Justice*, <https://www.ejnet.org/ej/principles.html>, Accessed July 27, 2022.

<sup>23</sup> Jonathan Colmer, Ian Hardman, Jay Shimshack, and John Voorheis, *Disparities in PM<sub>2.5</sub> air pollution in the United States*. *Science* 369 (6503), 575–578. DOI: 10.1126/science.aaz9353. November 24, 2020.

communities may be subject to a higher risk of pollutant-related health effects than the general population because they may be exposed to higher pollutant concentrations than the general population; they may experience a larger health impact at a given pollutant concentration; or they may be adversely affected by lower pollutant concentrations than the general population.<sup>24</sup> The most critical air pollutant affecting health in the Bay Area is PM<sub>2.5</sub>, which includes diesel PM as a toxic air contaminant.<sup>25</sup> Local levels of PM<sub>2.5</sub> and toxic air contaminants are highest near air pollution sources, such as freeways, heavily trafficked seaports, and large industrial facilities.<sup>26</sup> The burden of breathing unhealthy air is often disproportionately borne by low-income communities and communities of color, many of which are situated closer to busy highways, ports, factories, and other pollution sources.<sup>27</sup>

## 2.2 ENVIRONMENTAL JUSTICE GUIDANCE

This section makes the case for centering equity and environmental justice in CEQA processes and analyses. It identifies ways to assess and improve EJ practices in CEQA review for all projects. By using this guidance, lead agencies should be able to:

- ▶ inform, consult, or engage overburdened and/or AB 617 communities in CEQA analysis and decision making;
- ▶ identify projects located in overburdened and/or AB 617 communities;
- ▶ analyze project-level impacts on overburdened and/or AB 617 communities; and
- ▶ determine whether the project is centering nondiscrimination and environmental justice through its mitigation plan, cumulative impact analysis, and alternatives analysis.

### 2.2.1 Public Scoping Process and Public Engagement

This section draws on the principles of EJ, including principles 2, 4, 7, 11, 12, and 16,<sup>28</sup> by providing guidance on meaningful public engagement and identifying land use projects in communities disproportionately affected by environmental pollution and experiencing high levels of cumulative environmental burden.

<sup>24</sup> U.S. Environmental Protection Agency, *Fine Particulate Matter National Ambient Air Quality Standards: State Implementation Plan Requirements; Final Rule*, <https://www.govinfo.gov/content/pkg/FR-2016-08-24/pdf/2016-18768.pdf>.

<sup>25</sup> Bay Area Air Quality Management District Advisory Council, *Particulate Matter: Spotlight on Health Protection, Advisory Council Particulate Matter Reduction Strategy Report*, December 16, 2021.

<sup>26</sup> Bay Area Air Quality Management District, *Planning Healthy Places*, 2016.

<sup>27</sup> Bay Area Regional Health Inequities Initiative, *Applying Social Determinants of Health Indicators to Advance Health Equity: A Guide for Local Health Department Epidemiologists and Public Health Professionals*. Oakland, CA., 2015.

<sup>28</sup> Principles of Environmental Justice referenced: (2) Environmental Justice demands that public policy be based on mutual respect and justice for all peoples, free from any form of discrimination or bias. (4) Environmental Justice calls for universal protection from nuclear testing, extraction, production and disposal of toxic/hazardous wastes and poisons and nuclear testing that threaten the fundamental right to clean air, land, water, and food. (7) Environmental Justice demands the right to participate as equal partners at every level of decision-making, including needs assessment, planning, implementation, enforcement and evaluation. (11) Environmental Justice must recognize a special legal and natural relationship of Native Peoples to the U.S. government through treaties, agreements, compacts, and covenants affirming sovereignty and self-determination. (12) Environmental Justice affirms the need for urban and rural ecological policies to clean up and rebuild our cities and rural areas in balance with nature, honoring the cultural integrity of all our communities, and provided fair access for all to the full range of resources. (16) Environmental Justice calls for the education of present and future generations which emphasizes social and environmental issues, based on our experience and an appreciation of our diverse cultural perspectives.

## INFORM, CONSULT WITH, OR OTHERWISE ENGAGE THE OVERBURDENED COMMUNITY AND/OR AB 617 COMMUNITY IN THE ENVIRONMENTAL ANALYSIS AND DECISION MAKING

Meaningful public engagement is essential to conducting an environmentally just CEQA process. Lead agencies and other public agencies should review their public engagement process to ensure that they are providing meaningful engagement to a wide and diverse range of residents, youth, seniors, tribal government representatives, persons with disabilities, linguistically isolated persons, and others. Meaningful public engagement is helpful to maintain relationships with affected populations, enhance the ability to collect data and information, convene community advisory committees to further inform decision making, and provide opportunities for the community to discuss their concerns. The U.S. Environmental Protection Agency provides promising practices and methodologies, derived from agency practices, that federal agencies can consider for understanding EJ in the context of the National Environmental Policy Act process.<sup>29</sup> These same practices and methodologies also largely apply to CEQA.

Environmental injustices are often rooted in the exclusion of communities in land use, permitting, and entitlement decisions. With the state legislature codifying the requirement to address environmental justice, creating laws and programs to include community participation, authentic outreach during the scoping phase is now a more critical part of the overall CEQA process. Authentic outreach calls for meaningful involvement of community residents in the proposed project.<sup>30</sup> The scoping process should include all community members whose health may be affected by the proposed project, including affected businesses and organizations in the project area. Overburdened communities are diverse, with varying issues and needs, which requires engaging a local partner familiar with and trusted by the local community. Lead agencies should identify community assets, such as trusted partners, community leaders, and EJ groups with a history of working in the local community, to involve them early in the scoping process. Community partners should be linguistically accommodated, compensated for their time and support to raise awareness about the process, and provided opportunities to collaborate with planners and environmental experts to inform and educate the community about key project topics and provide local knowledge that helps to ensure that the project addresses the needs of the community. In addition, the scoping process should effectively engage the community and accommodate residents through providing cultural consideration, simultaneous translation services, a variety of times and accessible meeting locations, and communication and participatory facilitation techniques to convey information in an accessible format.

CEQA also provides that documents should be written in plain language and be user-friendly to the public,<sup>31</sup> and EJ advocates have successfully argued that the documents should be printed in the primary language of the population affected.<sup>32</sup> When designing a community engagement strategy for an EJ planning process, focus on involving and collaborating with the community. Implement a culturally relevant online strategy by identifying websites and social media platforms that are most viewed by the target populations to provide

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<sup>29</sup> U.S. Environmental Protection Agency, *Promising Practices for EJ Methodology*, August 2016.

<sup>30</sup> Claudia Garcia; Angie Xiong; Curtis E. Alling, AICP; and Gary D. Jakobs, AICP, *Environmental Justice in the California Environmental Quality Act: It Is Here, and It Is Time*, [http://ascntenvironmental.com/files/2915/9908/4232/AscentShare\\_Environmental\\_Justice\\_Paper.pdf](http://ascntenvironmental.com/files/2915/9908/4232/AscentShare_Environmental_Justice_Paper.pdf).

<sup>31</sup> State CEQA Guidelines § 15140.

<sup>32</sup> *El Pueblo Para el Aire y Agua Limpio v. County of Kings*, No. 366045, 22 ENVTL. L. REP. 20357 (Cal. Super. Ct., Sacramento County, Dec. 30, 1991).

updates on the ongoing planning process.<sup>33</sup> For more information on the principles and techniques to consider, see the California Environmental Justice Alliance SB 1000 Implementation Toolkit. It provides a planning process, tools, methodologies, and resources to support local governments and planners as they begin to implement the statutes of SB 1000.<sup>34</sup> The Governor's Office of Planning and Research (OPR) also provides example model goals, objectives, and policies and programs<sup>35</sup> that can serve as a reference for meaningful public engagement for other communities and local jurisdictions.

### Language Access

Meaningful public participation, including adequate language access and proper tribal consultation, is another critical aspect of an environmentally just CEQA process. On language access, the Dymally-Alatorre Act (Cal. Gov. Code §§ 7299.1-7299.5, 19052) provides state and local agencies important instruction on bilingual staffing and translation. At a minimum, lead agencies should ensure compliance with the act's language access requirements. From an equity and EJ perspective, lead agencies should go beyond the minimum legal requirements and tailor their own, population-specific language access policies that are as linguistically inclusive as possible. As they relate to the CEQA process, translation efforts should reflect the linguistic diversity of the lead agency's geographic area, with a particular focus on the linguistic diversity of the project area.

### Tribal Consultation

AB 52 enshrines CEQA's tribal consultation requirements. Under AB 52, the CEQA process must include formal, deliberate, and rigorous consultation with Native American tribal representatives<sup>36</sup> on issues that could affect potential culturally significant areas and resources, along with an impact analysis of those historical and cultural resources. OPR provides technical advisories to aid tribes and local governments in the tribal consultation process. Lead agencies should review that guidance before beginning the CEQA process. If the tribal consultation process fails to result in a mutual agreement on whether or how to mitigate significant impacts on tribal cultural resources, the lead agency should consider engaging a third-party mediator to resolve the intergovernmental dispute.

## 2.2.2 Defining the Environmental Setting and Project Description

State CEQA Guidelines Section 15125<sup>37</sup> directs lead agencies to describe the physical environmental conditions in the vicinity of a project. The environmental setting normally constitutes the baseline by which an agency determines whether an impact is significant. To begin addressing EJ, the environmental setting should include existing economic and social conditions to the extent they are implicated in significance determinations, as discussed in Section 2.2.4. It should identify any overburdened and/or AB 617 community that would be affected. There are other ways to define communities disproportionately impacted by air pollution that should be identified, including a locally defined EJ community via the SB

<sup>33</sup> California Environmental Justice Alliance and Placeworks, *SB 1000 Implementation Toolkit Planning for Healthy Communities*, October 2017, <https://caleja.org/2017/09/sb-1000-toolkit-release/>.

<sup>34</sup> Ibid.

<sup>35</sup> Governor's Office of Planning and Research, *General Plan Guidelines Appendix A*, [https://opr.ca.gov/docs/OPR\\_Appendix\\_A\\_final.pdf](https://opr.ca.gov/docs/OPR_Appendix_A_final.pdf), June 24, 2022.

<sup>36</sup> Under Assembly Bill 52, CEQA requires lead agencies to consider the effects of projects on tribal cultural resources and to conduct notification and consultation with federally and nonfederally recognized Native American tribes early in the environmental review process.

<sup>37</sup> The State CEQA Guidelines may be downloaded here: [https://www.califaep.org/docs/2022\\_CEQA\\_Statute\\_and\\_Guidelines.pdf](https://www.califaep.org/docs/2022_CEQA_Statute_and_Guidelines.pdf).



1000 general plan EJ element planning process. More specific information may include the community's ethnic, racial, and/or nationality,<sup>38</sup> as well as population characteristics in CalEnviroScreen 4.0,<sup>39</sup> including but not limited to sensitive population indicators (e.g., asthma, cardiovascular disease, infants with low birth weight) and socioeconomic factor indicators (e.g., educational attainment, housing-burdened low-income households, linguistic isolation, poverty, unemployment). EJ relates to the relationship between social and economic factors and environmental impacts on people and their communities. Thus, consideration of race, broader demographics, social determinants of health, and land use history of a potentially affected community is crucial to a proper, thorough, and sensitive environmental review.<sup>40</sup>

A clear, complete, and accurate project description is the linchpin of any CEQA analysis and is particularly important from an EJ and equity perspective. The project description should also provide a level of detail sufficient to understand and address EJ throughout the environmental review process. For example, for projects that would result in higher rates of vehicle trips or vehicle miles traveled, the project description should identify geographic boundaries with foreseeable areas that would be affected by an increase in emissions. Overall, the project description should be as inclusive and holistic as possible.

Likewise, in selecting a baseline for the CEQA analysis, lead agencies should use their discretion to advance equitable and public health–protective analyses and outcomes. For example, whenever possible, lead agencies should avoid including illegal pollution in their baseline determination. Lead agencies should also avoid inflating baselines in a manner that does not provide an accurate view of existing pollution levels or a project's impacts, especially in pollution-burdened communities.

## IDENTIFY PROJECTS LOCATED IN AN OVERBURDENED COMMUNITY AND/OR AB 617 COMMUNITY

The recommendations in this section will only refer to overburdened and/or AB617 communities. Overburdened communities, as defined by the Air District, are areas that experience high levels of cumulative impacts—census tracts that score at or above the 70<sup>th</sup> percentile in CalEnviroScreen 4.0<sup>41</sup> and areas within 1,000 feet of the boundaries of those census tracts.<sup>42</sup> An AB 617 community is affected by a high cumulative exposure burden for toxic air contaminants and criteria air pollutants, selected by CARB that works with the Air District to develop and implement community air monitoring plans and emission reduction programs in order to reduce air pollution and the associated health impacts in the community.

<sup>38</sup> Alan Ramo, Golden Gate University School of Law, *Environmental Justice As an Essential Tool in Environmental Review Statutes – A New Look at Federal Policies and Civil Rights Protections and California's Recent Initiatives*.

<sup>39</sup> California Office of Environmental Health Hazard Assessment, *CalEnviroScreen 4.0*, <https://oehha.ca.gov/calenviroscreen/report/calenviroscreen-40>, Accessed March 3, 2022.

<sup>40</sup> Ibid.

<sup>41</sup> CalEnviroScreen 4.0 is a screening methodology that can be used to help identify communities that are disproportionately burdened and cumulatively affected by multiple sources of pollution across California. California Office of Environmental Health Hazard Assessment, *CalEnviroScreen 4.0*, <https://oehha.ca.gov/calenviroscreen/report/calenviroscreen-40>, Accessed March 3, 2022.

<sup>42</sup> Bay Area Air Quality Management District, *Regulation 2, Permits Rule 1, Section 2-1-243*, [https://www.baaqmd.gov/~/\\_media/dotgov/files/rules/reg-2-permits/2021-amendments/documents/20211215\\_rg0201-pdf.pdf?la=en&rev=103cc60e706947d3ad1e4f5a090483c1](https://www.baaqmd.gov/~/_media/dotgov/files/rules/reg-2-permits/2021-amendments/documents/20211215_rg0201-pdf.pdf?la=en&rev=103cc60e706947d3ad1e4f5a090483c1), December 15, 2021.

As of autumn 2022, the AB 617 communities in the Bay Area are West Oakland, Richmond/North Richmond/San Pablo, and East Oakland. For more information, see the Air District’s AB 617 Program.<sup>43</sup>

The Air District recommends that the following actions be taken to identify projects located in an overburdened community and/or AB 617 community:

- ▶ Lead agencies should identify overburdened communities<sup>44</sup> in their CEQA analysis and contact Air District staff to determine whether the project site is located in an AB 617 community.
- ▶ Each overburdened and/or AB 617 community identified in the analysis should be identified by name or other identifying information, such as a census tract number, and its location should be shown on a map.<sup>45</sup>
- ▶ If the project site is located in an overburdened and/or AB 617 community, the project description should describe the environmental setting in the vicinity of the site.
- ▶ Local governments should complement the identification of these communities with ground-truthing, supplementing technical information with local knowledge, such as the location of pollution sources and their proximity to sensitive receptors, to inform policy and project decisions.<sup>46</sup>
- ▶ Lead agencies should also consider preparing a racial impact statement—an analysis of how a proposed action affects racial or ethnic groups—to accompany its CEQA analysis in order to ensure and demonstrate nondiscrimination.

### 2.2.3 Environmental Justice Considerations for Project-Level Impact Analysis

This section provides guidance and recommendations on how EJ should be considered for project-level impact analysis.

#### **ANALYZE PROJECT-LEVEL IMPACTS ON OVERBURDENED AND/OR AB 617 COMMUNITY**

The following EJ recommendations should build on and supplement the analysis conducted in response to the CEQA statute and State CEQA Guidelines Appendix G Environmental Checklist questions for air quality:

##### III. AIR QUALITY.

Would the project:

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<sup>43</sup> Bay Area Air Quality Management District, *Community Health Protection Program*, <https://www.baaqmd.gov/community-health/community-health-protection-program>.

<sup>44</sup> Bay Area Air Quality Management District, *Interactive Data Maps*, <https://www.baaqmd.gov/about-air-quality/interactive-data-maps>.

<sup>45</sup> California Department of Justice Office of Attorney General, *Agreement Between the California Attorney General's Office and the City of Huntington Park*, December 1, 2021.

<sup>46</sup> California Environmental Justice Alliance and Placeworks, *SB 1000 Implementation Toolkit Planning for Healthy Communities*, October 2017.

- a) *Conflict with or obstruct implementation of the applicable air quality plan?*
- b) *Result in a cumulatively considerable net increase of any criteria pollutant for which the project region is non-attainment under an applicable federal or state ambient air quality standard?*
- c) *Expose sensitive receptors to substantial pollutant concentrations?*
- d) *Result in other emissions (such as those leading to odors) adversely affecting a substantial number of people?*

## Consistency with Air Quality Plans

### **Question a): Would the project conflict with or obstruct implementation of the applicable air quality plan?**

As noted in Chapter 5 of these CEQA Guidelines, the analysis should include a discussion of the project's consistency with each applicable air quality plan. CARB's Community Health Protection Program works with communities across California to plan and implement AB 617 (C. Garcia, Chapter 136, Statutes of 2017). This effort focuses on developing community emissions reduction programs or plans (CERPs) and employing proven and innovative strategies to reduce exposure to air pollutants in neighborhoods most affected by air pollution and thereby improve community health. In addition to responding to the questions in Appendix G of the State CEQA Guidelines as part of the standard impact analysis, project sponsors and lead agencies with projects located in a community with an adopted CERP should consider the following recommendations.

The lead agency should consult with the Air District to evaluate the project's consistency with any adopted CERPs. For any projects that are within a CERP plan area, especially projects with a large geographic or pollution footprint, projects that require demolition, and projects that have extended construction periods or overlapping construction schedules, the project sponsor (applicant or lead agency) should consult with the Air District to ensure that it fully understands not only the goals and strategies outlined in the CERP but also how to engage with the community to create socially responsible projects and identify ways to reduce air pollution. In accordance with State CEQA Guidelines Appendix G and Chapter 5 of these CEQA Guidelines, lead agencies must analyze whether projects within a CERP plan area are consistent with the applicable CERP. To demonstrate consistency, the analysis should discuss how the project supports the CERP goals and targets; identify which CERP strategies are incorporated into the project and which strategies, if any, are not incorporated and present the reasons for their exclusion, supported by substantial evidence; and demonstrate that the project would not cause disruption or delay to or otherwise hinder implementation of any CERP strategies. The lead agency should contact the Planning and Climate Protection Division via email ([ceqa@baaqmd.gov](mailto:ceqa@baaqmd.gov)) for assistance with ensuring CERP plan consistency.

State CEQA Guidelines Section 15125(d) states that environmental impact reports shall discuss inconsistencies between the proposed project and applicable general plans, specific plans, and regional plans. Because local jurisdictions update and adopt EJ policies, a project review related to EJ policy consistency and applicable mitigation measures should be considered. The lead agency should confirm whether there are adopted EJ policies for the project area that are intended to avoid or reduce environmental effects on vulnerable

communities within its jurisdiction.<sup>47</sup> The environmental impact report should discuss in the regulatory background section and impact analyses any adopted EJ elements or policies that involve avoiding or mitigating environmental effects applicable to air pollutant emissions and health risks related to pollution. For more information on adopted EJ elements across the state, see OPR's Tools and Resources.<sup>48</sup>

## Criteria Air Pollutants

### **Question b): Would the project result in a cumulatively considerable net increase of any criteria pollutant for which the project region is non-attainment under an applicable federal or state ambient air quality standard?**

As noted in Chapter 5 of these CEQA Guidelines, the analysis should determine the significance of construction- and operation-related criteria air pollutants and precursors. For projects located in overburdened communities, the cumulative impact analysis should be holistic and inclusive and should identify all past, present, and future projects that add to the cumulative scenario. Implementation of the enhanced best management practices for mitigating construction fugitive dust emissions listed in Section 5.2.2 of Chapter 5, "Project-Level Air Quality Impacts," is particularly important in a pollution-burdened community facing cumulative impacts. Further, lead agencies should seek to implement mitigation measures that would benefit overburdened communities, as discussed below. The Air District additionally recommends that local jurisdictions review CARB's Concept Paper for the Freight Handbook<sup>49</sup> and the California Attorney General's Office Bureau of Environmental Justice<sup>50</sup> best practices and mitigation measures when studying air quality impacts from construction and operation and reducing air quality impacts of logistics and warehouse facilities. It is critical to consider these recommendations when assessing air quality impacts because overburdened communities continue to experience the worst air pollution in the region. Finally, as discussed above, for lead agencies that receive state or federal funding, the cumulative impact analysis should ensure that the project would not cause or contribute to a disparate impact on a community based on race, color, or national origin, consistent with a lead agency's civil rights obligations.

## Local Community Risks and Hazards

### **Question c): Would the project expose sensitive receptors to substantial pollutant concentrations?**

Careful consideration and mitigation of localized air quality exposure is central to incorporating EJ into the CEQA process. Chapter 5 and Appendix E of these CEQA Guidelines provide extensive guidance on identifying the sources, receptors, and project radius needed to perform preliminary screening and, if necessary, a detailed health risk assessment to determine local risks and hazard impacts. A clear

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<sup>47</sup> Claudia Garcia; Angie Xiong; Curtis E. Alling, AICP; and Gary D. Jakobs, AICP, *Environmental Justice in the California Environmental Quality Act: It Is Here, and It Is Time*, [http://ascentenvironmental.com/files/2915/9908/4232/AscentShare\\_Environmental\\_Justice\\_Paper.pdf](http://ascentenvironmental.com/files/2915/9908/4232/AscentShare_Environmental_Justice_Paper.pdf).

<sup>48</sup> Governor's Office of Planning and Research, *General Plan Guidelines and Technical Advisories*, <https://opr.ca.gov/planning/general-plan/guidelines.html>, June 24, 2022.

<sup>49</sup> California Air Resources Board, *Concept Paper for the Freight Handbook*, [https://www2.arb.ca.gov/sites/default/files/2020-03/2019.12.12%20-%20Concept%20Paper%20for%20the%20Freight%20Handbook\\_1.pdf](https://www2.arb.ca.gov/sites/default/files/2020-03/2019.12.12%20-%20Concept%20Paper%20for%20the%20Freight%20Handbook_1.pdf), Accessed April 29, 2022.

<sup>50</sup> Attorney General's Office Bureau of Environmental Justice, *Warehouse Projects and Best Practices and Mitigation Measures to Comply with the California Environmental Quality Act*, <https://oag.ca.gov/system/files/media/warehouse-best-practices.pdf>, Accessed April 29, 2022.

understanding of the siting of a project is integral to an assessment of potential health and equity impacts, and thoroughly describing the environmental setting helps to establish the baseline conditions in a community. For example, the particulate emissions from a proposed project might not be significant if the project would be located far from a populated area, but they may be significant if the project would be located in the airshed of a community whose residents may be particularly sensitive to the type of pollution associated with the project or are already experiencing higher-than-average asthma rates.<sup>51</sup>

Because overburdened and AB 617 communities include residents already experiencing higher-than-normal levels of air pollution and are often checkered with incompatible land uses, a careful analysis for sensitive receptors should be conducted. Sensitive receptors include children, the elderly, off-site workers, students, and those with preexisting medical conditions. They are typically found in residences, schools, parks and playgrounds, daycare centers, nursing homes, and medical facilities, but some receptors are overlooked because they are found in an unlikely location. Lead agencies should consider conducting an in-person survey of the project vicinity for a complete list of locations frequently overlooked, such as encampments for the unhoused, warehouses with indoor sports facilities for children and youth, privately operated indoor playgrounds for young children, and privately operated youth-serving facilities.

The following recommendations should be considered during preparation of health risk assessments to ensure that impacts on sensitive receptors are accurately captured:

- ▶ The environmental analysis should estimate and evaluate the project's potential health impacts, including potential cumulative health impacts, on existing sensitive receptors in and near the project area related to construction- and operation-related emissions of toxic air contaminants and PM<sub>2.5</sub>. Although generally not required, the lead agency may choose to study the effects of air pollution on future users to better inform mitigation strategies.
- ▶ In analyzing cumulative health impacts, lead agencies should carefully ensure that all closely related past, present, and reasonably foreseeable future projects are captured by the analysis so that the full magnitude of any cumulative impact is disclosed and considered.
- ▶ Larger industrial sources located more than 1,000 feet from the project site, such as refineries, power plants, and chemical plants, should be included in the analysis.
- ▶ Sensitive receptors near schools located more than 1,000 feet from the project site should be included in the analysis.
- ▶ The modeling analysis should include freeways, highways, major roads,<sup>52</sup> rail lines, marine ports, ferries, and airports within approximately 1,000 feet of the project site because mobile sources that use these facilities are significant sources of pollution.

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<sup>51</sup> Kamala Harris, Office of the California Attorney General, Department of Justice, *Environmental Justice at the Local and Regional Level: Legal Background*, July 2012.

<sup>52</sup> A major road is a road where risks are greater than 10 in one million.

## Odors

### **Question d): Would the project result in other emissions (such as those leading to odors) adversely affecting a substantial number of people?**

Chapter 5 of these CEQA Guidelines provides guidance regarding how to make a significance determination for an odor impact. In overburdened or AB 617 communities, the process should include providing additional notice to the surrounding community in order to increase the amount of input received and ensure that existing odor impacts are appropriately considered in the cumulative impact analysis.

If the proposed project involves siting a new odor source, and sensitive receptors are located within the screening distances shown in Table 5-4 of these CEQA Guidelines, lead agencies should require the project sponsor to distribute a notice to addresses located within 1,000 feet of the project site. The notice should explain how the public may obtain more information about the project and receive answers to questions.

In addition to determining whether a proposed project in isolation may result in a potentially significant odor impact, lead agencies should also assess whether there may be a cumulative odor impact. Such an analysis is particularly recommended when a project would be located within the screening distance of an existing or proposed odor source, as shown in Table 5-4 of these CEQA Guidelines, or within the vicinity of a known odor source. If so, the lead agency should determine whether the proposed project plus existing and proposed odor sources would result in a cumulative impact and, if so, whether the proposed project's contribution would be cumulatively considerable, as outlined in Chapter 3, "Thresholds of Significance."

As part of the cumulative impact determination, lead agencies must consider the contribution of existing sources. To do this, lead agencies should investigate whether there are confirmed odor complaints related to the existing sources. They also should survey the community. Overburdened communities may or may not be familiar with the Air District's air quality complaint reporting system or how to submit a complaint. Accordingly, conducting an online or door-to-door survey or site visit would provide a more accurate picture of current conditions in the neighborhood. The responses gathered through these efforts should be discussed in the environmental review document. Further, the responses would provide information critical to determining whether there would be a cumulative impact, and they would assist in determining whether the proposed project's contribution would be cumulatively considerable.<sup>53</sup> In addition, this information would help the lead agency determine the best path forward regarding the location of the project and how to implement adequate processes and control equipment to mitigate any significant impacts it would have on the community. A survey could include the following questions:

- ▶ In the last 10 days, have you smelled a strong and/or offensive odor in your community?
- ▶ What date and time did you smell this odor?
- ▶ Where did you observe the odor?
- ▶ How would you characterize the odor?
- ▶ What is the name and address of the possible odor source or site, if known?

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<sup>53</sup> As explained in Chapter 3, "the greater the existing environmental problems are, the lower the threshold should be for treating a project's contribution to cumulative impacts as significant." (*Communities for a Better Environment v. California Resources Agency* (2002) 103 Cal.App.4th 98, 120.)

- ▶ Is the odor ongoing?
- ▶ Have you experienced this type of odor issue in the past?
- ▶ Can you characterize your experience related to the odor? Did you experience any health impacts related to the odor?
- ▶ Have you reported the air quality concern to the Air District's complaint hotline? For more information on the complaint system, contact 1-800-334-ODOR (6367).

## 2.2.4 Environmental Justice Considerations for Economic and Social Effects

A key component of environmental justice is the consideration of the economic and social impacts of a project on people who have been historically subjected to unequal treatment and who are overburdened by environmental pollution and economic and social disparities. Historically, freeways, railways, polluting industries, and similar types of projects have cut through low-income and disenfranchised communities, perpetuating redlining impacts and those of other racist policies and practices. This section encourages lead agencies to implement antiracist measures to avoid perpetuating the mistakes of the past and to promote equity by evaluating and addressing the economic and social implications of proposed projects.

Purely economic or social impacts do not constitute significant effects under CEQA,<sup>54</sup> however, economic or social effects of a project may result in significant impacts under CEQA. The lead agency should consider whether implementing the project may result in economic or social impacts that in turn may cause significant physical impacts.<sup>55</sup> In addition, the lead agency should consider the economic or social effects of a project in determining the significance of physical changes caused by the project.<sup>56</sup> Former Attorney General Kamala Harris provided a CEQA-specific example: “[I]f 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.”<sup>57</sup>

Below are questions and examples that lead agencies should consider when determining whether a project may have economic or social impacts that result in a significant environmental impact:

- ▶ If implementing the project would result in a physical change to the environment, would the economic or social effects of the physical change to the environment cause that physical change to be significant?

For example, the California High-Speed Rail Merced to Fresno: Central Valley Wye Draft Supplemental Environmental Impact Report/Environmental Impact Statement<sup>58</sup> states that construction of the Central Valley Wye alternatives would introduce permanent infrastructure and associated physical changes that would result in impacts on community cohesion in residential communities and the rural agricultural communities adjacent

<sup>54</sup> State CEQA Guidelines, §§ 15064(e), 15131.

<sup>55</sup> State CEQA Guidelines, §§ 15064(e), 15131(a).

<sup>56</sup> State CEQA Guidelines, § 15131(b).

<sup>57</sup> Kamala Harris, Office of the California Attorney General, Department of Justice, *Environmental Justice at the Local and Regional Level Legal Background*, July 2012.; State CEQA Guidelines, § 15131(b).

<sup>58</sup> California High-Speed Rail Authority, *Merced to Fresno: Central Valley Wye Draft Supplemental EIR/EIS, Section 3.12, Socioeconomics and Communities*, September 2018.

to the Central Valley Wye alternatives. Even with mitigation measures to reduce impacts associated with the division of residential neighborhoods, including conducting outreach to affected residents to determine specific relocation needs and assist displaced residents with finding new suitable housing, and extensive coordination with stakeholders to identify a robust sense of community cohesion in the final design of the preferred alternative in Fairmead, impacts caused by community division would remain significant.

When no direct physical changes to the environment would occur, the analysis should nevertheless consider indirect changes to the environment that could stem from the project's economic and social impacts. To assess the potential indirect impacts, lead agencies should consider these questions:

- ▶ Would implementing the project result in economic or social impacts that would lead to a physical change to the environment?
- ▶ If yes, would that physical change be significant?

For example, in *Citizens for Quality Growth v. City of Mt. Shasta*,<sup>59</sup> the court found that the lead agency failed to analyze potential indirect physical deterioration resulting from the project's economic effects on downtown businesses. Although the lead agencies may find that indirect environmental effects are not significant, they should be considered if the potential to lead to a physical change in the environment exists.

## 2.2.5 Environmental Justice Considerations for Project-Level Mitigation and Monitoring

This section supplements the information provided in Chapter 8, "Mitigating Air Quality and Climate Impacts," in these CEQA Guidelines. Chapter 8 provides foundational recommendations for mitigating air quality and climate impacts from construction- and operation-related air pollutant emissions, local risks and hazards, and odors. This section does not repeat the valuable recommendations and resources provided in Chapter 8; rather, it focuses on considerations in the mitigation analysis and examples of mitigation tied to reducing air pollution emissions and exposure and health risks related to pollution in overburdened and AB 617 communities.

As noted in Chapter 8, the mitigation analysis should identify ways to reduce or eliminate significant impacts on a particular community or sensitive group, including adopting alternative project locations or designs. Mitigation measures should be developed in collaboration with the community, the public, and other interested parties, including responsible agencies. Mitigation measures that fail to benefit the affected community, (e.g., planting trees in a forest far from the project site) usually are deemed inadequate by environmental justice communities. Environmental justice calls for mitigation measures to *first* benefit the affected community. This section presents examples of measures to address construction- and operation-related impacts, such as adopting a less intensive and nonoverlapping project construction buildout schedule and installing air filtration units in schools, respectively. Finally, mitigation measures must be effective and enforceable, and there must be a mitigation monitoring and reporting program to ensure that the project

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<sup>59</sup> *Citizens for Quality Growth v. City of Mt. Shasta* (1988) 198 Cal.App.3d 433, 445–446, [https://files.resources.ca.gov/ceqa/cases/1988/shasta\\_020888.html](https://files.resources.ca.gov/ceqa/cases/1988/shasta_020888.html); *Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1204–1208.



sponsors, lead agency, responsible agencies, and other parties are accountable to those most affected. Lead agencies should report progress to the community on a regular basis.

The following questions should be considered in the mitigation analysis to determine whether the selected mitigation plan is in the best interest of the affected community:

► **Is the project centering environmental justice through its mitigation plan?**

- Are the mitigation measures intended to minimize impacts in overburdened and/or AB 617 communities?
- Would the mitigation measures be implemented outside the overburdened and/or AB 617 communities?
- Does the mitigation plan reduce or cause disparate impacts?
- If implementing the mitigation within the overburdened and/or AB 617 communities is infeasible, are there monetary benefits that could be directed to the affected community?
- How would implementing the project increase benefits in the overburdened and/or AB 617 communities?
- When would the overburdened and/or AB 617 communities benefit from the mitigation efforts?
- Are the overburdened and/or AB 617 communities engaged in the development and execution of the mitigation plan?

Answering the last question affirmatively is central to creating a mitigation plan that responds to community needs. The following section provides examples of how to reduce pollution exposure in overburdened and AB 617 communities and work toward more equitable solutions as part of the mitigation plan. It identifies resources—for example, mitigation measures crafted with a specific equity lens based on lessons learned from actual projects. It demonstrates how lead agencies can reduce pollution exposure and provide other community benefits by entering into a community benefits agreement. Typically, community benefits agreements are required by courts as a means to hold lead agencies accountable for funding and implementing the benefits and mitigation requests made by overburdened and AB 617 communities. Community benefits agreements can also be entered into voluntarily to support a positive relationship with the community.

## EXAMPLES OF MITIGATION TO REDUCE POLLUTION EXPOSURE AND MINIMIZE IMPACTS

[CAPCOA Handbook for Analyzing Greenhouse Gas Emission Reductions, Assessing Climate Vulnerabilities, and Advancing Health and Equity](#)<sup>60</sup>

The California Air Pollution Control Officers Association *Handbook for Analyzing Greenhouse Gas Emission Reductions, Assessing Climate Vulnerabilities, and Advancing Health and Equity* provides recommended measures that focus on project features and operational practices that support advancing equity. Although

<sup>60</sup> California Air Pollution Control Officers Association, *Handbook for Analyzing Greenhouse Gas Emission Reductions, Assessing Climate Vulnerabilities, and Advancing Health and Equity*, December 2021.

the title suggests a focus on climate impacts, many of the recommended measures also reduce air pollutant emissions. The construction equity and public health and air quality outcome measures can be used to reduce the air quality impacts of project construction and operations. Measures aim to improve the health outcomes of project residents, as well as those of residents of nearby neighborhoods.

[Attorney General’s Office Bureau of Environmental Justice](#)<sup>61</sup>

The Attorney General’s Office Bureau of Environmental Justice recommends best practices and mitigation measures to promote environmentally just development for warehouse projects pursuant to CEQA. Examples of best practices for siting and design of warehouse facilities and example local ordinances are provided to place these facilities away from sensitive receptors and set minimum standards for these projects to reduce environmental and quality-of-life harm on local communities.

[CARB Strategies to Reduce Air Pollution Exposure Near High-Volume Roadways](#)<sup>62</sup>

CARB developed a technical advisory that identifies effective strategies that planners and other land use decision makers can implement locally and in the near term to reduce exposure to near-roadway pollution as we pursue infill development while also protecting public health. The science literature supports, and this technical advisory presents, seven effective strategies, divided into three categories: strategies that reduce traffic emissions, strategies that reduce the concentration of traffic pollution, and strategies that remove pollution from indoor air.

[CARB Air Pollution Program Resource Center](#)<sup>63</sup>

CARB developed the Community Air Protection Program Resource Center, an online one-stop shop to obtain data, guidance, and tools to support improving air quality at the community scale. The Resource Center serves as a centralized repository of information and resources for use by community members, air districts, and the public. It will be continuously updated as new documents, materials, and data become available. It includes an introduction to community air quality, strategy development resources, technical assistance tools, data sources, and updates on AB 617 implementation.

## EXAMPLES OF COMMUNITY BENEFITS TO REDUCE POLLUTION EXPOSURE

### Residential and Schools Air Filtration

[Air Filtration in Residential Neighborhoods, County of Riverside](#)<sup>64</sup>

In Riverside County, the Agua Mansa Commerce Parks Specific Plan’s mitigation plan included a variety of important measures to mitigate air quality and climate impacts, such as the installation, maintenance, and monitoring of air filtration units in 260 homes near the redevelopment site, restricted truck routes ordinances, anti-idling enforcement, clean trucks, setbacks, solar-ready buildings, and air monitoring,

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<sup>61</sup> Attorney General’s Office Bureau of Environmental Justice, *Warehouse Projects and Best Practices and Mitigation Measures to Comply with the California Environmental Quality Act*, <https://oag.ca.gov/system/files/media/warehouse-best-practices.pdf>, Accessed April 29, 2022.

<sup>62</sup> California Air Resources Board, *Strategies to Reduce Air Pollution Exposure Near High-Volume Roadways*, April 27, 2017.

<sup>63</sup> California Air Resources Board, *Community Air Protection Program Resource Center*, 2022.

<sup>64</sup> Placeworks, *City of Jurupa Valley Agua Mansa Commerce Park Specific Plan*, [https://www.jurupavalley.org/DocumentCenter/View/1253/AMSP\\_FEIR\\_MASTER\\_3\\_19\\_20](https://www.jurupavalley.org/DocumentCenter/View/1253/AMSP_FEIR_MASTER_3_19_20), March 2020.

among others. This was a result of the litigation settlement from the case *Center for Community Action and Environmental Justice (CCA EJ) et. al. v. County of Riverside et. al.*, RIC 1112063 (Cal. Super. Ct. 2013).

#### *Air Filtration in Schools, South Coast Air Quality Management District*

In October 2008, South Coast Air Quality Management District approved \$1.125 million from a penalty settlement with a nearby Valero oil refinery for high-efficiency air filtration devices at schools in the Long Beach and Los Angeles Unified School Districts. Funding for the project came from a settlement with the City of Los Angeles and community groups to mitigate outdoor air pollutant impacts from the TraPac Container Terminal Expansion Project at the Port of Los Angeles.<sup>65</sup> The project will help expand the air filtration program to schools in communities surrounding the Valero refinery and help reduce children's exposure to particulate matter and diesel emissions.<sup>66</sup>

### **Community Benefits Agreement**

Community benefits agreements (CBAs) are project-specific, legally enforceable contracts between project proponents and the community that explicitly describe the benefits a project agrees to fund or implement in the community. CBAs help ensure that residents, particularly those in low-income areas, receive economic and other benefits from development projects. CBAs are integrated into the development agreement signed by the project proponent and the lead agency, allowing the CBA to be enforced by local officials and community groups.<sup>67</sup>

#### *3611 South Northpointe Drive, City of Fresno<sup>68</sup>*

The City of Fresno authorized the development of 3611 South Northpointe Drive<sup>69</sup> in 2020 when the South Fresno Community Alliance and Leadership Counsel for Justice and Accountability threatened litigation. The parties settled with the establishment of a community benefits fund that would be funded by the project developer and administered by the City of Fresno. The City of Fresno would manage the fund to "pay local, pre-approved licensed and bonded contractors to install pre-approved and qualified improvements to mitigate light spill, traffic, air, and noise impacts on sensitive receptors."<sup>70</sup> The agreement included other requirements, including pedestrian safety improvements, traffic checks and monitoring, a public complaint phone line, installation of signs to direct traffic, electrification, and modification of an air district rule.

#### *Harbor Community Benefit Foundation Air Quality Mitigation Fund<sup>71</sup>*

<sup>65</sup> South Coast Air Quality Management District Advisor, <http://www.aqmd.gov/docs/default-source/publications/aqmd-advisor/march-2011-advisor.pdf>, Volume 17 Number 2, March 2011.

<sup>66</sup> South Coast Air Quality Management District Advisor, <http://www.aqmd.gov/docs/default-source/publications/aqmd-advisor/november-2008-advisor.pdf>, Volume 15, Number 6, November 2008.

<sup>67</sup> California Air Pollution Control Officers Association, *Handbook for Analyzing Greenhouse Gas Emission Reductions, Assessing Climate Vulnerabilities, and Advancing Health and Equity*, December 2021.

<sup>68</sup> *South Fresno Community Alliance v. City of Fresno Settlement Agreement and Release of All Claims*, <https://leadershipcounsel.org/wp-content/uploads/2021/07/2021-03-17-SFCA-v-COF-Settlement-Agmt-Release-of-all-Claims-executed-certified-1.pdf>, March 17, 2021.

<sup>69</sup> City of Fresno Planning and Development Department, *Notice of Action Granting Special Permit 3611 S Northpointe Drive*, [https://appdev.fresno.gov/kiosk\\_clerk/admin/upload/1607386283\\_cityclerk.pdf](https://appdev.fresno.gov/kiosk_clerk/admin/upload/1607386283_cityclerk.pdf), December 7, 2020.

<sup>70</sup> <https://leadershipcounsel.org/wp-content/uploads/2021/07/2021-03-17-SFCA-v-COF-Settlement-Agmt-Release-of-all-Claims-executed-certified-1.pdf>.

<sup>71</sup> Harbor Community Benefit Foundation, *HCBF Press Release*, [https://hcbf.org/wp-content/uploads/2018/06/HCBF-Press-Release-6.27.18\\_FINAL\\_v2.pdf](https://hcbf.org/wp-content/uploads/2018/06/HCBF-Press-Release-6.27.18_FINAL_v2.pdf), June 27, 2018.

The Harbor Community Benefit Foundation Air Quality Mitigation Fund was established through a memorandum of agreement between the Port of Los Angeles (POLA) and the Harbor Community Benefit Foundation. In 2004, POLA set aside funding for air quality mitigation through a settlement associated with the approval of the China Shipping Container Terminal Project (China Shipping). Approximately \$5 million of the China Shipping funds are available for projects to reduce port-related air emissions in nearby neighborhoods, especially the communities of San Pedro and Wilmington.<sup>72</sup>

## 2.2.6 Alternatives Analysis

In cases where a project risks a potentially significant disparate or cumulative impact on a community based on race, color, or national origin, the CEQA analysis should include one or more less discriminatory alternative(s) to the project.

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<sup>72</sup> Harbor Community Benefit Foundation, Air Quality Mitigation Program, <https://hcbf.org/air-quality-mitigation-program/>, Accessed April 29, 2022.

## 2.3 RESOURCES

- Alan Ramo, Golden Gate University School of Law, *Environmental Justice As an Essential Tool in Environmental Review Statutes – A New Look at Federal Policies and Civil Rights Protections and California's Recent Initiatives*, 2013.
- Assembly Bill 617, Cristina Garcia, *Nonvehicular air pollution: criteria air pollutants and toxic air contaminants*, [https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill\\_id=201720180AB617](https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180AB617), Accessed April 29, 2022.
- Attorney General's Office Bureau of Environmental Justice, *Warehouse Projects and Best Practices and Mitigation Measures to Comply with the California Environmental Quality Act*, <https://oag.ca.gov/system/files/media/warehouse-best-practices.pdf>, Accessed April 29, 2022.
- Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1204–1208.
- Bay Area Air Quality Management District, *Community Health Protection Program*, <https://www.baaqmd.gov/community-health/community-health-protection-program>.
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