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## CalEnviroScreen 3.0 – Still the Wrong Tool for CEQA Review

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*On January 9, 2017, the California Environmental Protection Agency (CalEPA) and Office of Environmental Health Hazard Assessment (OEHHA) released an “Update to the California Communities Environmental Health Screening Tool,” better known as CalEnviroScreen Version 3.0.*

*CalEnviroScreen is a software tool used to identify and direct resources to communities affected by pollution, based on environmental exposure and population data. However, as guidance for prior CalEnviroScreen versions made clear, the tool’s approach to “cumulative impacts” is very different from that of environmental review under the California Environmental Quality Act (CEQA). While Version 3.0 omits that clear statement, lead agencies and project proponents should rest assured that CEQA law has not changed and CalEnviroScreen remains the wrong tool for CEQA review of local projects and permitting decisions.*

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### Background

CalEnviroScreen was developed by OEHHA to identify communities facing exposure and vulnerability to pollution and environmental hazards. In particular, the tool was designed to help implement Senate Bill 535, which requires at least 25 percent of greenhouse gas reduction funds collected under California’s cap-and-trade program to be allocated to projects that benefit disadvantaged communities. The bill directed CalEPA to identify disadvantaged communities to receive those funds. CalEPA and OEHHA have also encouraged use of CalEnviroScreen scores for other purposes, such as the Environmental Justice Small Grant Program and prioritization of enforcement, cleanup and abatement resources. On the other hand, developers have been concerned that high scores could be used to “redline” entire census tracts, precluding new projects.

The tool draws on 20 environmental, health and socioeconomic data sets, referred to as “indicators.” The indicators fall within two general categories, “pollution burden” (such as exposure to toxic air emissions and hazardous waste sites) and “population characteristics” (including both health data such as asthma rates, and socioeconomic factors such as poverty, that are considered to affect vulnerability to pollution). The indicators for census tracts throughout California are combined, according to a weighted formula, to calculate a single composite rank score for each census tract. Census tracts receiving higher rank scores are considered to be more heavily affected by pollution. Priority communities are identified by an arbitrary benchmark such as the top 25 percent of scores among all census tracts in the state.

Version 3.0 of CalEnviroScreen was released in final form on January 9. Among other technical changes, Version 3.0 adds two new indicators (incidence of cardiovascular disease and high housing cost for low income households), removes the “children and elderly” age indicator, incorporates more recent data for other indicators, and revises the calculation methodology. What has not changed is the fact that CalEnviroScreen is the wrong tool for CEQA review of local projects and permitting decisions.

### Comparing CEQA and CalEnviroScreen

CEQA requires a public agency that undertakes or approves a proposed project (referred to as the lead agency) to evaluate and, if feasible, mitigate its significant adverse environmental impacts. The lead agency must prepare and consider a CEQA document such as an Environmental Impact Report (EIR) before deciding to adopt a public project or to issue a permit, lease, grant or other approval for a private project. An EIR must be supported by substantial evidence such as scientific assessments of potential impacts to air quality, water quality, endangered species, etc.<sup>1</sup> Significant impacts under CEQA are limited to physical effects on the environment and do not include socioeconomic effects, although the latter may contribute to physical environmental effects (such as urban blight).<sup>2</sup> An EIR must consider both impacts specific to the proposed project and cumulative impacts, defined as impacts of the proposed project together with those of other past, present and reasonably foreseeable future projects in the vicinity of the proposed project.<sup>3</sup>

By contrast, for CalEnviroScreen purposes, CalEPA and OEHHA considered a broader scope:

CalEPA defines the term ‘cumulative impacts’ to mean exposures, public health or environmental effects from combined emissions and discharges in a geographic area, including environmental pollution from all sources, whether single or multimedia, routinely or accidentally, or otherwise released. In order to adequately identify areas in the state subject to these impacts, it was determined that consideration also should be given to populations that are especially sensitive to the effects of pollution, and to socioeconomic factors that can amplify the effects of pollution, where applicable and to the extent data are available.<sup>4</sup>

In guidance accompanying CalEnviroScreen Versions 1.0 and 2.0, CalEPA and OEHHA cautioned that CalEnviroScreen scores have important limitations, specifically in regard to CEQA analysis:

While CalEnviroScreen assists CalEPA and its boards, departments and office in prioritizing resources and helping promote greater compliance with environmental laws, it is important to note

<sup>1</sup> CEQA Guidelines Section 15064(f). Various technical criticisms have been raised regarding the methodology, weighting formula, geographical scale, and accuracy and representativeness of data sets used by CalEnviroScreen. These issues are outside the scope of this article but may affect whether information qualifies as “substantial evidence.”

<sup>2</sup> CEQA Guidelines Section 15064(e).

<sup>3</sup> CEQA Guidelines Section 15355(b).

<sup>4</sup> Draft California Communities Environmental Health Screening Tool (CalEnviroScreen), July 12, 2012, at 1.

some of its limitations. The tool's output provides a relative ranking of communities based on a selected group of available datasets, through the use of a summary score. The CalEnviroScreen score is not an expression of health risk, and does not provide quantitative information on increases in cumulative impacts for specific sites or projects. Further, as a comparative screening tool, the results do not provide a basis for determining when differences between scores are significant in relation to public health or the environment. Accordingly, the tool is not intended to be used as a health or ecological risk assessment for a specific area or site.

Additionally, the CalEnviroScreen scoring results are not directly applicable to the cumulative impacts analysis required under the California Environmental Quality Act (CEQA). The statutory definition of "cumulative impacts" contained in CEQA is substantially different than the working definition of "cumulative impacts" used to guide the development of CalEnviroScreen. Therefore, the information provided by this tool cannot substitute for analyzing a specific project's cumulative impacts as required in a CEQA environmental review.

Moreover, CalEnviroScreen assesses environmental factors and effects on a regional or communitywide basis and cannot be used in lieu of performing an analysis of the potentially significant impacts of any specific project. Accordingly, a lead agency must determine independently whether a proposed project's impacts may be significant under CEQA based on the evidence before it, using its own discretion and judgment. The tool's results are not a substitute for this required analysis. Also, this tool considers some social, health and economic factors that may not be relevant when doing an analysis under CEQA. Finally, as mentioned above, the tool's output should not be used as a focused risk assessment of a given community or site. It cannot predict or quantify specific health risks or effects associated with cumulative exposures identified for a given community or individual.<sup>5</sup>

Notwithstanding this disclaimer, commenters have sought the use of CalEnviroScreen scores in CEQA review of proposed projects.

### CalEnviroScreen Version 3.0's Limited CEQA Disclaimer

The above paragraphs of disclaimer are worth quoting in full because they are missing from the new CalEnviroScreen Version 3.0 guidance. In their place is a more limited statement regarding CEQA:

During the initial consideration and adoption of CalEnviroScreen, concerns were raised about its potential for misuse. To ensure proper use and understanding we explained that the tool is not a substitute for a cumulative impacts analysis under the California Environmental Quality Act (CEQA). Nor is the intent to restrict the authority of government agencies in permit and land-use decisions.<sup>6</sup>

CEQA analysis is tied to the central purpose of CEQA review: to inform agency decision-makers and the public of the environmental consequences of carrying out a project, before the agency approves it. CEQA analysis focuses on the vicinity of the project, not the census tract, and specifically excludes socioeconomic impacts. Moreover, by arbitrarily assigning different weights to assorted environmental and non-environmental variables and then subsuming them into a single score, the CalEnviroScreen methodology effectively discards any informative value of the underlying data sets for CEQA analysis.

<sup>5</sup> California Communities Environmental Health Screening Tool, Version 2.0 (CalEnviroScreen 2.0): Guidance and Screening Tool, October 2014, at iii-iv; available at <http://oehha.ca.gov/media/CES20FinalReportUpdateOct2014.pdf>.

<sup>6</sup> Update to the California Communities Environmental Health Screening Tool, CalEnviroScreen 3.0, January 9, 2017, at iii; available at <http://oehha.ca.gov/media/downloads/calenviroscreen/report/ces3report.pdf>.

Since the scores provide only a relative ranking, they also mask the magnitude of differences, e.g., census tracts in the 85th to 90th percentiles might have similar conditions but the 95th percentile might be much worse than the 90th.

The focus of cumulative impact analysis is also closely tied to its purpose: to determine whether the consequences of approving many modest projects may collectively rise to a significant level, before the lead agency approves a new project that contributes yet another increment. For this reason, the lead agency must consider impacts of the proposed project and its future contribution together with those of other projects. By contrast, the CalEnviroScreen approach, identifying existing exposures, public health and environmental effects included in the existing datasets used for calculating the scores, is closer to the CEQA definition of the “baseline” or “environmental setting”: a “description of the physical environmental conditions in the vicinity of the project, as they exist at the time... environmental analysis is commenced.”<sup>7</sup> While the environmental setting must be taken into account in CEQA analysis, an existing baseline condition is not an environmental impact of the proposed project.<sup>8</sup>

To the extent that any confusion may be created by CalEnviroScreen 3.0’s cryptic reference to prior discussion of potential misuse, lead agencies and project proponents should consult the detailed explanation provided with Versions 1.0 and 2.0, which remains sound and well-supported. The law has not changed and this is still the wrong tool for CEQA purposes.

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If you have any questions about the content of this alert, please contact the Pillsbury attorney with whom you regularly work, or the authors below.

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<sup>7</sup> CEQA Guidelines Section 15125(a).

<sup>8</sup> CEQA Guidelines Section 15126.2(a)