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VIA EMAIL

Mr. Ezra Rapport
Executive Director
Association of Bay Area Governments
Joseph P. Bort MetroCenter
101 Eighth Street
Oakland, CA 94607

Re: Proposal to Prepare Legal Analysis – Effect of *Ballona Wetlands* and Related CEQA Cases on CEQA Guidelines §15126.2

Dear Ezra:

This letter is a response to the request for a proposed scope of work and cost proposal for Wendel, Rosen, Black & Dean LLP (“Wendel Rosen”) to prepare a legal analysis regarding the impacts and implications of *Ballona Wetlands Land Trust et al. v. City of Los Angeles* (2011) 201 Cal.App.4th 455 (“*Ballona Wetlands*”) and related cases under California Environmental Quality Act (“CEQA”) on the validity of statewide CEQA Guidelines §15126.2. The legal analysis would be prepared on behalf of Association of Bay Area Governments (“ABAG”), with the intent that the analysis could be used by ABAG to assist in advocacy efforts related to the affects of CEQA Guidelines on development and the environment in the Bay Area. As further described below, we propose to prepare the requested legal analysis for a fixed fee of \$15,000.

Guidelines §15126.2, and related State materials, including Appendix G, as currently adopted requires EIRs to “analyze any significant environmental effects the project might cause by bringing development and people into the area affected.” By way of example, this Guideline’s section states that “an EIR on a subdivision astride an active fault line should identify as a significant effect the seismic hazard to future occupants of the subdivision.” Essentially, this means that EIRs must analyze the impacts of the environment on the project, in addition to the impact of the project on the environment. *Ballona Wetlands* is one of a series of cases that has called this language and approach into question, stating that “identifying the effects on the project and its users of locating the project in a particular environmental setting is neither consistent with CEQA’s legislative purpose nor required by the CEQA statutes.”

A number of legal firms and other parties interested in CEQA-related matters have issued statements, blog postings and other materials suggesting that the specific language in Guidelines §15126.2 cited above should be disregarded, while others have issued statements to the effect

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WENDEL, ROSEN, BLACK & DEAN LLP

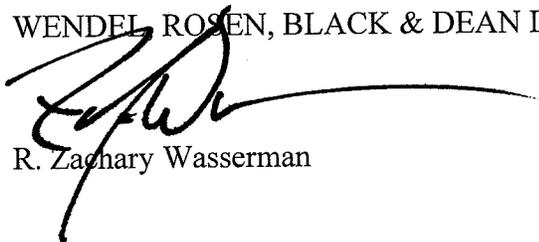
that jurisdictions preparing EIRs must rely on the current Guidelines, and include the analysis required by §15126.2 despite the courts' questioning in *Ballona Wetlands* and other cases. Additionally, as part of the process of amending the Guidelines pursuant to SB 226 (CEQA Streamlining for Infill Projects), some parties have submitted comments requesting that the Guidelines be amended to conform to the *Ballona Wetlands* decision. To date, however, the responses from the Governor's Office of Planning and Research ("OPR") have not addressed this issue, and the matter remains muddled.

Although CEQA itself only requires that the Guidelines be reviewed (and amended, if necessary) by OPR and the Secretary for Resources every two years, in practice the amendment process can occur continually, to account for statutory changes and evolving case law. We believe it is appropriate for ABAG to submit, with the assistance of Wendel Rosen, a specific request to OPR that the Guidelines be amended to account for the *Ballona Wetlands* decision and related cases. In particular, Wendel Rosen's work would consist of a careful review of the case law and commentary, and preparation of a detailed analysis explaining why §15126.2 should be amended – including a specific proposal for the required amendment. The analysis would be prepared by Wendel Rosen's experienced Land Use attorneys, with Patricia E. Curtin and Zack Wasserman assuming the lead roles. We propose to prepare the requested legal analysis for a fixed fee of \$15,000. We would also be available to make a presentation at an ABAG Board meeting, if requested.

We would be very pleased to assist ABAG in this important effort. If you have any questions on this proposal, feel free to contact me by phone or email. I look forward to discussing this with you.

Very truly yours,

WENDEL ROSEN, BLACK & DEAN LLP



R. Zachary Wasserman

RZW/nap