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15 STATE OF CALIFORNIA  
16 State Energy Resources  
17 Conservation and Development Commission

18 In the Matter of:

19  
20 **Application for Certification For the**  
21 **Eastshore Energy Center**  
22  
23  
24

Docket No. 06-AFC-06

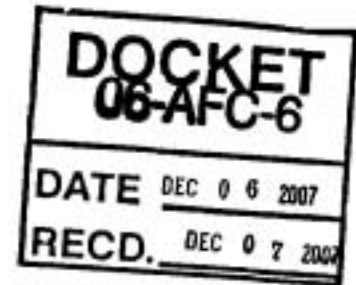
**CHABOT-LAS POSITAS  
COMMUNITYCOLLEGE DISTRICT AND  
CHABOT-LAS POSITAS FACULTY  
ASSOCIATION'S WITNESS TESTIMONY  
EXHIBIT LIST**

25 **CHABOT INTERVENORS SUBMIT THE FOLLOWING:**

26 **EXHIBIT LIST**

27 Testimony of Carolyn Arnold

Exhibit 600



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Student Characteristics Report, Fall 2007 Attachment A to Exhibit 600

Biennial Student Survey, Fall 2007 Attachment B to Exhibit 600


Testimony of Susan Sperling Exhibit 601

Testimony of Rachel Ugale Exhibit 602

Opportunities for Environmental Justice in  
in California – Agency by Agency Exhibit 603

Dated: December 6, 2007

Liebert Cassidy Whitmore

By:   
Laura Schulkind  
Attorneys for Intervenor  
Chabot-Los Positas Community College  
District

Check box if continuation pages are attached.  
(Proof of Service attached.)

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**TESTIMONY OF  
CAROLYN ARNOLD  
EXHIBIT 600**

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**TESTIMONY OF CAROLYN ARNOLD ON**  
**BEHALF OF CHABOT INTERVENORS**  
**PERTAINING TO ENVIRONMENTAL**  
**JUSTICE**

23  
24 I am the Coordinator of Institutional Research and Grants for Chabot College, and I have  
25 served in this capacity for fourteen years. A copy of my curriculum vitae is part of the record of  
26 this proceeding and was filed in conjunction with the Chabot Intervenors' Prehearing Conference  
27 Statement.  
28

1 My office is responsible for tracking student characteristics, success, and outcomes at  
2 Chabot College. Our information is based on quantitative and qualitative data gathered through  
3 my office and the office of admissions. My office is responsible for analyzing this data, as well  
4 as supplying it for state and federal reporting requirements.

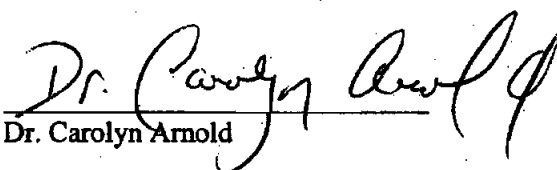
5  
6 I have reviewed our most recent Student Characteristic Report (a true and correct copy of  
7 which is attached to my sworn testimony as Attachment A.) Among other things, this report  
8 indicates the following:

- 9 --During the course of a semester, Chabot College serves over 14,000  
10 students;  
11 --During the course of a full academic year, Chabot College serves  
12 approximately 22,000 students; and  
13 --Approximately 70% of our students are minorities.  
14

15 Additionally, my office just completed Chabot College's biennial student survey (a true  
16 and correct copy of which is attached to my sworn testimony as Attachment B.) Among other  
17 things, this survey indicates the following:

- 18 --40% of Chabot College's students are in their family's first generation to  
19 attend college; and  
20 --60% of Chabot College's students are low-income by either federal or  
21 local standards.  
22

23 I declare under penalty of perjury under the laws of the State of California that the  
24 foregoing is true and correct and that this declaration was executed on December 6, 2007 at  
25 Hayward, California.

26  
27   
28 Dr. Carolyn Arnold

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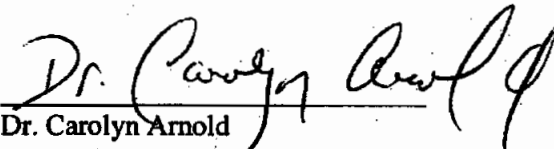
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27   
28 Dr. Carolyn Arnold

**ATTACHMENT A  
OF EXHIBIT 600**

## Chabot College Student Characteristics Fall 2007 Preliminary Census

		Number	Percent								
		<b>Total Students</b>	14,212	100%							
<b>Gender</b>	Female	8,036	57%	<b>Student Type</b>	<b>Enrollment Pattern</b>						
	Male	5,855	41%			Full-time	Day only	7,625	54%		
	Unknown	321	2%			12 or more units	Both Day and Eve/Sat	3,229	23%		
				Part-time	Evening or Eve/Sat	2,884	20%				
				6 to 11.5 units	Saturday only	402	3%				
				.5 to 5.5 units	Independently Scheduled	72	1%				
<b>Race-ethnicity</b>	African-American	2,102	15%	<b>Enrollment Status</b>	<b>Educational Goal</b>	Transfer					
	Asian-American	2,414	17%			First time any college	2,603	18%	(with/without AA/AS)	5,278	37%
	Filipino	1,445	10%			First time transfer	1,448	10%	AA/AS only		
	Latino	3,268	23%	Returning transfer	1,489	10%	(not transfer)	1,221	9%		
	Middle Eastern	36	0%	Returning	352	2%	Occupational certificate				
	Native American	101	1%	Continuing	8,083	57%	or job training	1,847	13%		
	Pacific Islander	371	3%	In High School	237	2%	Personal development				
	White	3,110	22%	<b>Student Educational Level</b>	(intellectual/cultural,						
	Other	252	2%		In High School	427	3%	(basic skills, GED)	1,131	8%	
Unknown	1,113	8%	Freshman (< 30 units)		7,863	55%	Other or Undecided	2,769	19%		
<b>Citizenship</b>	U.S. Citizen	11,838	83%	Sophomore (30-59 un.)	2,231	16%	Unknown	1,966	14%		
	Permanent Resident	1,706	12%	Other undergraduate	1,427	10%	<b>New Students: High school districts</b>				
	Student Visa	105	1%	AA/AS degree	837	6%	Chabot College Districts	1,339	51%		
	Other	561	4%	BA/BS or higher deg.	1,427	10%	Castro Valley	124	5%		
							Hayward	443	17%		
<b>Age</b>	19 or younger	3,452	24%	<b>Official residence</b>	District Resident	9,635	68%	New Haven	287	11%	
	20-21	2,256	16%		Other CA Districts	4,280	30%	San Leandro	155	6%	
	22-24	2,095	15%		Other States	154	1%	San Lorenzo	302	12%	
	25-29	1,790	13%		Other Countries	143	1%	Moreau	28	1%	
	30-39	1,844	13%	Note: Cities in the District include			Dublin/Livermore/Pleas	33	1%		
	40-49	1,302	9%	Castro Valley, Dublin, Hayward,			Other Alameda County	328	13%		
	50 or older	1,473	10%	Livermore, Pleasanton, San Leandro,			Other Bay Area	132	5%		
				San Lorenzo, and Union City.			Other California	556	21%		
<b>Local residence: Cities with over 100 students</b>						Other States	85	3%			
Hayward	4,247	30%	San Lorenzo	755	5%	Other Countries	130	5%			
San Leandro	2,045	14%	Newark	315	2%	<b>Total new students:</b>	2,603	100%			
Union City	1,444	10%	Alameda	183	1%	<b>Transfer students: Previous college</b>					
Castro Valley	1,062	7%	Pleasanton	103	1%	CA Community College	1,602	55%			
Oakland	916	6%	Livermore	115	1%	California State Univ.	365	12%			
Fremont	1,111	8%	Dublin	105	1%	University of California	127	4%			
			Other local cities	1,811	13%	CA private colleges	173	6%			
						Out of state	281	10%			
						Out of country	228	8%			
						Unknown	161	5%			
						<b>Total transfers:</b>	2,937	100%			

SOURCE: Chabot-Las Positas Institutional Research Dataset, Fall Census, preliminary count as of 10/18/07.



**ATTACHMENT B  
OF EXHIBIT 600**

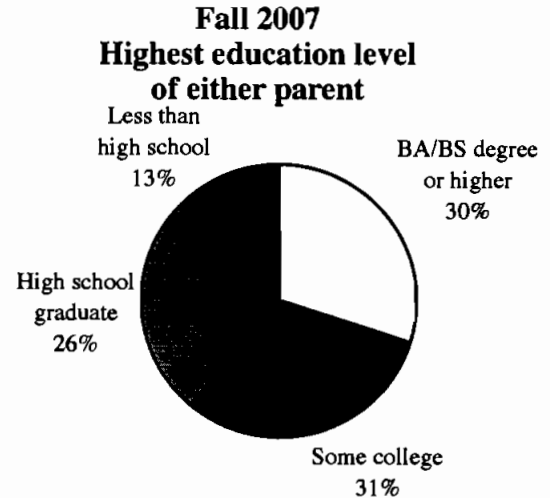
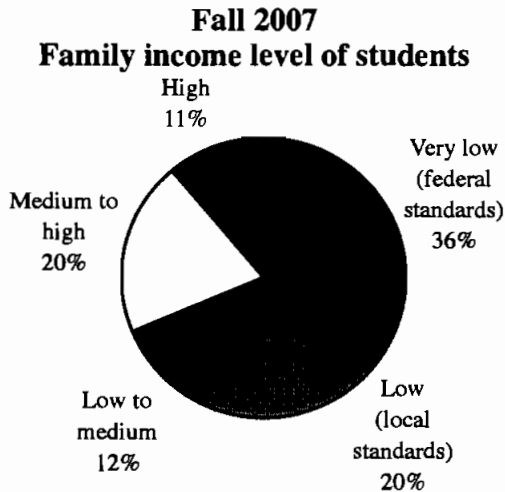
# Chabot College Student Accreditation Survey: Fall 2007

## Highlights

### Family Income and Status

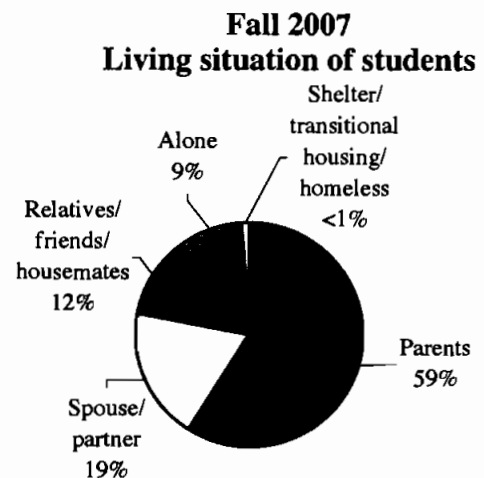
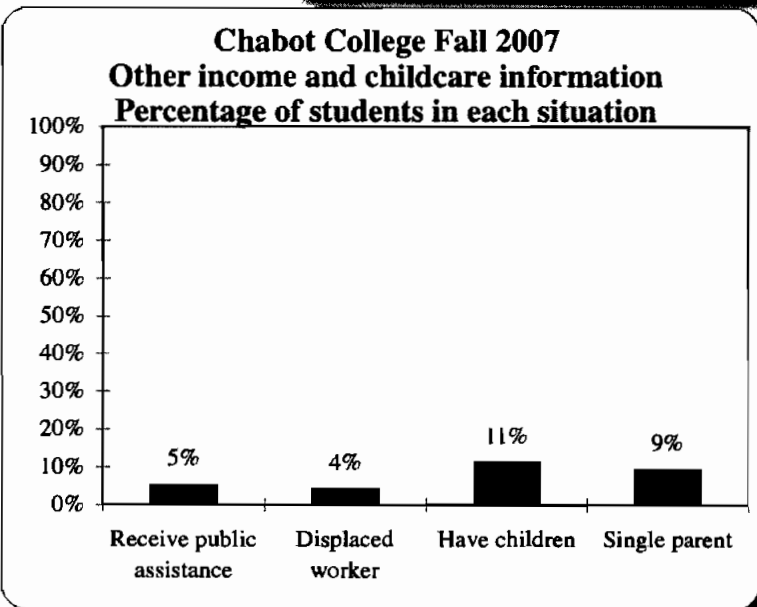
The Student Accreditation Survey collects student demographic data that is not otherwise available, such as family income, parents' education, childcare needs, and living situations. This information is used to plan services and grants that respond to our students' needs. In 2007, 36 percent of Chabot students have low incomes according to federal standards and another 20% have low incomes based on local standards. This means that more than half (56%) of Chabot students are low-income. In addition, almost 60 percent of the students live with their parents, and almost 40 percent are in the first generation of their family to attend college.

The Student Accreditation Survey was conducted in October 2007 in a representative sample of 69 classes. Surveys were completed by 1,379 students (63% full-time; 37% part-time).



Notes: Family income was self-reported and adjusted by household size. Very low income is defined by the Federal government (i.e., US Department of Health and Human Services) as income earned up to 150% of national poverty level. Low income is defined as about 50% of local median income by the US Department of Housing & Urban Development.

NOTE: All percentages have a margin of error of 2 to 4 percentage points.



**TESTIMONY OF  
SUSAN STERLING  
EXHIBIT 601**

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15 STATE OF CALIFORNIA  
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18 In the Matter of:

Docket No. 06-AFC-06

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20 **Application for Certification For the**  
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**TESTIMONY OF SUSAN SPERLING ON**  
**BEHALF OF CHABOT INTERVENORS**  
**PERTAINING TO PUBLIC HEALTH AND**  
**ENVIRONMENTAL JUSTICE**

23  
24 I am a tenured faculty member of the Chabot-Las Positas Community College District,  
25 and have been teaching at the Chabot College campus for twenty-one years, primarily in the  
26 areas of biological and cultural anthropology. Also as a biocultural anthropologist and  
27 postdoctoral fellow at UCSF, I have researched the relationship between multiple stressors on  
28 immigrant communities and health outcomes, and have taught first and second year medical

1 students at UCSF in the CAB Program (Culture and Behavior across the Curriculum) about these.  
2 This is now a required element of medical training at UCSF and in it we examine health  
3 behaviors and outcomes in the context of ethnicity, race and socioeconomic class. Medical  
4 students are referred to a robust body of research indicating, among other things, that the impact  
5 of accumulated environmental stresses may have a differential effect on morbidity and mortality in  
6 disenfranchised communities when compared to control populations. These stresses include the  
7 presence of heavy traffic, air pollution, and industrial plants, among other things. A copy of my  
8 curriculum vitae is part of the record of this proceeding and was filed in conjunction with the  
9 Chabot Intervenors' Prehearing Conference Statement.

10 I have reviewed the sworn testimony of Dr. Carolyn Arnold, regarding the demographics  
11 of Chabot College. As a long-standing member of the Chabot faculty, I am also familiar with the  
12 demographics of the College and surrounding community. Chabot Community College is located  
13 in a census tract with a highly diverse immigrant, poor and working class population and this is  
14 reflected in the demographics of the college itself. I have worked at Chabot with many students  
15 who have no reliable access to routine health care and who are confronting a variety of life  
16 stresses unknown to young adults in more affluent families. Many young people spend much of  
17 the work week, as do many infants and preschoolers (served by Chabot's Early Childhood  
18 Center) on the College campus. Faculty and other staff spend up to 40 or more hours a week at  
19 the College. So the College community shares with other local communities certain population  
20 features as well as risks.

21 I have reviewed the Final Staff Assessment (FSA) in this matter and find significant flaws  
22 in the methodology used by staff to analyze Environmental Justice ("EJ") impacts on the  
23 surrounding community, including Chabot College. It is my conclusion that these errors make  
24 the ultimate conclusions that there are no significant EJ impacts flawed and unreliable.

25 **Failure to Consider the Chabot College Student Community**

26 It is clear from a review of the FSA, that its demographic screening did not consider the  
27 presence of approximately 15,000 majority-minority students on the Chabot campus in its EJ  
28 analysis. In my opinion, it is appropriate to consider student populations, as well as residential

1 populations in conducting demographic screening and EJ analysis. I am aware that, even without  
2 considering the demographics of the Chabot student population, the FSA found that the  
3 surrounding community is over 50% minority and therefore conducted a disparate impact analysis  
4 in certain areas. However, students have unique vulnerabilities which should have been part of  
5 the disparate impact analysis. In particular, a majority of our students are the first in their family  
6 to attend a post-secondary educational institution and are at significant risk of dropping out. Any  
7 increased stressors increase the risk that they will not continue their education. A thorough EJ  
8 analysis would take into consideration the impacts on an educational institution devoted largely to  
9 minority and poor students who are seeking an education to break out of the cycle of poverty.

10 **Failure to Recognize Chabot-Las Positas Community College District as an**  
11 **Interested Local Agency**

12 As recognized in the FSA, EJ factors include not only the negative environmental impacts  
13 on minority and low-income communities, but their equal access to the process for approving  
14 power plant sites. It is very troubling that the community of Chabot students—who largely come  
15 from minority, low-income and immigrant communities—did not receive the protection and  
16 advocacy of their college district. Their greatest opportunity to be heard and have their interests  
17 articulated is through the community college. By failing to solicit the required analyses and  
18 recommendations from the District, a historically disenfranchised community was relegated to the  
19 fringes of this process.

20 **FSA Conclusions Relating to Land Use Compatibility and Traffic/Transportation**

21 The California Government Code at §65040.12 defines environmental justice as “fair  
22 treatment of people of all races, cultures and incomes with respect to the development, allocation,  
23 implementation, and enforcement of environmental laws, regulations and policies.” (Eastshore  
24 FSA, 2007, 2-4) In reviewing 11 areas of potential concern regarding environmental justice  
25 raised by the proposed Eastshore Project, CEC staff found only two requiring “environmental  
26 justice screening”: Land Use and Traffic, and Transportation. In each of these two areas  
27 however, staff set aside environmental justice concerns because they concluded that potential  
28 adverse public health and other effects would have no differential impact on populations by race,

1 ethnicity or socioeconomic class (Eastshore FSA 2-4.) Thus, while acknowledging that “A greater  
2 than 50% minority and low-income population have been identified within a one-mile radius of  
3 the Eastshore site” (FSA, 1-5), CEC staff does not find significant issues of environmental justice  
4 posed by the proposed Eastshore development. For the reasons discussed below, this analysis is  
5 flawed because it incorrectly assumes that different populations experience environmental  
6 impacts in the same way.

7 **FSA Conclusions that Eastshore Does Not Present Health Risks to Poor and**  
8 **Minority Communities**

9 The FSA Public Health section prepared by Dr. Greenberg (4.7-1), evaluates potential  
10 public health risks posed by the project and “does not expect there would be any significant  
11 adverse cancer, or short or long-term non-cancer health effects from the project”, and that  
12 “emissions from Eastshore would not contribute significantly to morbidity or mortality in any age  
13 or ethnic group residing in the project area.” For the reasons discussed below, this conclusion is  
14 also flawed, as it fails to consider public health concerns particular to minority and low-income  
15 communities. The FSA indicates that its analysis accounted for impacts on what it describes as,  
16 “the most sensitive individuals in a given population, including newborns and infants,”  
17 However, this methodology is inadequate, as there is no indication that it considered the unique  
18 vulnerabilities of poor and low-income residential and student communities.

19 **Methodology Concerns**

20 There are a number of lines of evidence not considered by CEC staff that call into  
21 question staff conclusions regarding potential environmental justice impact and public health. In  
22 drawing these conclusions, CEC staff have not considered a body of emerging relevant theory and  
23 data from public health/epidemiological disciplines examining the particular susceptibilities of  
24 low-income and minority populations to multiple stressors in the physical, economic and social  
25 environments. Conditions such as low birth weight, hypertension, cardiovascular disease and  
26 asthma pose problems in many low-income communities (Committee on Population, 2007;  
27 O’Neil et al.,2003). Low birth weight alone appears to predispose individuals to greater  
28 vulnerability to environmental stress over the entire lifespan (Barker, 1998). These and other

1 emergent data require that we redefine what constitute acceptable levels of air pollution for  
2 particular communities.

3 As CEC staff consultant Dr. Greenberg acknowledges in the FSA "Exposure to multiple  
4 toxic substances may result in health effects that are equal to, less than, or greater than effects  
5 resulting from exposure to the individual chemicals. Only a small fraction of the thousands of  
6 potential combinations of chemicals have been tested for the health effects of combined  
7 exposures." (Eastshore FSA, 4.7-6) Clearly the area of multiple toxics exposure is in an early  
8 stage of science. In light of this fact, the emerging data on higher susceptibilities of vulnerable  
9 populations must be reviewed by the CEC for an impartial and fair analysis of these important  
10 issues, and as mandated by CEC rules and procedures.

11 CEC staff analysis also does not adequately take into account the potential cumulative  
12 impact of siting a second new power plant in a community already at heightened risk (see  
13 below), and heavily impacted by exhaust from diesel truck traffic in the immediate vicinity of the  
14 College and the plant(s). As the FSA makes clear, the demographics of the relevant surrounding  
15 area raise potential issues of environmental justice if air quality is affected by the proposed siting  
16 of the Eastshore Project. Recent research indicates that acceptable thresholds for pollutants may  
17 vary, depending upon demographics and accumulated stresses. Thus, a threshold that applies to a  
18 socioeconomically privileged demographic may differ for disenfranchised communities. This fact  
19 is simply not addressed anywhere in the FSA.

20 A Report of the Public Law Research Institute at UC Hastings College of Law,  
21 Opportunities for Environmental Justice in California, Agency by Agency (Auyong, 2003) raises  
22 some similar issues in CEC processes of analyzing environmental justice concerns:

23  
24 In attempting to integrate environmental justice concerns into this  
25 process the CEC focuses on three issues: demographics, public outreach,  
26 and impact assessment. ....First the CEC examines the demographic nature  
27 of the potentially "affected area", i.e. within a six-mile radius of the  
28 proposed facility, or a more precise area when feasible. The criteria for  
what makes an area "affected" include air quality, water, visuals, traffic,  
public health, and noise effects. If "minority" or "low-income" individuals  
comprise over 50% of the population in this "affected area", than an  
affected minority and/or low-income population is found. This finding,



1 presumably, is the threshold for the CEC to determine that environmental  
2 justice is possibly implicated in the matter.

3 The assumptions underlying this finding, however, are debatable.  
4 For example, the determination of the affected area appears to consider  
5 only the additional impact of the power facility, not the cumulative impact  
6 of the facility with other existing conditions that affect air quality, water,  
7 public health, etc., in this area. (emphasis mine.).

8 The Hastings Report concludes that the CEC appears to be making a good faith effort to  
9 address certain environmental justice issues in the licensing of power plants, but that “Whether  
10 these efforts are sufficient is open to debate.” (Auyong, 2003) The Report raises the following  
11 questions about CEC processes of considering environmental justice (pp. 19-25.):

- 12 • Are the public hearings merely informational, or are comments truly welcome?
- 13 • Have the important decisions already been made prior to any public  
14 announcements or hearing?
- 15 • Are cumulative and indirect impacts taken into full consideration and how?
- 16 • Does current and future policy take adequate account of history of the proximity of  
17 many power facilities to minority and/or low-income communities?

18 The Report concludes that the CEC is mandated to assess trends in energy consumption  
19 and to “analyze the social, economic, and environmental consequences of these trends.” (Public  
20 Resources Code 25216a) and that “Having pertinent data is an essential requirement to identify,  
21 evaluate and, where appropriate, act on or dispel, environmental justice concerns.”

22 The Hastings Public Law Research Institute is not alone in raising questions about the  
23 CEC’s current methodology in assessing environmental justice issues. The Latino Issues Forum’s  
24 Report on California Energy Planning (2001) addresses concerns that: “...the State of  
25 California’s rush to build gas-fired power plants as a solution to the energy crisis (is) at odds with  
26 its mandates to protect public health, the environment, and insure environmental justice for  
27 people of color and the poor. “ The study examines 18 power plant projects, 17 of which are  
28 peaker plants, (for which specific location data were available to the public at the CEC web Site  
as of June 30, 2001.) The study concludes that “the majority of power plants considered by the  
CEC are planned for or being built in neighborhoods populated by people of color---especially

1 Latinos and African Americans.” The report proposes that, in light of these data, the Governor  
2 and Legislature should place a moratorium on all present and future gas-fired generation  
3 development until the CEC completes “full and detailed environmental justice impact analyses  
4 and comprehensive environmental reviews of existing and proposed energy facilities.”

5 Clearly, there is significant debate in legal and other interested communities about the  
6 current CEC approach to environmental justice concerns and these debates also provide a context  
7 for my testimony.

8 Biocultural Factors: The Differential Impact of Cumulative Stress in low-income and  
9 Underserved Communities

10 The Committee on Population (CPOP) of the National Academy of Sciences defines stress  
11 as “environmental demands that tax or exceed the adaptive capacity of an organism, resulting in  
12 biological and psychological changes that may be detrimental and place the organism at risk for  
13 disease or disability (Cohen et al., 1998). The hypothesis that “greater exposure to stress over the  
14 life course increases susceptibility to morbidity and mortality among members of minority groups”  
15 is well supported by data from many reliable epidemiological studies both here and abroad.

16 For example, British researcher Dr. Andrew Steptoe of the Department of Epidemiology  
17 and Public Health at University College, London studied residents of 18 higher SES  
18 neighborhoods and 19 low SES neighborhoods (Steptoe et al., 2001). The study concluded that  
19 high levels of noise, smells, and fumes from industrial plants in poorer neighborhood were  
20 associated with “poorer self-rated health, psychological distress and reduced ability to carry out  
21 activities of daily living.” (Interestingly Steptoe et al. found no association between neighborhood  
22 and different levels of smoking, diet or alcohol consumption or physical activity, suggesting that  
23 the environmental factors associated with poorer neighborhoods may act as independent  
24 stressors.)

25 The Eastshore FSA notes that asthma rates vary by race/ethnicity in Alameda County,  
26 with African Americans experiencing over twice the rate of asthma as non Hispanic whites.  
27 Public health research in numerous studies has demonstrated the prevalence of asthma at  
28 epidemic levels among minority populations in California and elsewhere. Given the apparent

1 greater susceptibility of certain groups to environmental stressors, including pollution, a uniform  
2 “acceptable level” of plant emissions may not apply to such populations. Risk factors may accrue  
3 in logarithmic progressions rather than additively. Again, research on the prevalence low birth  
4 weight in low-income communities(Barker, 1998) suggests that this factor alone can lead to  
5 greater effects from cumulative environmental challenges and higher morbidity and mortality at  
6 every life stage. The Eastshore FSA acknowledges “It is evident that further research is needed to  
7 definitively link emissions from gas-fired plants as a cause or exacerbation of asthma (FSA: 4.7-  
8 15). Given this fact, how then can we know, as stated two pages later, that “All impacts at all  
9 receptors, including sensitive receptors such as schools, would be below the level of significant  
10 impact.” (FSA: 4.7-17) What is an acceptable level of emissions from a second gas-powered plant  
11 near communities with potentially heightened susceptibilities, given that by CEC staff’s own  
12 admission, further research is needed to establish a linkage between such emissions and asthma?

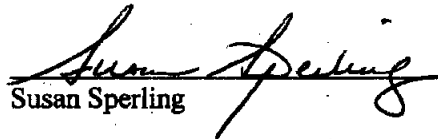
13         Yet, even without definitive data on such, we know quite a lot about populations at risk  
14 and the environmental hazards they tend to confront. According to the U.S. National Academy of  
15 Sciences Understanding Racial and Ethnic Differences in Health in Late Life: a research agenda  
16 ( 2004 ) “A considerable body of evidence has established that individuals of low socioeconomic  
17 status are more likely to suffer from disease, to experience loss of functioning, to be cognitively  
18 and physically impaired, and to experience higher mortality. The influence of socioeconomic  
19 status on health is assumed to begin in the prenatal environment and continue through life.  
20 Parents’ socioeconomic status affects childhood conditions, such as exposure to toxins and  
21 infectious agents. These conditions affect health immediately and possibly for years afterwards,  
22 the effects being only partly moderated by later changes in status...”

23         Recent data indicate that the interaction between socioeconomic status and air pollution in  
24 low-income communities is not just additive. Such emissions as produced by a natural gas-  
25 powered plant may have a greater impact on the health of working class and low-income  
26 communities. . A study by O’Neil et al. (2003) in the journal Environmental Health Perspectives  
27 notes that groups with lower socioeconomic status may receive more exposure to air pollution,  
28 and that such groups have already experienced greater material deprivation, less consistent access

1 to health care and greater psychosocial stress, and may therefore be more susceptible to the health  
2 effects of air pollution. Because of this mix of greater susceptibility and greater exposure to air  
3 pollution, such populations are apt to suffer differential and worse health effects from the  
4 presence of pollution plants than more economically privileged communities. These include  
5 reduced life expectancy, poorer birth outcomes and higher rates of asthma and cardiovascular  
6 disease.

7 In conclusion, I am confident that a more thorough review by CEC staff of relevant  
8 research on the potential adverse effect of the proposed siting of the Eastshore Project will indeed  
9 raise issues of environmental justice. The many low income, immigrant and minority  
10 communities served by the College are at potentially increased risk of suffering negative health  
11 impacts. It is incumbent upon us as an academic community to bring to your attention the most  
12 current, valid and heuristic science to consideration of these crucial issues.

13 I declare under penalty of perjury under the laws of the State of California that the  
14 foregoing is true and correct and that this declaration was executed on December 6, 2007 at  
15 Hayward, California.

16  
17   
Susan Sperling

18  
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28 Power against the People: Moving Beyond Crisis Planning in California Energy.

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50693.1 CH030-032

**TESTIMONY OF  
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EXHIBIT 602**

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16 STATE OF CALIFORNIA  
17 State Energy Resources  
18 Conservation and Development Commission

19 In the Matter of:

Docket No. 06-AFC-06

20  
21 **Application for Certification For the**  
22 **Eastshore Energy Center**

**TESTIMONY OF RACHEL UGALE ON**  
**BEHALF OF CHABOT INTERVENORS**  
**PERTAINING TO IMPACT ON**  
**EDUCATIONAL RESOURCES**

23  
24  
25 I have served as a member of the classified service of the Chabot-Las Positas Community  
26 College District at its Chabot campus for thirteen years. I am also president of the Classified  
27 Senate of Chabot College, and have served in this position for three years. The Classified Senate  
28

1 participates in shared governance of the College and participates in decisions that relate to the  
2 interests and welfare of the college's classified employees. In my capacity as Senate President, I  
3 am familiar with the needs and concerns of the college's classified employees.

4 **High Level of Exposure to the Environment**

5 Chabot College employs approximately 226 classified staff on a 94 acre campus with over  
6 30 buildings. Many classified staff has duties that require them to work outside and engage in  
7 strenuous outside activities for all or part of the day. These jobs include such things as grounds  
8 maintenance, repairs, security, transportation and delivery services, leading outside recreational  
9 activities for children, and providing athletic training to our sports teams. Additionally, virtually  
10 all classified staff are routinely required to walk from building to building in the course of  
11 fulfilling their duties.

12 This regular and often strenuous outdoor activity has raised the serious concerns of the  
13 Classified Senate as to the potential negative health impacts of the Eastshore Power Plant on  
14 classified staff. It is my understanding that the specific demographics of Chabot College were not  
15 taken into consideration in analyzing the Eastshore application, and that these concerns were  
16 therefore not adequately factored into the CEC staff's conclusions.

17 **Impacts on Staffing**

18 Additionally the Classified Senate has serious concerns that approval of a second power  
19 plant so close to the campus will negatively impact student enrollment, which in turn threatens  
20 staffing levels. Chabot College's state funding is keyed to its enrollment. Thus, as enrollment  
21 declines, so does funding; and if funding declines, cutbacks in staffing are likely to occur.

22 The Classified Senate is also concerned with the impact of siting a second power plant so  
23 close to the campus on staff recruitment and retention. As president of the Classified Senate, I am  
24 involved in the hiring and retention of classified staff. It has been my direct experience that the  
25 college is already suffering with a high turn-over rate and difficulty filling positions. The  
26 Classified Senate believes that approval of the Eastshore Plant will compound this problem.

27 **Classified Senate Resolution**

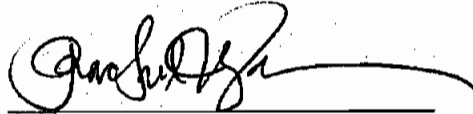
28 Due to these serious concerns, on November 30, 2007, the Classified Senate, on behalf of



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the classified staff of Chabot College, adopted a resolution opposing approval of the Eastshore Plant.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on December 6, 2007 at Hayward, California.



Rachel Ugale

50009.1 CH030-032

LIEBERT CASSIDY WHITMORE  
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# EXHIBIT 603

# The Public Law Research Institute

University of California, Hastings College of the Law

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## ***Opportunities for Environmental Justice in California***

### ***Agency by Agency***

May 2003

John Auyong, Adante Pointer, and Nicholas Wellington



The Public Law Research Institute at Hastings College of the Law prepared this report. It does not represent the views or policies of Hastings College of the Law, its Board of Directors or its faculty.

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## I. INTRODUCTION

Many disadvantaged, primarily low-income and minority communities across the nation are disproportionately affected by environmental degradation and pollution.<sup>1</sup> Because these communities have traditionally lacked political power, they have not always had the ability to resist the placement of polluting facilities in their neighborhoods. Environmental justice developed as the broad movement dedicated to the idea these communities should not have to bear the brunt of environmental pollution and the attendant health risks.

So what is "environmental justice"? While the term "environmental justice" may mean different things to different people, in California "'environmental 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."<sup>2</sup>

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<sup>1</sup> See, e.g., Janisse Ray, *Guardian of Grand Bois*, SIERRA, May/June 2002, at 26 (describing the location of toxic sludge processing pits adjacent to a small Louisiana town populated with people primarily of Native American and Cajun descent, and their struggle to close down the polluting facility).

<sup>2</sup> Government Code Section 65040.12(e). For an alternative definition, Executive Order 12898, for example, directs federal agencies to identify and address the disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority and low-income populations.

This definition will constitute the meaning of environmental justice for the purpose of this paper.

Beginning as an outgrowth of the national civil rights movement, environmental justice is a nationwide grass-roots movement that has been based in large part on Title VI of the federal Civil Rights Act of 1964.<sup>3, 4</sup> Title VI applies to all recipients of federal funding, including many California state agencies, and prohibits those funding recipients from actions that are intentionally discriminatory or have a discriminatory effect based on race, color, or national origin.<sup>5</sup> However, the U.S. Supreme Court's decision in *Alexander v. Sandoval*

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<sup>3</sup> Ellen M. Peter, *Implementing Environmental Justice: The New Agenda for California State Agencies*, 31 GOLDEN GATE U. L. REV. 529, 531 (2001). See Title VI of the Civil Rights Act of 1964, as amended 42 U.S.C. Sections 2000d to 2000d-7 (1999) ("[n]o person . . . shall, on the grounds 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. ").

<sup>4</sup> The environmental justice movement gained momentum at the federal level with the issuance of Executive Order 12898, signed by President Bill Clinton on February 11, 1994, directing federal agencies to incorporate environmental justice into their missions. Exec. Order No. 12,898, 3 CFR 859 (1994 compilation), 59 Fed. Reg. 7,629 (Feb. 16, 1994). Several federal agencies have specifically added Executive Order 12898 to their regulatory requirements. See, e.g., 24 CFR 50.4(l) and 24 CFR 58.5(j) (Department of Housing and Urban Development ("HUD") requirements that applicants to HUD and environmental review of HUD projects comply with the requirements of Executive Order 12898); 28 CFR 91.62 (U.S. Department of Justice requirements for making grants for correctional facilities include consideration of Executive Order 12898 when undergoing the environmental impact review process for project planning and site selection for correctional facilities).

<sup>5</sup> For additional information on the EPA's environmental justice programs, visit the EPA's environmental justice website at <http://es.epa.gov/oeca/main/ej/>. See also Kara Brown, Hillary Gross, and Hannah Shafsky, *Environmental Justice: A Review of State Responses*, 8 HASTINGS W.-NW. J. ENVTL. L. & POL'Y (forthcoming 2002), available at <http://www.uchastings.edu/plri/PDF/envirjustice.pdf>.

effectively blocks private parties from suing in federal court to advance environmental justice.<sup>6</sup>

*Sandoval* has led proponents of environmental justice to turn to alternative means of pursuing environmental justice, most significantly, other federal and state laws.

Starting in 1999, a series of laws was enacted in California to implement environmental justice. The new laws require state and local government to consider how to create new laws and enforce existing environmental laws to address the problem of environmental justice in California, providing an alternative to federal laws. For instance, Government Code Section 11135 now expressly prohibits disparate impact discrimination and provides a private right of action to enforce any state anti-discrimination regulation created under section 11135. Thus, private parties in California can rely on the judicial system to address environmental justice concerns.

But, for the purposes of this paper, the most interesting post-*Sandoval* development has been the EPA's effort to catalog those existing federal statutes and regulations (apart from Title VI and other laws specifically about environmental justice) which may be used to address

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<sup>6</sup>*Alexander v. Sandoval*, 532 U.S. 275 (2001)(holding that federal regulations implementing Title VI that have been used in racial discrimination cases involving "disparate impact" do not confer a right of action for private parties to bring suits to enforce those regulations).

Disparate impact results when the implementation of "facially" neutral laws (i.e., laws that do not explicitly advocate racial discrimination and do not mention race, national origin, ethnicity, etc.) nevertheless results in racial discrimination. Since a prohibition on disparate impact discrimination is not written into the statutory language of Title VI, various federal agencies promulgated regulations to prohibit disparate impact discrimination under authority of Title VI. *Alexander v. Sandoval* involved the U.S. Department of Justice's disparate impact regulations that were used to challenge an Alabama English-only statute. The U.S. Supreme Court said that because the statutory language of Title VI did not create a private right of action to enforce the regulations, a private person could not sue to enforce those regulations. Thus, private parties must now rely on the federal government to enforce federal regulations prohibiting disparate impact

environmental justice during the EPA's permitting process.<sup>7</sup> This report takes as its model the EPA memorandum, in assessing how California state agencies might rely on existing California law to further the aims of environmental justice.

### **Scope and Methodology**

A brief mention should be made about the scope and purpose of this paper. Its fundamental purpose is to demonstrate how agencies can begin to re-examine their own statutory authority to incorporate environmental justice into their unique missions, even though the statutes (possibly passed before the advent of the EJ movement) might not specifically address environmental justice. In a sense, this paper is intended to begin the process of replicating, at a broader scope at the state level, the effort undertaken by the EPA at the federal level in the Guzy memorandum. This process is being undertaken to help educate state agencies about environmental justice so that they may begin to integrate environmental justice into their activities and, as a result, implement the spirit and mandates of California's new environmental justice laws.

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discrimination.

<sup>7</sup> Memorandum from Gary S. Guzy to Steven A. Herman, Robert Perciasepe, Timothy Fields, Jr., and J. Charles Fox (Dec. 1, 2000) (on file with the U.C. Hastings Public Law Research Institute).

Ideally, all California statutes would be examined for their potential impact on environmental justice. However, this report selects ten state agencies, with a view towards presenting models with which other agencies may examine their own organic statutes and organize their environmental justice efforts. Those agencies were generally selected because they were housed in those cabinet level agencies, namely the Business, Transportation and Housing Agency, the California Environmental Protection Agency, the Resources Agency, and the Trade and Commerce Agency, that are specifically identified in one of the recently enacted environmental justice laws.<sup>8</sup>

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<sup>8</sup> Government Code Section 65040.12(b)(1) requires the Governor's Office of Planning and Research, as the state's environmental justice coordinating agency, to consult specifically with these four cabinet level agencies.



There are additional limitations that must be mentioned. First, since this paper is about environmental justice in California, this paper will use the California statutory definition of environmental justice stated above as the basis for evaluating existing statutes. Since Government Code Section 65040.12 (e) does not specifically define the terms "environmental laws, regulations, and policies," this paper focuses primarily on existing laws that, in the authors' opinion, are traditionally thought to relate to the environment, with the realization that this narrower approach has its limitations.<sup>9</sup>

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<sup>9</sup> The California Environmental Quality Act defines "environment" as " the physical conditions which exist within the area which will be affected by a proposed project, including land, air, water, minerals, flora, fauna, noise, objects of historic or aesthetic significance." P.R.C. 21060.5. The focus of this paper will be to narrowly construe "environmental" laws, although some may argue that a broad reading of environmental justice. For example, it may be argued that issuance of liquor licenses by the Department of Alcoholic Beverage Control ("ABC") may contribute to the decline of certain neighborhoods, disempowering its residents and making it easier for polluting industries to locate in those neighborhoods. While the actions of the ("ABC") may indeed ultimately lead to problems of environmental justice, the statutes governing the ABC are not, in our opinion, necessarily traditional environmental laws. As another example, the diversion by the California Highway Patrol ("CHP") of diesel trucks through poor neighborhoods in the event of a highway closure certainly increases the particulate from diesel exhaust in those neighborhoods, temporarily impacting the health of its

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residents. While these types of actions by state agencies very well may contribute to environmental justice problems and should be explored in further detail, they are beyond the particular scope of this paper.

Second, the enactment of environment justice statutes is relatively recent in California. The first two environmental justice laws enacted in 1999 have already been amended, and new environmental justice laws have been enacted since then. It is likely that further amendments and new laws will probably be enacted. When evaluating agencies' efforts in this regard, it may be worth keeping in mind that to some degree their efforts are being measured against changing notions of environmental justice. While it is the purpose of this paper to simply identify statutes and not to critique agencies' environmental justice efforts, we will note areas in which we believe there are gaps in existing statutes that should be closed in order to strengthen environmental justice.

Third, this paper will not explore existing local ordinances and laws applicable only to cities and counties or to regional, governmental entities such as air quality management districts, regional transportation districts, or school districts that are not traditional state agencies, even though these agencies are sometimes charged with implementing state laws, such as in the area of health.<sup>10</sup> Fourth, the focus of the papers is on statutes, not the California Code of Regulations, although we recognize that implementing regulations (particularly the "CEQA" Guidelines<sup>11</sup>) often may have specific provisions that may be better suited to address environmental justice concerns than the sometimes broader language in a statute. Finally, this paper does not assess the relative priority among these various existing statutes as new avenues

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<sup>10</sup> While a survey of local governments is beyond the scope of this paper, there are some regional agencies such as air quality management districts that have adopted environmental justice policies that may be worth exploring. See, e.g., Bay Area Air Quality Management District, *Guiding Principles of Environmental Justice for the Bay Area Air Quality Management District*, (Aug. 4, 1999).

<sup>11</sup> 14 Cal. Code Regs. § 15000, *et. seq.*

for addressing environmental justice concerns nor evaluate their legal sufficiency for that purpose.

Organizationally, section II will briefly describe recently enacted California environmental justice statutes.<sup>12</sup> Next, laws of general applicability that have implicit environmental justice mandates will be reviewed, specifically statutes that relate to public participation. These include agency-specific statutes that address otherwise generic processes like permitting that are common to several agencies. A brief discussion of the importance of data collection in determining, analyzing, and evaluating environmental justice issues will be next. Section III will feature the individual reviews of statutes applicable to specific agencies: a fuller description of the structure of the agency discussions themselves will be set out in the beginning of section III, below.

## **II. CALIFORNIA LAWS with EJ Consequences**

### **A. EJ Laws**

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<sup>12</sup> For a description of the history of how these laws came into being and a more comprehensive description of their provisions, *see, e.g.*, Ellen M. Peter, *Implementing Environmental Justice: The New Agenda for California State Agencies*, 31 GOLDEN GATE U. L. REV. 529, 531 (2001), and Kara Brown, Hillary Gross, and Hannah Shafsky, *Environmental Justice: A Review of State Responses*, 8 HASTINGS W.-NW. J. ENVTL. L. & POL'Y (forthcoming 2002), available at <http://www.uchastings.edu/plri/PDF/environjustice.pdf>.

Building on the momentum of the environmental justice movement at the federal level, California recently enacted several laws specifically relating to environmental justice,<sup>13</sup> including one designating the Governor's Office of Planning and Research ("OPR") as the "coordinating agency in state government for environmental justice programs."<sup>14</sup> OPR's director is now required to consult specifically with the secretaries of the California Environmental Protection Agency ("CalEPA"), the Business, Transportation and Housing Agency, and the Resources Agency, and also to consult with other "appropriate state agencies" and interested members of the public and private sectors in California.<sup>15</sup> Recognizing the federal government's lead in the area of environmental justice, the new laws also require OPR to coordinate with federal agencies regarding environmental justice.<sup>16</sup>

Government Code Section 11135 is not an express environmental justice statute, but rather a general prohibition on discrimination in government programs and benefits. Prior to its amendment by the environmental justice law AB 677, Government Section 11135(a) provided simply that no person in California shall be denied the benefits of state programs based on ethnic group identification, religion, age, sex, color, or disability. As amended, Government Code Section 11135(a) now specifically provides that no person in California shall be denied "full and equal access" to the benefits of state programs as described above. This amendment puts a prohibition on "disparate impact"<sup>17</sup> into the statute itself. Further,

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<sup>13</sup> These laws are: SB 115 (Solis), SB 89 (Escutia), AB 970, AB 1390, AB 677, SB 32, SB 828, and AB 1553.

<sup>14</sup> SB 115, codified at Gov. Code Section 65040.12(a).

<sup>15</sup> Gov. Code Section 65040.12(b)(1).

<sup>16</sup> Gov. Code Section 65040.12(b)(2)-(3).

<sup>17</sup> *I.e.*, those laws that don't expressly discriminate (so-called "facially-neutral" statutes) but

Government Code Section 11139 was amended by the new environmental justice laws to permit, through civil actions for equitable relief enforcement of regulations created by state agencies to implement Section 11135. Thus, disparate impact discrimination is now actionable in California under both the statute and regulations.

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when put into practice the result is discrimination.

Perhaps because its member agencies (e.g., the Air Resources Board, Office of Environmental Health Hazard Assessment, Integrated Waste Management Board, State Water Resources Control Board, and the Department of Toxic Substances Control) have a primary role in regulating the environmental effects on human health, several of the recently enacted environmental justice laws focus specifically on CalEPA. CalEPA is now required to take a variety of steps to incorporate environmental justice concerns in its mission.<sup>18</sup> The laws also created a Working Group to assist CalEPA in developing an intra-agency environmental justice strategy.<sup>19</sup>

CalEPA also has a role under some of the environmental justice laws targeted to local governments. For instance, local governments have the option of enacting an ordinance to implement the new California Land Environmental Restoration and Reuse Act,<sup>20</sup> which would give local governments additional authority to require owners of potentially contaminated property to conduct environmental assessments prior to the property's reuse. CalEPA would create pollution standards and provide other guidelines for local government implementation of the act. Further, regional air quality management districts and air pollution control districts of over one million are now required, and districts with less than one million residents are now

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<sup>18</sup> Public Resources Code Section 71110 (2002).

<sup>19</sup> Public Resources Code Sections 71112-13 (2002).

<sup>20</sup> Health and Safety Code Sections 25401 (2002).

encouraged, to increase their purchases of cleaner burning buses, in consultation with the CalEPA's Air Resources Board.<sup>21</sup>

In a major effort to incorporate environmental justice into local government planning decisions, OPR, as part of its new environmental justice coordinator role, must now incorporate environmental justice considerations in the next edition of its general plan guidelines. Since general plans are local governments' primary blueprints for land use, OPR's new environmental justice guidelines are intended to help local governments incorporate into their general plans methods that would, for example, plan for the equitable distribution of public facilities or avoid the over-concentration of toxic land uses in proximity to schools or residential dwellings.

**B. Public Participation Laws with EJ Significance**

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<sup>21</sup> Health and Safety Code Sections 43023.5, 44260 (2002).



Public participation is a key method to ensuring environmental justice because it allows members of the affected communities to directly express their concerns to the decisionmakers in state agencies.<sup>22</sup> Some agencies have specific statutes applicable only to their public participation processes. This section, however, will discuss portions of three primary public participation statutes that are applicable to all state agencies in one way or another. These statutes are the California Environmental Quality Act ("CEQA")<sup>23</sup> because of its specific focus on the environment, the Bagley-Keene Open Meeting Act<sup>24</sup> because it is the main statute governing the public hearing process for state agencies, and statutes applicable to the rulemaking process in California<sup>25</sup> that govern the promulgation of regulations by agencies to implement their substantive statutes. In all instances, agencies should afford the maximum public participation opportunities, especially participation early in the process.

1. California Environmental Quality Act

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<sup>22</sup> OPR has identified agency actions that can involve public participation--namely (1) making or funding land use decisions, (2) making permitting decisions, (3) writing or producing regulations, (4) taking discretionary actions, (5) provide funding for activities, and (6) interacting with the public--as leading to a high probability of environmental justice issues being raised. See EJ Overview, *available at* <http://www.opr.ca.gov/ejustice/overview.shtml>

<sup>23</sup> Public Resources Code Sections 21000 *et. seq.*

<sup>24</sup> Government Code Sections 11120 *et. seq.*

<sup>25</sup> Government Code Sections 11340 *et. seq.*

One of CEQA's policy mandates to state regulatory agencies is that regulation take place with consideration to preventing environmental damage while providing a decent home and satisfying living environment for every Californian.<sup>26</sup> CEQA contains requirements for public participation as well as specific findings that an agency must make when evaluating a project for environmental impacts.<sup>27</sup> Agencies must determine whether a project will have a significant effect on the environment.<sup>28</sup> The determination of significance must be based on substantial evidence in the administrative record and can include not only expert scientific information but also residents' observations based on personal knowledge.<sup>29</sup> Thus, agencies can consider residents' comments about environmental effects in their community based on personal knowledge to the same extent they would consider the information prepared by experts.

CEQA also requires a finding as to whether or not specific social considerations, among others, make infeasible the mitigation measures or alternatives to the project identified

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<sup>26</sup> Public Resources Code 21000(g).

<sup>27</sup> As mentioned above, the Guidelines that implement CEQA actually are part of the California Code of Regulations. While they may contain valuable authority for implementing environmental justice, they will not be discussed because they are not statutes.

<sup>28</sup> Public Resources Code Section 21081(d).

<sup>29</sup> See *Gentry v. City of Murrieta (McMillan Communities)*, 36 Cal.App.4th 1359 (1995), modified on denial of rehearing.

in the environmental review process.<sup>30</sup> Agencies should carefully evaluate and thoroughly discuss whether measures or alternative projects that minimize significant environmental effects on low-income and minority communities truly are infeasible.<sup>31</sup>

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<sup>30</sup> Public Resources Code Section 21081(a).

<sup>31</sup> Public Resources Code Section 21100.

An agency must find that a project has a significant effect on the environment if the possible effects of a project are individually limited but cumulative considerable.<sup>32</sup> Considerable cumulative effects are those incremental effects of a proposed project that become considerable when viewed in connection with the effects of past projects, other current projects, and probable future projects.<sup>33</sup> Agencies must also find that a project has a significant environmental effect if a proposed project's environmental effects will either directly or indirectly cause substantial adverse effects on human beings.<sup>34</sup> Thus, agencies could theoretically limit the concentration of environmentally polluting industries in a low-income and minority community by determining whether a particular project's incremental effects would result in making that community's environmental problems considerably worse in light of existing polluting industry in the community.

These findings and requirements are to be fleshed out in the Guidelines that OPR adopts pursuant to Public Resources Code Section 21083 in order to implement that section. As described above, the Guidelines are regulatory and not statutory in nature. However, OPR should, pursuant to its statutory authority under Public Resources Code Section 21087, continually review the Guidelines and change them as appropriate to ensure that current themes in environmental justice, including the adoption of environmental-justice specific laws, are expressly addressed in the Guidelines.

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<sup>32</sup> Public Resources Code Section 21083(b).

<sup>33</sup> Public Resources Code Section 21083(b).

<sup>34</sup> Public Resources Code Section 21083(c).

Further, as required under Public Resources Section 21084, the Guidelines are to include classes of projects that are exempt from CEQA requirements. OPR should continually review these classes to ensure that their exemption does not result in unanticipated disproportionate environmental impacts on low-income and minority communities. Also, a state agency should consider using their authority under Public Resources Code Section 21086 to suggest to OPR changes to those exempt classes of projects if a state agency feels it has information to support its position that an exempt class of projects actually does have a significant effect on the environment.

Historic resources are covered under CEQA. Historic resources may in some instances provide a local point of pride for low-income and minority community. CEQA provides that the fact that a historic resource is not designated as an historic or cultural landmark by the local, state, or federal governments, does not automatically preclude an agency from determining that the resource is not historic and thus not worthy of protection.<sup>35</sup>

Also, the Secretary of the Resources Agency should review the criteria under the CEQA provisions in Public Resources Code Section 21080.5(d) that allow state agencies to bypass CEQA if the Secretary certifies that the agency's regulatory program contains provisions equivalent to CEQA. The criteria might be changed to included environmental justice, and certification withdrawn if agencies don't follow those criteria.

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<sup>35</sup> Public Resources Code Section 21084.1.

State agencies should take maximum advantage of Government Code Section 21104(a) which allows but does not require state agencies to consult with members of the public prior to the preparation of an environmental impact report. Early participation provides greater assurances that members of a low-income and minority community have a say in shaping a project to minimize environmental problems rather than having to fight a project that has been essentially finalized by the time the public hearing occurs for final approval of the project. State agencies should also provide as much opportunity for notice and comment at the final public hearings as can be liberally construed under CEQA.<sup>36</sup>

## **2. Bagley-Keene Open Meeting Act**

Generally, the Bagley-Keene Open Meeting Act requires agencies to deliberate in public, and presents an opportunity for state agencies to reach out to communities affected by environmental justice issues. A few examples of the public participation requirements and options available to state agencies include the provisions of Government Code Section 11123(b) which permits teleconferences as an option to encourage public participation, although due to expense and logistical difficulties it may not be a practical way to increase public participation by low-income and minority communities. Government Code Section 11124.1 does offer the option that, subject to certain requirements, videotaping and audiotaping of public meetings is allowed. This may be a means to convey information to members of low-income and minority communities who could not attend the meeting in person.

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<sup>36</sup> Public Resources Code Sections 21091, *et. seq.*

Agencies should remember that Government Code Section 11124 provides that the public is not required to sign in as a condition of attendance. It must be made clear that attendance lists, requests for completion of surveys, etc., are voluntary. This may alleviate the privacy concern of some members of the public that might otherwise discourage public participation. At the same time, these attendance lists may be valuable in developing mailing lists for future notices of similar hearings. Agencies may want to consider encouraging (in a non-coercive manner, of course) persons in low-income and minority communities to sign such lists after making it clear that the lists are for the purpose of facilitating their participation in decisions affecting their communities.

Government Code Section 11125.1(b) provides that writings distributed at meetings should be available for public inspection. Agencies should be careful, however, to ensure that invoking the provisions permitting the hearing of off-agenda items and convening special meetings and emergency meetings with shortened notice times<sup>37</sup> do not jeopardize the opportunity of low-income and minority communities to participate in matters affecting their communities. Agencies should also liberally construe the provisions providing for opportunities for the public to address the governing board.<sup>38</sup> When people feel they are being paid attention to and listened to, they may be less likely to create a disturbance at the meeting, the control for which is provided under the Government Code Section 11126.5.

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<sup>37</sup> Government Code Sections 11125.3-11125.6.

<sup>38</sup> Government Code Section 11125.7.

### **3. Office of Administrative Law**

State agencies promulgate regulations to implement their substantive statutes. Those regulations may have provisions that are more specific than the substantive statute, perhaps resulting in additional tools for addressing environmental justice issues. Sometimes, as in the case of the CEQA Guidelines, the implementing regulations are referenced and cited by agencies at least as much as, if not more often than, the statute itself. The importance of regulations cannot be underscored, even though they are not reviewed in this paper. It is paramount that the public have as much input as possible in the creation and adoption of the regulations, rather than having to work around an inadequate regulation that has already been adopted when it comes to an agency's individual actions made under the regulation.

Public comment can come at the time a particular agency is adopting its rules or at the time the rules are under review by the Office of Administrative Law ("OAL"). To this end, Government Code Section 11346.6, for example, discusses a state agency's determination of appropriateness to mail notice to interested parties. Government Code Section 11346.8 governs the hearing and comment procedures for rulemaking. State agencies and OAL both should strive to liberally construe of all the applicable statutes to make sure as many people in low-income and minority communities receive notice of and are afforded an opportunity to comment on regulations that may affect the environment in general or their communities in particular.

### **C. Other General Statutes with EJ Possibilities**



The political appointment process, the permitting process, and the enforcement process are all opportunities for agencies to incorporate environmental justice principles. In addition, many agencies may have specific mandates to create programs to educate the public about the workings of the agency. Also, agencies that dispense grants or otherwise fund projects can have an impact on environmental justice concerns. Often, each agency has specific statutes that tailor these processes to its specific mission. However unique the statutes may be, each agency should take full advantage of these processes to incorporate environmental justice principles.

Where an agency is governed by a board or commission comprised of appointed members, the agency should strive to see that these members are committed to principles of environmental justice. These members, the final decisionmakers with respect to a particular agency's actions, are in a good position to ensure that the agency's actions address environmental justice issues. Sometimes, the statutes are very specific about the types of members sought. One example is the Integrated Waste Management Board where the Governor must specifically appoint one member "who has served as an elected or appointed official of a nonprofit environmental protection organization whose principal purpose is to promote recycling and the protection of air and water quality."<sup>39</sup>

Where an agency has specific statutes governing its permit process separate and apart, or in addition to, the generally applicable public participation statutes, the agency should involve the public early in its decision-making process. Agencies that have enforcement

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<sup>39</sup> Public Resources Code Section 40401(b).

authority should be sure they are taking action against parties that pollute the environments of disadvantaged communities, at least as equally as they take action against other parties.

Several agencies, such as the California Coastal Commission, the Integrated Waste Management Board, and OPR have statutes specifically requiring a public education component. For example, OPR is specifically required to "[e]stablish a public education and training program for planners, developers, and other interested parties to assist them in implementing [CEQA]."<sup>40</sup> Because CEQA is a potentially important vehicle for addressing environmental justice concerns, OPR should ensure that it includes representatives of disadvantaged communities as part of its training of "other interested parties" so that those communities may have a better understanding of CEQA.

#### **DATA COLLECTION, INDEXING AND ARCHIVING**

Many state agencies generate and collect data that relates either directly or potentially to environmental justice issues. For example, the Air Resources Board gathers data on air quality in different parts of the state. The Division of Labor Statistics and Research collects and compiles data on occupational accidents and safety and other labor matters. The Departments of Health Services and Pesticide Regulation share responsibility to gather and assess data relating to consumption of pesticide-treated foods, and abortions, birth defects and infertility. This assessment must include risks relating to - and therefore the underlying data about - the diets of people of different ages, sexes and ethnic groups, and different regions of the state. The State Department of Health Services must also provide, along with various CalEPA agencies, lists of toxic and hazardous waste sites to the Secretary for Environmental

Protection.<sup>41</sup> The California Energy Commission collects and reviews forecasts of energy demand, and analyzes their environmental, economic, and public health and safety impacts. The examples are legion.

To understand and achieve environmental justice, it is essential to have adequate and accessible information and data. Without them, environmental injustice cannot be discerned, analyzed or remedied. Disparate impacts cannot be identified, and neither can low-income or

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<sup>40</sup> Public Resources Code Section 21159.9(a).

<sup>41</sup> Government Code Section 65962.5.

minority communities. For example, the California Energy Commission relies on data about local demographics, costs of living, poverty standards, air quality, water quality, traffic patterns, and many other economic and environmental factors when it makes a determination about

licensing a new power plant or an expansion to an existing power plant. Public Resources Code §§ 25500 et seq. Without this data, an environmental justice assessment would be impossible.

Thus almost every agency has an opportunity to further environmental justice if it takes these factors into consideration when making decisions about what data to collect, how to collect it, how to index it, how long to maintain it, and how to make it accessible and understandable to the public.

**BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT COMMISSION  
OF THE STATE OF CALIFORNIA**

**APPLICATION FOR CERTIFICATION  
FOR THE EASTSHORE ENERGY CENTER  
IN CITY OF HAYWARD  
BY TIERRA ENERGY**

**Docket No. 06-AFC-6**

**PROOF OF SERVICE  
(Revised 12/04/07)**

**INSTRUCTIONS: All parties shall either (1) send an original signed document plus 12 copies or (2) mail one original signed copy AND e-mail the document to the address for the Docket as shown below, AND (3) all parties shall also send a printed or electronic copy of the document, which includes a Proof of service declaration to each of the individuals on the proof of service list shown below:**

**CALIFORNIA ENERGY COMMISSION**

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**DECLARATION OF SERVICE**

I, Ervietta McCullough, declare that on **December 6, 2007**, deposited a copy of the attached **Chabot-Las Positas Community College District and Chabot Faculty Association (Chabot Intervenors) Witness Testimony Declarations of Carolyn Arnold, Susan Sperling and Rachel Ugale, Opportunities for Environmental Justice in California, Agency by Agency**; in the United States mail at San Francisco , California with first-class postage thereon fully prepaid and addressed to those identified on the Proof of Service list above.

**OR**

Transmitted via facsimile transmission to those identified above with a Fax number.

**OR**

Transmission via electronic mail was consistent with the requirements of the California Code of Regulations, title 20, sections 1209, 1209.5, and 1210. All electronic copies were sent to all those identified on the Proof of Service list above.

I declare under penalty of perjury that the foregoing is true and correct.

  
**Ervietta McCullough**