April 2nd, 2019

The Honorable Marc Berman
California State Assembly
State Capitol, Room 6011
Sacramento, CA 90814

Re: AB 782 (Support)

Dear Assemblymember Berman,

The undersigned organizations are pleased to support your AB 782, a bill that would clarify the timing for compliance with the California Environmental Quality Act (CEQA) for the acquisition, sale, or other transfer of property by a public agency for certain purposes, or the funding of that acquisition, sale, or other transfer by a public agency, if the public agency conditions those transactions on compliance with CEQA before making any physical changes to the transferred property.

Under existing CEQA regulations as reflected in Section 15325 of the CEQA Guidelines, there is a categorical exemption for transfers of ownership interests in land in order to preserve open space, agriculture, habitat, or historical resources. This exemption has made it possible to conserve and protect countless acres of valuable resource lands by allowing state and local agencies and land trusts to purchase private property 'as is', without the expense and delay of prior CEQA review in a competitive, fast-paced real estate market.

However, a recent series of lawsuits has created significant hurdles and uncertainty for public agencies seeking to acquire sensitive and threatened lands for open space and other conservation purposes. The courts in these cases

have held that public agencies violated CEQA simply by agreeing to purchase—or in some cases, simply applying for funds to help purchase—property without first analyzing the environmental impacts of potential future preservation, restoration and public park activities. In particular, courts have used the agencies' applications for grant funding, which must specify the purposes of the funding, as evidence that the agency has already committed to specific restoration and preservation activities that could affect the environment. In reality, at the time the agencies apply for funding, they typically have not committed to any particular restoration activities and frequently do not have sufficiently detailed restoration plans to allow for meaningful CEQA review.

These recent cases are in tension with a long line of earlier court decisions, and several CEQA Guideline provisions, which provide that public agencies may conduct environmental review *after* acquiring property, so long as the agency fully complies with CEQA before committing to undertake any specific restoration or development activities.

The tension between these two lines of cases has created substantial uncertainty and confusion about the timing for CEQA compliance by public agencies that are considering acquiring property for conservation purposes. This uncertainty has, in turn, put all public conservation transactions at risk, as acquiring agencies and funding sources alike are hesitant to move forward with these transactions under threat of litigation. By contrast, private parties seeking to purchase land for future development are not required to first comply with CEQA, and thus the uncertain state of the law is making it more difficult to preserve threatened lands.

The proposed bill (AB 782) would end this uncertainty by clarifying that public agencies may acquire land for conservation purposes—including the critical process of obtaining grant funding for the acquisition—without first conducting environmental review, but only so long as the public agency has committed to fully comply with CEQA *prior to commencing any physical change to the environment*. This bill would thus restore the intent of the existing regulatory exemption and the common practice prior to the more recent line of cases and would provide a bright line rule for courts, land trusts, public agencies, and the public to follow.

AB 782 would not create a new CEQA exemption or expand any existing exemption. Rather, it would simply codify the regulatory guidance already provided in CEQA Guidelines section 15325 (Class 25 Exemption for "Transfers of Ownership in Land to Preserve Existing Natural Conditions and Historical Resources") and section 15004 ("Time of Preparation"). In combining the application of these two Guidelines into a single statutory provision, the author of AB 782 has also made grammatical changes to avoid redundancy and to clarify that applying for and accepting funding for qualifying acquisitions may occur prior to conducting environmental review, as many acquisitions rely on public grant funding.

Because the bill partially codifies the Class 25 regulatory (or "categorical") exemption by specifying the timing of CEQA compliance for the circumstances covered by this Guideline, the Guidelines "exceptions" to the exemptions would no longer apply. Critically, however, the bill achieves the same purposes as these exceptions by ensuring that full CEQA compliance *must* occur prior to the agency commencing any physical change in the environment. Any private activities on the property that could potentially impact the environment would remain fully subject to CEQA and would not be affected by the bill.

We would like to thank Assemblymember Berman for his leadership on this issue, and for all the above stated reasons strongly support AB 782.

Sincerely,

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