February 2, 2009

Ms. Cynthia Bryant  
Director  
Governor’s Office of Planning and Research  
P.O. Box 3044  
Sacramento, CA 95812-3044

Re: Preliminary Draft Guideline Amendments for Greenhouse Gas Emissions

Dear Ms. Bryant:

The California State Association of Counties (CSAC) would like to thank the Governor’s Office of Planning and Research (OPR), and especially Terry Roberts, State Clearinghouse Director, for all of the stakeholder and public outreach efforts over the past eighteen months during the development of the Preliminary Draft Guideline Amendments for Greenhouse Gas (GHG) Emissions. CSAC staff as well as various county staff from planning, public works, environmental, and legal departments across the state have found these outreach and discussion opportunities to be invaluable as local governments struggle to integrate climate change and GHG emissions considerations into general plan updates, specific plans, and project level environmental analysis.

CSAC supports the overall direction the preliminary amendments take the CEQA Guidelines and would like to submit the following specific comments for your further consideration:

Section 15064(h)(3) adds climate action plans and sustainable communities strategies to the list of plans that an agency can use to determine whether a proposed project will have a significant cumulative impact. This provision, if retained, will be very helpful in clarifying a preferred approach to assessing GHG impacts. The programmatic approach is consistent with the earlier advice in the OPR Technical Advisory as well as the California Air Resources Board’s (CARB) Scoping Plan.

However, an issue that remains is whether this approach to making a significance determination negates any obligation to establish quantitative thresholds or otherwise calculate the effectiveness of mitigation measures. It is likely that, in certain cases, local agencies will look for projects to comply on a qualitative level with the climate action plan without having to demonstrate numerical ton-for-ton reduction results. Under what circumstances does such a plan “adequately address greenhouse gas emissions”?

The same general comment above applies to Section 15126.4(c)(3) while Section 15152(i) seems to address this concern, though maybe not precisely enough.

Questions regarding Section 15064.4(a)(1) include: What qualifies as “the plans, programs and regulations adopted to implement the Global Warming Solutions Act”? Would that include a local agency’s climate action plan? Is the reference to “an adopted statewide 2020 greenhouse gas emissions limit” one that will be adopted by CARB?

Section 15064.4(a)(1) may be too broadly stated. Some have argued that any level of new GHG emissions from any new project, no matter how small, constitutes a significant impact because AB 32 requires the State to bring overall GHG emissions far below the existing baseline. This rather strict reading of AB 32/CEQA could result in the conclusion that every single new project that emits some level of GHG is significant for CEQA purposes. That would prevent lead agencies from relying upon categorical exemptions for many small scale projects. This would have a severe administrative impact on lead agencies. Consider clarifying what it means to “hinder attainment” of the State’s goals under AB 32.
The reference to “especially fossil fuels” should be deleted from Section 15064.4(a)(2). It seems unnecessary so long as the provision focuses on “fuels or other energy resources that contribute to GHG emissions when consumed.” The emphasis on fossil fuels might be read to elevate fossil fuel consumption over the consumption of other fuels or energy resources that might also result in GHG emissions. Or, was that the intent?

The inclusion of the word “estimate” in Section 15064.4(b) is crucial because it will not always be possible to quantify or calculate a project’s emissions. For smaller projects, lead agencies may simply assess the impact of project based upon its size, scale or scope of operations. Such a categorical approach has obvious administrative efficiency and economic benefits. Additionally, modeling for energy consumption in general (i.e., electricity needs of a new subdivision) is not as readily available as is modeling for vehicular traffic emissions. Thus, another reason why it would be burdensome to require strict quantification in every instance.

Section 15093(d) seems to be inconsistent with statute. The provision seems to allow a lead agency to now rely upon adverse environmental impacts to support an override, so long as those adverse effects are necessary to achieve a regional or statewide (environmental?) benefit. What are some examples of this scenario? This provision may require some clarification. The phrase “in the context of” seems like it could invite a wide range of interpretations.

It would be helpful to clarify in Section 15126.4(c)(2) that these types of measures are not to the exclusion other mitigation options that are not necessarily project features, such as the purchase of off-sets.

With respect to Appendix G, CSAC requests that the reference to Level of Service (LOS) remain a part of the initial checklist (consistent with comments OPR received from the Counties of Trinity and Napa). While the checklist does not serve as a complete list of questions and considerations lead agencies must account for in an assessment of environmental impacts, removing all references to LOS may lead to challenges against local agency impacts fees due to a lack of nexus (discussed more in-depth in the County of Trinity comment letter). CSAC also supports the City of Los Angeles Planning Department’s suggestion to allow for local agency flexibility by allowing LOS considerations as well as the more holistic approach via vehicle miles traveled (VMT).

Lastly, CSAC would also like to reiterate and lend support to the comments made to OPR from the County of Napa regarding the integration of forest resources into Appendix G and the general comments made on a section by section basis.

Once again, CSAC and our 58 member counties are sincerely appreciative of the opportunity to work with OPR during the development of the Preliminary Draft Guideline Amendments for Greenhouse Gas Emissions and the chance to provide the above comments. We look forward to our continued work on this important issue. Should you have any questions or need any additional information please don’t hesitate to contact me at (916) 327-7500 ext. 509 or dbaker@counties.org.

Sincerely,

DeAnn Baker
Legislative Representative