



VIA E-MAIL: CEQA.GHG@opr.ca.gov, and
Hand Delivery

February 2, 2009

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State of California
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Re: Preliminary Draft CEQA Guideline Amendments for Greenhouse Gas Emissions

Dear Ms. Bryant:

On behalf of the above-mentioned organizations, thank you for providing us with the opportunity to comment on the preliminary draft CEQA Guideline Amendments for Greenhouse Gas (GHG) emissions. The preliminary draft does a good job of balancing the need for further guidance on how to treat GHG emissions with the discretionary authority granted to local lead agencies that are in the best position to meet the goals of AB 32 while taking into consideration local circumstances.

SB 97 directs the Office of Planning and Research to develop CEQA guidelines on how state and local agencies should analyze, and when necessary, mitigate greenhouse gas emissions. The Governor, in his signing message, noted that "litigation under CEQA is not the best approach to reduce greenhouse gas emissions and maintain a sound and vibrant economy. To achieve these goals, we need a coordinated policy, not a piecemeal approach dictated by litigation." It is our hope that these proposed Guidelines will achieve this goal.

The proposed guidelines, Section 15093 adds a new subdivision (d) to allow an agency to consider region-wide or statewide benefits when making a statement of overriding considerations for local adverse environmental effects. This new provision brings common sense to the California Environmental Quality Act and actually specifies what is contained in SB 375.

AB 32 was predicated on the fact that human activities, specifically greenhouse gas emissions, cause global climate changes, including increased flooding, sea level rise, increased risk of fire, health risks to humans, risks to frail species of plants and animals, among others. These effects are global in nature and affect the entire state. Therefore, it makes good sense to consider those far-reaching benefits if we are instrumental in reducing GHG emissions. There may be those who do not like the adverse environmental effects associated with increased traffic due to higher density development in an infill location. However, those impacts are less, considered in their entirety, than they would be in another location or at a reduced density. It was for this reason that SB 375 incorporated subdivision (b) of Public Resources Code §21159.28(b), which provides:

(b) Any environmental impact report prepared for a project described in subdivision (a) shall not be required to reference, describe, or discuss a reduced residential density alternative to address the effects of car and light-duty truck trips generated by the project.

Therefore, we believe that proposed subdivision (d) of Section 15093 is consistent with SB 375.

There are a few other provisions, however, that appear confusing and we believe could benefit from some further clarification.

Section 15064 (h)(3) – p. 3:

This section provides examples of previously approved plans or mitigation programs that, if complied with, may be the basis for an agency's determination that a project's incremental contribution to a cumulative effect is not cumulatively considerable. Among those plans and programs are: "climate action plan, regional transportation plan, regional blueprint plan, sustainable community strategy, statewide plan of mitigation for greenhouse gas emissions...."

We believe that "alternative planning strategy" should be added to the list of plans and programs in order to be consistent with SB 375 (Public Resources Code §21159.28(a)).

Additionally, the last sentence of subdivision (h)(3) provides:

If there is substantial evidence that the possible effects of a particular project are still cumulatively considerable notwithstanding that the project complies with the specified plan or mitigation program addressing the cumulative problem, an EIR must be prepared for the project.

This sentence takes away the benefits this section provides. The time for challenging one of the listed plans expires after the applicable statute of limitations has run, and the plan should then be conclusively presumed to be valid. The preceding sentence, however, gives project opponents a second bite at the apple, and under the fair argument standard at that. Additionally, it is contrary to both the Governor's signing message for SB 97 (quoted above) and SB 375 which provides

that if a project complies with a plan, i.e., the sustainable communities plan or the alternative planning strategy, the CEQA document shall not be required to reference, describe or discuss...cumulative impacts" (See Public Resources Code §21159.28(a)). For all of these reasons, the last sentence of (h)(3), quoted above, should be deleted.

Section 15064.4(a)(1) – p.4:

This section provides guidance on how lead agencies should assess the significance of GHG emissions impacts. They include:

(a)(1) The extent to which the project could help or hinder attainment of the state's goals of reducing greenhouse gas emissions to 1990 levels by the year 2020 as stated in the Global Warming Solutions Act of 2006. A project may be considered to help attainment of the state's goals by being consistent with an adopted statewide 2020 greenhouse gas emissions limit or the plans, programs, and regulations adopted to implement the Global Warming Solutions Act of 2006;

We are concerned that the second sentence of this paragraph raises three issues: (1) are the listed methods to consider whether a project helps meet the attainment of the state's goals intended to be an exclusive list? (2) if the project does not help to meet the attainment of the state's goals, does it necessarily fall into the category of "hindering" the attainment of the state's goals? and (3) should any other regulation, plan or program that reduces GHG emissions or energy use be considered to help the attainment of the state's goals, even if they are not explicitly adopted in order to implement the Global Warming Solutions Act of 2006?

In our view, the identified options should neither be exclusive nor create the presumption that if they do not help attainment of the state's goals that they therefore hinder the attainment of the state's goals. There are many provisions of state, regional and local law that have been adopted or are being considered that would help achieve the state's goals without any reference to AB 32. Some examples include revisions to the building standards in the future to increase energy efficiency, compliance with local or regional greenhouse gas reduction plans, use of recycled products, higher density and mixed use zoning, and greater use of renewable energy.

Moreover, we are concerned that the terms "help or hinder" do not provide a safe harbor for lead agencies that comply with this provision and is not consistent with CEQA regarding significance criteria. We believe it would be better to replace "help or hinder" with "is consistent with" as set forth below.

Accordingly, we suggest that paragraph (a)(1) be modified as follows:

(a)(1) The extent to which the project ~~could help or hinder~~ is consistent with the attainment of the state's goals of reducing greenhouse gas emissions to 1990 levels by the year 2020 as stated in the Global Warming Solutions Act of 2006. A project may be considered to ~~help~~ to be consistent with the attainment of the

state's goals by, including but not limited to, being consistent with an adopted statewide 2020 greenhouse gas emissions limit or the plans, programs, and regulations adopted to implement the Global Warming Solutions Act of 2006, or otherwise reduce greenhouse gas emissions or energy use;

Section 15064.4(a)(2) – p.4:

Section 15064.4 continues the factors that should be considered when assessing the significance of a project's impacts. This section adds a consideration in assessing significance as follows:

(2) The extent to which the project may increase the consumption of fuels or other energy resources, especially fossil fuels that contribute to greenhouse gas emissions when consumed;

SB 375 establishes the methods by which a project should mitigate fossil fuel emissions through either a sustainable community strategy or an alternative planning strategy pursuant to Public Resources Code §21159.28. If a project complies with §21159.28, no further discussion is required. Paragraph 2 of the proposed guidelines should provide such an exemption.

Additionally, Paragraph 2 creates the impression that any increase in fuels should be considered significant. This is tantamount to the one-molecule rule. We believe some clarification is necessary to remove this implication.

Finally, we are concerned that subsection may apply to off-site emissions due to consumption of fuels or other energy resources that are caused by utility power generation facilities. Greenhouse gas emissions from these off-site facilities are analyzed and mitigated at the source and this provision may be read to double count those emissions

Accordingly, we recommend the following modifications:

(2) Except as provided in Public Resources Code §21159.28, the extent to which the project may substantially increase the emission of greenhouse gases due to consumption of fuels or other energy resources, especially fossil fuels that contribute to greenhouse gas emissions when consumed. This provision should not apply to the consumption of fuels or other energy resources by off-site energy providers;

Section 15064.4(a)(4) – p.4:

Section 15064.4(a)(4) should maintain lead agency discretion to choose the appropriate threshold of significance pursuant to existing CEQA Guidelines provisions. Additionally, this section should be put into a GHG context since the entire section deals with "Determining the Significance of Impacts from *Greenhouse Gas Emissions*," as follows:

(4) The extent to which the project impacts or emissions exceed ~~any~~ the greenhouse gas threshold of significance that applies to the project and has been adopted pursuant to subdivision (b) of section 15064.7.

15064.4(b) – p. 4

This subdivision provides:

(b) A lead agency should make a good-faith effort, based on available information, to describe, calculate or estimate the amount of greenhouse gas emissions associated with a project, including emissions associated with energy consumption and vehicular traffic.

Similar to our comment regarding subdivision (a)(2), we are concerned that the reference to energy consumption may be understood to double count off-site energy provider emissions. Therefore we suggest the following modification:

(b) A lead agency should make a good-faith effort, based on available information, to describe, calculate or estimate the amount of greenhouse gas emissions associated with a project, including on-site emissions associated with energy consumption and emissions of vehicular traffic except as provided in Public Resources Code §21159.28.

Section 15064.7(c) – p. 5:

This subdivision provides:

(c) When adopting thresholds of significance, a lead agency may consider thresholds of significance adopted by other public agencies and recommendations of others, provided such thresholds or recommendations are supported by substantial evidence, including expert opinion based on facts.

Very few agencies formally adopt thresholds of significance. Instead, they use Appendix G for thresholds, rely on thresholds in their general plan or adopted by another agency (e.g., the local air district) or they formulate custom thresholds to be used in a CEQA document.

In addition, the last clause could give opponents an improper second bite of the apple. It would allow project opponents to challenge thresholds adopted by CARB or OPR, for example, in the context of a project approval; such adopted thresholds should only be challengeable in a suit against the adopting agency filed within the limitations period.

So, this subdivision should be modified instead to say:

~~(c) When adopting thresholds of significance, a lead agency may consider use thresholds of significance adopted by other public agencies and recommendations of others, provided such thresholds or recommendations are supported by substantial evidence, including expert opinion based on facts.~~

Section 15093 – p. 8:

This section addresses circumstances under which a statement of overriding considerations may be made. As these Guidelines specifically address greenhouse gas emissions, we believe that, to that extent, they should also take into consideration AB 32. AB 32 specifically provides for relief due to a declaration of significant economic harm by the Governor as provided in Public Resources Code section 38599. Therefore, we believe the proposed Guidelines could be improved by the addition of a new subdivision (e) to read, as follows:

(e) In considering the feasibility of mitigation measures or alternatives to mitigate significant adverse impacts related to greenhouse gas emissions, a lead agency may consider the threat of significant economic harm as set forth in Health & Safety Code Section 38599 from the incorporation of such measures in the project

Section 15125(d) – p.9:

This section deals with describing the environmental setting of the project. In particular, subdivision (d) provides that an “EIR shall discuss any inconsistencies between the proposed project and applicable...regional blueprint plans, sustainable community strategies, climate action plans....”

SB 375 provides that a project may address global warming by complying with either a sustainable communities strategy (SCS) or an alternative planning strategy (APS). Public Resources Code §21159.28(a). If a project complies with either the SCS or APS, then the CEQA document “shall not be required to reference, describe or *discuss* (1) growth inducing impacts; or (2) any project specific or cumulative impacts from cars and light-duty truck trips generated by the project on global warming or the regional transportation network.” Accordingly, for treatment of global warming issues in the CEQA context, SCS and APS are interchangeable.

Moreover, SB 375, at Government Code §65080(b)(2)(H)(v), provides that:

(v) For purposes of the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code), an alternative planning strategy shall not constitute a land use plan, policy, or regulation, and the inconsistency of a project with an alternative planning strategy shall not be a consideration in determining whether a project may have an environmental effect.

Therefore, if a project's inconsistency with an APS shall not be considering in determining whether a project may have an environmental effect, it makes no sense to require a discussion of a project's inconsistency with an SCS in proposed §15125(d). Therefore, we request that the reference to "sustainable community strategies" be deleted from the subdivision.

Section 15126.2(c)(5) – p 13:

This section provides guidance on mitigation measures. However, when treating off-site measures or the purchase of carbon offsets, paragraph 5 appears to limit mitigation measures to those offered by public agencies. This would create a monopoly in mitigation offered by such agencies and could lead to uneconomic options and reduce the affordability of housing. Therefore, we suggest the following modification:

(5) Where mitigation measures are proposed for reduction of greenhouse gas emissions through off-site measures or purchase of carbon offsets, these mitigation measures must be part of a reasonable plan of mitigation ~~that the relevant agency commits itself to implementing~~ that are enforceable through permit conditions pursuant to §15126.4(a)(2).

Section 15126.4(c) – p. 13:

The proposed guidelines should be applying CEQA's general rules regarding mitigation to greenhouse gas analysis and not imposing more stringent or different requirements. Section 15126.4(a)(1) states that lead agencies should consider *all* mitigation measures. However, CEQA generally requires only that an EIR describe "feasible" mitigation measures to address "significant adverse impacts."

Additionally, we have the same concern regarding "emissions associated with the project's energy consumption including fossil fuel consumption" as described above in section 15064.4(a)(2). We believe that off-site energy provider impacts should not be required to be mitigated by a project.

Therefore, the proposed guidelines should conform to the general CEQA law by making the following modifications:

(1) Lead agencies should consider ~~all~~ feasible means of mitigating significant adverse impacts due to greenhouse gas emissions including but not limited to emissions of greenhouse gas associated with the project's energy consumption including fossil fuel consumption other than emissions by off-site energy providers.

Section 15130(d) and (f) – p. 15:

This section is intended to address how cumulative impacts should be discussed in CEQA documents.

The reference to “land use documents” should be replaced by “plans” because elsewhere the amendments identify plans upon which an agency may rely that are not land use plans. Additionally, the list of plans should be expanded to include all of the examples in section 15064(h)(3). Also, consistent with other new sections (e.g. section 15064(h)(3)) impacts are adequately addressed if the project is consistent with an adopted *plan*; there is no additional requirement that the agency find the impacts have been adequately addressed in the EIR for the plan. Therefore, the last clause of the existing guideline should be deleted to make this section consistent with the amendments.

Finally, as mentioned above, SB 375 provides that if a project complies with either the SCS or APS, then the CEQA document “shall not be required to reference, describe or discuss (1) growth inducing impacts; or (2) any project specific or *cumulative impacts* from cars and light-duty truck trips generated by the project on global warming or the regional transportation network.” Public Resources Code §21159.28(a).

Accordingly, we suggest the following modifications:

- (d) Except as provided in Public Resources Code §21159.28(a), previously approved ~~land use documents~~ plans such as water quality control plans, air quality attainment or maintenance plan, integrated waste management plan, general plans, specific plans, regional transportation plans, regional housing allocation plans, habitat conservation plans, natural community conservation plans, regional blueprint plans, climate action plans, sustainable community strategies, alternative planning strategies, statewide plans of mitigation for greenhouse gas emissions and local coastal plans may be used in cumulative impact analysis. A pertinent discussion of cumulative impacts contained in one or more previously certified EIRs may be incorporated by reference pursuant to the provisions for tiering and program EIRs. No further cumulative impacts analysis is required when a project is consistent with a general, specific, master or comparable programmatic plan where ~~the lead agency determines that~~ the regional or areawide cumulative impacts of the proposed project have already been adequately addressed, as defined in section 15152(f), ~~in a certified EIR for that plan.~~

Also, the reference in subsection (f) to past, current and probably future projects does not make sense in the context of greenhouse gas emissions, because a "list of projects" approach does not make sense for the analysis of a cumulative condition that is global in nature. Instead, the Guideline can simply refer to a determination that the project's contribution is cumulatively considerable. Therefore, we suggest:

- (f) Except as provided in Public Resources Code §21159.28(a), an EIR should evaluate greenhouse gas emissions associated with a proposed project when those emissions, ~~when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects,~~ may result in a cumulatively considerable impact to the environment that cannot be mitigated to a level of less than significant.

Section 15152(i) – p. 19:

Use of the word “adequately” in this subsection gives project opponents an opportunity to challenge the support for an adopted plan in the context of an individual project approval; it should be deleted because an adopted plan should be conclusively presumed adequate if it is not challenged during the applicable limitations period. Therefore, we suggest the following modification:

- (i) Project level CEQA documents need not provide additional project-level greenhouse gas emissions analysis or mitigation measures, if the proposed project is consistent with an applicable regional or local plan that ~~adequately~~ addresses greenhouse gas emissions and the plan is one for which an EIR has previously been certified.

CEQA Guidelines Appendix G – p.1:

The introductory note states that the "sample questions" in Appendix G "do not necessarily represent thresholds of significance." While it may be true that the sample questions in Appendix G are not adopted as thresholds of significance under CEQA Guidelines §15064.7, we believe that as written, the note may lead some lead agencies to think that the sample questions cannot be used as significance thresholds. Therefore, we believe that the point can be more clearly made as follows:

NOTE: Lead agencies are cautioned that the following is a sample form and may be tailored to satisfy individual agencies' needs. It may be used to meet the requirements for an initial study when the criteria set forth in the CEQA Guidelines have been met. It is the lead agency's responsibility to determine whether this sample form adequately identifies all environmental issues relevant to the proposed project and the project setting. The sample questions in this form are not mandatory; are intended to encourage thoughtful assessment of impacts; may be used by lead agencies as significance criteria at their discretion; and, do not necessarily represent thresholds of significance.

CEQA Guidelines Appendix G, Section VII(a) and (b) – p. 7:

This section asks “Would the project:

- a) Generate greenhouse gas emissions, either directly or indirectly, that may have a significant impact on the environment, based on any applicable threshold of significance?

Other Appendix G questions do not include “directly or indirectly” as part of the question. While direct and indirect impacts are part of the background general law of CEQA, specifying in one place and not everywhere else may lead to confusion about the implications of doing so. Therefore, this section should delete the reference to ensure consistency.

As noted in the proposed Guidelines, thresholds of significance may be qualitative or simply criteria to assess significance – see section 15064.4. Therefore the term “any” should be omitted, and the question should include a reference to “criteria” rather than “thresholds.”

Accordingly, subsection a) should read:

- a) Generate greenhouse gas emissions, ~~either directly or indirectly~~, that may have a significant impact on the environment, based on ~~any~~ applicable ~~threshold~~ of significance criteria?

Subsection b) asks “Would the project:

- b) Conflict with any applicable plan, policy or regulation of an agency adopted for the purpose of reducing the emissions of greenhouse gases?

As SB 375 provides, inconsistencies with an APS may be considered in determining whether a project may have an environmental effect. Government Code §65080(b)(2)(H)(v). Therefore, (b) should be modified to read:

- b) Conflict with any applicable plan other than an alternative planning strategy if a sustainable community strategy does not apply, policy or regulation of an agency adopted for the purpose of reducing the emissions of greenhouse gases?

CEQA Guidelines Appendix G, Section XVI.

This proposed revision makes extensive changes in the questions to be asked concerning a project's potential impacts to traffic and parking. The proposed deletions to the questions regarding traffic impacts, XVI(a)-(b) give the inappropriate impression that the lead agency should not be analyzing volume to capacity and levels of congestion that the project would create. These are key measures of environmental impact used by cities and counties throughout the state, as well as under the Congestion Management Act.

If the proposed revision is intended to endorse the theory that adverse environmental impacts related to traffic only result from a "substantial increase" in vehicle volume or vehicle miles traveled ("VMT"), then this confuses the size of a project with its environmental impact. Large scale projects, even well planned, transit oriented developments, inherently have more VMTs than smaller projects. *The key is whether there is a street or highway network in place or included in the project to handle this increase in traffic.* Large scale projects should not be labeled as having a significant adverse impact simply because they are larger. In addition, VMTs standing alone are not an appropriate measure of environmental impact. A lead agency should also analyze how a project will affect "per person VMTs" and the emissions related to each vehicle mile traveled. Focusing on the raw number of total VMTs will provide a disincentive for a project to incorporate incentives or mandates for alternative fueled vehicles, which generate the same number of VMTs, but with lower emissions per VMT than existing or alternative developments.

We recognize that VMTs may have a role to play but they should be addressed in a separate provision. Therefore, we suggest returning a) and b) to their existing composition and adding a new c) as follows:

XVI. TRANSPORTATION/TRAFFIC -- Would the project:

a) Cause an increase in traffic which is substantial in relation to the existing traffic load and capacity of the street system (i.e., r~~Result in a substantial increase in either the number of vehicle trips, the volume to capacity ratio on the roads, or congestion at intersections)~~ roadway vehicle volume or vehicle miles traveled?

b) Exceed, either individually or cumulatively, a level of service standard established by the county congestion management agency for designated roads or highways?

c) Cause a substantial increase in the number of vehicle trips, roadway vehicle volume or vehicle miles traveled, which exceeds adopted standards for trips, volumes and vehicle miles traveled that are applicable to the type and size of the project before the lead agency?

~~db)~~ Result in a change in air traffic patterns, including either an increase in traffic levels or a change in location that results in substantial safety risks?

~~ee)~~ Substantially increase hazards due to a design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment)?

~~df)~~ Result in inadequate emergency access?

~~f)~~ Result in inadequate parking capacity?

~~eg)~~ Conflict with adopted policies, plans, or programs supporting alternative transportation (e.g., bus turnouts, bicycle racks)?

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Thank you for considering our comments.

Sincerely,

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