



South Coast Air Quality Management District

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January 30, 2009

Ms. Cynthia Bryant, Director
Governor's Office of Planning and Research
State of California
1400 10th Street
P.O. Box 3044
Sacramento, CA 95812-3044

Re: *Preliminary Draft CEQA Guideline Amendments for Greenhouse Gas
Emissions, January 8, 2009*

Dear Ms. Bryant:

This letter presents the comments of the South Coast Air Quality Management District (SCAQMD) staff on the Preliminary Draft CEQA Guideline Amendments for Greenhouse Gas Emissions released by the Office of Planning and Research (OPR) on January 8, 2009. The SCAQMD staff appreciates the opportunity to comment on these important draft guidelines. The staff comments presented here reflect the SCAQMD's interim significance thresholds for greenhouse gases (GHGs) from stationary sources, which were adopted by the SCAQMD Governing Board on December 5, 2008. In addition, these comments reflect rules providing methods for mitigating GHG emissions, which are part of the SCAQMD Governing Board Chairman's 2008 Initiatives, and which have either been adopted by the Board or are proposed for adoption in February.

Significance Thresholds

The SCAQMD developed its interim significance threshold for GHGs from stationary sources through a robust stakeholder working group process, which included staff from OPR, the California Air Resources Board (CARB), and the Office of Attorney General. The working group provided input to staff at seven meetings between April and November, 2008, all of which were open to the public. Ultimately, the Governing Board on December 5, 2008 adopted an interim threshold for stationary sources which was

based on a tiered approach. (The Board deferred for later consideration the adoption of any thresholds for commercial and residential sources.) The tiered approach first looks at whether the project is exempt under any applicable CEQA exemption; if not, further analysis must occur. The second tier considers whether the project is consistent with a locally or regionally adopted GHG reduction plan that meets certain criteria. If the project is not consistent with such a plan, or there is no such plan, then a screening level with a numerical threshold in tons per year is applicable. The numerical threshold we established was 10,000MTCO₂e/yr, which corresponds to a threshold which captures 90% of stationary source GHG emissions. We believe the 90% emission capture rate is a reasonable cut-off point, especially since staff estimates that the emissions from projects that will not exceed this threshold would account for slightly less than one percent of the future statewide GHG emissions target (85 MMTCO₂e/yr) (Tier 4, a set of performance-based compliance options, has been deferred for further evaluation and consideration). The SCAQMD's Board-adopted GHG Significance Thresholds may be found at <http://www.aqmd.gov/hb/2008/December/081231a.htm>.

We note that OPR has asked CARB to recommend a method for setting thresholds of significance. It is not clear whether OPR intends to incorporate such CARB recommendations into the proposed amended CEQA Guidelines. If so, we would respectfully request an additional opportunity to comment on any such CARB-recommended methods before they are adopted by OPR. In the meantime, we believe the method used by SCAQMD, i.e. to seek to capture 90% of the emissions from a given source category, is an appropriate method of setting a significance threshold. In addition, it may be appropriate to develop a performance-based significance threshold. (See, e.g. CEQA Guidelines § 15064.7(a), indicating that a threshold of significance may be a "quantitative, qualitative, or performance level of a particular environmental effect....") However, if a performance-based approach is used, we believe it should be accompanied by a numerical threshold above which a project is considered significant even if it complies with performance standards. This will ensure a more thorough analysis of possible mitigation measures that may be available for a larger project, but would not be available, and could not be incorporated into performance standards, for a smaller project.

In the course of developing the SCAQMD's interim CEQA significance thresholds, we received comments from certain stakeholders contending that a source that complies with CARB's AB 32 scoping plan has mitigated its effects to insignificance. We recommend that OPR issue guidance on whether or not that is the case.

Scope of CEQA Analysis

CEQA Guidelines 15277 provides that projects undertaken outside of California are not subject to CEQA if they are subject to review under similar environmental laws, but that "Any emissions or discharges that would have a significant effect on the environment in the State of California are subject to CEQA where a California public agency has authority over the emissions or discharges." The discussion accompanying this section indicates it was developed in response to an Attorney General opinion stating that the definition of "environment" under CEQA did not stop at the borders of the state. We recommend that OPR issue guidance on whether CEQA analysis of the impacts of a project should include impacts outside the state of California, such as use of electricity that may be generated out-of-state. This question may pertain to impacts other than GHG emissions as well as to GHG emissions.

We also recommend that OPR issue guidance on whether a project may mitigate its GHG emissions by obtaining offsets or carrying out a project outside the borders of California. Normally an out of state project would be unlikely to mitigate in-state impacts, so this question does not arise. However, in the case of GHG impacts, it has been argued that emission reductions anywhere in the world could serve to mitigate GHG emissions occurring in California.

Mitigation Measure Guidelines

We appreciate that OPR has proposed to incorporate a new Guideline section, §15126.4(c), "Mitigation Measures Related to Greenhouse Gas Emissions." However, we urge OPR to use the public process it has now initiated to develop even more guidance on appropriate mitigation for GHG emissions. We believe this was the heart of the task given to OPR by SB97 (Pub. Res. C. §21083.05). We believe OPR could provide some examples of programs that could be used to provide real and enforceable mitigation measures. For example, the SCAQMD Governing Board on December 5, 2008, adopted as part of the Chairman's 2008 Initiatives Rule 2701-SoCal Climate Solutions Exchange, which provides for certifying and registering GHG emission reductions, on a voluntary basis, from projects carried out within the South Coast District. Only projects following protocols approved first by CARB and then by the SCAQMD Governing Board may be registered. This helps assure that the emission reductions from those projects will be real, additional, quantifiable, verifiable, and enforceable, and thus may provide appropriate mitigation for CEQA projects. Because the projects are carried out within the SCAQMD, any-co-benefits will also be local.

At its February 6 Board Meeting, the SCAQMD Governing Board is scheduled to consider an additional rule, Proposed Rule 2702-Greenhouse Gas Reduction Program.

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This rule creates a voluntary program whereby persons needing or wanting GHG reduction credits, including for CEQA mitigation purposes, may pay a fee to the SCAQMD to cover the costs of implementing a GHG emission reduction project. The SCAQMD will issue requests for proposals for projects to generate credits, which the SCAQMD staff will monitor and verify. As under Rule 2701, the projects must follow protocols that have been approved by CARB and also by the SCAQMD Governing Board. This program provides an additional option which can provide high-quality credits for persons needing GHG reductions for CEQA mitigation. However, both programs are strictly voluntary, and it is not the Board's intent to require use of these programs for CEQA mitigation.

If OPR establishes a GHG Mitigation Clearinghouse, we would welcome the inclusion of Rule 2701 and Rule 2702 can be listed and described, once OPR staff has concluded they will provide high-quality credits. This will provide a helpful resource to lead agencies and project proponents that are looking for ways to mitigate GHG impacts for CEQA purposes.

In addition, we have a question regarding proposed amended Guideline § 15126.4(c) (5), which provides as follows:

“(5) Where mitigation measures are proposed for the reduction of greenhouse gas emissions through off-site measures or purchases of carbon offsets, these mitigation measures must be part of a reasonable plan of mitigation that the relevant agency commits itself to implementing.”

Our question is, if an off-site GHG measure, or purchase of carbon offsets, implemented by the project proponent *fully mitigates* the GHG impacts of that project, why does the off-site mitigation, or purchase of carbon offsets, have to be part of a plan of mitigation implemented by the relevant agency? And in particular, what is meant by a “plan of mitigation implemented by the relevant agency.”?

This proposed new Guideline appears to be based on the two cases which have been added to the citation of authority for Section 15126.4, i.e. *Anderson First Coalition v. City of Anderson* (2005) 130 Cal. App. 4th 1173, 1187, and *City of Marina v. Board of Trustees of the California State University* (2006) 39 Cal. 4th 341. . These cases stand for the proposition that “A single project’s contribution to a cumulative impact is deemed less than significant if the project is required to implement or fund its “fair share” of a mitigation measure designed to alleviate the cumulative impact. (Guidelines, §15130, subd. (a)(3)) Fee-based mitigation programs for cumulative traffic impacts—based on fair-share infrastructure contributions by individual projects—have been found to be adequate mitigation measures under CEQA. (citation omitted.) To be adequate, these

mitigation fees, in line with the principle discussed above, must be part of a reasonable plan of actual mitigation that the relevant agency commits itself to implementing.” *Anderson First*, 130 Cal. App. 4th at 1188. (See also *City of Marina*, 39 Cal. 4th at 364 “...a project proponent may satisfy its duty to mitigate its own portion of a cumulative environmental impact by contributing to a regional mitigation fund.”)

As is apparent from the above quote, the reason for the requirement for a plan of mitigation implemented by the relevant agency is because absent such a plan, there is no assurance that impacts will be mitigated., even if the project pays for its fair share of such mitigation. This is for two reasons: it is not in the power of the project proponent to conduct the mitigation, and full mitigation requires the “fair share” contribution of other projects, not just the one in issue. That concern does not exist when a mitigation measure carried out by the project proponent fully mitigates the adverse impacts of a given project. It appears that the Guideline in its present form could prevent a project from implementing mitigation measures next door, even if those measures fully mitigated its impacts, if the agency did not have some kind of “plan” for implementing such measures. This does not seem to be a result required by CEQA.

We therefore recommend that the above-quoted Guideline (§15126.4(c)(5)) be revised to read as follows:

“ Where mitigation measures are proposed for the reduction of greenhouse gas emissions through off-site measures or purchases of carbon offsets, *and the mitigation has not been secured by the time of project approval*, these mitigation measures must be part of a reasonable plan of mitigation that the relevant agency commits itself to implementing.”

We believe this language would also alleviate the concern expressed by a commenter at OPR's January 22 workshop that the Guideline in its present form could limit mitigation projects to those carried out by a public agency.

In addition, we recommend that OPR define what is meant by “a reasonable plan of mitigation that the relevant agency commits itself to implementing.” We believe the concern this Guideline seeks to address is two-fold: First, that there be assurance that the mitigation is actually implemented, and second, that there be assurance that other projects are also required to contribute their “fair share” of mitigation, including fees, if the contribution of other projects is necessary to fully implement the mitigation measure. However, the use of the term “plan” may be considered to imply some sort of regional program such as an air quality management plan, which may not always be present.

Therefore, we Recommend that OPR add to the above-quoted Guideline the following definitional language: "Such a plan must assure that the mitigation measure is actually implemented, and that there is a program in place to obtain a fair share contribution towards that mitigation from other projects, where such contribution is necessary to fully mitigate the impact."

Priority of Mitigation

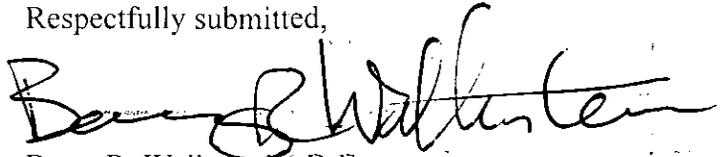
Finally, we recommend that the OPR Guidelines include recommendations for a priority order or hierarchy of types of mitigation measures. This guidance would be aimed at maximizing the assurance that real mitigation will occur, as well as the likelihood that local co-benefits will occur in terms of criteria and toxic air contaminants. We recommend the following order of preference for mitigation measures, which was approved by the SCAQMD Governing Board at its December 5, 2008 Meeting:

- Incorporate GHG reduction features into the project design, e.g. increase a boiler's energy efficiency, use materials with a lower global warming potential than conventional materials, etc.
- Implement onsite measures that provide direct GHG emission reductions onsite, e.g. replace onsite combustion equipment (boilers, heaters, steam generators, etc.) with more efficient combustion equipment, install solar panels on the roof, eliminate or minimize fugitive emissions, etc.
- Implement neighborhood mitigation measure projects that could include installing solar power, increasing energy efficiency through replacing low efficiency water heaters with high efficiency water heaters, increasing building insulation, using fluorescent bulbs, replacing old inefficient refrigerators with efficient refrigerators using low global warming potential refrigerants, etc.
- Implement in-district mitigation measures such as any of the above identified GHG reduction measures; reducing vehicle miles traveled (VMT) through greater rideshare incentives, transit improvements, etc.
- Implement in-state mitigation measures, which could include any of the above measures.
- Implement out-of-state mitigation measure projects, which may include purchasing offsets if other options are not feasible.

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Thank you again for the opportunity to comment on this important proposal. We look forward to working with OPR to further develop the proposed GHG CEQA Guidelines. Should you have any questions or wish to discuss this matter further, please contact me at 909-396-2100, or Dr. Elaine Chang, Deputy Executive Officer, Planning, Rule Development and Area Sources, at 909-396-3186.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Barry R. Wallerstein". The signature is fluid and cursive, with a long horizontal stroke at the end.

Barry R. Wallerstein, D.Env.,
Executive Officer

BRW/BB

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cc: Ian Peterson