



ARNOLD SCHWARZENEGGER
GOVERNOR

STATE OF CALIFORNIA
GOVERNOR'S OFFICE OF PLANNING AND RESEARCH



CYNTHIA BRYANT
DIRECTOR

April 13, 2009

Honorable Mike Chrisman
California Secretary for Natural Resources
Natural Resources Agency
1416 Ninth Street, Suite 1311
Sacramento, CA 95814

Re: Transmittal of the Governor's Office of Planning and Research's Proposed SB97
CEQA Guidelines Amendments to the Natural Resources Agency.

Dear Secretary Chrisman:

This packet contains the Governor's Office of Planning and Research's (OPR) proposed amendments to the CEQA Guidelines (Proposed Amendments) to address analysis and mitigation of the potential effects of greenhouse gas emissions. OPR developed the Proposed Amendments pursuant to Public Resources Code section 21083.05, which states in part:

On or before July 1, 2009, the Office of Planning and Research shall prepare, develop, and transmit to the Resources Agency guidelines for the mitigation of greenhouse gas emissions or the effects of greenhouse gas emissions as required by this division, including, but not limited to, effects associated with transportation or energy consumption.

In developing the Proposed Amendments, OPR actively sought the input, advice, and assistance of numerous interested parties and stakeholder groups. Over the past year and a half, OPR has met with representatives of numerous agencies and organizations to discuss the perspectives of the business community, the environmental community, local governments, non-governmental organizations, state agencies, public health officials, CEQA practitioners and legal experts. In addition, OPR took advantage of numerous regional and statewide conferences to raise awareness about CEQA and Greenhouse Gas Emissions among diverse audiences and to seek their input.

After publishing a preliminary draft on January 8, 2009, OPR continued to conduct extensive public outreach, including two public workshops, to receive input on the proposed amendments. Both public workshops were well attended, drawing over two hundred participants representing various California business interests, environmental

organizations, local governments, attorneys and consultants. In addition to oral comments at its workshops, OPR also received over eighty written comment letters.

Some comments suggested additional amendments to the CEQA Guidelines. Other comments sought clarification on the proposed language in the amendments. OPR has incorporated those suggestions and clarifications to the extent possible. Some suggestions were not appropriate for inclusion, however, due to conflict with existing statutory authority and case law. The Proposed Amendments reflect OPR's effort to consider all viewpoints in a manner consistent with CEQA.

Summary of OPR's Proposed Amendments

Analysis of greenhouse gas emissions in a CEQA document presents unique challenges to lead agencies. Such analysis must be consistent with existing CEQA principles, however. Therefore, the Proposed Amendments suggest relatively modest changes to various portions of the existing CEQA Guidelines. Modifications address those issues where analysis of greenhouse gas emissions may differ in some respects from more traditional CEQA analysis. Other modifications are suggested to clarify existing law that may apply both to analysis of greenhouse gas emissions as well as more traditional CEQA analyses. Except where expressly stated to the contrary, OPR intends the Proposed Amendments to incorporate existing law. The incremental approach in the Proposed Amendments reflects Public Resources Code section 21083(f), which directs OPR to regularly review the Guidelines and propose amendments as necessary.

The Proposed Amendments recommend changes to or additions of fourteen sections of the existing Guidelines, as well as updates to Appendices F (Energy Conservation) and G (Environmental Checklist Form). A summary of the Proposed Amendments is below.

Determining Significance

A new section is proposed to assist lead agencies in determining the significance of the impacts of greenhouse gas emissions. (See section 15064.4.) Consistent with developing practice, this section urges lead agencies to quantify the greenhouse gas emissions of proposed projects where possible. In addition to quantification, this section recommends consideration of several other qualitative factors that may be used in the determination of significance.

This section evolved as a result of OPR's public outreach process. For example, a sentence has been added to the beginning of section 15064.4 to incorporate the standards of determining significance in section 15064, and to reiterate that the determination of significance calls for the lead agency to exercise its judgment. Further, the phrase "associated with" in the preliminary draft was replaced by "resulting from" to conform to existing CEQA law that requires analysis only of impacts caused by the project. The change is also necessary to avoid an implication that a "life-cycle" analysis is required.

Descriptions of emissions were drafted to be more general to capture all relevant emissions resulting from a project and to avoid any suggestion that lead agencies should only consider emissions related to traffic and energy use, for example. Similarly, lead agencies are encouraged to consider the full range of project features that may increase or decrease greenhouse gas emissions as compared to the existing setting.

Regarding the use of thresholds, section 15064.4 confirms that if it chooses to rely on a threshold developed by some other entity, the lead agency must determine that an existing threshold is appropriate for the project.

Finally, some comments suggested that the California Air Resources Board's Scoping Plan, by itself, provides sufficient CEQA analysis of greenhouse gas emissions, and that projects that are consistent with the Scoping Plan should not require further analysis. While specific regulations that will be developed to achieve the targets and goals set in the Scoping Plan might be used, consistent with the standards in existing section 15064(h)(3), in a cumulative impacts analysis, the Scoping Plan itself is not a regulatory instrument. Therefore, the Proposed Amendments have been revised to clarify that consistency with the Scoping Plan, by itself, is not a sufficient basis to determine that a project's emissions of greenhouse gases is not cumulatively considerable.

Thresholds of Significance

A new subdivision to section 15064.7 is proposed to clarify that in developing thresholds of significance, a lead agency may appropriately look to thresholds developed by other public agencies, including the California Air Resources Board's recommended CEQA Thresholds, or suggested by other experts, such as the California Air Pollution Control Officers Association, so long as any threshold chosen is supported by substantial evidence. (See section 15064.7(c).)

Statement of Overriding Considerations

A new subdivision was added to clarify that the benefits of a project that may be considered in a statement of overriding considerations may include not just local benefits, but also regional or statewide benefits. (See section 15093(d).) OPR does not intend the addition to section 15093 to encourage local versus regional considerations or to imply that regional considerations are more important than local considerations. Rather, a lead agency remains free to consider a broad range of factors in determining whether a project's benefits override its adverse impacts.

Mitigation

A new subdivision was added to assist lead agencies in determining methods to mitigate the effects of greenhouse gas emissions. (See section 15126.4(c).) This section emphasizes that the general standards for mitigation in subdivision (a) of section 15126.4 apply to mitigation of greenhouse gas emissions. Language in this

subdivision intentionally refers to emissions generally to avoid any suggestion that a lead agency need only mitigate for particular emissions, from energy and fossil fuel consumption for example. The subdivision does direct lead agencies to Appendix F, however, for mitigation measures that may reduce a project's energy use.

Additionally, this new subdivision emphasizes compliance with a plan among the list of potential mitigation measures to emphasize the advantages of programmatic planning. However, to qualify as mitigation, specific measures from an existing plan must be identified and incorporated into the project; general compliance with a plan, by itself, is not mitigation. Finally, this subdivision reiterates that mitigation for planning level decisions may include the development of specific measures to be implemented on a project-by-project basis.

Cumulative Impacts

A new subdivision is proposed to emphasize that the effects of greenhouse gas emissions are cumulative, and should be analyzed in the context of CEQA's requirements for cumulative impacts analysis. (See section 15130(f).) The new subdivision has been revised from its preliminary draft in response to comments and to focus on a project's incremental contribution to an overall cumulative effect. The revision also clarifies that a summary of projections approach may be used in an analysis of greenhouse gas emissions.

Plans, Incorporation by Reference and Tiering

Given that impacts resulting from greenhouse gas emissions are cumulative in nature, significant advantages may result from analyzing such impacts on a programmatic level. If analyzed properly, later projects may then tier, incorporate by reference, or otherwise rely on that programmatic analysis. Thus, several amendments were proposed to identify plans that may provide some level of analysis of greenhouse gas emissions, and to suggest how those plans may be used in later CEQA analyses. Changes to that effect were recommended in sections 15064(h)(3) (determining the significance of cumulative impacts), 15125 (environmental setting), 15130(b)(1)(B) (using a summary of projections in a cumulative impacts analysis), 15130(d) (plans that may be used in a cumulative impacts analysis), 15150 (incorporation by reference), 15152 (tiering), and 15183 (projects consistent with a community plan or zoning).

In response to public comments, the Proposed Amendments clarify which plans are appropriate for specific uses throughout the Guidelines. For example, while regional blueprint plans are appropriately discussed as part of the Environmental Baseline in section 15125, such plans would not be appropriately considered in section 15064(h)(3), which permits a lead agency to determine that cumulative impacts are less than significant due to compliance with certain plans.

Further, a new proposed section, 15183.5, will provide additional guidance on tiering of greenhouse gas emissions analyses where environmental impact reports for plans

addressing greenhouse gas emissions have been prepared. That section will also describe the characteristics of greenhouse gas emissions reduction plans that may be used in a tiering context.

Definition

A definition of “greenhouse gas” was added in section 15364.5.

Energy Analysis

Appendix F was revised to clarify that EIRs must specifically consider a project's energy use and efficiency potential. During its outreach efforts on the Proposed Amendments, OPR received some comments referring to the phrase “life-cycle analysis.” OPR finds, however, that the term is capable of different interpretations, and its usage in the Guidelines may potentially create confusion. Therefore, references to a “life-cycle analysis” in the existing Appendix F have been revised or eliminated for clarity.

Environmental Checklist

Questions relating to the effects of greenhouse gas emissions were added to the Appendix G Environmental Checklist. Other questions were revised to encourage consideration of forestry impacts and to clarify the proper focus of a traffic impacts analysis. OPR originally proposed deletion of level of service (LOS) references in the Checklist questions related to traffic and transportation. After considering public input, OPR recommends inclusion of revised questions in the Environmental Checklist that recognize the following: (a) the necessity of assessing traffic impacts on intersections, streets, highways and freeways, (b) a lead agency's discretion to choose methodology, including LOS, to assess traffic impacts, (c) existing requirements in Congestion Management Programs, General Plans, ordinances, and elsewhere, and (d) traffic impacts include impacts to pedestrian, non-vehicular and mass-transit circulation.

Miscellaneous

Finally, several minor corrections and clarifications were added in sections 15065, 15086, and 15126.2.

Next Steps

This submittal to the Natural Resources Agency will be posted on the OPR website. The Natural Resources Agency will then begin a formal rulemaking process to certify and adopt the amendments as part of the state regulations implementing CEQA, in accordance with the requirements of the Administrative Procedures Act (APA).

The Natural Resources Agency's rulemaking process will include additional opportunities for public involvement, including comment periods and public hearings.

Secretary Chrisman
Page 6

As required by the APA, the Resources Agency will respond to all public comments in writing before certifying and adopting the amendments.

The rulemaking process will be completed by January 1, 2010, as required by Public Resources Code section 21083.05(b). Names of interested parties on OPR's contact list for the SB 97 CEQA Guidelines process will automatically be placed on the Natural Resources Agency's contact list and will receive notices from the Natural Resources Agency regarding the 2009 CEQA rulemaking.

Please do not hesitate to contact me if I can provide further assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "Cynthia Bryant". The signature is written in a cursive, flowing style.

Cynthia Bryant
Director