

OPR Submits Proposals for Analyzing Greenhouse Gas Emissions *Proposed Changes to CEQA Guidelines Recommend Consideration of Qualitative and Quantitative Factors in Determining Significance of Project Impacts*

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The Governor's Office of Planning and Research ("OPR") recently submitted its draft proposals for analyzing and mitigating the potential effects of greenhouse gas ("GHG") emissions. OPR was required by Senate Bill 97 to submit draft amendments to the California Environmental Quality Act's ("CEQA") Guidelines to the Natural Resources Agency by July 1, 2009. OPR beat this deadline by more than two months.

"The Proposed Amendments and related information can be found on OPR's website at www.opr.ca.gov."

Formal Rulemaking Process to Follow

The Resources Agency will now begin a formal rulemaking process to certify and adopt the Proposed Amendments as part of the state CEQA Guidelines, as required by the Administrative Procedure Act. The rulemaking process must be completed by January 1, 2010 and will involve public comment periods and public hearings.

Summary of Proposed Amendments

The Proposed Amendments are very similar to the discussion draft issued by OPR on January 29, 2009, but do include several revisions and clarifications. Overall, the Proposed Amendments recommend changes to, or additions of, fourteen sections of the existing Guidelines, as well as updates to Appendix F: Energy Conservation, and Appendix G: Environmental Checklist Form. Some of the significant proposed changes are:

Determining Significance

Proposed Guideline § 15064.4. provides guidance for local agencies in determining the significance of impacts resulting from a proposed project's GHG emissions and urges lead agencies to quantify emissions from projects. The proposed description of GHG emissions seeks to encompass all relevant emissions resulting from a project, not just those resulting from traffic and energy use. Lead agencies would have the discretion to choose between (i) using a model or methodology to quantify GHG emissions, and to select which model or methodology to use, or (ii) relying on a qualitative analysis or performance based standard.

Thresholds of Significance

Proposed Guideline § 15064.7(c) would allow a lead agency that is establishing a threshold of significance to look to thresholds developed by other public agencies, such as the California Air Resources Board, or suggested by other experts, such as the California Air Pollution Control Officers Association, so long as the threshold chosen is supported by substantial evidence.

Statements of Overriding Considerations

In considering the benefits of a project in a statement of overriding considerations, a lead agency may include not only local benefits, but also regional and statewide benefits. This provision in proposed Guideline § 15093(d) provides a broader range of factors that can be used in determining whether a project's benefits override its adverse impacts.

Mitigation

To assist lead agencies in determining methods to mitigate the effects of GHG emissions, proposed Guideline § 15126.4(c) specifies that the general CEQA mitigation standards also apply to mitigation of GHG emissions. In addition, it provides that compliance with an existing plan or mitigation program may be appropriate mitigation. Of course, to qualify as mitigation, the specific measures from the existing plan must actually be identified and incorporated into the project.

Finally, as with other mitigation measures identified at the planning level, specific measures must be incorporated at the project level.

Cumulative Impacts

Proposed Guideline § 15130(f) emphasizes that the effects of GHG emissions are cumulative, and should be analyzed in the context of CEQA's existing cumulative impacts analysis. This subdivision focuses on a project's incremental contribution to an overall cumulative effect and clarifies that the summary of projects approach may be used to analyze GHG emissions.

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Plans and Tiering

Because GHG emissions are cumulative, the Proposed Amendments identify plans that may provide some analysis of GHG emissions and suggest how these plans may be used in subsequent CEQA analyses. The Proposed Amendments clarify which regional and statewide plans are and are not appropriate for use in CEQA analysis. For example, a plan may establish a baseline but may not be appropriate for determining cumulative impacts. The Proposed Amendments also specify that, as with other impacts, a project-level environmental assessment does not need to evaluate GHG emissions if the project is consistent with a local plan that adequately addresses the issue and for which an EIR was already prepared. (Guideline § 15183.5.)

Energy Analysis and Deletion of "Life Cycle"

Appendix F, which deals with energy conservation, was revised to clarify that EIRs must specifically consider a project's energy use and efficiency potential. Of note, OPR has deleted any references to the term "life cycle analysis" because based on submitted comments, OPR found that the phrase is subject to differing interpretations and could cause confusion.

Environmental Checklist - Level of Service

Appendix G, which is the sample environmental checklist, is proposed to be amended to add questions relating to the effects of GHG emissions and the consideration of forestry impacts. Of greatest interest to most local agencies are the proposed changes to the traffic sections. Originally OPR proposed deleting all references to level of service ("LOS") in the Checklist questions related to traffic and

transportation and replacing this with references to vehicle miles traveled ("VMT"). This raised great concern with the discussion draft. The current proposed Guidelines now include revised Checklist questions that recognize: (a) the need to assess traffic impacts on intersections, streets, highways, and freeways; (b) a lead agency's discretion to choose a methodology to assess traffic impacts, including LOS; (c) existing requirements such as Congestion Management Programs, General Plans and the like; and (d) traffic impacts to pedestrian, non-vehicular, and mass-transit circulation.

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