

SUMMARY OF OPR'S PROPOSED CEQA GUIDELINES AMENDMENTS

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On April 13, 2009, the Governor's Office of Planning & Research (OPR) transmitted Proposed CEQA Guidelines Amendments to the Natural Resources Agency to address Greenhouse Gas mitigation as required by Senate Bill 97 (2007). The Natural Resources Agency must publish the Amended Guidelines, with any revisions it makes, as of January 1, 2010. The following is a section-by-section summary of the Proposed Amendments.

§ 15064: Determining the Significance of Environmental Effects Caused by a Project

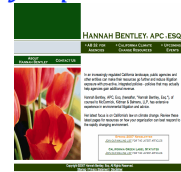
Subsection (h)(3), regarding cumulative effects, provided that a lead agency may determine that a project's incremental contribution to a cumulative effect is not cumulatively considerable if the project would comply with "the requirements in a previously approved plan or mitigation program" that had "specific requirements [to] avoid or substantially lessen the cumulative problem."

- The amendments would add a parenthetical describing a nonexclusive list of types plans that would qualify: water quality control, air quality attainment or maintenance, integrated waste management, habitat conservation, natural community conservation plans "or plans or regulations for the reduction of greenhouse gas emissions."
- The amendments would add that when relying on the plan or program, the lead agency should explain how the particular requirements of the plan or program would ensure that the project's incremental contribution would not be cumulatively considerable.

§ 15064.4: Determining the Significance of Greenhouse Gas Emissions

OPR proposes to add this Section under its authority under SB 97. The new proposed section provides

- A lead agency should make a good faith effort based on available information to describe, calculate or estimate the amount of greenhouse gas emissions resulting from a project.



- The agency has discretion to determine whether to use a model or methodology of its choice (explaining the model’s limitations) or a qualitative analysis or performance based standards.
- The agency “may consider” the extent to which the project may increase or reduce GHG emissions relative to the “existing environmental setting,” whether the project exceeds a threshold of significance the agency finds applies to the project (see discussion of §15064.7, below) the extent to which the project complies with the specific requirements or regulations of a statewide, regional or local plan to reduce GHG emissions, applicable to the project’s incremental emissions, as adopted by a relevant public agency after public review. However, if there is substantial evidence that the project’s incremental emissions will still be cumulatively considerable, an EIR is required.

NOTE: OPR’s cover letter to the Natural Resources Agency makes clear that ARB’s Scoping Plan does not qualify as a plan to reduce GHG emissions under this provision, as it is not specific and not adopted by regulation.

§ 15064.7: Thresholds of Significance

The existing 15064.7 provides that an agency could develop thresholds of significance consisting of a quantitative, qualitative or performance level relating to a particular environmental effect so long as that threshold is adopted by ordinance, resolution, rule or regulation in a public review process and supported by substantial evidence. OPR’s proposed amendments would add a new subsection (c) providing that:

- A lead agency may consider thresholds of significance previously adopted or recommended by “other public agencies or recommended by experts, *if* the lead agency’s decision is supported by substantial evidence.

§ 15065: Mandatory Findings of Significance

OPR proposes to amend this existing section on mandatory findings of significance to provide:

- Mitigated negative declarations are permissible where mitigation measures are incorporated into a project prior to the commencement of “public” review, rather than “preliminary” review, as the section read previously.



§ 15086: Consultation Concerning Draft EIR

Proposed amendment simply corrects a reference to the “State Air Resources Board” to call it the “California Air Resources Board.”

§ 15093: Statement of Overriding Considerations

OPR proposes to add a new subsection (d) to the existing section on Overriding Considerations to provide:

- When a lead agency makes a Statement of Overriding Considerations, it may consider adverse environmental effects in the context of region-wide or statewide environmental benefits.

§ 15125: Environmental Setting

OPR proposes to change existing subsection (d) to add to the list of plans, which an EIR must address, inconsistencies: specific plans, regional blueprint plans, and greenhouse gas reduction plans.

§ 15126.2: Consideration and Discussion of Significant Environmental Impacts

OPR proposes to amend existing subsection (c) simply by adding a citation for the proposition that to make clear that “significant irreversible environmental changes which would be caused by the proposed project should it be implemented” need only be addressed only in cases (1) where the lead agency is adopting a plan policy or ordinance, (2) where the project requires the preparation of an EIR/EIS, or (3) where the lead agency is a Local Agency Formation Commission adopting a resolution making determinations. *See* Pub. Res. Code § 21100.1.

15126.4: Consideration and Discussion of Mitigation Measures Proposed to Minimize Significant Impacts

OPR proposes to add a new subsection (c) regarding Mitigation Measures Related to Greenhouse Gas Emissions. The subsection provides that feasible means of mitigating GHG emissions “may include but not be limited to”



1. Measures in an existing plan or mitigation program that are required as part of the lead agency's decision on the project
2. Reductions in emissions through implementation of project features or other measures including those specified in Appendix F to the Guidelines [on Energy Efficiency, also amended, see below].
3. Off-site measures including offsets
4. Measures that sequester GHGs
5. In the case of the adoption of a plan such as a general plan, long range development plan or greenhouse gas reduction plan, mitigation may include specific measures that can be implemented on a project-by-project basis or measures in an adopted ordinance or resolution on reducing emissions.

§ 15130: Discussion of Cumulative Impacts

OPR proposes to alter the wording of subsection (b), which covers how cumulative impacts should be analyzed, and provides either for a list of past, present and future relevant projects, or a summary of projections. With regard to the summary of projections, OPR would alter the existing wording to indicate:

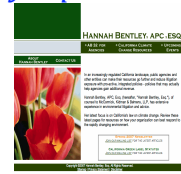
- Regional Transportation Plans, greenhouse gas reduction plans, as well as general plans previously specified in the subsection
- Prior certified EIRs for such plans would qualify
- These documents could be supplemented with additional information including regional modeling.

OPR further proposes to alter subsection (d) to again make reference to previously approved general plans, RTPs, and greenhouse gas reduction plans, as well as specific plans, as documents that can be used.

Finally, OPR proposes to add a new subsection (f) to specifically provide that an EIR shall analyze GHG emissions from a proposed project if its incremental contribution may be cumulatively considerable.

§ 15150: Incorporation by Reference

OPR simply seeks to amend the section to add GHG emissions descriptions to the list of items that can be discussed by incorporation by reference.



§ 15183: Projects Consistent with a Community Plan or Zoning

Section 15183 already provides that if an impact is not particular to a parcel or project and that impact can be mitigated by the imposition of “uniformly applied development policies or standards,” then an additional EIR is not required solely based on that impact.

- OPR proposes to amend the section to indicate that, among other types of documents that qualify, requirements for GHG reductions as set forth in an adopted land use plan, policy or regulation would qualify as a uniformly applied development policies or standards.

§ 15183.5: Tiering and Streamlining the Analysis of Greenhouse Gas Emissions

OPR proposes to add a new subsection here regarding tiering and streamlining in the particular case of GHG emissions. In summary, the section

- Indicates that existing streamlining methods apply, including tiering (15152), Program EIRs (15168), Master EIRs (15175-79.5), EIRs for Specific Plans (15182), and EIRs for General Plans, Community Plans or Zoning (15183).
- States that public agencies may choose to adopt a GHG Reduction Plan which can be used in cumulative impact analysis in later documents
- Provides that if the GHG Reduction Plan is used in later documents, the reliance upon it to adopt the present project must be based on substantial evidence, or else a further EIR is required.
- Specifies that a GHG Reduction Plan “can” be adopted by public process after environmental review. The elements of a GHG Reduction Plan “may include”
 - Quantifying GHG emissions from a specific area over a specified period of time
 - Establishing a threshold below which emissions would not be cumulatively considerable
 - Identifying emissions from actions or categories of actions
 - Specifying measures including performance standards that would collectively reduce emissions if adopted on a project by project basis (if supported by substantial evidence)
 - Establishing mechanisms for monitoring plan’s progress

NOTE – Other Guidelines sections would suggest that the GHG Reduction Plan would probably have to be adopted by public process after environmental review.



- Recognizes the infill and transit priority projects as adopted and modified by SB 375 (see Pub. Res. Code §§ 21152, 21155.2, and 21155) and are special situations allowing streamlining.

§ 15164.5: Greenhouse Gas (Definition)

OPR proposes to add this section to define “greenhouse gas” for CEQA purposes. The definition states that definition “includes but is not limited to” the six gases referred to in AB 32.



APPENDIX F: ENERGY CONSERVATION

Proposed amendments further emphasize importance of long-term energy conservation over short-term cost, and to include water conservation and waste reduction as relevant to energy conservation.

APPENDIX G: INITIAL STUDY CHECKLIST

Appendix G would be modified to

- Specify that impacts not referred to in the sample checklist must still be addressed if potentially significant
- Clarify that the sample questions are not necessarily thresholds of significance for adoption
- Add “Forest” Resources to the analysis of impacts to Agricultural Resources, and to provide additional questions regarding forestry inventory and conservation in that Section
- Add a new Section in the checklist on Greenhouse Gas Emissions
- Revise the analysis of Transportation/Traffic such that a lead agency now would have to address system capacity and alternative modes of transportation

The GHG Section asks if the project would:

- Generate GHG emissions, directly or indirectly that would have a significant impact
- Conflict with any applicable plan regarding GHG reductions