via electronic and regular mail

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Re: Comments on Proposed Amendments to the State CEQA Guidelines Addressing Analysis and Mitigation of Greenhouse Gas Emissions Pursuant to SB 97

Dear Mr. Calfee:

Thank you for the opportunity to comment on Proposed Amendments to the State CEQA Guidelines Addressing Analysis and Mitigation of Greenhouse Gas Emissions

("Proposed Guidelines"). We appreciate the extensive outreach and work both the Office of Planning and Research and the Resources Agency has done in drafting the Proposed Guidelines. These comments are submitted on behalf of the undersigned organizations and focus on language in the current iteration of the Proposed Guidelines and the accompanying Statement of Reasons.[1]

We strongly support several proposed changes to the Guidelines, including the recognition of impacts to forest resources and the removal of parking criteria from Appendix G. However, in other instances, modification to proposed Guideline text or additional language is needed to better realize the intent articulated in the Statement of Reasons, avoid ambiguity, and ensure consistency with CEQA's existing requirements. For example, while the Statement of Reasons recognizes that a project should quantify its emissions where possible, the text of proposed Guideline § 15064.4(a) can be read to make quantification of emissions entirely discretionary. This outcome is contrary to the intent expressed in the Statement of Reasons and CEQA's requirement that a lead agency "use its best efforts to find out and disclose all that it reasonably can." Guidelines § 15144. In the case of proposed guidance on mitigation of greenhouse gas emissions, more specific guidance is needed to better fulfill the intent of SB 97 and limit the potential for the adoption of mitigation of questionable effectiveness. Guidance is also needed on the potential effect of climate change on project impacts and human safety. While the Statement of Reasons recognizes that the consideration of the effect of climate change on a project is required under CEQA, the Guidelines fail to explicitly address this important issue. As Resources has acknowledged that "some lead agencies will not seriously consider an environmental issue unless it is specifically mentioned in the [Appendix G] checklist," there is no legitimate basis to omit explicit guidance on the evaluation of the effects of climate change on project impacts and human safety from the Proposed Guidelines. (Statement of Reasons at 64.)[2]

It is also important that the Statement of Reasons be consistent with CEQA and avoid ambiguous statements that could be interpreted to support an erroneous analysis of the impacts of a project's greenhouse gas emissions. We appreciate and concur with much of the discussion in the Statement of Reasons, including reference to the fair argument standard and the recognition that traffic, by itself, is not necessarily an indicator of a potentially significant impact. However, other aspects of the Statement of Reasons are problematic. For example, the Statement of Reasons fails to clearly recognize that the duty to analyze global warming impacts under CEQA is independent of AB 32. The Statement of Reasons also contains misstatements concerning the evaluation of emissions relative to the existing baseline and the potential duty to analyze lifecycle emissions under CEQA.

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[1] Although the focus of these comments is narrow, we continue to stand by earlier recommendations that have not yet been incorporated into the Guidelines. Earlier comment letters, submitted on September 24, 2008 and February 2, 2009, are included as attachments for inclusion in the administrative record of this rulemaking.

[2] Citations to the Statement of Reasons apply the numbering in the Table of Contents to the body of the document.

We hope that Resources will carefully consider our suggested improvements to the Proposed Guidelines and Statement of Reasons and modify these documents accordingly.

COMMENTS ON PROPOSED GUIDELINES

I. As Currently Drafted, Section 15064.4(a) Does Not Fully Convey the Agency's Intent That GHG Emissions Be Quantified Where Possible and Is Contrary to CEQA's Informational Mandates.

Consistent with CEQA's emphasis on informational disclosure, the Statement of Reasons properly recognizes that "lead agencies should quantify GHG emissions where quantification is possible." (Statement of Reasons at 17.) As the Statement of Reasons observes, quantification of the greenhouse gas emissions resulting from a project "is reasonably necessary to ensure an adequate analysis of GHG emissions …. [e]ven where a lead agency finds that no numeric threshold of significance applies to a proposed project." (*Id.* at 18.) Not only is quantification of greenhouse gas emissions "possible for a wide range of projects," but it also "informs qualitative factors" of significance and "indicates to the lead agency, and the public, whether emissions reductions are possible, and if so, from which sources." (*Id.*) Thus, where possible, quantitative data is critical to providing "decisionmakers with information which enables them to make a decision which intelligently takes account of environmental consequences." Guidelines § 15151.

Contrary to both the Statement of Reasons and CEQA's informational mandates, proposed Section 15064.4(a) could be read to make quantification of emissions entirely discretionary. After first stating that a lead agency should make a good faith effort to "describe, calculate or estimate the amount of greenhouse gas emissions resulting from the project," Section 15064.4(a) goes on to state that a lead agency may quantify emissions *or* rely on a qualitative analysis or performance based standards. By improperly casting the analysis of project emissions as an either/or proposition, Section 15064.4(a) can mistakenly be interpreted to allow a lead agency to omit readily quantifiable data on project emissions in favor of potentially vague and uninformative qualitative analyses or performance based descriptions of project impacts. This outcome is in direct contravention of CEQA's requirement that a lead agency "use its best efforts to find out and disclose all that it reasonably can." Guidelines § 15144; *see also* § 15151 ("sufficiency of an EIR is to be reviewed in light of what is reasonably feasible."). If Section 15064.4(a) is not clarified, it could present a litigation risk to lead agencies who may now believe that the omission of quantitative data on project emissions is legally defensible in every instance.

In some cases, qualitative or performance based metrics can provide useful information to supplement a quantitative analysis. For example, a qualitative discussion of a small project with few overall GHGs could reveal that the project is inefficient for its size and identify additional mitigation opportunities. Qualitative or performance based standards may also be helpful where quantitative methodologies do not exist to measure emissions from all or part of a particular project. However, as the Statement of Reasons acknowledges, where quantification is reasonably feasible, a qualitative or performance based description of a project's emissions is not a legitimate substitute for a quantitative analysis. *See* Guidelines § 15151 (EIR must reflect "good faith effort at full disclosure" and evaluate environmental effects to extent "reasonably feasible").

To ensure that proposed Section 15064.4(a) effectuates the intent articulated in the Statement of Reasons and does not conflict with CEQA's existing requirements, Section 15604.4(a) should be revised to read:

> (a) The determination of the significance of greenhouse gas emissions calls for a careful judgment by the lead agency consistent with the provisions in section 15064. A lead agency should make a good-faith effort, based on available information, to ~~describe,~~ calculate, model, or estimate the amount of greenhouse gas emissions resulting from a project.[3] ~~A lead agency shall have discretion to determine, in the context of a particular project, whether to:~~
>
> > (1) Where quantification of greenhouse gas emissions is reasonably feasible, a lead agency should use a model or methodology to quantify greenhouse gas emissions resulting from a project ~~and which model or methodology to use~~. The lead agency has discretion to select the model it considers most appropriate provided it supports its decision with substantial evidence. The lead agency should explain the limitations of the particular model or methodology selected for use.~~; or~~
> >
> > (2) A lead agency may also rely on qualitative or other performance based standards to further describe project emissions or for estimating the greenhouse gas emissions for those parts of the project that cannot be quantified based on available models or methodologies.

II. Section 15093. Statement of Overriding Considerations

According to the Statement of Reasons, the purpose of amendments to Section 15093 is to affirm that region-wide or statewide environmental benefits can be part of the calculus in determining to approve a project with unavoidable adverse environmental effects. However, by creating a separate subsection, the proposed amendment can be read to improperly signal that region-wide or statewide benefits are more important than localized adverse environmental effects. Moreover, while Section 15093(a) requires that benefits "outweigh" unavoidable adverse environmental impacts, no such language is included in Section 15093(d). By unduly emphasizing region-wide environmental

[3] When dealing with amounts as in the case of greenhouse gas emissions, "describe" does not suggest a meaningful analysis. "[C]alculate, model, or estimate" is consistent with language in OPR's Technical Advisory. OPR, CEQA & Climate Change Technical Advisory at 5 (June 17, 2008).

benefits over local impacts, proposed Section 15093(d) unnecessarily raises environmental justice concerns and creates a potential conflict with existing Section 15093(a).

In justifying the proposed amendment, the Statement of Reasons posits a challenge to "increased housing density within a jobs-rich region to reduce region-wide GHG emissions from vehicles and transportation." (Statement of Reasons at 31.) While this type of project may be generally beneficial, the language of Section 15093(d) is sufficiently broad to also encourage a dismissive view of legitimate environmental justice concerns from projects with more serious localized impacts. For example, a project that is intended to process fuel to meet the state's low carbon fuel standard may have purported benefits for the statewide reduction of greenhouse gases but localized emissions of criteria pollutants from the refining process may have significant environmental and health effects on the local community. While Section 15093(d) is framed in discretionary terms, as a practical matter, it could be read to add weight to regional and state-wide concerns at the expense of local adverse environmental effects that disproportionately occur in environmental justice communities. This outcome is contrary to the Environmental Justice Policy of the California Resource Agency, which is intended to ensure that implementation of Resource Agency policies do not discriminate against, treat unfairly, or cause minority and low income populations to experience disproportionately high and adverse human health and environmental effects from environmental decisions.

To better realize the purpose of the amendments to Section 15093, limit the potential for abuse, and address environmental justice concerns, subsection (d) should be removed and its language incorporated into subsection (a). In this way, no particular project benefit is given special prominence and the "outweigh" language in section (a) is consistently retained for all potential project benefits.

Accordingly, Section 15093 should be modified to provide:

> (a) CEQA requires the decision-making agency to balance, as applicable, the economic, legal, social, technological, or other benefits, <u>including region-wide or statewide environmental benefits,</u> of a proposed project against its unavoidable environmental risks when determining whether to approve the project. If the specific economic, legal, social, technological, or other benefits, of a proposed project outweigh the unavoidable adverse environmental effects, the adverse environmental effects may be considered "acceptable."
>
> (b) When the lead agency approves a project which will result in the occurrence of significant effects which are identified in the final EIR but are not avoided or substantially lessened, the agency shall state in writing the specific reasons to support its action based on the final EIR and/or other information in the record. The statement of overriding considerations shall be supported by substantial evidence in the record.

> (c) If an agency makes a statement of overriding considerations, the statement should be included in the record of the project approval and should be mentioned in the notice of determination. This statement does not substitute for, and shall be in addition to, findings required pursuant to Section 15091.
>
> ~~(d) When an agency makes a statement of overriding considerations, the agency may consider adverse environmental effects in the context of region-wide or statewide environmental benefits.~~

III. Section 15126.4. Consideration and Discussion of Mitigation Measures Proposed to Minimize Significant Effects

Mitigation of greenhouse gas emissions presents new issues for which specific guidance is needed. For example, unlike the mitigation of other impacts, proposed mitigation measures for greenhouse gas emissions can be potentially global in reach, cross sectors (e.g. tree planning as purported mitigation for direct industrial emissions), present environmental justice concerns such as treatment of co-pollutants often associated with the release of greenhouse gas emissions, and raise heightened risks that proposed mitigation activities will not ultimately result in claimed emission reductions. While we are mindful that guidance on the mitigation of greenhouse gases not unduly impinge upon lead agency discretion or be inconsistent with caselaw, we encourage Resources to better fulfill the intent of SB 97 and provide more specific guidance to lead agencies that address the unique issues related to the mitigation of greenhouse gas emissions. Our suggestions follow.

A. Add Language Requiring Additionality

The proposed Guidelines should specifically remind lead agencies that to qualify as mitigation, off-site measures must occur as a result of the project. It has long been recognized that the legitimacy of off-site mitigation of greenhouse gas emissions depends on whether the off-site reductions are in addition to business-as-usual activities.[4] While "additionality" is a term that has been coined in the context of greenhouse gas mitigation, the concept that off-site mitigation is only effective when it occurs as a result of the project is already articulated in CEQA case law. *See, e.g., Riverwatch v. County of San Diego*, 175 Cal.App.4th 768 (2009) (noting trial court ruling that mitigation was inadequate because it relied on acreage already required to be preserved under local

[4] *See, e.g.*, UNFCCC, Kyoto Protocol, Art. 12 § 5 (project activities under the Clean Development Mechanism must provide "[r]eal, measurable, and long-term benefits related to the mitigation of climate change" and result in "[r]eductions in emissions that are additional to any that would occur in the absence of the certified project activity."); GAO, *Carbon Offsets: The U.S. Voluntary Market is Growing, but Quality Assurance Poses Challenges for Market Participants*, GAO-09-1048 (Aug. 2008) at 25 ("According to most stakeholders and key studies, additionality is fundamental to the credibility of offsets because only offsets that are additional to business-as-usual activities result in new environmental benefits.").

ordinance); *San Bernardino Valley Audubon Society v. Metropolitan Water Dist.*, 71 Cal.App.4th 382, 397 (1999) (accepting fair argument that mitigation bank allowing for resale of mitigation rights on same parcel of land is inadequate to compensate for take of endangered and threatened species).

While it may appear self-evident that a project proponent cannot legitimately mitigate project impacts by pointing to measures that would have otherwise already have occurred, this is exactly what is currently being proposed by certain lead agencies. For example, the San Joaquin Valley Air Pollution Control District has proposed a rule allowing for the banking of greenhouse gas emissions for use as CEQA mitigation that result from actions that are already required by law. Under the "surplus" rule, greenhouse gas reduction benefits that are incidental to a regulation or other required action, such as compliance with preexisting regulations aimed at reducing criteria pollutants, could be banked. (SJVAPCD, Draft Staff Report, Rule 2301 (Emission Reduction Credit Banking) at 5 (June 30, 2009); Proposed Rule § 4.5.3 (requiring greenhouse gas emissions reductions to be "surplus".) These "banked" credits could then be used for projects that are required to undergo CEQA review, reducing the amount of emissions that otherwise would be subject to mitigation. By allowing participants to take credit for the ancillary benefits of actions they were otherwise required to do, claimed reductions are illusory, undercut genuinely additional greenhouse gas off-site mitigation, and cannot validly be used for CEQA purposes. Absent specific guidance from Resources, this type of gamesmanship will only proliferate and result in needless additional litigation. To clarify that greenhouse gas emissions must be additional to qualify as mitigation, the following provision should be added to Section 15126.4(c):

> (6) Emissions reductions that would occur whether or not the project is approved do not constitute mitigation for purposes of this paragraph.

B. Remove Reference to Offsets in Section (c)(3)

As the Statement of Reasons acknowledges, there is still a high degree of uncertainty concerning the efficacy of offsets. As currently drafted, signaling the potential use of offsets as mitigation through parenthetical text in subsection (c)(3) suggests that the use of offsets is appropriate in every instance even where a lead agency, in its discretion, has sound reasons to reject the use of offsets to mitigate project impacts. Because offsets are already a subset of off-site mitigation, are not a defined term, and in particular instances may be of questionable legitimacy,[5] it is more appropriate to discuss their potential use as mitigation in the Statement of Reasons rather than explicitly

[5] *See, e.g.,* GAO, *Carbon Offsets: The U.S. Voluntary Market is Growing, but Quality Assurance Poses Challenges for Market Participants*, GAO-09-1048 (Aug. 2008) at 35 ("Economic analyses of offsets acknowledge difficulties in their use, including baseline determination, additionality, permanence, double-counting, and verification and monitoring. If these criteria are more likely to be satisfied by internal reductions from regulated sources than by offsets, the use of offsets may result in greater emissions.").

reference them in the Guidelines. Accordingly, subsection (c)(3) should be revised to state:

(3) Off-site measures~~, including offsets, ~~to mitigate a project's emissions.

C. Add Specific Language on Effectiveness on Mitigation

In rejecting suggestions that the Guidelines require greenhouse gas mitigation to result in real and verifiable emissions reductions, the Statement of Resources states that "mitigation must be fully enforceable, which implies that the measures is also real and verifiable. Additionally, substantial evidence in the record must support an agency's conclusion that mitigation will be effective." (Statement of Reasons at 40.) Given the legitimate concerns that a project proponent may opt to mitigate project impacts through the use of offsets, which are unlikely to be as effective as on-site measures, it would be helpful to articulate these requirements in the Guidelines themselves. Guideline § 15126.4(a)(1)(B) should be revised to state:

(B) Where several measures are available to mitigate an impact, each should be discussed and the basis for selecting a particular measure, including the effectiveness of that measure, should be identified….

D. Recognize Lead Agency's Discretion to Prioritize Mitigation Measures

It is widely acknowledged that there are legal and policy reasons to give preference to on-site mitigation of a project's greenhouse gas emissions over off-site mitigation or offsets. These reasons include: environmental justice concerns, local co-benefits, ease of monitoring, and the heightened ability to verify and guarantee actual emissions reductions. Resources can, at a minimum, affirm the existing authority of a lead agency to exercise its discretion to determine which mitigation measures a project should implement. *See, e.g.,* Guidelines §§ 15040, 15141 ("A lead agency for a project has authority to require feasible changes in any or all activities involved in the project in order to substantially lessen or avoid significant effects on the environment. . ."), 15126.4(a)(1)(B) ("Where several measures are available to mitigate an impact, each should be discussed and the basis for selecting a particular measure should be identified."); Guideline § 15021(d) ("in determining whether and how a project should be approved, a public agency has an obligation to balance a variety of public objectives, including economic, environmental, and social factors and in particular, the goal of providing a decent home and satisfying living environment for every Californian."). In doing so, Resources can support the work of lead agencies, such as SCAQMD, that have set forth a preference toward on-site mitigation of greenhouse gas emissions and mitigation that also results in co-benefits. *See* SCAQMD, Interim GHG Significance Threshold Staff Proposal (revised version) (Oct. 2008) at 3-16 to 3-17. This language would also support the decision by a lead agency to exercise its authority and require additional on-site or local mitigation where a project proponent initially proposed to mitigate greenhouse gas impacts entirely through carbon offsets.

Language should provide:

(7) Where several measures are available to mitigate greenhouse gas emissions, the lead agency has the authority to determine which measures best serve public objectives, including economic, environmental, and social factors and to prioritize certain types of mitigation over others, including those measures that would provide co-benefits to the local community.

IV. Section 15130. Discussion of Cumulative Impacts

Proposed amendments to Guideline § 15130(b) seem conceptually flawed. As articulated in the Statement of Reasons, a cumulative impacts analysis is a two step process. First, the lead agency determines the extent of the cumulative problem. Second, the lead agency determines whether the project's incremental contribution to the problem is cumulatively considerable. (Statement of Reasons at 43.) Proposed amendments to Section 15130(b) are intended to address step one of this process by allowing a lead agency to rely on land use plans or climate action plans to describe areawide contributions to climate change. (Statement of Reasons at 43-44.) Provided they contain sufficient analysis, these documents may be helpful in describing the cumulative problem of global warming or assessing the significance of the project's incremental contribution to climate change. However, they are not a prerequisite for determining the extent of the cumulative problem of global warming and in cases where these documents do not yet exist, may present unnecessary hurdles to a cumulative impact analysis.

There are currently few, if any, local or regional planning documents for which an EIR has been prepared that contain a summary of projections related to greenhouse gas emissions. In addition, "[a] list of past, present, and probable future projects" or "[a] summary of projections in an adopted local, regional, or statewide plan" are not determinative or necessary to inform the determination of whether climate change is a cumulative problem. Because we know that climate change is a cumulative problem regardless of what additional emissions may occur in the vicinity of the project, the only relevant question for the purpose of a cumulative impacts analysis of climate change impacts is whether the incremental contribution of the project is cumulatively considerable. Therefore, the proposed changes do not alleviate the immediate tension between the terms of Section 15130(b)(1) and a manageable analysis of a statewide or global cumulative effect. Even when local or regional plans are developed, there are other methods of discussing the cumulative problem of greenhouse gas emissions, such as through reference to authoritative scientific analyses such as the IPCC reports.

Rather than attempt to fit a square peg in a round hole, amendments to Section 15130 can simply recognize that for purposes of a climate change analysis, requiring reliance on local documents to describe the extent of a global problem may be inappropriate. A new subsection to Section 15130(b) could be inserted stating:

(b)(6) In discussing the extent of the cumulative problem of greenhouse gas emissions, the lead agency may rely on authoritative sources, including state and federal agencies and expert international bodies.

V. Section 15183. Projects Consistent with a Community Plan, General Plan, or Zoning

Greenhouse gas emissions are an impact that does not appear to fit within the scope of Section 15183. While compliance with existing development density and zoning may provide predictable information on parking requirements and impacts to views and habitat loss, it is not indicative of the greenhouse gas emissions. Projects that comply with development densities established by a community plan or zoning can have vastly different carbon footprints depending on their location in relation to other development and design. Therefore, greenhouse gas impacts will always be "peculiar to the project" and outside the scope of Section 15183. Accordingly, references to greenhouse gas emissions should be removed from Section 15183.

In the event Resources believes greenhouse gas impacts could be addressed through Section 15183, proposed changes to Section 15183 should be revised. As currently drafted, Section 15183(g) is written in the singular, suggesting that a single "policy or regulation," such as a green building ordinance, is sufficient to avoid an analysis of all or part of a project's greenhouse gas emissions. Section 15183 can only be invoked if "uniformly applied development policies or standards have been previously adopted by the city of county with a finding that the development policies or standards will substantially mitigate that environmental effect when applied to future projects." Guidelines § 15183(f). For this finding to be made in the context of greenhouse gas emissions, a collection of measures will be necessary that address the various components of a project's carbon footprint. It is therefore highly unlikely that a single "policy or regulation" is sufficient to meet the requirements of subsection (f). As the Statement of Reasons recognizes, a greenhouse gas reduction plan, as defined in Section 15183.5(b) "might be used in the context of section 15183." (Statement of Reasons at 50.) However, rather than specifically reference a greenhouse gas reduction plan, proposed Section 15183(g)(8) describes the uniformly applied development policies for greenhouse gas emissions as those set forth "in an adopted land use plan, policy, or regulation." To eliminate unnecessary ambiguity and conform proposed Section to both the Statement of Reasons and the requirements of Section 15183(f), proposed Section 15183(g) should be revised to state:

> (8) Requirements for reducing greenhouse gas emissions, such as those set forth in an adopted greenhouse gas reduction plan as defined in Section 15183.5. ~~land use plan, policy or regulation.~~

Perhaps as a function of the use of the singular "policy or regulation" in proposed Section 15183(g), some commentators have appeared to suggest that if a county passed a single greenhouse gas emissions regulation such as a green building ordinance, Public Resources Code § 21083.3/Guideline § 15183 could be used to exempt emissions from the project's energy use from CEQA review.[6] The impact of a project's greenhouse gas emissions is measured by total project emissions from all sources. This is because the "environmental effect" of concern is a project's greenhouse gas emissions, not the greenhouse gas emissions from energy use or other source. Thus, if a single policy or regulation functions to reduce emissions from a particular source, the remaining emissions from that source are still part of total project emissions, relevant to a determination of significance, and cannot legitimately be exempted from review. It is therefore not appropriate to assume that an entire subset of a project's carbon footprint can be ignored because a single plan or policy purports to reduce emissions from that subset by some unspecified margin. To avoid future confusion on the application of Section 15183, it would be helpful for the Statement of Reasons to clarify that a single ordinance addressing a subset of a project's carbon footprint cannot be used to exempt the remaining emissions from that portion of the project from further review.

VI. Section 15183.5. Tiering and Streamlining the Analysis of Greenhouse Gas Emissions

A. Change "may" to "should" in Section 15183.5(b)(1)

We appreciate the addition of guidance on necessary criteria for a greenhouse gas reduction plan to be utilized under CEQA's tiering provision. As the Statement of Reasons notes, the criteria articulated in proposed Section 15183.5(b)(1) "are designed to ensure that a greenhouse gas reduction plan would satisfy the [tiering and streamlining] requirements in sections 15064(h)(3) and 15130(d) pursuant to CEQA's existing requirements. (Statement of Reasons at 54-55.) These criteria are also consistent with those recommended in the AB 32 Scoping Plan and by the Attorney General.[7]

Despite the recognition in the Statement of Reasons that the criteria set forth in proposed Section 15183.5(b)(1) are necessary to comport with CEQA's existing tiering requirements, the proposed guideline only states that they "may" be part of elements of a greenhouse gas reduction plan. Under CEQA, the term "'may' identifies a permissive element which is left fully to the discretion of the public agencies involved." Guidelines § 15005(c). The purpose of Section 15183.5 is to ensure that, given the lack of legislative criteria of what is meant by the term "greenhouse gas reduction plan," lead agencies do not erroneously rely on a plan that is insufficient to meet the criteria of Section 15064(h)(3) and other tiering provisions. Describing the elements of a greenhouse gas reduction plan as entirely permissive does not fulfill this objective and may result in litigation on this issue that could otherwise have been avoided.

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[6] Whit Manley, CEQA Streamlining and Climate Change (Feb. 2009) at 11 (stating that "under Public Resources Code section 21083.1, if a proposed project's buildings adhere to the requirements of the [green building ordinance], and there is nothing "peculiar to the parcel or the project" with respect to its energy use, then that aspect of the project would be exempt from CEQA review.").

[7] ARB, Scoping Plan, Appendix C, at C-49; Attorney General, *Climate Change, the California Environmental Quality Act, and General Plan Updates: Straightforward Answers to Some Frequently Asked Questions* (Mar. 2009) at 6.

To fulfill the purpose of Section 15183.5, "may" should be replaced with "should." "'Should' identifies guidance provided by the Secretary of Resources based on policy considerations contained in CEQA, in the legislative history of the statute, or in federal court decisions which California courts can be expected to follow. Public agencies are advised to follow this guidance in the absence of compelling, countervailing considerations." Guidelines § 15005(b). In light of the existing Guideline authority Resources' references in the Statement of Reasons to support each element of a greenhouse gas reduction plan, Resources is well within its authority to replace "may" with "should." This modification would also create a needed presumption that the criteria in Section 15183.5(b)(1) are necessary elements of a valid greenhouse gas reduction plan. While a lead agency could create a greenhouse gas reduction plan that did not include each of these elements, or include alternative criteria, it would need to explain why this document effectively functions to address the project's cumulative impact at a programmatic level. As currently drafted however, subsection(b) is too permissive to function as an effective check on the erroneous reliance on plans that do not meet the requirements of Guidelines § 15064(h)(3) and 15130(d). Accordingly, Section 15183.5(b)(1) should be revised to state:

(1) Plan Elements: A greenhouse gas emissions reduction plan should ~~may~~:

B. Change "should" to "must" in Section 15183.5(c)

As set forth in the Statement of Reasons, projects that qualify for the exemption from considering the GHG effects from cars and light duty trucks in SB 375 codified in Public Resources Code "sections 21155.2 and 21159.28 *must* still analyze emissions resulting from, as applicable, energy use, land conversation, and other direct and indirect sources of emissions." (Statement of Reasons at 56 (emphasis added).) However, the text of proposed Section 15183.5(c) provides that, where a project is consistent with sections 21155.2 and 21159.28, "[a] lead agency *should* consider whether such project may result in greenhouse gas emissions resulting from other sources, however, consistent with these Guidelines." Because Sections 21155.2 and 21159.28 unequivocally exclude only a subset of a project's emissions, use of the qualifier "should" in proposed Section 15183.5(c) creates needless ambiguity. Accordingly, Section 15183.5(c) should be revised to state:

> c) Special Situations. Consistent with Public Resources Code sections 21155.2 and 21159.28, certain residential and mixed use projects, and transit priority projects, as defined in section 21155, that are consistent with the general use designation, density, building intensity, and applicable policies specified for the project area in an applicable sustainable communities strategy or alternative planning strategy accepted by the California Air Resources Board need not analyze global warming impacts resulting from cars and light duty trucks. A lead agency must ~~should~~ consider whether such projects may result in greenhouse gas emissions resulting from other sources, however, consistent with these Guidelines.

VII. By Failing to Provide Explicit Guidance on the Effects of Climate Change on Project Impacts and Human Safety, the Proposed Guidelines Fall Short of SB 97's Statutory Mandate, Put Human Safety at Risk, and Undermine California's Current Efforts to Adapt to Climate Change

In demurring to requests to include explicit guidance on the potential need to analyze the effects of climate change on project impacts and human safety, the Statement of Reasons states that any such addition is unnecessary because CEQA already requires a lead agency to analyze the potential effects of climate change on the project. (Response to Comments at 68-69.)[8] This justification seems contrary to Resources' statutory mandate under SB 97, which is to provide guidance on issues that are already required under CEQA, including "the effects of greenhouse gas emissions." More importantly, the proposed Guidelines' failure to address this issue can potentially result in devastating real world consequences. Absent specific language reminding lead agencies to consider the effect of climate change on the project, it is unlikely that lead agencies will consider the consequences of placing a project in an area vulnerable to future sea level rise, increase wildfire risk, or other threats posed by climate change. As the Statement of Reasons elsewhere acknowledges, "some lead agencies will not seriously consider an environmental issue unless it is specifically mentioned in the checklist." (Statement of Reasons at 64.) Nor is it reasonable to expect that the public be responsible for raising the issue. As a consequence of the Guidelines' failure to explicitly signal that climate effects should be considered as part of environmental review, projects are more likely to be sited in at-risk areas, putting lives in jeopardy and complicating California's efforts to adapt to climate change.

The Guidelines' omission of any reference to the effects of climate change on the project is especially glaring in light of Resources' recently released Draft 2009 California Climate Adaptation Strategy. As this document properly recognizes, "[t]o effectively address the challenges that a changing climate will bring, climate adaption and mitigation (i.e. reducing greenhouse gas (GHG) emission) policies must complement each other." (Adaption Strategy at 5.) Key recommendations of this report include the consideration of "climate change impacts, as currently required under CEQA Guidelines Section 15126.2" and "project alternatives that avoid significant new development in areas that cannot be adequately protected (planning, permitting, development, and building) from flooding due to climate change." (Adaption Strategy at 7-8.) As acknowledge in the Draft Adaptation Strategy, "[t]he need to plan for climate change impacts before they

[8] The requirement that a lead agency consider the effects of climate change on a project is also affirmed in Resources' Draft 2009 California Climate Adaption Strategy and the Attorney General's FAQs on Climate Change, CEQA, and General Plan Updates. Natural Resources Agency, *2009 California Climate Adaptation Strategy Discussion Draft* (2009) ("Adaption Strategy") at 8 ("All significant state projects, including infrastructure projects, must consider climate change impacts, as currently required under CEQA Guidelines § 15126.2."); Attorney General, *Climate Change, the California Environmental Quality Act, and General Plan Updates: Straightforward Answers to Some Frequently Asked Questions* (Mar. 2009) at 6 ("Lead agencies should disclose any areas governed by the general plan that may be particularly affected by global warming.").

happen is important; not only with effective and coordinated response, but also proactively when making land use planning decisions." (Adaption Strategy at 27.)

In many cases, sufficient data is available to evaluate the impacts of climate change on a project. For example, sea-level rise maps for the entire California coast have been generated by the Pacific Institute for 2050 and 2100 time horizons.[9] Thus, given the available science and the recognized need for proactively planning for climate change through the land use process, there is no legitimate basis for excluding reference to the consideration of the effects of climate change from the Proposed Guidelines. To proactively plan for climate change impacts as envisioned by the Resources Agency in the Adaptation Strategy, language must be added to the proposed Guidelines. Guidance could include amending Section 15126.2 and/or add the issue to the CEQA checklist as follows:

Amendments to Guideline § 15126.2(a):

(a) The Significant Environmental Effects of the Proposed Project. An EIR shall identify and focus on the significant environmental effects of the proposed project. In assessing the impact of a proposed project on the environment, the lead agency should normally limit its examination to changes in the existing physical conditions in the affected area as they exist at the time the notice of preparation is published, or where no notice of preparation is published, at the time environmental analysis is commenced. Direct and indirect significant effects of the project on the environment shall be clearly identified and described, giving due consideration to both the short-term and long-term effects. The discussion should include relevant specifics of the area, the resources involved, physical changes, alterations to ecological systems, and changes induced in population distribution, population concentration, the human use of the land (including commercial and residential development), health and safety problems caused by the physical changes, and other aspects of the resource base such as water, historical resources, scenic quality, and public services and the effect of climate change on relevant resources for the lifetime of the project. The EIR shall also analyze any significant environmental effects the project might cause by bringing development and people into the area affected, including the effects of climate change. For example, an EIR on a subdivision astride an active fault line should identify as a significant effect the seismic hazard to future occupants of the subdivision. The subdivision would have the effect of attracting people to the location and exposing them to the hazards found there.

Additions to the greenhouse gas emission section of Appendix G:

VII. GREENHOUSE GAS EMISSIONS – Would the project:

c) Place substantial additional demands on resources that are projected to be adversely affected by climate change?

[9] Sea-level rise maps available at: http://www.pacinst.org/reports/sea_level_rise/maps/index.htm

d) Bring development into areas that are projected to be adversely affected by climate change, creating a significant hazard to the public?

VIII. We Strongly Support the Inclusion of Forest Resources in Appendix G

We strongly support the explicit inclusion of forest resources in the Appendix G environmental checklist. Our forests provide a host of critical environmental values, from clean water and wildlife habitat to biodiversity and sustainable forest products. A key value for this update of the CEQA guidelines is the role of forests in climate change. Forests release significant amounts of carbon dioxide (CO_2) when converted to non-forest use, and, alternatively, can absorb and store CO_2 for long periods of time when restored, protected, and sustainably managed. The addition of environmental impacts to forestland, including forest loss, conversion to non-forest use, and zoning changes, is a crucial step forward for appropriately assessing the climate value of forestland and ensuring adequate mitigation. It is also consistent with the California Air Resources Board Scoping Plan for AB 32, which recognizes the significant effect of forest conversion on climate, and identifies CEQA as a main mechanism for assessing and mitigating impacts.[10]

IX. Proposed Changes to the Transportation Criteria in Appendix G Still Do Not Have a Clear Relationship to Environmental Effects

Questions in the CEQA checklist related to transportation have historically focused on *roadway capacity* instead of an environmental impact. The Statement of Reasons clearly recognizes the problem with this approach and corrects it: "an increase in traffic, by itself, is not necessarily an indicator of a potentially significant *environmental* impact." (Statement of Reasons at 64.)

Unfortunately, the revision proposed in the Guidelines does not fundamentally change the focus of the question. Proposed checklist XVI(a) reads: "Would the project…exceed the capacity of the existing circulation system, based on an applicable measure of effectiveness, taking into account all relevant components of the circulation system, including but limited to intersection, streets, highway and freeways, pedestrian and bicycle paths, and mass transit."

On the one hand, this language provides somewhat greater latitude as to choices for performance measures and recognizes multiple modes, both of which are conceptual improvements. Nevertheless, as written, the question still relies on a *capacity standard* as a proxy for environmental impact. The current language is substantively similar to the original and seems to limit the range of measures to only those related to *capacity*.

Using a capacity standard as an indicator for potential environmental impacts is problematic for a number of reasons:

- Measures of transportation system capacity relative to demand or use have no direct or clear association with significant environmental effects;

[10] CARB Climate Change Proposed Scoping Plan Appendices, Volume I, page C-166.

- Projects that provide alternatives to personal vehicle travel (e.g. bicycle lanes, bus rapid transit) may reduce the environmental impacts of a transportation system while also reducing the system's capacity;
- Taken from another perspective, the proposed criteria appear to allow projects to generate traffic up to the capacity threshold, whether or not there are adverse environmental impacts.
- The most common mitigation for inadequate capacity—more capacity for vehicles—can result in substantial adverse environmental impacts.

For the above reasons, triggering environmental review based on level of service standards as suggested in question (b) in the checklist would also be problematic.

The criteria in the Checklist should instead use measures directly related to the environmental impacts of a project. The two primary measures of environmental impacts from transportation are <u>auto trips generated</u> (ATG) and vehicle miles traveled (VMT). ATG, for example, captures increases in vehicle volume, and vehicle volume increases predict air pollutant emission, community noise levels, pedestrian injury collisions, and other domains of environmental quality including neighborhood livability. VMT is directly related to vehicle emissions.

We support OPR's earlier proposal, which took into account vehicle trips, vehicle volume, and vehicle miles travelled rather than level of service or the capacity of the existing circulation system. If Resources will not reinstate OPR's original language, the Checklist could use a more open-ended question permitting a range of appropriate local metrics, such as:

> *Would the project generate transportation system demand that would adversely impact the environment as measured by an applicable measure of transportation system impacts (such as Auto Trips Generated or Vehicle Miles Travelled), taking into account all relevant components of the circulation system, including but not limited to intersection, streets, highway and freeways, pedestrian and bicycle paths, and mass transit.*

COMMENTS ON TEXT OF STATEMENT OF REASONS

I. Background to Statement of Reasons

<u>What Causes Greenhouse Gas Emissions?</u>

This section, entitled "What Causes Greenhouse Gas Emissions," begins with the sentence "The incremental contributions of GHGs from immeasurable and innumerable direct and indirect sources result in elevated atmospheric GHG levels." As stated later in the Statement of Reasons, the incremental contributions of GHGs from a particular source are frequently measurable and should be quantified under CEQA. It is both incorrect and internally inconsistent to state that an incremental contribution of greenhouse gas emissions is "immeasurable." An accurate introductory sentence that also addresses the topic of this section could simply state: "Most greenhouse gas emissions have sources from both the ecosystem in general (natural) and from human activities specifically (anthropogenic)." A statement on the relationship between greenhouse gas emissions, atmospheric concentrations of greenhouse gases, and the impacts of global warming could be saved for the next section.

The Statement of Reasons attributes the majority of California's transportation-related emissions to "urban growth characterized by travel-inducing features: low density, unbalanced land uses separating jobs and housing, and a focus on single-occupancy vehicle travel." (Statement of Reasons at 4.) Low density development and associated characteristics more accurately characterize suburban and exurban growth. Accordingly, "urban growth" should be changed to "suburban and exurban growth."

What Effects May Result from Increased Greenhouse Gas Emissions?

Climate change impacts are measured as a function of increased atmospheric concentrations of greenhouse gases, not increased greenhouse gas emissions. Accordingly, the first sentence should be revised to state "Several measurable effects, including, among others, an increase in global average temperatures have been attributed to increases in *atmospheric concentrations of greenhouse gases* ~~GHG emissions~~ *that have resulted from anthropogenic greenhouse gas emissions* r~~esulting from human activity~~."

Why is California Involved in Greenhouse Gas Regulation?

This section explains California's involvement with greenhouse gas regulation exclusively as a function of legislative findings in AB 32. The purpose of this section as it relates to CEQA and the Guideline Amendments is unclear and erroneously suggests that all greenhouse gas regulation stems from the Legislature's findings in AB 32. As an initial matter, beginning at least as early as Executive Order S-3-05, California recognized its "particular vulnerability to the impacts of climate change" and set targets for emissions reductions. Moreover, CEQA is not a mechanism for AB 32 compliance, but a separate and independent statute requiring the analysis and mitigation of significant environment effects of projects prior to their approval. As specifically stated in the legislative history for SB 97, "The analysis of GHG impacts under laws like CEQA, and its federal counterpart NEPA, is not new, nor did it commence with the passage of the California Global Warming Solutions Act of 2006." (SB 97, Senate Floor Analyses at 4 (Aug. 22, 2007).) Greenhouse gas impacts are not analyzed under CEQA because of AB 32, but because global warming is a cumulative environmental problem and projects approved under CEQA that result in greenhouse gas emissions, and therefore increase the atmospheric concentration of greenhouse gases, incrementally contribute to that problem. While AB 32 may have settled the question as to whether global warming is an environmental impact, it did not create a regulatory obligation under CEQA. Should a discussion of why California is involved in greenhouse gas regulation be viewed as necessary to include in the Statement of Reasons, it should address the issue with a more holistic and historical perspective that emphasizes the long-held recognition of the threats climate change poses to the state, rather than exclusively focus on findings in AB 32.

What is California Doing to Reduce its Greenhouse Gas Emissions?

CEQA and SB97

In practice, many lead agencies are unclear about the relationship between CEQA, SB 375, and AB 32. Unfortunately, this section in its current form does not help to clarify things. The most important point the Statement of Reasons should make on this topic would be to clearly state that there is an independent duty to analyze global warming impacts under CEQA. This section should be revised to state:

> CEQA mandates consideration of all potential environmental impacts, including those that may not have been foreseen at the time CEQA was enacted. (*See Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1204-1205 (tracing judicial recognition of CEQA application to urban blight impacts and noting that "[w]ater contamination and air pollution, now recognized as very real environmental problems, were once scoffed at as the alarmist ravings of environmental doomsayers."). Although climate change may not have been an environmental impact foreseen at the time CEQA was enacted, it is now recognized as a cumulative problem that poses grave environmental threats. (*See Ctr. for Biological Diversity v. Nat'l Highway Traffic Safety Admin.*, 538 F.3d 1172, 1217 (9th Cir. 2008) (recognizing that "the impact of greenhouse gas emissions on climate change is precisely the kind of cumulative impacts analysis that NEPA requires agencies to conduct."). In enacting Senate Bill 97, the State of California "confirm[ed] that GHG emissions are a significant adverse effect under" CEQA." (SB 97, Senate Bill Analyses at 5.) As recognized in the Senate Bill Analysis for SB 97, "[t]he analysis of GHG impacts under laws like CEQA, and its federal counterpart NEPA, is not new, nor did it commence with the passage of the California Global Warming Solutions Act of 2006."
>
> Although CEQA requires an analysis of GHG emissions, uncertainty exists among public agencies regarding how to analyze GHG emissions in environmental documents under CEQA. To provide greater certainty to lead agencies, Senate Bill 97 requires OPR to develop, and the Resources Agency to adopt, amendments to the State CEQA Guidelines to address analysis and mitigation of potential effects of GHG emissions in CEQA documents and processes. This rulemaking package responds to the Legislature's directive in SB 97.

Specific Comments on Current Text on CEQA & SB97:

The first sentence states that "Many activities that will not be regulated by either AB 32 or SB 375 may still result in significant GHG emissions." The negative implication of this sentence is that an activity that is regulated under AB 32 or SB 375 will not result in significant GHG emissions. As an activity regulated under AB 32 or SB 375 might still have significant GHG emissions, this sentence should be deleted.

With regard to AB 32, the determination of whether a regulated activity has significant GHG emissions cannot be made in the abstract, and cannot responsibly be asserted in passing in the Statement of Reasons. At this juncture, we do not know the extent future regulations will function to reduce emissions from a particular regulated activity and whether it is therefore appropriate to rely on these as of yet undeveloped regulations to reach a determination of significance. In addition, AB 32's emission reduction target is an interim step to the deeper reductions necessary to minimize the risk of dangerous climate change. Therefore, compliance with AB 32 targets is not necessarily an appropriate standard from which to determining significance under CEQA. *See, e.g., Protect the Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal.App.4th 1099, 1109 (regulatory standards can serve as proxies for significance only to the extent that they accurately reflect the level at which an impact can be said to be less than significant). Even if a near-term target could be used as a basis from which to determine significance, scientific consensus is that the interim target of reducing emission to 1990 emission levels by 2020 is insufficient to minimize the risk of dangerous climate change. According to the IPCC, developed countries need to reduce emissions to 25-40% below 1990 levels by 2020 and to 80 to 95% below 1990 levels by 2050 to stabilize atmospheric greenhouse gas concentrations at 450 ppm CO_2eq.,[11] a target that itself only provides a 50/50 chance of limiting global average temperature increase to 2°C (3.6º F) from pre-industrial levels.[12] Moreover, scientific evidence since the IPCC report and passage of AB 32 indicate that 450 ppm CO_2eq. is too high to minimize the risk of dangerous climate change.[13] Because AB 32 has not yet been implemented and is only an interim and likely insufficient step in the larger emissions reduction trajectory necessary to avoid catastrophic environmental impacts, the Statement of Reasons should be drafted to avoid implying that an activity "regulated" under AB 32 does not result in significant GHG emissions under CEQA.

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[11] S. Gupta et al., *Policies, Instruments and Co-operative Arrangements, in* CLIMATE CHANGE 2007: MITIGATION, CONTRIBUTION OF WORKING GROUP III TO THE FOURTH ASSESSMENT REPORT OF THE INTERNATIONAL PANEL ON CLIMATE CHANGE 776 (2007); *see also* Michel den Elzen & Niklas Höhne, *Reductions of Greenhouse Gas Emissions in Annex I and Non-Annex I Countries for Meeting Concentration Stabilization Targets*, 91 CLIMATE CHANGE 249-274 (2008) (recent studies of allocations of greenhouse gas emissions reductions needed to stabilize atmospheric greenhouse gas concentrations at 450 ppm CO_2eq. are consistent with IPCC estimate).

[12] UNION OF CONCERNED SCIENTISTS, HOW TO AVOID DANGEROUS CLIMATE CHANGE: A TARGET FOR U.S. EMISSIONS 16 (2007); Malte Meinshausen, *What Does a 2°C Target Mean for Greenhouse Gas Concentrations? A Brief Analysis Based on Multi-Gas Emission Pathways and Several Climate Sensitivity Uncertainty Estimates, in* AVOIDING DANGEROUS CLIMATE CHANGE 270-72 (2006). Not only are AB 32's targets insufficient to meet this objective, but the best available scientific evidence now indicates that a warming of 2°C is not "safe" and would not prevent dangerous interference with the climate system. *See, e.g.,* Rachel Warren, *Impacts of Global Climate Change at Different Annual Mean Global Temperature Increases* in AVOIDING DANGEROUS CLIMATE CHANGE 95 -98 (2006).

[13] *See, e.g.,* James Hansen et al., *Target Atmospheric CO_2: Where Should Humanity Aim?* 2 OPEN ATMOSPHERIC SCI. J. 217, 226 (2008); Joel B. Smith et al., *Assessing Dangerous Climate Change Though an Update of the Intergovernmental Panel on Climate Change (IPCC) "Reasons for Concern,"* PROC. OF THE NAT'L ACAD, SCI., Feb. 26, 2009, at 1, *available at* http://www.pnas.org/content/early/2009/02/25/0812355106.abstract.

SB 375 provides statutory exemptions for all or part of a project's greenhouse gas emissions provided that the project meets certain criteria. Accordingly, compliance with SB 375 is not determinative of whether a project may "result in significant GHG emissions." As a statutory exemption, whether or not a project has significant impacts is not relevant. Therefore, like AB 32, it is not appropriate to assume that because an activity complies with SB 375, it does not result in significant GHG emissions.

The second paragraph states that SB 97 "constitutes the Legislature's *determination* that GHG emissions and the effect of GHG emissions are appropriate subjects for CEQA analysis." (Statement of Reasons at 9 (emphasis added).) As set forth above, the Legislative Floor Analyses for SB 97 is clear that the SB 97 recognizes an existing obligation. To remove any ambiguity that SB 97 created a new requirement to analyze GHGs under CEQA, the sentence should be revised to state that SB 97 "constitutes the Legislature's *recognition* that GHG emissions and the effect of GHG emissions are appropriate subjects for CEQA analysis."

II. Section 15604. Determining the Significance of the Environmental Effects Caused by a Project

<u>Use of Plans and Regulations in a Cumulative Impacts Analysis</u>

The Statement of Reasons improperly suggests that compliance with AB 32 early action measures could satisfy Section 15064(h)(3). The Statement of Reasons states in part:

> AB 32 requires ARB to adopt regulations that achieve the maximum technologically feasible and cost effective GHG reductions to reach the adopted state-wide emissions limit. ARB has already identified several discrete early action items that will reduce GHG emissions as part of the State's effort to achieve the adopted emissions limit. Pursuant to Health and Safety Code section 38560(b), ARB will adopt regulations to make those measures enforceable by January 1, 2010. ARB's GHG reduction regulations may satisfy the criteria in existing subdivision (h)(3). (Statement of Reasons at 13.)

This paragraph implies that compliance with early action measures can be used to determine a project's greenhouse gas impacts are less than significant pursuant to Section 15064(h)(3). AB 32's nine early action measures are a diverse array of no-regrets policies ranging from a tire pressure program to ship electrification that, at most, function to reduce a segment of a project's greenhouse gas emissions. Because the early action measures are not designed to comprehensively address the range of emissions resulting from a particular type of project and address its cumulative effects, compliance with early action measures does not satisfy 15064(h)(3). Indeed, the Statement of Reasons recognizes as much in a later section which states that consistency with early action items is not sufficient to determine that a project's cumulative greenhouse gas impact is less than significant because it does not "account for emissions that are not addressed by the early action items." (Statement of Reasons at 13, 22-23.) Accordingly, the above-referenced paragraph should be removed.

The Statement of Reasons also states that a lead agency may presume a project's GHG emissions are not cumulatively considerable where a project complies with a regulation that "governs" the project's emissions. (Statement of Reasons at 13.) Under 15064(h)(3), a plan or regulation must do more that merely "govern" a project's emissions, it must "provide specific requirements that will avoid or substantially lessen the cumulative problem." Guideline § 15064(h)(3). Rather than create ambiguity through new, undefined language, the Statement of Reasons should track existing regulatory text.

III. Section 15064.4. Determining the Significance of Impacts From Greenhouse Gas Emissions

Determine whether emissions will increase or decrease

The Statement of Reasons states:

> [A] mass transit project may involve GHG emissions during the construction phase, but substantial evidence may also indicate that it will cause existing commuters to switch from single-occupant vehicles to mass transit use. Operation of such a project may ultimately result in a decrease in GHG emissions. Such analysis may support a lead agency's determination that GHG emissions associated with a project are not cumulatively considerable.

This statement suggests that a project with large construction phase impacts need not consider feasible near-term mitigation because construction-related emissions could be amortized over the life of the project. Thus, feasible opportunities to reduce emissions are needlessly missed based on the mistaken premise that emissions generated today are effectively offset by reductions at some future juncture. Such an approach is contrary to climate science, which emphasizes the importance of near-term reductions to avoid triggering climactic tipping points.[14] The suggestion that construction-related impacts can be ignored for certain types of projects is flawed and should be removed from the Statement of Reasons.

Consistency with a Plan or Regulation

[14] *See, e.g.,* Michael den Elzen & Malte Meinshausen, *Multi-Gas Emission Pathways for Meeting the EU 2°C Climate Target, in* AVOIDING DANGEROUS CLIMATE CHANGE at 299 (2006) ("A stabilization of 450 (400) ppm CO_2eq requires global emissions to peak around 2015, followed by substantial overall reductions…"); UNION OF CONCERNED SCIENTISTS, HOW TO AVOID DANGEROUS CLIMATE CHANGE: A TARGET FOR U.S. EMISSIONS 16 (2007) (delaying reductions will require both faster and deeper reductions in future); S. Solomon et al., *Irreversible climate change due to carbon dioxide emissions*, 106 PNAS 1704, 1709 (Feb. 10, 2009) (because of longevity of the atmospheric CO_2 perturbation and ocean warming and irreversibility of passing climactic tipping points assumption that future reductions can reverse harm of emissions released today is incorrect).

The Statement of Reasons states that the AB 32 Scoping Plan "*may* not be appropriate for use in determining the significance of individual projects [] because it is conceptual at this stage and relies on the future development of regulations to implement the strategies identified in the Scoping Plan." (Statement of Reasons at 22.) Because the Scoping Plan is in the conceptual stage and does not "provide[] specific requirements that will avoid or substantially lessen the cumulative problem" of climate change, it unequivocally cannot be a basis from which to evaluate the significance of project impacts. Guidelines § 15064(h)(3). Consistent with Guideline § 15064(h)(3), OPR has specifically stated 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." (April 13, 2009 Letter from OPR to Resources Agency Re: Transmittal of the Governor's Office of Planning and Research's Proposed SB97 CEQA Guidelines Amendments to the Natural Resources Agency at 3.) Rather than vaguely state that consistency with the Scoping Plan "*may* not be appropriate for determining the significance of individual projects," the Statement of Reasons should be revised to unambiguously provide that the Scoping Plan "*is* not appropriate for determining significance" under CEQA.

IV. Section 15125. Environmental Setting

Regional Blueprint Plans

The Statement of Reasons states that "Regional Blueprint Plans may [] provide evidence to assist the lead agency in determining whether a project may tend to increase or decrease GHG emissions relative to the existing baseline." (Statement of Reasons at 34.) This is a misstatement of existing law and should be removed from the Statement of Reasons. Regional Blueprint Plans have no connection to the existing baseline. The baseline for a project is typically "the environmental conditions in the vicinity of the project, as they exist at the time the notice of preparation is published." Guidelines § 15125. A project's contribution of greenhouse gas emissions is measured from this baseline, not from a hypothetical development scenario. *See, e.g.*, *Woodward Park Homeowners Ass'n, Inc. v. City of Fresno*, 150 Cal. App. 4th 683, 691 (2007). Therefore, comparing a project to a blueprint scenario does not indicate whether the project would result in an increase or decrease in emissions.

V. Appendix F

Lifecycle

The reasoning for removal of the term "lifecycle" from Appendix F contains numerous misstatements that go well beyond the scope of the proposed Guideline change. Should Resources choose to remove the word "lifecycle" from Appendix F to avoid ambiguity, then it need only say so. However, the Statement of Reasons goes on to make broad and erroneous arguments about emissions needing to be in "control" of the project proponent and purported "double counting." These assertions are unnecessary, flawed, will lead to additional uncertainty, and should be removed.

The Statement of Reasons first suggests that even if there was a standard definition of lifecycle, such an analysis may not be consistent with CEQA because "the term could refer to emissions beyond the direct control of the project applicant or sponsor." (Statement of Reasons at 60.) Whether or not a project applicant has "direct control" over a particular emissions source is not relevant to a CEQA analysis. In many cases, such as with growth-inducing impacts resulting from a new road, the project applicant does not have any control over what development may ultimately occur as a result of the project. However, because project could facilitate this development, it is the proper subject of a CEQA analysis.

Contrary to the characterization in the Statement of Reasons, lifecycle emissions are a subset of the indirect effects caused by a project, not a separate category onto themselves.[15] CEQA requires a lead agency to analyze "[d]irect and indirect significant effects of the project on the environment … giving due consideration to both the short-term and long-term effects." Guidelines § 15126.2(a). "Indirect or secondary effects which are caused by the project and are later in time or farther removed in distance, but are still reasonably foreseeable." CEQA Guidelines § 15358(a). Choices project proponents make about the type of materials to utilize ultimately impact the demand for these materials and their future production. To the extent emissions from the manufacture of these products have already been fully mitigated, the lead agency can provide evidence to this effect. However, to simply presume, as the Statement of Reasons does, that lifecycle emissions are excluded from CEQA review because it "could lead to double-counting" absent any evidentiary support is contrary to CEQA's substantial evidence standard.

Chief among CEQA's purposes "is that of providing public agencies and the general public with detailed information about the effects of a proposed project on the environment." *San Franciscans for Reasonable Growth v. City & County of San* Francisco, 151 Cal. App. 3d 61, 72 (1984). Including information on lifecycle emissions where feasible will ultimately allow for the opportunity to make more environmentally sound decisions. For example, cement production is a highly carbon intensive process regardless of where it is manufactured. Mixing cement with fly ash can reduce these emissions for a particular project. By improperly precluding a consideration of the emissions associated with the use of cement from CEQA review, this mitigation would not be considered.

Concerns regarding the potentially speculative nature of quantifying these emissions are already addressed under CEQA's existing mechanisms. Under CEQA, an agency is only obliged to "use its best efforts to find out and disclose all that it reasonably can." Guidelines § 15144. If, after good faith efforts, a lead agency finds that it cannot

[15] This view is shared by SCAQMD, which has recognized that a lifecycle analysis falls within the scope of CEQA. *See* SCAQMD, Draft Guidance Document – Interim CEQA Greenhouse Gas (GHG) Significance Threshold (Oct. 2008) at 3-8.

calculate lifecycle or out-of-state emissions, it need only explain the basis for the inability to assess these emissions and conclude its analysis. However, if and when models become available to calculate these emissions, this should become part of a CEQA analysis.

Thank you for considering these comments. If you have any questions, please contact Matt Vespa, mvespa@biologicaldiversity.org, (415) 436-9682 x309.

Sincerely,

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Enc: The following references are included in the accompanying CD for your review and inclusion in the administrative record for this action.

ENCLOSED REFERENCES

Exhibit A: Letter dated September 24, 2008 Re: CEQA Guidelines Global Warming Update Pursuant to SB 97 to Office of Planning and Research from Center for Biological Diversity et al.

Exhibit B: Letter dated February 2, 2009 Re: Comments on January 9, 2009 Preliminary Draft CEQA Guideline Amendments for Greenhouse Gas Emissions to Office of Planning and Research from Center for Biological Diversity et al.

Exhibit C: AVOIDING DANGEROUS CLIMATE CHANGE (Hans Joachim Schellnuber et al. eds., 2006)

Exhibit D: Michel den Elzen & Niklas Höhne, *Reductions of Greenhouse Gas Emissions in Annex I and Non-Annex I Countries for Meeting Concentration Stabilization Targets*, 91 CLIMATE CHANGE 249 (2008)

Exhibit E: GAO, *Carbon Offsets: The U.S. Voluntary Market is Growing, but Quality Assurance Poses Challenges for Market Participants*, GAO-09-1048 (Aug. 2008)

Exhibit F: S. Gupta et al., *Policies, Instruments and Co-operative Arrangements, in* CLIMATE CHANGE 2007: MITIGATION, CONTRIBUTION OF WORKING GROUP III TO THE FOURTH ASSESSMENT REPORT OF THE INTERNATIONAL PANEL ON CLIMATE CHANGE 776 (2007)

Exhibit G: James Hansen et al., *Target Atmospheric CO_2: Where Should Humanity Aim?* 2 OPEN ATMOSPHERIC SCI. J. 217 (2008)

Exhibit H: Whit Manley, *CEQA Streamlining and Climate Change* (Feb. 2009)

Exhibit I: SCAQMD, Draft Guidance Document – Interim CEQA Greenhouse Gas (GHG) Significance (Oct. 2008)

Exhibit J: SJVAPCD, Draft Staff Report, Rule 2301 (Emission Reduction Credit Banking, June 30, 2009

Exhibit K: SJVACPD, Draft Rule 2301, Emission Reduction Credit Banking, June 30, 2009

Exhibit L: Union of Concerned Scientists, *How to Avoid Dangerous Climate Change: A Target for U.S. Emissions* (2007)