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August 27, 2009

Mr. Christopher Calfee
Special Counsel
ATTN: CEQA Guidelines
California Natural Resources Agency
1017 L Street, #2223
Sacramento, CA 95814

Subject: Orange County Transportation Authority's Comments on the Proposed Amendments to the California Environmental Quality Act Guidelines

Dear Mr. Calfee:

The Orange County Transportation Authority (OCTA) appreciates the opportunity to comment on the California Natural Resources Agency's (Resources Agency) proposed amendments to the California Environmental Quality Act (CEQA) to address the analysis and mitigation of greenhouse gas (GHG) emissions pursuant to SB 97 (Chapter 185, Statutes of 2007). Acknowledging the complexity involved in creating new guidelines that effectively analyze the impacts of GHG emissions, while taking account of the unique regional nature of these emissions, OCTA commends both the Governor's Office of Planning and Research and the Resources Agency for their recognition of the use of program level documents to both create mitigation strategies to reduce GHG emissions and to analyze the impacts of such emissions under CEQA.

I. Tiering and GHG Emissions

The emphasis on the use of a programmatic approach for analyzing GHG emissions recognizes the value of analyzing GHG emissions at the regional level and its greater effectiveness at balancing projects to reduce overall emissions. In particular, with the development of a sustainable communities strategy (SCS) in the next cycle of regional transportation plan development, agencies will balance projects to meet GHG emission reduction targets to be adopted by the California Air Resources Board (ARB) and the guidelines recognize the value of this approach.

Specifically, section 15183.5 of the guidelines creates tiering provisions for the analysis of GHG emissions. In the Resources Agency's Initial Statement of Reasons for Regulatory Action (Statement), there is specific acknowledgement that GHG emissions may be best analyzed and mitigated at the programmatic

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level, citing the Legislature's preference for utilizing tiering whenever possible. The Statement also maintains that because GHG emissions raise a cumulative concern, they are best suited for tiering analysis.

In order to accomplish the analysis of GHG emissions by using tiering, the proposed amendments would create a new type of plan, a GHG reduction plan. This plan is defined in Section 15183.5(b), with a listing of non-exclusive elements that can be included in the plan such as the establishment of a baseline, a mechanism to monitor the plan's progress, and a process whereby the plan could be amended if it is not achieving specific reductions.

What is lacking in this definition, however, are specific examples of what types of plans would meet these requirements. Thus, lead agencies wishing to use the proposed tiering provisions will not know if the program-level environmental document that the project document wishes to tier from would meet the criteria within this section. The Statement notes the concern that without the Legislature establishing specific criteria for such plans, these provisions could be misused in cumulative impacts analysis. However, with regard to an environmental document created for a regional transportation plan that includes a SCS, SB 375 already sets forth specific criteria. For instance, the SCS must meet regional GHG emission reduction targets set by the ARB after an extensive stakeholder process to determine how to set targets that are both aggressive and achievable. Moreover, if it is later determined that more GHG emission reductions can be achieved, the ARB can revise the targets in future years.

Another concern with the proposed amendments in this section is language that states that if the GHG Reduction Plan is used for tiering purposes, but there is substantial evidence that the effects of a particular project may be cumulatively considerable, notwithstanding the project's compliance with the plan, then a separate environmental impact report must be completed at the project level. This requirement ignores the balancing that occurs with transportation projects included in a SCS. Overall, the plan must reduce emissions to meet the ARB's GHG emission reduction target, and therefore allow tiering. Included within the SCS, there may be individual projects that increase emissions. The intent of SB 375, however, is to also include other projects which decrease emissions enough to not only offset any increase in emissions that other projects may contribute, but also decrease overall emissions. Thus, the SCS already accounts for and mitigates a project's regional impacts from GHG emissions.

To address these issues, the following amendment is suggested:

(2) Use with Later Activities. A greenhouse gas reduction plan, once adopted, following certification of an EIR, may be used in the cumulative impacts analysis of later projects. An environmental document that relies on a greenhouse gas reduction plan for a cumulative impacts analysis must identify those requirements specified in the plan that apply to the project, and if those requirements are not otherwise binding and enforceable, incorporate those requirements as mitigation measures applicable to the project. If there is substantial evidence that the effects of a particular project may be cumulatively considerable notwithstanding the project's compliance with the specified requirements in the greenhouse gas reduction plan, an EIR must be prepared for the project, except as specified in 15183.5(b)(3).

(3) A regional transportation plan, which includes a sustainable communities strategy that meets regional greenhouse gas emission reduction targets set per Government Code section 65080(b)(2)(A) is deemed to meet the above requirements. If the greenhouse gas emissions reduction target is met, no further project level environmental analysis is needed to analyze the impacts related to greenhouse gas emissions.

II. Environmental Setting

Section 15125(d) requires an environmental impact report to discuss any inconsistencies between a proposed project and applicable general plans and regional plans. The proposed amendments would add specific plans to this list, and would also add regional blueprint plans and GHG reduction plans to the list of applicable regional plans. Within the Statement, it is noted that regional blueprint plans are created to not only address transportation inefficiencies, but moreover, they can reduce vehicle miles traveled (and thereby reduce GHG emissions) and lead to smart growth patterns. In regards to specific plans, the Statement notes that many local governments are addressing GHG emissions in their policy documents, and therefore it is likely that GHG emissions will also be addressed in specific plans because specific plans are required to contain standards and criteria.

The concern with this amendment is that it requires a lead agency to discuss the inconsistencies between the project and regional blueprints and specific plans, but nothing requires a blueprint or specific plan to mitigate GHG

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emissions or produce other environmental benefits. Therefore, this could potentially require consistency analysis of a project with a plan that is not proven to provide environmental benefits. In addition, as in the Southern California Association of Governments (SCAG) region, some blueprints, although adopted by the metropolitan planning organization, are voluntary and are not consistent with city general plans. This would mean that a project would have to analyze its consistency with a plan that is not based on realistic, or even feasible, planning assumptions and is additionally non-binding on any locality within the region. Thus, this section should be amended to only include plans that actually have binding authority over the land that is being used for the project.

III. Appendix G

Within Appendix G's section on Transportation/Traffic, there seems to be a minor editing issue on question (a), which if left as is, could prohibit the consideration of the overall circulation system, as was intended by the amendments. The language should be revised to read:

(a) Exceed the capacity of the existing circulation system, based on an applicable measure of effectiveness (as designated in a general plan policy, ordinance, etc.), taking into account all relevant components of the circulation system, including but not limited to intersections, streets, highways and freeways, pedestrian and bicycle paths, and mass transit."

OCTA looks forward to collaborating with the Resources Agency throughout the process of amending the CEQA guidelines, with confidence that guidelines will be created to allow for accurate analysis and mitigation of GHG emissions, as well as discretion to allow regions to best decide how to reduce emissions while meeting regional transportation needs. If you have any questions please contact me at (714) 560-5584 or Kristine Murray, Executive Director of Government Relations, at (714) 560-5908.

Sincerely,



Will Kempton
Chief Executive Officer

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