



South Coast Air Quality Management District

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Mr. Christopher Calfee, Special Counsel
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Re: Proposed CEQA Guidelines Amendments Regarding Greenhouse Gas Emissions

Dear Mr. Calfee:

This letter presents the comments of the South Coast Air Quality Management District (SCAQMD) staff on the proposed California Environmental Quality Act (CEQA) Guidelines amendments addressing greenhouse gases which were released by the Natural Resources Agency in July, 2009. The SCAQMD staff appreciates the opportunity to comment on these important proposed guidelines. We commend your staff on developing helpful clarifications regarding how greenhouse gas emissions should be treated under CEQA. In general, we support the proposed changes. In addition, we would like to thank the agency for eliminating the language we had objected to in our previous comments regarding Guidelines § 15126.4(c)(5). (The earlier language had required that off-site mitigation measures must be part of a plan of mitigation that the relevant agency commits to implementing.) Also, we appreciate the mention in the Initial Statement of Reasons of the SCAQMD's SoCal Climate Solutions Exchange and its adopted thresholds of significance for projects for which SCAQMD is lead agency. We note that SCAQMD staff is continuing to work on developing thresholds of significance for other projects for which we are a commenting agency (primarily residential and commercial projects).

Scope of CEQA Analysis

There is one area in which we believe the Agency should issue guidance that has not been addressed in the proposal. That is the issue of out-of-state impacts and out-of-state mitigation measures. We had requested that these issues be addressed in our January 30, 2009 comments to the Governor's Office of Planning and Research. Lead agencies are currently facing the questions of whether and to what extent a lead agency must address out-of-state impacts, and whether a project proponent may mitigate its greenhouse gas emissions with reductions from out of state. There is a great need for guidance on these issues. The Agency should propose guidelines answering these questions, and circulate them for public review and comment.

There is some guidance available on one of these issues. CEQA Guidelines § 15277 provides that projects undertaken outside of California are not subject to CEQA if they are subject to review under similar environmental laws, but that "Any emissions or discharges that would have a significant effect on the environment in the State of California are subject to CEQA where a California public agency has authority over the emissions or discharges." The guideline cites 58 Ops. Cal. Atty. Gen. 614 (1975), which held that CEQA applies to the whole of a project, including those parts of a local project occurring outside the boundaries of the state.

The Attorney General Opinion goes further than Guidelines § 15277, however, in stating that "Section 21060.5 defines the term "environment" in broad terms as the 'physical conditions which exist within the area which will be affected by the proposed project'. This definition does not narrow the scope of legislative concern to preserving and enhancing only the environment of California...." The opinion goes on to say: "It would be inconsistent with the declared intent of CEQA (§§ 21000 and 21001) and the very specific mandate of section 21151 in conjunction with section 21060.5 to restrict this consideration of the environment just to those impacts occurring within California." Thus, the opinion supports the interpretation that CEQA applies to all effects of a project, wherever they occur. However, the facts of that case involved a government project which actually took place largely out-of-state (construction of power plant in Utah). Thus, it could be argued that the AG statements only apply where part of the project actually occurs out-of-state.

We request that the Agency clarify this issue, either by issuing a guideline or by explaining in the Final Statement of Reasons if it believes that the AG opinion is conclusive on the subject and means that out-of-state impacts must always be considered, even if the project occurs entirely in California.

In addition, we request that the Agency issue guidance concerning whether a project proponent may mitigate its in-state GHG emissions by obtaining offsets or carrying out a project outside the borders of California. (We presume that out-of-state impacts may be mitigated by reductions in the area where they occur.) Normally an out-of-state project would be unlikely to mitigate in-state impacts, so this question does not arise. However, in the case of GHG impacts, it has been argued that emission reductions anywhere in the world could serve to mitigate GHG emissions occurring in California. We have not found any guidance applicable to this issue, and therefore request that the Agency issue such guidance.

Removal of Term “Life-cycle” from Appendix F

Appendix F to the CEQA Guidelines, relative to energy conservation, currently requires lead agencies to consider “Initial and lifecycle energy costs or supplies.” The proposal would remove the reference to “life-cycle” on the grounds that its use is “confusing”, because there is no one definition of “life-cycle”, and because analysis of lifecycle emissions may not be appropriate because CEQA only requires analysis of impacts that are directly or indirectly attributable to the project under consideration. However, the staff discussion goes on to state that “Certainly where substantial evidence supports a fair argument that such “lifecycle” emissions are attributable to a project, that evidence must be considered.” Therefore, we think it is more confusing to remove the term “life-cycle” than to leave it in. Indeed, the removal would create a trap for the unwary, by implying that “life-cycle” emissions never need to be considered, which is contrary to the Agency’s position. Therefore, rather than remove the term “life-cycle”, we recommend the Agency insert clarifying language to the effect that such impacts need be considered only where there is substantial evidence supporting a fair argument that such impacts are caused by the project. In addition, the Agency could adopt a definition of “life-cycle”, if it believes the term is ambiguous.

Priority of Mitigation

Finally, we recommend that the Guidelines include recommendations for a priority order or hierarchy of types of mitigation measures. The Initial Statement of Reasons explains that the Agency did not propose such a hierarchy because “CEQA leaves the determination of the precise method of mitigation to the discretion of lead agencies.” However, CEQA section 21083.05 requires the Agency to adopt “guidelines for the mitigation of greenhouse gas emissions or the effects of greenhouse gas emissions as required by this division...” At minimum, this specific legislative directive clearly empowers the agency to adopt a recommended hierarchy of mitigation measures for lead agencies to adopt, even if the Agency concludes that it does not empower the Agency to require adoption of that hierarchy. Our rationale for the priority order we recommend is not just to maximize local co-benefits, but also to maximize the assurance that real mitigation will actually occur. The recommended priority order is designed to begin with the most easily enforceable and verifiable measures first, and ending with the least easily enforceable and verifiable measures. We recommend the following order of preference for mitigation measures, which was approved by the SCAQMD Governing Board at its December 5, 2008 meeting:

- Incorporate GHG reduction features into the project design, e.g. increase a boiler’s energy efficiency, use materials with a lower global warming potential than conventional materials, etc.
- Implement on-site measures that provide direct GHG reductions on-site, e.g. replace on-site combustion equipment (boilers, heaters, steam generators, etc.) with more efficient combustion equipment, install solar panels on the roof, eliminate or minimize fugitive emissions, etc.

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- Implement neighborhood mitigation measure projects that could include installing solar power, increasing energy efficiency through replacing low efficiency water heaters, increasing building insulation, using fluorescent bulbs, replacing old inefficient refrigerators with efficient refrigerators using low global warming refrigerants, etc.
- Implement in-district mitigation measures such as any of the above-identified GHG reduction measures; reducing vehicle miles traveled (VMT) through greater rideshare incentives, transit improvements, etc.
- Implement in-state mitigation measures, which could include any of the above measures.
- Implement out-of -state mitigation measure projects, which may include purchasing offsets if other options are not feasible.

Thank you again for the opportunity to comment on this important proposal. Should you have any questions or wish to discuss this matter further, please contact me at 909-396-2302.

Sincerely,



Barbara Baird
District Counsel

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