

Letter 12

Arthur Unger
Public

August 17, 2009

Comment 12-1

The 2050 emission goal set forth in EO S-03-05 will be unobtainable if projects continue to be permitted under the assumption of reducing GHG only 29% below business-as-usual levels.

Response 12-1

The California Legislature and Governor have both determined that California needs to take action to curb GHG emissions on a statewide level. Due to its potential vulnerability to the effects of GHG emissions, and the wide variety of GHG emission sources within its borders, California has enacted several laws and programs designed to reduce that State's GHG emissions. The primary legislative initiatives are AB 32 (Statutes of 2006), SB 375 (Statutes of 2007), and SB 97 (Statutes of 2007). AB 32 directs the California Air Resources Board to develop a Scoping Plan which outlines a comprehensive set of actions designed to reduce overall GHG emissions to 1990 levels by 2020. SB 375 recognizes the fact nearly 40 percent of California's GHG emissions come from the State's transportation section and enacted several measures to reduce vehicular emissions through land-use planning. SB 97 was enacted to address the fact that many activities will not be regulated by either AB 32 or SB 375 may still result in significant GHG emissions. As explained in the Initial Statement of Reasons, "where those emissions may result in a significant adverse environmental impact, CEQA requires that a lead agency analyze those emissions, and, if those emissions are determined to be significant, to implement mitigation to reduce those emissions." (Initial Statement of Reasons at pg. 8.)

To support a lead agency's decision, the Natural Resources Agency proposed a new section specifically addressing the determination of significance of greenhouse emissions. Section 15064.4(a) states:

"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 to the extent of possible on scientific and factual data. A lead agency shall have discretion to determine, in the context of a particular project, whether to: (1) 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 or methodology 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; and/or (2) Rely on a qualitative analysis or performance based standards".

The Natural Resources Agency believes proposed section 15064.4 reflects the existing CEQA principle that there is no iron-clad definition of “significance,” but has attempted, nonetheless, to identify relevant factors for lead agencies to consider when assessing the significance of greenhouse gas emissions from a proposed project. (State CEQA Guidelines, § 15064(b); *Berkeley Keep Jets Over the Bay Com. v. Board of Port Comm.* (2001) 91 Cal.App.4th 1344, 1380-81.)

Finally, the proposed amendments do not establish 29% below “business-as-usual” as a threshold of significance. Neither the existing CEQA Guidelines nor the proposed amendments establish thresholds of significance for potential environment impacts. Nothing in SB 97 authorized the Natural Resources Agency to develop thresholds as part of this CEQA Guidelines update.