

CALIFORNIA NATURAL RESOURCES AGENCY



FINAL STATEMENT OF REASONS FOR REGULATORY ACTION

**Amendments to the State CEQA Guidelines
Addressing Analysis and Mitigation of Greenhouse Gas
Emissions Pursuant to SB97**

December 2009

find it difficult to demonstrate a good faith effort through a purely qualitative analysis. (See, e.g., *Berkeley Keep Jets Over the Bay Com. v. Board of Port Comm.* (2001) 91 Cal.App.4th 1344, 1370.)

In the context of Project 1, however, a qualitative analysis would likely be appropriate. Project 1's emissions are not easily modeled, and the Project is small in scale. While it may be technically possible, quantification of the emissions may not reveal any additional information that indicates the significance of those emissions or how they may be reduced that could not be provided in a qualitative assessment of emissions sources. (See, e.g., Public Resources Code, § 21003(f) ("public agencies involved in the environmental review process be responsible for carrying out the process in the most efficient, expeditious manner in order to conserve the available financial, governmental, physical, and social resources with the objective that those resources may be better applied toward the mitigation of actual significant effects on the environment".))

Factors Potentially Indicating Significance

The qualitative factors listed in the proposed section 15064.4(b) are intended to assist lead agencies in collecting and considering information relevant to a project's incremental contribution of GHG emissions and the overall context of such emissions. Notably, while subdivision (b) provides a list of factors that should be considered by public agencies in determining the significance of a project's GHG emissions, other factors can and should be considered as appropriate.

Determine Whether Emissions Will Increase or Decrease

The first factor in subdivision (b), for example, asks lead agencies to consider whether the project will result in an increase or decrease in different types of GHG emissions relative to the existing environmental setting. All project components, including construction and operation, equipment and energy use, and development phases must be considered in this analysis. (State CEQA Guidelines, § 15378 (project includes "the whole of the action").) For example, a mass transit project may involve GHG emissions during its 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, provided that it is supported with substantial evidence and fully accounts for all project emissions, may support a lead agency's determination that GHG emissions associated with a project are not cumulatively considerable.

This section's reference to the "existing environmental setting" reflects existing law requiring that impacts be compared to the environment as it currently exists. (State CEQA Guidelines, § 15125.) This clarification is necessary to avoid a comparison of the project against a "business as usual" scenario as defined by ARB in the Scoping Plan. Such an approach would confuse "business as usual" projections used in ARB's Scoping Plan with CEQA's separate requirement of analyzing project effects in

comparison to the environmental baseline. (*Compare* Scoping Plan, at p. 9 (“The foundation of the Proposed Scoping Plan’s strategy is a set of measures that will cut greenhouse gas emissions by nearly 30 percent by the year 2020 as compared to business as usual”) with *Fat v. County of Sacramento* (2002) 97 Cal.App.4th 1270, 1278 (existing environmental conditions normally constitute the baseline for environmental analysis); see also *Center for Bio. Diversity v. City of Desert Hot Springs*, Riverside Sup. Ct. Case No. RIC464585 (August 6, 2008) (rejecting argument that a large subdivision project would have a “beneficial impact on CO2 emissions” because the homes would be more energy efficient and located near relatively uncongested freeways).) Business as usual may be relevant, however, in the discussion of the “no project alternative” in an EIR. (State CEQA Guidelines, § 15126.6(e)(2) (no project alternative should describe what would reasonably be expected to occur in the future in the absence of the project).)

Notably, section 15064.4(b)(1) is not intended to imply a zero net emissions threshold of significance. As case law makes clear, there is no “one molecule rule” in CEQA. (CBE, *supra*, 103 Cal.App.4th at 120.)

Thresholds of Significance

The second factor in subdivision (b) asks whether a project exceeds a threshold of significance for GHG emissions. Section 21000(d) of the Public Resources Code expressly directs public agencies to identify whether there are any critical thresholds for health and safety to identify those areas where the capacity of the environment is limited. A threshold is an “identifiable quantitative, qualitative or performance level” at which impacts are normally less than significant. (State CEQA Guidelines, § 15064.7(a); see also *Protect the Historic Amador Waterways*, *supra*, 116 Cal.App.4th at 1107.) Lead agencies may rely on thresholds developed by other agencies that have particular expertise in the subject matter under consideration. (See, e.g., State CEQA Guidelines, Appendix G, Sample Question III (“[w]here available, the significance criteria established by the applicable air quality management or air pollution control district may be relied upon to make” a significance determination).) For example, a lead agency may look to standards included in a Basin Plan to assist in the determination of whether water quality impacts are significant. (*Protect the Historic Amador Waterways*, *supra*, 116 Cal.App.4th at 1107 (“[s]uch thresholds can be drawn from existing environmental standards, such as other statutes or regulations”).)

Several agencies have developed, or are in the process of developing, thresholds of significance for GHG emissions.³ For example, thresholds are currently being developed, or have already been adopted by the Bay Area Air Quality Management District for operations and construction,⁴ the City of Davis for residential

³ Reference to these thresholds and proposed thresholds does not reflect an endorsement of those thresholds; rather, they are cited solely for the purpose of demonstrating that agencies are developing such thresholds.

⁴ BAAQMD CEQA Guidelines Update: work in progress - <http://www.baaqmd.gov/pln/ceqa/index.htm>.