



Natural Resources Agency Adopts Amendments to the CEQA Guidelines Relating to Greenhouse Gas Emissions

On December 30, 2009, the Natural Resources Agency certified and adopted amendments to the CEQA Guidelines just a few days before the deadline of January 1, 2010 as required by Senate Bill 97 (Chapter 185, Statutes 2007; Pub. Resources Code, § 21083.05, subd. (b)). Previous to adoption, the Governor's Office of Planning and Research (OPR) had released its proposed amendments to the CEQA Guidelines on April 13, 2009. OPR had prepared the proposed amendments pursuant to Public Resources Code section 21083.05, subdivision (a), which required OPR to develop guidelines for the mitigation of effects of greenhouse gas emissions on or before July 1, 2009. Numerous interested parties and stakeholder groups were instrumental in assisting OPR with the development of the proposed amendments. The Natural Resources Agency adopted almost all of the amendments proposed by OPR.

Previous to the amendments proposed by OPR, OPR issued its Technical Advisory on CEQA and Climate Change on June 19, 2008. OPR then released its Preliminary Draft CEQA Guidelines Amendments on January 8, 2009. As part of that process, OPR held public hearings to garner public input on the draft amendments.

With the new amendments in hand from the Natural Resources Agency, the Office of Administrative Law will have 30 working days to review the amendments to the CEQA Guidelines and relay them to the Secretary of State. Upon sending the amendments to the Secretary of State, the amendments will become effective after 30 days. Public agencies will not be required to comply with the new amendments until either the effective date of the agency's procedures amended to conform to the new amendments, or the 120th day after the effective date of the amendments, whichever is earlier. (CEQA Guidelines, § 15007, subds. (1)-(2).) The new amendments will apply prospectively. (CEQA Guidelines, § 15007, subd. (b).)

The amendments target the certain sections of the CEQA Guidelines and have the following environmental law implications:

A. Determining Significance (Section 15064.4)

The Natural Resources Agency adopted a new section, Section 15064.4, regarding the determination of significance of impacts from greenhouse gas emissions. This new section urges lead agencies to "make a good-faith effort" to quantify a project's amount of greenhouse gas emissions and gives lead agencies the discretion to take one of the following actions:

1. Select a model or methodology that the lead agency deems as appropriate to quantify a project's greenhouse gas emissions and actually use this model or methodology; and/or
2. Rely on a qualitative analysis or performance based standards. Additionally, a lead agency may consider the following factors when determining the significance of impacts under this section:
 - a. The extent to which the project may increase or reduce greenhouse gas emissions as compared to the existing environmental setting;
 - b. Whether the project emissions exceed an applicable threshold of significance; or
 - c. The extent to which the project complies with regulations or requirements adopted to implement a statewide, regional, or local plan for mitigating greenhouse gas emissions.

(CEQA Guidelines, § 15064.4, subds. (a)-(b).)

B. Thresholds of Significance (Section 15064.7)

The Natural Resources Agency adopted a new subdivision to section 15064.7 clarifying that a lead agency may refer to thresholds adopted or recommended by other public agencies when adopting its own thresholds of significance. A lead agency may also consider the thresholds recommended by experts provided that this decision is supported by substantial evidence.

(CEQA Guidelines, § 15064.7.)

C. Statement of Overriding Considerations (Section 15093)

An amendment to section 15093 clarifies that a lead agency may consider regional or statewide environmental benefits when making its statement of overriding considerations. This amendment allows a lead agency to freely consider a broad range of factors in determining whether a project's benefits outweigh the adverse impacts. (CEQA Guidelines, § 15093, subd. (d).)

D. Environmental Setting (Section 15125)

Amendments to section 15125 clarify that an EIR must also discuss inconsistencies between the proposed project and applicable specific plans. This section also includes regional blueprint plans and plans for the reduction of greenhouse gas emissions among its non-exhaustive list of regional plans that the EIR must consider for inconsistencies with the proposed project. (CEQA Guidelines, § 15125, subd. (d).)

E. Consideration and Discussion of Significant Environmental Impacts (Section 15126.2)

With respect to significant environmental effects, an amendment to section 15126.2 clarifies that the EIR should evaluate any potentially significant impacts of locating development in other areas susceptible to hazardous conditions as identified in maps or plans addressing hazard areas. (CEQA Guidelines, § 15126.2, subd. (a).)

F. Consideration and Discussion of Mitigation Measures (Section 15126.4)

The amendments to section 15126.4 stress that the general standards for mitigation measures discussed in section 15126.4, subdivision (a), also apply to mitigation measures for greenhouse gas emissions. Lead agencies must consider feasible mitigation measures, which may include the following:

1. Measures in an existing plan or mitigation program to reduce emissions that are required as part of a lead agency's decision;
2. Emissions reductions resulting from a project through implementation of project features, project design, or other measures, such as those described in Appendix F;
3. Off-site measures, including offsets;
4. Measures that sequester greenhouse gases; and
5. Identification of specific measures to be implemented on a project-by-project basis when involved in planning efforts, such as adoption of a general plan.

(CEQA Guidelines, § 15126.4, subd. (c).)

G. Cumulative Impacts (Section 15130)

The amendments to section 15130 require lead agencies provide a summary of projections in their planning documents that discuss the project conditions contributing to the overall cumulative effect. A regional modeling program may supplement the discussion of projections. Planning documents that would be required to discuss the projections may include:

1. General plans;
2. Regional transportation plans; or
3. Plans for the reduction of greenhouse gas emissions.

(CEQA Guidelines, § 15130, subd. (b)(1)(B).)

H. Incorporation By Reference (Section 15150)

The Natural Resources Agency adopted an amendment to section 15150 that includes a description of the effects of greenhouse gas emissions on the environment among the examples of materials that an EIR or Negative Declaration may incorporate by reference. (CEQA Guidelines, § 15150, subd. (e)(4).)

I. Tiering and Streamlining the Analysis of Greenhouse Gas Emissions (Section 15183.5)

Amendments to the CEQA Guidelines provide guidance on the ability of EIRs to tier greenhouse gas emissions analyses from plans that have already prepared a programmatic review. Furthermore, project-specific environmental documents may rely on EIRs that contain a programmatic analysis of greenhouse gas emissions. (CEQA Guidelines, § 15183.5, subd. (a).)

This new section also allows public agencies to analyze and mitigate greenhouse gas emissions in a greenhouse gas reduction plan. According to amended section 15183.5, a greenhouse gas emissions reduction plan may perform the following functions:

1. Quantify greenhouse gas emissions, both existing and projected over a specified time period, resulting from activities with a defined geographic area;
2. Establish a level, based on substantial evidence, below which the contribution to greenhouse gas emissions from activities covered by the plan would not be cumulatively considerable;
3. Identify and analyze the greenhouse gas emissions resulting from specific actions anticipated within the geographic area;
4. Specify measures, including performance standards, that would collectively achieve the specified emissions level if implemented on a project-by-project basis;
5. Establish a mechanism to monitor the plan's progress toward achieving the specified emissions level and to require amendment if the plan does not achieve specified levels; and
6. Be adopted in a public process following environmental review.

(CEQA Guidelines, § 15183.5, subd. (b)(1)(A)-(F).)

Section 15183.5 allows a lead agency to use an adopted greenhouse gas reduction plan in the cumulative impacts analyses of later projects. The lead agency must identify the requirements specified in the plan that apply to that later project. The lead agency must also incorporate these requirements as mitigation measures to the project if the requirements are not already binding and enforceable. The amendments also require a lead agency to prepare an EIR if substantial evidence shows a project's effect may be cumulatively considerable notwithstanding the project's compliance with the requirements in the plan. (CEQA Guidelines, § 15183.5, subd. (b)(2).)

Lastly, this section states that a lead agency is not required to analyze global warming impacts resulting from car and light duty trucks for certain residential, mixed use, and transit priority projects. (CEQA Guidelines, § 15183.5, subd. (c).)

J. **Definition of "Greenhouse Gases" (Section 15364.5)**

The Natural Resources Agency adopted a definition of "greenhouse gases" to the CEQA Guidelines. The added definition references the Health and Safety Code, section 38505, subdivision (g). The definition provides a non-exhaustive list of greenhouse gases, including carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons and sulfur hexafluoride. (CEQA Guidelines, § 15364.5.)

K. **Energy Conservation, Appendix F**

Appendix F of the CEQA Guidelines pertains to energy conservation and analysis. Under the adopted changes, a lead agency may consider the extent to which an energy source serving the project has already undergone adequate environmental review and mitigation for the effects of energy production. The adopted amendments also omit or revise references to a "life-cycle analysis" in Appendix F for clarity.

L. Environmental Checklist, Appendix G

The amendments to Appendix G include questions regarding the effects of greenhouse gas emissions by a project. Specifically, the proposed amendments include a new section on greenhouse gas emissions asking if the project would:

1. Generate greenhouse gas emissions, either directly or indirectly, that may have a significant impact on the environment?
2. Conflict with any applicable plan, policy or regulation of an agency adopted for the purpose of reducing the emissions of greenhouse gases?

(Appendix G, section VII.)

The Natural Resources Agency also adopted an amendment to the agricultural resources section to include the consideration of forestry impacts. Questions include whether the project would:

1. Conflict with existing zoning for, or cause rezoning of, forest land, timberland, or timberland zoned Timberland Production as defined by Government Code section 51104, subdivision (g)?
2. Result in the loss of forest land or conversion of forest land to non-forest use?
3. Involve other changes in the existing environment that could result in conversion of forest land to non-forest use?

(Appendix G, section II.)

Regarding the traffic questions in Appendix G, the Natural Resources Agency also adopted questions asking whether the project would conflict with an applicable plan, ordinance or policy establishing measures of effectiveness for the performance of the circulation system, taking into account all relevant system components. This question replaced asking whether the project would cause an increase in traffic that would result in a substantial increase in vehicle trips, volume to capacity ratio on roads, or congestion at intersections. The amendments to the traffic section also ask whether the project would conflict with an applicable congestion management program and delete a question asking whether the project would result in inadequate parking capacity. Finally, the amendments ask whether the project would conflict with adopted policies, plans or programs regarding public transit, bicycle, or pedestrian facilities, or decrease the performance or safety of such facilities. This question replaced asking whether the project would conflict with adopted policies, plans or programs supporting alternative transportation.

(Appendix G, section XVI.)