



ASSOCIATION OF
ENVIRONMENTAL
PROFESSIONALS

Mr. Chris Calfee
California Natural Resources Agency
1017 L Street, Room 2223
Sacramento, CA 95814

Comments On
**Proposed Amendments to the
California Environmental Quality Act (CEQA) Guidelines**

Dear Mr. Calfee:

On behalf of the Association of Environmental Professionals (AEP or "Association"), I appreciate this opportunity to provide comments on the *Proposed Amendments to the California Environmental Quality Act Guidelines for Greenhouse Gas Emissions* ("Proposed Amendments") as required by SB 97 (Dutton, 2007). The purpose of the CEQA Guidelines (Guidelines) is to explain and implement the requirements of CEQA (statute), and the purpose of the Proposed Amendments is to provide guidance for the consideration of greenhouse gas (GHG) emissions in the CEQA review process.

A. Background and Introduction.

As you may know, on February 2, 2009, AEP submitted comments on a Preliminary Draft of the Proposed Amendments prepared by the Office of Planning and Research (OPR). A copy of our February 2 letter is attached hereto for your reference. We appreciate OPR's consideration of our earlier comments and are pleased to see the many improvements that have been made to the Proposed Amendments since February 2.

SB 97 specifically requires OPR to develop and submit to the Resources Agency amendments to the Guidelines for the feasible mitigation of GHG emissions, or the effects of GHG emissions, as required by CEQA. The Resources Agency is required to certify and adopt those amendments by January 1, 2010.

The California Global Warming Solutions Act of 2006 (AB 32) is the foundation upon which the Proposed Amendments rest. AB 32 establishes a regulatory scheme under the auspices of the California Air Resources Board (CARB) for the reduction of GHG emissions. The purpose of AB 32 is to reduce GHG emissions to 1990 levels by 2020 through statewide programs and regulations affecting both existing and future sources of GHG emissions.

Nowhere in the practice of CEQA compliance today is there more controversy than in the adequacy of a project's GHG impact analysis. The ultimate task set forth in SB 97 was to amend the CEQA Guidelines so that they conformed to a very new and complex regulatory scheme (AB 32) with a very mature and comprehensive information disclosure scheme (CEQA) in a manner that affectively contributed to diffusing this controversy.

OPR and the Resources Agency staff are to be commended for accomplishing this very difficult task in an orderly fashion. The amendments are at times elegant in their simplicity and always helpful in their intent. *AEP supports the level of detail found in the Proposed Amendments.*

AEP is also appreciative of the Proposed Amendments in anticipation of the implementation of SB 375 (Steinberg, 2008). SB 375 extends the reach of AB 32 into the realm of land use and transportation planning. As implementation of SB 375 progresses, we look forward to working with OPR and the Resources Agency on further refinements to the Guidelines.

This letter and Attachments A and B represent the comments of AEP, all of which are intended to improve the Proposed Amendments. In order to put these suggestions in context, please consider the following information about AEP and why we care about the Proposed Amendments.

B. AEP Represents CEQA Practitioners.

AEP is a nonprofit organization of environmental professionals founded in direct response to the enactment of CEQA. AEP's bylaws are based on the purposes of CEQA.

Members of AEP are involved in the evaluation, analysis, and assessment of projects subject to CEQA. They are also involved in the design and implementation of environmental plans and programs, as well as the application and enforcement of environmental law and regulation. AEP members work for public agencies, consulting firms, research institutions, non-governmental organizations, and project developers with one common goal in mind: to enhance, maintain, and protect the natural and human environment.

AEP is dedicated to improving the technical expertise and professional qualifications of its members, as well as educating the public on the value of California's environmental protection laws, managing our natural resources, and encouraging sustainable land use.

C. Tools and Trade of CEQA Practitioners.

AEP has a significant interest in the Guidelines that support CEQA. AEP members work with CEQA and CEQA Guidelines on a daily basis—simply put, CEQA is what we do. The substantial influence of the Guidelines on project development, assessment, and approval is universally recognized by all CEQA stakeholders. For this reason, the Association and its regional chapters sponsor seminars and workshops on the implementation of CEQA and California's other environmental laws.

AEP developed the first "white paper" on the integration of AB 32 and CEQA. AEP members have participated in OPR's recent Guidelines workshops and in the SB 97 Working Group. They have also met personally with OPR staff during the development of the Proposed Amendments. As well, AEP members have been involved in innumerable regional and local government discussions throughout the state concerning GHG emissions and the CEQA review process.

The history of legal challenges to decisions made during the development review process under CEQA is replete with references and arguments over a project's consistency with the Guidelines. Because the tools and skills of CEQA practitioners include knowledge of the Guidelines and advice on their application, we take great interest in any proposal to amend them. It is of the utmost importance to our membership that the Guidelines be fair, unambiguous, and practical in the pursuit of the public interest in impartial and informed decision-making under CEQA.

D. Beyond Guidelines

Statutory Changes Must Be Considered.

Notwithstanding legislative intent for SB 97, the key challenge to incorporating GHG emissions into the CEQA process remains statutory: CEQA and AB 32 are just different kinds of law.

- On the one hand, AB 32 is designed to *reduce* GHG emissions to 1990 levels by 2020 through enforceable statewide programs and regulations affecting both existing and future sources of GHG emissions.
- On the other hand, CEQA is designed to *inform* the public about the environmental effects of specific projects in the interest of preserving existing environmental quality and minimizing project impacts.
- AB 32 empowers the state with command and control strategies to reduce GHG emissions, while CEQA empowers public discussion of the environmental effects of government decisions. AB 32 focuses on regulations and programs, whereas CEQA focuses on projects.
- AB 32 confronts global warming and climate change; CEQA confronts physical change to the environment in a finite geographic area.

Some parties to the CEQA review process hold that CEQA analysis of a project's GHG emissions is likely to result in finding any contribution of GHG emissions above the baseline to be cumulatively considerable and the project's cumulative impact to be significant and unavoidable. Yet it is difficult to imagine GHG emissions from a single project influencing global warming and climate change in a perceptible way, let alone effecting a physical change in a finite geographic area. In sum, CEQA and its Guidelines in their current form are not well suited to addressing GHG emissions.

The Proposed Amendments offer a reasonable approach to addressing GHG emissions in several strategic respects by:

- ✓ Making clear that lead agencies have, and should act, on their discretion as to how they assess the significance of GHG emissions;
- ✓ Encouraging lead agencies to consider GHG thresholds of significance recommended by air districts and other agencies with technical proficiency on GHG emissions;
- ✓ Broadening the interpretation of "overriding considerations";
- ✓ Elaborating on the forms of mitigation measures that could apply to GHG impacts; and
- ✓ Reinforcing the applicability of tiering and streamlining provisions of CEQA to the analysis of GHG emissions.

Given the limitations of both CEQA and AB 32, AEP believes the Proposed Amendments, when taken as a whole, are in the best interests of the public, project stakeholders, and lead agencies.

Considering the fundamental differences of the two laws, *AEP further believes that the state Administration and the Legislature should consider statutory changes that would allow the CEQA review process to concentrate on projects with significant GHG effects and avoid unproductive CEQA review of small projects. Further statutory clarification may be needed with respect to the manner in which projects necessary to the implementation of AB 32 should be treated under CEQA.*

E. Strengths of the Proposed Amendments.

AEP is particularly supportive of the amendments that would:

- Reinforce lead agency discretion in determining the significance of impacts, including the flexibility to choose quantitative, qualitative, or performance-based approaches for determining significance (15064.4);
- Add a separate section in the Guidelines for determining the significance of GHG emissions in recognition of the distinction between an environmental effect with global significance and an environmental effect that can be mitigated within the geographic area in which the project is located (§15064.4);
- Encourage a lead agency to consider thresholds of significance for GHG emissions adopted or recommended by others before adopting a threshold of significance of its own (§15064.7);
- Clarify the statement of overriding considerations to include consideration of adverse environmental effects in the context of region-wide or statewide environmental benefits (§15093);
- Add a separate description for a lead agency's consideration of mitigation measures related to GHG emissions (§15126.4(c));
- Add a separate section for tiering and streamlining the analysis of GHG emissions (§15183.5);
- Clarify the consideration of energy implications of a project by advising a lead agency to avoid double-counting the GHG impact of energy consumed by a project if the energy source serving the project has already been analyzed and GHG impacts mitigated, and by deleting reference to "initial and life cycle energy costs" (Appendix F); and
- Update the Environmental Checklist Form to include forest resources and GHG emissions (Appendix G).

While our comments include suggestions for improving some of these sections, AEP would respectfully oppose the elimination or weakening of any of these important amendments.

F. AEP Appreciates Necessity for Compromise in the Guidelines.

How the Guidelines are Proposed to be Amended. As previously mentioned, AEP believes that the analysis of GHG emissions under CEQA is awkward. AEP is therefore keenly aware of OPR's dilemma over how to incorporate GHG emissions into the Guidelines, (i.e., whether to thread GHG emissions throughout the existing Guidelines or partition CEQA consideration of GHG emissions separate from the existing guidelines). The former would effectively treat GHG like any other environmental effect, but in so doing may unintentionally hinder the attainment of AB 32 goals. The latter would elevate GHG impact analysis into a category of its own, but in so doing may unintentionally diminish the importance of a project's other environmental effects.

AEP believes that the Proposed Amendments strike a fair balance between these two approaches.

AEP is also appreciative of the fact that the Proposed Amendments appear to lay groundwork for the eventual implementation of SB 375 (Steinberg, 2008), which requires regional and local planning agencies to address GHG emissions reductions through land-use planning.

Determining Significance. CEQA directs a lead agency to assess the significance of the environmental effects, including GHG emissions, caused by a project that is subject to a lead agency's jurisdiction. Pursuant to CEQA, a lead agency must determine the significance of GHG emissions associated with a project that is subject to the local lead agency's jurisdiction.

While AB 32 does many things, it does not address methods for determining the significance of GHG emissions and is silent regarding thresholds of significance for GHG emissions; and no other statutory guidance in this area exists at this time.

The Proposed Amendments encourage lead agencies to determine the amount of GHG emissions resulting from a project based on the context of the project (Section 15064.4(a) and to consider thresholds of significance as determined by others (§ 15064.7(c)).

In light of the fact that the impact of GHG emissions is global in nature, the job of a lead agency in determining the significance of a project's GHG emissions under CEQA is unprecedented and therefore controversial. As noted earlier, some environmental groups argue that any contribution of GHG emissions above the baseline may have an effect on global warming and climate change, and therefore may be considered cumulatively considerable, which leads to a project's cumulative impact to become significant and unavoidable. Whether or not this is the case, it leaves open the question: What amount of GHG emissions is deemed to be significant?

Establishing an appropriate threshold of significance for GHG emissions is therefore critical. AEP is particularly concerned that a very low GHG threshold of significance could result in the CEQA review of projects that, previous to AB 32, might not have required CEQA review at all. The implications are obvious: significant increases in workloads for lead agencies; additional documentation for the CEQA review of affected projects; increased and risk unnecessary project delays; and negligible environmental benefit, especially when there are few, if any, options to eliminate or mitigate GHG emissions from low-GHG emission projects.

Arriving at commonly accepted thresholds of significance appears to be unrealistic at this point. In the absence of adequate statutory guidance, AEP believes that the Proposed Amendments help shape the discussion of significance as far as statute and the Guidelines permit.

G. Issues Not Considered In the Current Proposal.

AEP believes that CEQA stakeholders would benefit from additional guidance in the following areas:

Indirect Effects. The Proposed Amendments do not provide guidance with respect to an assessment of a project's indirect GHG emissions effects. While indirect effects are generally defined in Section 15358(a)(2), the global nature of GHG emissions creates the temptation to also examine the indirect effects of GHG emissions in a global context. AEP believes that a reiteration of existing guidance on indirect effects in the Proposed Amendments will help avoid any misunderstanding or unnecessary documentation during CEQA review of project GHG emissions. Specific language is proposed in our comments on Proposed Section 15064.4.

GHG Significance of Projects Required by AB 32. The Proposed Amendments do not consider the significance of projects that comply with the regulations and requirements of AB 32 or the AB

32 Scoping Plan. Since AB 32 establishes statewide targets for GHG emissions, projects required to meet those goals would seem to merit special consideration in the Guidelines.

AEP recommends that the Guidelines include a discussion of whether or not a project's GHG emissions should be considered less than significant if the project is required under, or otherwise compliant with, AB 32 as fully implemented.

Effects of Climate Change on a Project. The Proposed Amendments address a project's potential impact on global warming and climate change, but they do not address the effects of climate change on the project or the significant environmental effect a project might cause by bringing development and people into an area likely to be affected by global warming and climate change.

We note that AB 32 very clearly recognizes the need to consider the effects of global warming on projects when it recognized the adverse consequences of climate change, including increased incidence of sea rise, flooding, and wildfires, as well as the significance of climate change on potable water supplies.

By providing a discussion of the vulnerability of a new project to the cumulative effects of climate change and global warming, the Guidelines would reinforce an important precept of the need to reduce GHG emissions: if we don't reduce GHG emissions, bad things can happen (e.g., sea rise, changes in precipitation patterns and the supply of water, changes in temperature, etc.). As the ISOR points out in its discussion of "Issues Not Addressed...", existing CEQA Guidelines and case law already address the potential need to analyze the effects of climate change on a project (pg. 68 of the ISOR).

AEP believes that lead agencies would benefit from more explicit guidance on how to address the impacts of climate change upon proposed projects and project sites.

H. Organization of Specific Comments.

Our specific comments are organized under two attachments to this letter: **Attachment A** is a compilation of AEP comments on the Proposed Amendments, organized on a section-by-section basis; **Attachment B** is a list of what we believe to be the technical changes needed to correct errors and omissions.

We trust you will find that these comments strengthen the final Guidelines as well as improve the continuity between CEQA, AB 32, and SB 375. Should you have any questions, I am available at your convenience.

Sincerely,

Kent Norton
President

cc: Senator Bob Dutton
Senate pro Tem Darrell Steinberg
Senate Minority Leader Dennis Hollingsworth
Assembly Speaker Karen Bass
Assembly Minority Leader Sam Blakeslee
Cynthia Bryant, Director, Office of Planning and Research

Attachment A

Association of Environmental Professionals
Comments
On the
Proposed Amendments to the CEQA Guidelines
By Section

The following comments include recommended changes to the Proposed Amendments. Recommended changes are underlined or shown as ~~strike-out~~ type against the text of the existing Guidelines and Proposed Amendments, which are shown together in regular type. For the sake of brevity, only the sections or subdivisions affected by our recommended changes are shown.

§ 15064 – Determining the Significance of the Environmental Effects Caused by a Project.

No comment.

§ 15064.4 – Determining the Significance of Impacts from GHG Emissions

The following recommended changes are intended to clarify or amplify the meaning of Proposed Section 15064.4 in its entirety.

15064.4 (a) 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 on available information, to describe, calculate or estimate the amount of greenhouse gas emissions resulting from a project. A lead agency shall have ~~discretion to~~ broad discretion to consider all relevant factors and 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; or
- (2) Rely on a qualitative analysis or performance-based standards.

(b) A lead agency may consider the following when assessing the significance of impacts from greenhouse gas emissions on the environment:

- (1) The extent to which the project may increase or reduce greenhouse gas emissions, as compared to the existing environmental setting;

(2) Whether the project emissions exceed a threshold of significance that the lead agency determines applies to the project, including but not limited to thresholds of significance adopted by the CARB and local air districts.

(3) The extent to which the project complies with regulations or requirements adopted to implement a statewide, regional, or local plan for the reduction or mitigation of greenhouse gas emissions, including but not limited to the AB 32 Scoping Plan. Such regulations or requirements must be adopted by the relevant public agency through a public review process and must include specific requirements that reduce or mitigate the project's incremental contribution of greenhouse gas emissions or the significance of the project's emissions. If there is substantial evidence that the possible effects of a particular project are still cumulatively considerable, notwithstanding compliance with the adopted regulations or requirements, an EIR must be prepared for the project.

(c) When considering indirect effects of GHG emissions, a lead agency shall limit discussion to reasonably foreseeable physical changes that are later in time or farther removed in distance.

Rationale:

The first recommended change is necessary to reinforce the discretion of lead agencies to determine what factors and methods may be used in determining the significance of GHG emissions of given project.

The second clarifies that a lead agency may choose which model or methodology it wishes to use for the purpose of quantifying GHG emissions.

Since CARB and local air districts possess unique expertise and experience in developing appropriate thresholds of significance, the third recommendation directs the attention of lead agencies to these sources when considering whether a project's GHG emissions exceed a threshold of significance.

The fourth recommended change is intended to eliminate any doubt as to the relevance of regulations and requirements adopted to implement the AB 32 Scoping Plan.

The fifth is necessary to support the consideration of a lead agency that a project's compliance with a relevant regulation or requirement may result in the reduction of the significance of the project's GHG emissions.

The sixth and last recommended change to this section is necessary to remind lead agencies of the scope of indirect impacts as defined in Section 15358(a)(2) of the Guidelines. Reiteration of existing guidance on indirect effects in the Proposed Amendments will help avoid any misunderstanding or unnecessary documentation during CEQA review of project GHG emissions.

§ 15064.7 – Thresholds of Significance

No comment.

15065 – Mandatory Findings of Significance

No comment.

§ 15086 – Consultation Concerning Draft EIR

No comment.

§ 15093 – Statement of Overriding Considerations

Comment:

AEP supports the proposed amendment that would add subdivision (d) to Section 15093. This subdivision is important for recognizing that AB 32 and SB 375 are predicated on essentially all sources of GHG emissions in all parts of the state contributing to the state's GHG emission reduction goals, and that purely local interests should not impose conditions on projects contributing to successful implementation of statewide or regional plans, regulations, and programs designed to achieve those goals.

§ 15125 – Environmental Setting

No comment.

§ 15126.2 – Consideration and Discussion of Significant Environmental Impacts

The following recommended change is intended to provide an example of the effect of global warming and climate change on a project.

(a) The Significant Environmental Effects of the Proposed Project. An EIR shall identify and focus on the significant environmental effects of the proposed project. In assessing the impact of a proposed project on the environment, the lead agency should normally limit its examination to changes in the existing physical conditions in the affected area as they exist at the time the notice of preparation is published, or, where no notice of preparation is published, at the time environmental analysis is commenced. Direct and indirect significant effects of the project on the environment shall be clearly identified and described, giving due consideration to both short- and long-term effects. The discussion should include relevant specifics of the area, the resources involved, physical changes, alterations to ecological systems, as well as changes induced in population distribution, population concentration, the human use of the land (including commercial and residential development), health and safety problems caused by the physical changes, and other aspects of the resource base such as water, historical resources, scenic quality, and public services. The EIR shall also analyze any significant environmental effects the project might cause by bringing development and people into the project area. For example, an EIR on a subdivision astride an active fault line should identify as a significant

effect the seismic hazard to future occupants of the subdivision. The subdivision would have the effect of attracting people to the location and exposing them to the hazards found there. Similarly, an EIR on a subdivision adjacent to a coastal marsh or wetland should identify as a significant effect the inundation or flooding hazard to future residents of the subdivision as a result of sea rise from global warming and climate change

Rationale: please refer to the discussion in our cover letter under the heading “Effects of Climate Change on a Project.”

§ 15126.4 – Consideration and Discussion of Mitigation Measures

The following recommended changes are intended to clarify or amplify the meaning of subdivision (c) only.

(c) Mitigation Measures Related to Greenhouse Gas Emissions.

Consistent with section 15126.4(a), lead agencies shall consider feasible means of mitigating significant GHG emissions that may include, but not be limited to:

(1) Measures in an existing plan or mitigation program for the reduction or offset of emissions that are required as part of the lead agency’s decision;

(2) Reductions in emissions resulting from a project through implementation of project features, project design, or other measures related to GHG emissions, such as those described in Appendix F;

(3) Off-site measures, including offsets, to mitigate a project’s emissions, provided the emission reductions achieved by off-site measures, including offsets, can be shown by substantial evidence to be effective, verifiable, and enforceable;

(4) Measures that sequester greenhouse gases; and

(5) In the case of the adoption of a plan, such as a general plan, long-range development plan, or greenhouse gas reduction plan, mitigation may include the identification of specific measures that may be implemented on a project-by-project basis. Mitigation may also include the incorporation of specific measures or policies found in an adopted ordinance or regulation that reduces the cumulative effect of emissions.

Rationale: the recommended changes shown above are intended to:

- Clarify that less-than-significant effects of GHG emissions, including zero net emissions, are not required to be mitigated under CEQA, by adding the word “significant”;
- Clarify that an emission “offset” is a legitimate means of mitigating GHG emissions;

- Clarify that mitigation measures must be related to GHG emissions; and
- Remind CEQA stakeholders that off-site mitigation measures need to be accountable.

§ 15130 – Discussion of Cumulative Impacts

Recommended changes to subdivision (f) only:

~~(f) An EIR shall analyze greenhouse gas emissions resulting from a proposed project when the incremental contribution of those emissions may be cumulatively considerable.~~

Rationale: If subdivision (f) is retained in the final CEQA Guidelines, it will be the only instance in the Guidelines in which a particular environmental effect is singled out for CEQA analysis. Further, the language of this Proposed Amendment is susceptible to a misunderstanding that CEQA review may be required for every project that has any GHG effect, regardless of significance. For these reasons, we recommend that subdivision (f) be deleted.

According to the ISOR, the purpose of this subdivision is to clarify that sections 21083 and 21083.5 of the Public Resources Code do not require a detailed analysis of GHG emissions solely due to the emissions of other projects. That purpose would seem to be lost in the translation. To accomplish that end, we suggest:

(f) The list approach described in subsection (b)(1) is not necessary to the analysis of GHG emissions. When analyzing the effects of GHG emissions, a lead agency shall limit its consideration to reasonably foreseeable physical changes.

§ 15150 – Incorporation by Reference

No comment.

§ 15183 – Projects Consistent With a Community Plan or Zoning

No comment.

§ 15183.5 – Tiering and Streamlining the Analysis of Greenhouse Gas Emissions

Our proposed changes to Section 15183.5 are limited to the opening paragraphs of subdivision (a) and subdivision (b).

(a) Lead agencies may analyze and mitigate the significant effects of GHG emissions at a programmatic level, such as in a general plan, a long-range development plan, or a separate

plan to reduce GHG emissions. Later project-specific environmental documents may tier and/or incorporate by reference that existing programmatic review. Project-specific environmental documents may rely on an EIR containing a programmatic analysis of GHG emissions as provided in section 15152 (tiering), 15167 (staged EIRs), 15168 (program EIRs), 15175-15179.5 (Master EIRs), 15182 (EIRs Prepared for Specific Plans), and 15183 (EIRs Prepared for General Plans, Community Plans, or Zoning).

(b) Greenhouse Gas Reduction Plans. Public agencies may choose to analyze and mitigate significant GHG emissions in a greenhouse gas reduction plan or similar document. A plan to reduce GHG emissions may be used in a cumulative impacts analysis as set forth below. Pursuant to sections 15064(h)(3) and 15130(d), a lead agency may determine that a project's incremental contribution to a cumulative effect is not cumulatively considerable if the project complies with the requirements in a previously adopted plan or mitigation program under specified circumstances.

Rationale: "Significant" is added in two places to clarify that less-than-significant effects of GHG emissions are not required to be mitigated under CEQA simply by adding the word.

§ 15364.5 – Greenhouse Gas (definition)

No comment.

Appendix F – Energy Conservation

Comment: AEP supports and applauds Proposed Amendments to delete "initial and life cycle energy costs" in each instance within Appendix F. Because lead agencies provide CEQA analysis for a wide range of projects that require a variety of analysis tools to effectively evaluate potential environmental impacts resulting from a particular project, lead agencies need to be able to maintain control of the analysis methods and criteria used. Therefore, the lead agency needs the discretion and authority to determine appropriate analysis tools for use in analyzing a project under CEQA. This is just as true in energy conservation.

In order to maintain the lead agency's discretion and authority in determining impacts, we recommend the following changes to the "Introduction" section and the opening paragraph of the "EIR Contents" section.

I. Introduction

The goal of conserving energy implies the wise and efficient use of energy. The means of achieving this goal include, but are not limited to:

- (1) decreasing overall per capita energy consumption;
- (2) decreasing reliance on natural gas and oil; and
- (3) increasing reliance on renewable energy sources.

In order to assure that energy implications are considered in project decisions, the California Environmental Quality Act requires that EIRs include a discussion of the potential energy impacts of proposed projects, with particular emphasis on avoiding or reducing inefficient, wasteful, and unnecessary consumption of energy (see Public Resources Code section 21100(b)(3)). Energy conservation implies that a project's cost effectiveness be reviewed not only in dollars, but also in terms of energy requirements. For many projects, costs effectiveness may be determined more by energy efficiency than by initial dollar costs. A lead agency may consider the extent to which an energy source serving the project has already undergone environmental review that adequately analyzed and mitigated the effects of energy production.

II. EIR Contents

Potentially significant energy implications of a project shall be considered in an EIR to the extent relevant and applicable to the project. The following lists of energy impact possibilities (items under "C." below) and potential conservation measures (items under "D." below) are designed to assist the lead agency in the preparation of an EIR. In many instances specific items under C. and D. below may not apply, or additional items may be needed. The lead agency has the ultimate authority and responsibility of determining the environmental impacts associated with the energy consumption of a project subject to its jurisdiction. Where items listed below are applicable or relevant to the project, they should be considered in the EIR.

Appendix G – Environmental Checklist Form

See "Technical Comments" below; (Attachment B).

Attachment B

Association of Environmental Professionals Technical Comments on the Proposed Amendments to the CEQA Guidelines

Section 15130(d)

Subdivision (d) of Section 15130 appears to have inadvertently neglected to pick up on amendments proposed by the Office of Planning and Research in its CEQA Guidelines Sections Proposed to be Added or Amended, as released on April 13, 2009. Subdivision (d), as recommended to be amended by OPR, reads as follows:

(d) Previously approved land-use documents ~~such as~~, including but not limited to, general plans, specific plans, regional transportation plans, GHG emissions reduction plans, and local coastal plans may be used in cumulative impact analysis. A pertinent discussion of cumulative impacts contained in one or more previously certified EIRs may be incorporated by reference pursuant to the provisions for tiering and program EIRs. No further cumulative impacts analysis is required when a project is consistent with a general, specific, master, or comparable programmatic plan where the lead agency determines that the regional or area-wide cumulative impacts of the proposed project have already been adequately addressed, as defined in section 15152(f), in a certified EIR for that plan.

The Resources Agency's Proposed Amendments to the CEQA Guidelines should be amended to reconstruct OPR's draft amendments, or a reason supporting the rejection of these changes should be provided.

Appendix G Initial Study Checklist

Appendix G, as transmitted by OPR to the Resources Agency, contains a discussion titled "Evaluation of Environmental Impacts" that appears to have been inadvertently omitted from the Proposed Amendments to the CEQA Guidelines produced by the Resources Agency. This particular discussion is contained in the existing (2007) Guidelines; OPR proposed no amendments to this discussion, shown below:

EVALUATION OF ENVIRONMENTAL IMPACTS:

1) A brief explanation is required for all answers except "No Impact" answers that are adequately supported by the information sources a lead agency cites in the parentheses following each question. A "No Impact" answer is adequately supported if the referenced information sources show that the impact simply does not apply to projects like the one involved (e.g., the project falls outside a fault rupture zone). A "No Impact" answer should be explained when it is based on project-specific factors as well as general standards (e.g., based on a project-specific screening analysis, the project will not expose sensitive receptors to pollutants).

- 2) All answers must take account of the whole action involved, including off-site as well as on-site, cumulative as well as project-level, indirect as well as direct, and construction as well as operational impacts.
- 3) Once the Lead Agency has determined that a particular physical impact may occur, then the checklist answers must indicate whether the impact is potentially significant, less than significant with mitigation, or less than significant. "Potentially Significant Impact" is appropriate if there is substantial evidence that an effect may be significant. If there are one or more "Potentially Significant Impact" entries when the determination is made, an EIR is required.
- 4) "Negative Declaration: Less Than Significant With Mitigation Incorporated" applies where the incorporation of mitigation measures has reduced an effect from "Potentially Significant Impact" to a "Less-than-significant Impact." The Lead Agency must describe the mitigation measures, and briefly explain how they reduce the effect to a less-than-significant level (mitigation measures from "Earlier Analyses," as described in (5) below, may be cross-referenced).
- 5) Earlier analyses may be used where, pursuant to the tiering, program EIR, or other CEQA process, an effect has been adequately analyzed in an earlier EIR or negative declaration. Section 15063(c)(3)(D). In this case, a brief discussion should identify the following:
 - a) Earlier Analysis Used. Identify and state where they are available for review.
 - b) Impacts Adequately Addressed. Identify which effects from the above checklist were within the scope of and adequately analyzed in an earlier document pursuant to applicable legal standards, and state whether such effects were addressed by mitigation measures based on the earlier analysis.
 - c) Mitigation Measures. For effects that are "Less Than Significant with Mitigation Measures Incorporated," describe the mitigation measures which were incorporated or refined from the earlier document and the extent to which they address a project's site-specific conditions.
- 6) Lead agencies are encouraged to incorporate into the checklist references to information sources for potential impacts (e.g., general plans, zoning ordinances). Reference to a previously prepared or outside document should, where appropriate, include a reference to the page or pages from which the statement is substantiated.
- 7) Supporting Information Sources: A source list should be attached, and other sources used or individuals contacted should be cited in the discussion.
- 8) This is only a suggested form, and lead agencies are free to use different formats; however, lead agencies should normally address the questions from this checklist that are relevant to a project's environmental effects in whatever format is selected.
- 9) The explanation of each issue should identify:
 - a) the significance criteria or threshold, if any, used to evaluate each question; and
 - b) the mitigation measure identified, if any, to reduce the impact to less than significant

The Resources Agency's Proposed Amendments to the Guidelines should be amended to restore this information or a reason supporting its deletion should be provided.

Comments on the Initial Statement of Reasons

On page 68, third paragraph, the ISOR incorrectly quotes the legislative authorization for the Proposed Amendments as referring specifically to guidelines on the "*mitigation of greenhouse gas emissions and the effects of greenhouse gas emissions.*" The correct quote is: "*mitigation of greenhouse gas emissions or the effects of greenhouse gas emission.*"; (emphasis added).

In addition to correcting this error, the Resources Agency may wish to address the question of whether the reasoning on page 68 stands, or should be modified in light of this error.