



March 7, 2007

Submitted by email to aayala@arb.ca.gov

Dr. Alberto Ayala
California Environmental Protection Agency
Air Resources Board
1001 I Street, P.O. Box 2815
Sacramento, CA 95812-2815

Re: Discrete Early Action Greenhouse Gas Emission Reduction Measures, as Required under the Global Warming Solutions Act of 2006

Dear Dr. Ayala,

I am writing on behalf of the Center for Biological Diversity (“Center”), a non-profit conservation organization with over 32,000 members, to submit our first recommendations for items to be included in the list of discrete early action greenhouse gas emission reduction measures. Section 38560.5 of the Global Warming Solutions Act of 2006 requires that on or before June 30, 2007, the California Air Resources Board (CARB) shall publish and make available to the public a list of discrete early action greenhouse gas emission reduction measures that can be implemented prior to the measures and limits adopted on or before January 1, 2011, pursuant to Section 38562.¹

The Center is dedicated to protecting imperiled species and their habitats by combining scientific research, public organizing, and advocacy. The Center’s Climate, Air, and Energy Program works to reduce United States greenhouse gases and other harmful air pollutants in order to protect biological diversity, public health, and the environment, and to improve management for the plants and animals most immediately threatened by the climate crisis. Global warming is one of the foremost problems California and the nation face today and implicates all aspects of society, including environmental quality and biodiversity, public health, the stability of our economy, and national security. Because California’s biological diversity is profoundly threatened by global warming, we urge CARB to reduce greenhouse gas emissions as rapidly as possible in ways that maximize benefits and minimize harm to imperiled species.

¹ AB 32, § 38562. (a) On or before January 1, 2011, the state board shall adopt greenhouse gas emission limits and emission reduction measures by regulation to achieve the maximum technologically feasible and cost-effective reductions in greenhouse gas emissions in furtherance of achieving the statewide greenhouse gas emissions limit, to become operative beginning on January 1, 2012.

We thank CARB for its invaluable efforts to implement the Global Warming Solutions Act. The discrete early action greenhouse gas emission reduction measures pursuant to Section 38560.5(a) are a critically important part of the statutory scheme. Because leading climate scientists warn that just ten more years of continued emissions trajectories will make it difficult or impossible to avoid true climate disaster, the need for immediate and substantial reductions in greenhouse gas pollution simply cannot be overstated. We strongly encourage CARB to consider the full range of actions that can be implemented pursuant to Section 38560.5(a), and work to implement them immediately.

As an initial recommendation, we request that CARB issue guidance regarding the implementation of the California Environmental Quality Act, Pub. Res. Code §§ 21000 et seq. (CEQA) with regard to greenhouse gas emissions.² Enacted in 1970, CEQA requires that state and local agencies fully analyze all of the significant environmental impacts of projects they approve, and then avoid and mitigate those impacts to the maximum extent feasible. The Environmental Impact Report (EIR) is often described as the heart of CEQA, and is intended to provide decisionmakers and the public with detailed information about a proposed project's likely effect on the environment, to list ways in which the significant effects of a project might be minimized, and to indicate alternatives to the project. Pub. Res. Code § 21061.

Despite a long history of successful implementation to address criteria air pollutants and other impacts from projects approved in California, CEQA is currently under-utilized with respect to greenhouse gas emissions. While some agencies are beginning to analyze this

² While the CEQA Guidelines are revised by the Secretary for Resources in consultation with the Office of Planning and Research, pursuant to CEQA Guidelines Sections 15023 and 15024, Section 15022(a) provides: "Each public agency shall adopt objectives, criteria, and specific procedures consistent with CEQA and these Guidelines for administering its responsibilities under CEQA, including the orderly evaluation of projects and preparation of environmental documents. The implementing procedures should contain at least provisions for:

(1) Identifying the activities that are exempt from CEQA. These procedures should contain:

(A) Provisions for evaluating a proposed activity to determine if there is no possibility that the activity may have a significant effect on the environment.

(B) A list of projects or permits over which the public agency has only ministerial authority.

(C) A list of specific activities which the public agency has found to be within the categorical exemptions established by these Guidelines.

(2) Conducting Initial Studies.

(3) Preparing Negative Declarations.

(4) Preparing draft and final EIRs.

(5) Consulting with and obtaining comments from other public agencies and members of the public with regard to the environmental effects of projects.

(6) Assuring adequate opportunity and time for public review and comment on the Draft EIR or Negative Declaration.

(7) Evaluating and responding to comments received on environmental documents.

(8) Assigning responsibility for determining the adequacy of an EIR or Negative Declaration.

(9) Reviewing and considering environmental documents by the person or decision-making body who will approve or disapprove a project.

(10) Filing documents required or authorized by CEQA and these Guidelines.

(11) Providing adequate comments on environmental documents which are submitted to the public agency for review.

(12) Assigning responsibility for specific functions to particular units of the public agency.

(13) Providing time periods for performing functions under CEQA."

critically important issue in their CEQA documents, many agencies are still failing to do so. In response to our requests for analysis and mitigation of greenhouse gas emissions on projects including residential and commercial development, transportation, and others, the Center has received a variety of responses illustrating that guidance from CARB could be highly beneficial.

Some agencies and project proponents have asserted that greenhouse gas emissions should be regulated solely under the California Global Warming Solutions Act. While the statute itself makes it quite clear that this is not the case, clarification from CARB would be helpful.³

Other agencies and project proponents have complained of the lack of a current “threshold of significance” for greenhouse gases similar to the thresholds of significance adopted for criteria pollutants by Air Pollution Control Districts. While the lack of a formal threshold of significance clearly cannot obviate the need for a full analysis of the direct, indirect, and cumulative greenhouse gas emissions of a proposed project, we do believe that a threshold of significance from CARB would be useful.

Still other agencies and project proponents have expressed general confusion and lack of knowledge and technical expertise relating to a methodology for analyzing, avoiding, and mitigating greenhouse gas emissions from proposed projects. Guidance from CARB on this issue would also be highly beneficial.

Agencies’ failure to implement CEQA with regard to greenhouse gas emissions represents a significant missed opportunity for reducing greenhouse gas pollution. For example, residential developments include a number emissions sources, from the energy necessary to construct the developments, to the daily energy consumption of individual households and the additional vehicle trips generated by the growth. A wealth of solutions is readily available as mitigation for these impacts, including passive solar construction methods, photovoltaic panels, improved insulation practices, and energy-efficient lighting and appliances. When agencies fail to consider greenhouse gas emissions, they also generally fail to consider and require these important measures.

Full implementation of CEQA will enable state and local planners and decisionmakers to begin immediately addressing greenhouse gas pollution through practical solutions and readily available technology. It will also compel the consideration of solutions across a range of scales, from the very local to actions of statewide significance. The solution to global warming requires that many seemingly small actions and reductions be taken and ultimately add up to significant emissions reductions. CEQA is an excellent, mandatory legal instrument for achieving such reductions and stimulating study and consideration of a wide variety of individual actions. Full implementation of CEQA will support and be complimentary to implementation of the Global

³ See, e.g., Section 38592(b) “Nothing in this division shall relieve any person, entity, or public agency of compliance with other applicable federal, state, or local laws or regulations, including state air and water quality requirements, and other requirements for protecting public health or the environment,” Section 38598(a) “Nothing in this division shall limit the existing authority of a state entity to adopt and implement greenhouse gas reduction measures,” and Section 38598(b) “Nothing in this division shall relieve any state entity of its legal obligations to comply with existing law or regulation.”

Warming Solutions Act and California's overall greenhouse gas reduction goals. Because the climate crisis is far too urgent to allow such a legal instrument to remain underutilized, we urge CARB to include issuing guidance on CEQA compliance as one of its discrete early actions pursuant to Section 68560.5.

Thank you for the opportunity to submit recommendations for items to be included in the list of discrete early action greenhouse gas emission reduction measures. The Center looks forward to continuing to participate in California's exciting, groundbreaking efforts to address global warming. Please contact us at the numbers below if you have any questions or concerns. Thank you for your consideration of these comments.

Yours Sincerely,



Brian Nowicki
(520) 623-5252 x.311
bnowicki@biologicaldiversity.org



Kassie Siegel
(760) 366-2232 x302
ksiegel@biologicaldiversity.org