



California Council for Environmental and Economic Balance

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April 15, 2019

Clerk of the Board
California Air Resources Board
1001 I Street
Sacramento, CA 95814

Re: Comments on Proposed Rule Proposed Amendments to CARB's CEQA Regulations (17 Cal. Code Regs. §§ 60000-60007)

To Whom It May Concern:

The California Council for Environmental and Economic Balance (“CCEEB”) submits these comments on the proposed amendments to 17 Cal. Code Regs. Sections 60000-60007 released by the California Air Resources Board (“CARB”) on February 27, 2019 (“Proposed Rule”), updating CARB’s procedural regulations implementing the California Environmental Quality Act (“CEQA”). Founded in 1973, CCEEB is a non-profit and non-partisan organization that works to advance strategies to achieve a sound economy and a healthy environment.

Comment 1:

Proposed Rule Section 60003(a) deletes the requirement to prepare a staff report “where the action contemplated may have a significant effect on the environment.” Instead, the amended language provides that a staff report will be prepared only when a public hearing is required by law or when CARB voluntarily elects to prepare a staff report. Proposed Rule Section 60003 also deletes the requirements to make staff reports available for public review and comment, and to distribute reports to government agencies with jurisdiction and to persons who have requested such reports. CEQA does not require a public hearing in every instance (CEQA Guidelines Section 15202(a), see also Proposed Rule Section 60004.2(b)(6)), but does require analysis of impacts and feasible mitigation or alternatives in every instance where an action may have significant environmental impacts. CEQA Section 21081, CEQA Guidelines Section 15064. CEQA Sections 21092, 21092.2 and 21092.5 also require circulation of staff reports containing environmental analyses for public review and comment, and distribution directly persons who requested copies and to commenting agencies, as provided in language deleted from Section 60003.

The Initial Statement of Reasons (“ISOR”), p. 5, clarifies that amended Section 60003(a) is intended to cover non-CEQA actions and “Other sections below set forth the public review and comment process for CEQA purposes.” However, the intent to separate CEQA actions in Section 60004 from non-CEQA actions in 60003 is not reflected in the scope of amended Section 60004(b) which applies to a “staff report for a proposed regulation or other state action *for which a staff report is prepared under section 60003*” (emphasis added). To clarify that CEQA and non-CEQA actions are treated separately, and CEQA documents must be prepared and subject to public review and comment process for all non-exempt actions subject to CEQA, proposed Section 60004 should be revised to replace “for which a staff report is prepared under section 60003” with “which may have a significant effect on the environment”, i.e., to read: “A staff report for a proposed regulation, or other state action which may have a significant effect on the environment shall include an environmental analysis...”

Comment 2:

Proposed Rule Sections 60004, 60004.1 and 60004.2 introduce the new term “Impact Environmental Analysis” to replace CARB’s former term “Environmental Assessment.” This terminology appears to have originally been intended to parallel the term “No Impact Environmental Analysis” in CARB’s January 4, 2019 Discussion Draft of the Proposed Rule. The elimination of the confusing term “No Impact Environmental Analysis” and replacement with “Environmental Analysis Finding No Impacts” is a helpful clarification, as the former term incorrectly suggested that no impact analysis was performed and that no mitigation was required (i.e., that the action is exempt from CEQA) rather than that an analysis was performed and the result was a finding of no significant impact. However, in parallel with the Proposed Rule’s “Environmental Analysis Finding No Impacts”, the appropriate and grammatically sensible term when significant impacts do occur should be “Environmental Analysis” or “Environmental Impact Analysis”, not the awkward “Impact Environmental Analysis.”

Comment 3:

Proposed Rule Section 60004(d) enumerates other CARB actions purported to be categorically exempt from CEQA. Similarly, as Section 60004(d) correctly notes, these actions remain subject to CEQA if any of the exceptions to exemptions in CEQA Guidelines Section 15300.2 apply; e.g., for actions which cause significant cumulative impacts, or have a reasonable possibility of causing significant impacts due to unusual circumstances. The incentives and disincentives created by ARB’s grant and fee programs may have environmental consequences that trigger the exception to exemption. For example, grants for clean transportation projects or vehicle charging or fueling stations have the reasonably foreseeable – and intended – result of construction and operation of such facilities, together with any potentially significant environmental consequences.

Comment 4:

Most of the content requirements for an Impact Environmental Analysis have been moved from Section 60003(b) to Section 60004.2(a). However, the inclusion of “beneficial environmental impacts associated with the proposed action” in current Section 60003(b) has been deleted. As recently amended, CEQA Guidelines Section 15124 expressly provides that an EIR may discuss project benefits.

Moreover, the ISOR, p. 6, states that CARB’s intent in Section 60004(b)(1) is to require preparation of an environmental analysis document “if CARB determines there is substantial evidence that any aspect of the project, either individually or cumulatively, may cause a significant effect on the environment, *regardless of whether the overall effect is adverse or beneficial...*” (emphasis added). While not required by CEQA, which defines significant impacts as substantial adverse changes in the environment (CEQA Guidelines § 15382), CARB has discretion to elect a broader scope of analysis in its certified regulatory program as expressed in current Section 60 003(b). However, nothing in the Proposed Rule implements that intent; there is no mention of beneficial effects in the proposed language. Moreover, the only reference to beneficial effects is proposed to be deleted from Section 60003(b). The logical inference from the deletion is that CARB no longer intends to consider beneficial effects. If that is not the case, as the ISOR suggests, then the language in the current CARB regulations regarding beneficial impacts should be retained in Section 60004.2(a), consistent with amended CEQA Guidelines Section 15124.

Comment 5:

Proposed Rule Section 60004.2(b)(3) provides for CARB’s evaluation and response to comments on a draft Impact Environmental Analysis. While written responses to late comments are not required, CARB must consider comments presented orally or in writing not only during the public comment period, but also prior to the close of the public hearing on the project. CEQA Section 21177(a).

Thank you for considering CCEEB’s comments on the Proposed Rule amendments. If you have any questions concerning our comments, please contact me or Jackson R. Gualco, Kendra Daijogo or Cliff Moriyama of The Gualco Group, Inc. at 916/441-1392.

Sincerely,



WILLIAM J. QUINN
President and CEO

Cc: The Honorable Gavin Newsom
Mr. Richard Corey