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PR 2301/CEQA Alternative

INDUSTRY PROPOSAL

January 22, 2009

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PROPOSED RULE 2301

CEQA-Based Alternative

CONTROL OF EMISSIONS FROM NEW OR REDEVELOPMENT PROJECTS

(a) Purpose

The purpose of this Rule is to assure that development and redevelopment projects approved for construction pursuant to the California Environmental Quality Act (California Public Resources Code section 21000 *et seq.*) (“CEQA”) by agencies located within the boundaries of the District will be required, to the fullest extent feasible, to incorporate appropriate mitigation measures in order to meet emission reduction targets specified in the Air Quality Management Plan.

(b) Applicability

Subject to the exemptions set forth below in section (f), this Rule applies to actions taken by a lead agency under CEQA where a project applicant seeks to gain a final discretionary approval for a development project that (i) will directly and/or indirectly, emit baseline operational emissions upon final build-out equal or exceed [TBD] tons per year of NO_x, and (ii) is required to prepare an Environmental Impact Report, Negative Declaration or Mitigated Negative Declaration pursuant to CEQA.

(c) Definitions:

- (1) APPLICANT is any person or entity that proposed to undertake a development project.
- (2) AQMD CEQA AIR QUALITY HANDBOOK is the most recent AQMD CEQA Air Quality Handbook issued by the District, as amended every four (4) years consistent with the adoption of the Air Quality Management Plan.
- (3) CEQA is the California Environmental Quality Act, Calif. Public Resources Code sections 21000 *et seq.*
- (4) COMPLIANCE PLAN is a plan quantifying the mitigation measures required in connection with the approval of a project, how those measures will be implemented by the Applicant, and monitored and enforced by the Lead Agency.

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- (5) DEVELOPMENT PROJECT is any project, or portion thereof, that is subject to a discretionary approval by a public agency, and will ultimately result in a new or modified building.
- (6) HANDBOOK is the District's CEQA Air Quality Handbook, as revised from time to time.
- (7) MITIGATION includes all quantifiable, enforceable emission reductions required by the lead agency pursuant to and allowed under CEQA which avoid, lessen or minimize the significant effects on the environment of a project.
- (8) MITIGATION MEASURES PACKAGES include mitigation measures and their cumulative emission reduction value as defined and determined in light of the PR 2301 Guidance Document.

(d) AQMD CEQA Air Quality Handbook Requirements

(1) The District Staff shall, within one year following the adoption of this Rule, (i) conduct public workshops to solicit input concerning revisions to the District's CEQA Air Quality Handbook to address air emissions related to development and redevelopment, (ii) revise the Handbook, (iii) present the revised Handbook to the Governing Board for review and public comment prior to its finalization and (iv) release the Handbook as revised. Future revisions will be made concurrent with adoption of AQMP updates.

(2) The Handbook shall recommend project air quality analysis procedures, technical tools, and a menu of quantifiable mitigation measures available to projects. The Handbook shall also recommend the appropriate format for the Compliance Plan contained in the CEQA air quality analysis.

(3) The District Staff shall conduct public workshops and solicit input concerning revisions to the Handbook from lead agencies, non-governmental organizations, industry representatives, CEQA practitioners, and other interested parties.

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(e) Air Quality Analysis and Mitigation Pursuant to CEQA – Requirements

(1) Any public agency acting as the lead agency pursuant to CEQA concerning a proposed Development Project that will be located within the boundaries of the District must comply with the provisions of this Rule in connection with any required study of and potential mitigation of air emissions impacts before the agency may approve the project.

(2) Concerning any Development Project to be located within the boundaries of the District for which a public agency acting as the lead agency provides required notice pursuant to Public Resources Code section 21092 at least ninety (90) days following any revision of the Handbook pursuant to Section (d) above, the lead agency must consider and apply the Handbook, with respect to air emissions from and related to the Development Project, subject only to the exceptions set forth below.

(A) Modeling and Analysis of Air Emissions from Projects:

The lead agency shall utilize the methodology, including modeling requirements, indicated in the AQMD CEQA Air Quality Handbook for the analysis of emissions from any Development Project, unless the lead agency does one of the following:

(i) Formally adopts a program that calls for the consistent utilization of any alternative methodology or modeling methods that the lead agency determines, based on a substantial record of evidence, adequately and more appropriately accounts for air emissions in light of the local circumstances, appropriate modeling assumptions, cost and/or staffing limitations, and/or local technical expertise. An agency that plans to adopt an alternative program must notify the District in advance of the proposed adoption of such a program, a comprehensive explanation of the proposed program, how it differs from the methodologies and modeling recommended by the District in the Handbook, and the justification for any such differences. The agency must provide to the District the opportunity to review and comment on the proposed alternative program. Promptly following adoption of an alternative program, the adopting agency must provide a final report to the District containing a comprehensive explanation of the adopted

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program.(ii) Determines administratively, on an individual Development Project basis based on record evidence, that an alternative methodology, which includes any alternative modeling method, adequately and more appropriately accounts for air emissions in light of local circumstances, modeling assumptions, cost and/or staffing limitations, and/or local technical expertise. Any agency that makes such determination concerning an individual Development Project must inform the District at the time that the agency provides required notice pursuant to Public Resources Code section 21092 concerning the Development Project. Such notice to the District must include a comprehensive explanation of the alternative methodology and/or modeling, how it differs from the methodologies and/or modeling recommended by the District Handbook, and the justification for any such differences.

(B) Development Project Design Features and Mitigation Measures:

When reviewing and approving any Development Project, the lead agency shall consider the design features and mitigation measures recommended for consideration and potential application in the Handbook, and shall require all such design features that are potentially applicable to the Development Project, unless and except to the extent that the lead agency makes any of the following findings expressly and based on record evidence:

(i) The design feature or mitigation measure recommended should be forgone or limited in application due to site limitations or surrounding circumstances, incompatibility with project objectives and/or the foreseeable utilization of the Development Project, incompatibility with the general design and neighborhood compatibility of the Development Project, and technical, legal or economic infeasibility.

(ii) The design feature or mitigation measure recommended should be forgone or limited in application due to the fact that the Development Project will incorporate alternative design features and/or mitigation measures that otherwise provide similar emissions reductions .

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(f) District Commenting Agency Responsibilities

(1) The District Staff shall comment on regional plans and general plans to recommend mitigation strategies and measures to reduce operational NOx and PM 2.5 at the jurisdiction and regional level, and to comment on the analytical methodology employed by the lead agency concerning air emissions.

(2) The District shall comment on individual development and redevelopment projects if and as it deems appropriate.

(g) Quantification, Reporting, and Enforcement of Emissions Reductions

A public agency acting as the lead agency pursuant to CEQA concerning a proposed project that will be located within the boundaries of the District shall provide to the District a copy of all Final EIRs and other CEQA documents specifying the final mitigation measures and emission reductions, beginning with the calendar year 2011.

Mitigation measures approved by Lead Agencies will be enforced as required by CEQA.

(h) Exemptions

The following Development Projects shall be exempt from the provisions of this Rule:

- (1) Transportation and transit projects.
- (2) Reconstruction of any development project that is damaged or destroyed and is rebuilt to essentially the same use and intensity.
- (3) Projects at marine ports.

The exemption provided by this section (h) shall not relieve any lead agency from any duties that it must fulfill pursuant to CEQA apart from this Rule.

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