

## Letter 16

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Mayor  
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### **Comment 16-1**

Commenter is concerned by the lack of guidance on thresholds of significance and the unintended consequences that are potentially created by uncertainty, thereby resulting in unnecessary EIRs.

### **Response 16-1**

Public Resources Code section 21000, subdivision (d), expressly directs public agencies to identify whether there are any critical thresholds for health and safety to identify those areas where the capacity of the environment is limited. A threshold is a numeric or qualitative level at which impacts are normally less than significant. (State CEQA Guidelines, § 15064.7(a); see also *Protect the Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal.App.4th 1099, 1107.) With respect to greenhouse gas emissions, the Natural Resources Agency has intentionally maintained a lead agency's discretion to determine the appropriate threshold of significance for a proposed project. This approach is in keeping with existing guidance for determining and adopting thresholds.

Further, the Natural Resources Agency believes proposed section 15064.4 reflects the existing CEQA principle that there is no iron-clad definition of "significance," but has attempted, nonetheless, to identify relevant factors for lead agencies to consider when assessing the significance of greenhouse gas emissions from a proposed project. (State CEQA Guidelines, § 15064(b); *Berkeley Keep Jets Over the Bay Com. v. Board of Port Comm.* (2001) 91 Cal.App.4th 1344, 1380-81.)

Finally, the Natural Resources Agency cautions that it is unlawful to misuse CEQA, and that the "rules regulating the protection of the environment must not be subverted into an instrument for the oppression and delay of social, economic, or recreational development and advancement." (*Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 576.) Therefore, the Natural Resources Agency rejects this comment.

For additional information, see the discussion of thresholds in the Thematic Responses.

**Comment 16-2**

Revise Section 15064.4 to provide more guidance on the use of thresholds for projects below the general plan level.

**Response 16-2**

See response to comment 16-1. Regardless of the type, nature, or tier of a proposed project, thresholds of significance remain within the discretion of the lead agency. Accordingly, the Natural Resources Agency rejects this comment.

**Comment 16-3**

The City believes section 15093, subdivision (d) permits a lead agency to consider the benefits of significant increases in greenhouse gas, and wants clarity on what that means. It is also concerned that this inclusion emphasizes region-wide or state-wide benefits of greenhouse gas reduction while de-emphasizing local benefits of a proposed project.

**Response 16-3**

The Natural Resources Agency has further refined Section 15093 in response to comments. Specifically, it has added “region-wide or statewide environmental benefits” to the other benefits listed in section 15093(a), and deleted the proposed subdivision (d). The previously proposed subdivision (d) could have been interpreted to mean that lead agencies should consider region-wide and statewide environmental benefits of greenhouse gas reduction in isolation. Listing region-wide and statewide environmental benefits among the other benefits enumerated in subdivision (a) placed those benefits within the proper context of the section governing statements of overriding considerations. This change clarifies that lead agencies must balance region-wide and statewide environmental benefits, just like the other listed benefits, against a project’s significant adverse impacts in making a statement of overriding considerations. This change still advances the policy objective of encouraging lead agencies to consider benefits of a project that may extend beyond just a local jurisdiction when choosing to override potentially significant environmental impacts from a project. Since the Natural Resources Agency believes lead agencies were already permitted the broad discretion to consider region-wide or statewide benefits when balancing the pros and cons of a proposed project against its potential impacts, it rejects this comment in so far as it seeks to prioritize local benefits above regional or statewide benefits, or vice versa, or in so far as it seeks to eliminate that discretion.

**Comment 16-4**

Clarify if Section 15126.4(c) is consistent with Section 15064.4. One is mandatory while the latter is not.

#### **Response 16-4**

Section 15064.4 provides direction on “Determining the Significance of Impacts from Greenhouse Gas Emissions.” As was explained in detail in Response to Comments 16-1 and 16-2, Public Resources Code Section 21000 endows a lead agency with the discretion to determine what, if any, threshold of significance is appropriate for analyzing a proposed project. Conversely, section 15126.4 provides direction on “Consideration and Discussion of Mitigation Measures Proposed to Minimize Significant Effects.” Unlike determination of the threshold of significance, feasible mitigation of potentially significant impacts is required, not discretionary.

The Natural Resources Agency has further refined subsection (c) of section 15126.4, which now provides:

Consistent with section 15126.4(a), lead agencies shall consider feasible means, supported by substantial evidence and subject to monitoring or reporting, of mitigating the significant effects of greenhouse gas emissions. Reductions in emissions that are not otherwise required may constitute mitigation pursuant to this subdivision. Measures to mitigate the significant effects of greenhouse gas emissions may include, among others: (1) Measures in an existing plan or mitigation program for the reduction 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, such as those described in Appendix F; (3) Off-site measures, including offsets, to mitigate a project’s emissions; (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 plan for the reduction of greenhouse gas emissions, 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.

This section is intended to clarify that while feasible mitigation measures must be implemented, there are a variety of measures that may be considered when a lead agency is undertaking to determine what, if any, mitigation measures exist, and whether such measures are in fact “feasible.” As this comment is not seeking any change to the proposed language, no further response is required.

#### **Comment 16-5**

Commenter would like to know how proposed section 15130 subsection (f) helps a lead agency determine what is cumulatively considerable given GHG emissions are a global issue.

### **Response 16-5**

In response to comments, proposed section 15130, subdivision (f) has been deleted. Proposed section 15130, subdivision (b)(1)(B) has been further refined to clarify that a detailed cumulative impacts analysis is required when substantial evidence establishes that the incremental contribution of the project's GHG emissions is cumulatively considerable when added to other cumulative projects found in: "A summary of projections contained in an adopted local, regional or statewide plan, or related planning document, that describes or evaluates conditions contributing to the cumulative effect. "

Further clarification was provided so that now, "Such plans may include: a general plan, regional transportation plan, or plans for the reduction of greenhouse gas emissions. A summary of projections may also be contained in an adopted or certified prior environmental document for such a plan. Such projections may be supplemented with additional information such as a regional modeling program. Any such document shall be referenced and made available to the public at a location specified by the lead agency."

This language is intended to limit the scope of potential future projects to those that are foreseeable and non-speculative, and provide the lead agency with discretion to determine what projection(s) it will use to inform its analysis. Other portions of these proposed Guidelines address how lead agencies may determine whether a project's emissions are cumulatively considerable. (See, e.g., Proposed Sections 1506(h)(3) and 15064.4.)

### **Comment 16-6**

Clarify changes to Appendix F (II). Commenter believes that the proposed language changing "should" to "shall," but adding "to the extent relevant and applicable to the project," creates ambiguity as "relevance" and "applicability" have not been defined. Commenter further believes this change imposes an excessive analysis and could lead to legal challenge.

### **Response 16-6**

The changes to Appendix F reflect CEQA's requirement that a project's energy-related impacts be analyzed. (*Tracy First v. City of Tracy* (2009) 177 Cal. App. 4th 912, 930-936; *People v. County of Kern* (1976) 62 Cal.App.3d 761, 774.) The proposed revision, therefore, clarifies that lead agencies must consider such impacts. Just as with other potential environmental impacts, however, a lead agency may explain in a brief statement why impacts are not significant. (State CEQA Guidelines, § 15128.) Thus, the scope of analysis of energy impacts will necessarily depend on the scope and nature of the project under consideration. Thus, the revision providing that energy impacts must be considered in an EIR "to the extent relevant and applicable to the project" reflects the rule that impacts are to be discussed in "proportion to their severity and probability of occurrence." (State CEQA Guidelines, § 15143.) Thus, an EIR for a project involving no energy use, for example, would not be expected to include a detailed discussion of energy impacts. Such limitation is consistent with the Legislative intent in CEQA, that

information in existing environmental analysis and review be used to “reduce delay and duplication in preparation of subsequent environmental impact reports.” (Pub. Resources Code, § 21003(d).) Accordingly, because analysis of energy impacts is required, and the revisions to Appendix F reflect existing law, the Natural Resources Agency rejects this comment.

#### **Comment 16-7**

Commenter believes the phrase “of an agency” in the proposed checklist question, “Would the project conflict with any applicable plan, policy or regulations of an agency adopted for the purpose of reducing the emissions of greenhouse gas?”, is overly broad as multiple agencies may be working on greenhouse gas reduction plans simultaneously.

#### **Response 16-7**

This proposed check list question in Appendix G is intended to provoke a full analysis of the issue of consistency of a proposed project with applicable plans or regulations for the reduction or mitigation of greenhouse gas emissions. More detailed guidance on the context of such an analysis is provided in other sections throughout the Guidelines including sections 15064.4 and 15126.4. That checklist question has been revised for clarity, moreover, so that it now asks whether a project would: “Conflict with an applicable plan, policy or regulation adopted for the purpose of reducing the emissions of greenhouse gases?” The Natural Resources Agency replaced the word “any” with the word “an” to clarify that only a plan determined to be applicable by the lead agency, and not any plan developed by any person or entity, should be considered in determining whether a project would result in a significant impact relating to greenhouse gas emissions. It is possible that different plans, developed by overlapping or neighboring jurisdictions, may apply to a single project; however, this would be true for many different types of plans. Therefore, the Natural Resources Agency rejects this comment.

#### **Comment 16-8**

Appendix G: Transportation/Traffic question (a) is problematic. Metrics to measure capacity for an entire circulation system do not exist for sidewalks, bike paths, bus lines, and airports.

#### **Response 16-8**

Question (a) changes the focus from an increase in traffic at a given location to the effect of a project on the overall circulation system in the project area. Specifically, the change to question (a) recognizes that the lead agency has discretion to choose its own metric of analysis of impacts to intersections, streets, highways and freeways. (Pub. Resources Code, § 21081.2(e); *Eureka Citizens for Responsible Gov’t v. City of Eureka*, (2007) 147 Cal.App.4th 357, 371-373 (lead agency has discretion to choose its methodology).) However, this discretion does not allow a lead agency to rely on speculative or unreasonable methodologies or measures for analysis. If metrics for measuring the capacity of an entire

circulation system do not exist or are not considered sufficient by a lead agency, lead agencies remain free to consider level of service, and/or any other reasonable measure or metric, so long as they consider the transportation system in its entirety. To the extent the commenter is seeking further revision or deletion of this proposed section, no further revision is needed to clarify this section, and the Natural Resources Agency rejects the comment.

#### **Comment 16-9**

Clarify changes to Appendix G: Transportation/Traffic (b). Broadening that question to include travel demand measures and other standards to the analysis introduces ambiguity.

#### **Response 16-9**

See Response to 16-8. Question (b), as revised, would ask whether a project would conflict with the provisions of a congestion management program. The Government Code, beginning at section 65088, requires Congestion Management Agencies, in urbanized areas, to adopt Congestion Management Programs covering that agency's cities and county, and in consultation with local governments, transportation planning agencies, and air quality management districts. A CMP must, pursuant to statute, contain level of service standards for certain designated roadways. A CMP must also include a land use analysis program to assess the impact of land use decisions on the regional transportation system. A CMA may require that land use analysis to occur through the CEQA process. Thus, level of service standards cannot be deleted from the Appendix G checklist altogether. The proposed amendments did, however, amend question (b) to put level of service standards in the broader context of the entire CMP, which should also contain travel demand measures and other standards affecting the circulation system as a whole. Beyond this amendment, however, the Natural Resources Agency cannot remove level of service standards entirely from the Appendix G checklist.

#### **Comment 16-10**

Removing parking capacity from Appendix G: Transportation/Traffic is supported by the fact the Municipal Code adequately addresses parking requirements, including when parking waivers are considerable.

#### **Response 16-10**

The Natural Resources Agency notes this commenter's support of the deletion of this question. Case law recognizes that parking impacts are not necessarily environmental impacts. (*San Franciscans Upholding the Downtown Plan v. City and County of San Francisco* (2002) 102 Cal. App. 4th 656, 697.) Therefore, the question related to parking is not relevant in the initial study checklist. However, if there is substantial evidence indicating a potential for adverse environmental impacts from a project related to parking capacity, such as for example attendant air quality issues that result from cars idling while

searching for parking spots, the lead agency must address such potential impacts regardless of whether the checklist contains parking questions. (*Protect the Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal.App.4th 1099, 1109.) As this comment is not seeking any change to the proposed language, no further response is required at this time.