

Letter 24

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Director
CalFire

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Comment 24-1

Commenter supports changes to add forestry in Appendix G but acknowledges they are not sufficient to identify ultimate actions that result in loss of forestlands.

Response 24-1

The Natural Resources Agency appreciates the support of the Department of Forestry and Fire Protection (CAL FIRE) for the amendments to Appendix G relating to forestry resources. The Natural Resources Agency acknowledges the Department's concern that the proposed amendments do not go far enough. Specific concerns regarding the proposed amendments are addressed below.

Comment 24-2

Commenter opines that lead agencies should be considering the long term, indirect, cumulative effects of their land use decisions, and the proposed Appendix G checklist do not address these issues.

Response 24-2

The text preceding the Appendix G checklist, describing the "Evaluation of Environmental Impacts," already specifically addresses long term, indirect and cumulative effects. Paragraph 2 under that section states:

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.

That section was inadvertently left out of the proposed amendments that were circulated on July 3, 2009; however, the Natural Resources Agency has since revised Appendix G to include that section. Because the existing text of Appendix G already addresses the concerns raised by the comment, no further revision is required.

Comment 24-3

Revise Appendix G: Agriculture and Forest Resources to include specific reference to Government Codes allowing for a more accurate analysis of impacts to forestlands or timberlands as a result of rezoning or land subdivision.

Response 24-3

The comment suggests numerous additions to the Appendix G checklist regarding forestry impacts. The Natural Resources Agency revised the proposed amendments to those Appendix G checklist questions to add a reference to “timberland zoned Timberland Production.” The Agency declines, however, to incorporate the remainder of the suggested text because the Agency finds it to be unnecessary. For example, the other additions to question (c) would address conversion of forestry uses. Conversion is already addressed in the text in question (d), however. The second and third suggested questions also ask about forestland conversion. While those suggested questions address specific types of activities that could ultimately cause conversion, those activities would already fall within the more general concept of conversion addressed in the already proposed question (d).

The last suggested question would ask whether a project would cause a cumulatively considerable decrease in numerous, specified forest benefits. Appendix G already includes questions relating to aesthetics, biology, water quality and recreation, so the addition of such questions in the section on forestry would be duplicative. Sequestration value could be considered in the already proposed questions related to forestry impacts. Finally, a question about impacts to “wood products and other forest products” would appear to address primarily economic concerns which would normally not be a proper subject of a CEQA analysis. (State CEQA Guidelines, § 15131.) Thus, except for the reference to “timberland zoned Timberland Production,” the Natural Resources Agency finds that the questions suggested in this comment are unnecessary.

In suggesting the additional text, the comment indicates that lead agencies may not fully consider the reasonably foreseeable indirect effects of a rezone if there are no immediate plans to clear the land for development. As indicated above, Appendix G and the existing CEQA Guidelines already call for lead agencies to consider a project’s indirect effects. For example, the definition of “effects” expressly includes:

Indirect or secondary effects which are caused by the project and are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect or secondary effects may include growth-inducing effects and other effects related to induced changes in the pattern of land use, population density, or growth rate, and related effects on air and water and other natural systems, including ecosystems.

(State CEQA Guidelines, § 15358.) Thus, the specific text suggested in the comment is not necessary.

Comment 24-4

Add to Appendix G: GHG Emissions Checklist, question regarding the project's overall effect of reducing the capacity of land to reduce GHG levels by means of sequestration or removal of vegetation.

Response 24-4

The Natural Resources Agency declines to incorporate the suggested question into the Appendix G questions related to greenhouse gas emissions. As explained in the Initial Statement of Reasons, the questions related to greenhouse gas emissions in Appendix G "are necessary to satisfy the Legislative directive in section 21083.05 that the effects of GHG emissions be analyzed under CEQA." (Initial Statement of Reasons, at p. 64.) As explained in Response 24-3, above, the sequestration value of forests and other vegetation could fall within the more general questions related to forestry, agriculture and biology in other sections of Appendix G.

Comment 24-5

Revise Appendix G: Hazards question (h) to include projected changes in the environment as a result of climate change.

Response 24-5

The Natural Resources Agency declines to incorporate the suggested text into question (h) related to wildfire hazards because the added text is unnecessary. First, the suggested text relates to ways that urban and suburban development in wildfire areas increases the risk and difficulty in fighting wildfires. Those impacts are already encompassed in the existing text of question (h), which asks: "Expose people or structures to a significant risk of loss, injury or death involving wildland fires, including where wildlands are adjacent to urbanized areas or where residences are intermixed with wildlands?" No evidence is presented to suggest that the existing text is not sufficient. Additionally, adding more specific language to that question could cause readers to ignore causes of wildfire risk that are specifically listed. Finally, the Note proposed to be added to Appendix G makes clear that the questions are intended to provoke "thoughtful assessment of impacts" and that "[s]ubstantial evidence of potential impacts that are not listed on this form must also be considered." Thus, because the broad language in question (h) already encompasses the concerns expressed in this comment, no further revisions are necessary in response to this comment.

Comment 24-6

Amend Section 15386 to add CAL FIRE as a Trustee Agency.

Response 24-6

Public Resources Code section 21070 defines a “trustee agency” to mean “a state agency that has jurisdiction by law over natural resources affected by a project, that are held in trust for the people of the State of California.” Thus, an agency must exercise jurisdiction over natural resources, that are also trust resources, affected by the project. Whether an agency meets the definition of a trustee agency is a matter of law. No published decision has considered whether CAL FIRE is a trustee agency. The authorities cited in the comment do not expressly state that forest resources are held in trust for the people of the State of California, nor do they imply a legislative intent that CAL FIRE be considered a trustee agency.

Amending the definition of trustee agency in the CEQA Guidelines to expressly list CALFIRE would not answer the concern expressed in the comment, however. Specifically, the comment states that the CEQA Guidelines need to be amended to “ensure that lead agencies consult with CAL FIRE when the resources it protects and maintains are potentially impacted.” The CEQA Guidelines already require such consultation. Section 15073(c), for example, states that prior to adopting a negative declaration, the lead agency shall provide notice plus a copy of the initial study to each responsible agency, trustee agency “and every other public agency with jurisdiction by law over resources affected by the project.” Additionally, the Public Resources Code requires that notice of intent to adopt a negative declaration be sent through the State Clearinghouse if a “state agency otherwise has jurisdiction by law with respect to the project.” (Pub. Resources Code, § 21082.1(c)(4)(B).) Thus, the failure of lead agencies to notify CAL FIRE appears to result from a failure to follow existing law, and not a failure of the Guidelines to list CAL FIRE as a trustee agency.

Notably, a lead agency’s failure to follow required procedure can produce harsh results in a lawsuit. For example, the court in *Fall River Wild Trout Foundation v. County of Shasta* (1999) 70 Cal.App.4th 482, 493, presumed a prejudicial error when an agency failed to give required notice to other potentially concerned agencies. In that case, the agency that failed to receive notice was a trustee agency; however, the holding of the case turned on the fact that an agency that was required to receive notice did not. Failure to inform an agency that was required to receive notice, therefore, “deprived the [lead agency] of information necessary to informed decisionmaking and informed public participation.” (*Ibid.*) Thus, a lead agency that fails to provide notice to CAL FIRE of a project with a potential effect on resources over which CAL FIRE exercises jurisdiction commits a prejudicial abuse of discretion. Because the existing statute and CEQA Guidelines already require CAL FIRE to receive notice of projects affecting forest resources, and because the authorities cited in the comment do not clearly indicate the legislature’s intent that CAL FIRE act as a trustee agency, the Natural Resources Agency finds that amendment of the definition of trustee agency is not necessary at this time.

Comment 24-7

Revise Section 15126.4(c)(3) to include “activities to avoid emissions as project mitigation”.

Response 24-7

The Natural Resources Agency declines to incorporate the suggested text. The suggested text would revise section 15126.4(c)(3) to include “avoidance” as project mitigation. The definition of “mitigation” in State CEQA Guidelines section 15370 already encompasses avoidance. Thus, the suggested revision is not necessary.

Comment 24-8

Add Section 15126.4(c)(6) to specifically identify measures that utilize materials in a carbon-neutral manner to produce energy that would otherwise produce emissions.

Response 24-8

The Natural Resources Agency declines to incorporate the suggested text into section 15126.4(c) addressing mitigation of greenhouse gas emissions. As explained in the Initial Statement of Reasons, that section “identify[ies] five general methods of mitigation that may be tailored to the specific circumstances surrounding a specific project.” (Initial Statement of Reasons, at p. 37.) The CEQA Guidelines apply generally to all public agencies and projects subject to CEQA, and must therefore be written in broad language. A lead agency could consider such alternative energy projects, if appropriate, as off-site or on-site mitigation, depending on the characteristics of the project. Notably, subdivision (c)(2) already refers lead agencies to measures listed Appendix F, which includes “increasing reliance on renewable energy sources.” Therefore, the Natural Resources Agency finds the proposed text to be unnecessary.

Comment 24-9

Revise Appendix B to identify resources subject to CalFire’s authority to include “forests and trees”

Response 24-9

The primary purpose of this rulemaking package is to comply with SB97’s directive to develop guidance on the analysis and mitigation of greenhouse gas emissions. The suggested revisions address the scope of CAL FIRE’s authority for purposes of identifying whether CAL FIRE should be included on a State Clearinghouse distribution. The Natural Resources Agency will consider such changes for a future rulemaking activity.

Comment 24-10

Section 15064.4(b) is problematic for the forest sector. Current harvesting practices allow for short term increases in GHG emissions while the remaining forest is managed to allow for increased carbon storage

capacity, resulting in a net increase of statewide carbon stock. Existing language implies approving a project with short term impacts but long term benefits will be difficult.

Response 24-10

As indicated in Response 24-8, above, the CEQA Guidelines are necessarily general in nature. Though the forestry sector is unique, proposed section 15064.4 recognizes that the determination of significance occurs within the context of the particular project. Section 15064.4(b)(1) would have a lead agency consider whether a project will increase or decrease greenhouse gas emissions compared to the existing setting. In performing that analysis, a lead agency must consider all project phases. (See, e.g., State CEQA Guidelines ,§ 15063(a)(1) (“[a]ll phases of project planning, implementation, and operation must be considered in the Initial Study of the project”).) Thus, a lead agency could consider short-term emissions in the context of a long-term sequestration benefit, provided that substantial evidence supports the analysis, and provided that any effects that are unique to short-term emissions are appropriately analyzed.