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Comment 25-1

Clarify Section 15064(h) (3). Commenter wants to know whether the plans and policies listed in this section will be created and made available prior to the enactment of this rulemaking.

Response 25-1

Section 15064(h)(3) provides in relevant part: “A lead agency may determine that a project's incremental contribution to a cumulative effect is not cumulatively considerable if the project will comply with the requirements in a previously approved plan or mitigation program (including, but not limited to, water quality control plan, air quality attainment or maintenance plan, integrated waste management plan, habitat conservation plan, natural community conservation plan, plans or regulations for the reduction of greenhouse gas emissions) that provides specific requirements that will avoid or substantially lessen the cumulative problem within the geographic area in which the project is located. Such plans or programs must be specified in law or adopted by the public agency with jurisdiction over the affected resources through a public review process to implement, interpret, or make specific the law enforced or administered by the public agency....”

Notably, existing subdivision (h)(3) already allows an agency to find that a project’s potential cumulative impacts are less than significant due to compliance with requirements in certain listed plans or mitigation programs. (*Communities for a Better Environment v. California Resources Agency* (2002) 103 Cal.App.4th 98, 111) In effect, this section presently creates a rebuttable presumption that compliance with appropriate plans and regulations reduces a project’s potential incremental contribution to a cumulative effect to a level that is not cumulatively considerable.

The additional clarification being made by the Natural Resources Agency to this section simply provides further examples of appropriate plans and programs that may be considered relative to such analysis. Of course, such plans or programs must meet the criteria identified in the guideline, which include being “adopted by the public agency with jurisdiction over the affected resources.”

Importantly, this section remains discretionary in part, because the Natural Resources Agency recognizes an analysis of a proposed project’s consistency with a plan or program necessarily requires such plan or program to exist and be applicable to the proposed project. Thus, a lead agency “may”

consider such plans or policies as listed, where that consideration informs its decision relative to the potential for cumulatively considerable impacts. According to existing Guideline section 15005, “may” identifies a permissive element which is left fully to the discretion of the public agencies involved.” Consequently, to the extent the Commenter seeks to have this section include already-enacted plans or programs by reference, the Natural Resources Agency rejects this as unnecessary.

Comment 25-2

Section 15064.4(a) and (b) do not take into account effects of rural counties/cities or rural operations/projects.

Response 25-2

Section 15064.4 is not meant to provide an exhaustive list of all potential sources of greenhouse gas emissions, but rather a framework for analyzing the significance of greenhouse gas emissions from a proposed project given the availability of scientific and other data. Section 15064.4(a) states: “The determination of the significance of greenhouse gas emissions calls for a careful judgment by the lead agency consistent with the provisions in section 15064. A lead agency should make a good-faith effort, based to the extent possible on scientific and factual data, to describe, calculate or estimate the amount of greenhouse gas emissions resulting from a project. A lead agency shall have discretion to determine, in the context of a particular project, whether to: (1) Use a model or methodology to quantify greenhouse gas emissions resulting from a project, and which model or methodology to use. The lead agency has discretion to select the model or methodology it considers most appropriate provided it supports its decision with substantial evidence. The lead agency should explain the limitations of the particular model or methodology selected for use; and/or (2) Rely on a qualitative analysis or performance based standards.” This section has been further revised to clarify that regardless of which method the lead agency chooses to determine the significance of a project’s greenhouse gas emissions, the analysis must be based, “to the extent possible on scientific and factual data.”

The Natural Resources Agency has further refined Section 15064.4(b) in response to comments. The section now provides: “A lead agency should consider the following factors, among others, when assessing the significance of impacts from greenhouse gas emissions on the environment.” The previous language could have been interpreted to mean lead agencies had the option to consider whether to assess potentially significant environmental impacts caused by greenhouse gas emissions. It further suggested the list of factors was limited to those proscribed in subsection (b). This change clarifies that, in the absence of important countervailing considerations, a lead agency is required to consider, at a minimum, the listed factors and determine the significance of any potentially significant impacts caused by greenhouse gas emissions from a proposed project. Again, this subsection is not exhaustive.

The Natural Resources Agency believes proposed section 15064.4 fully reflects the existing CEQA principle that there is no iron-clad definition of “significance.” (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.) It

further recognizes that calculation of emissions must inform a determination of significance, or such calculation is not legally required. It therefore leaves it to the discretion of a lead agency to determine when calculation helps establish the significance of greenhouse gas emissions associated with a project, and when a qualitative analysis is, instead, appropriate.

The Natural Resources Agency believes that as written, proposed section 15064.4 requires lead agencies to use their best efforts to investigate and disclose all that they reasonably can regarding a project's potential adverse impacts. (*Ibid*; see also State CEQA Guidelines, § 15144.) Section 15064.4 is designed to assist lead agencies in performing that required investigation.

Finally, the qualitative factors listed in the proposed section 15064.4(b) are intended to assist lead agencies in collecting and considering information relevant to a project's incremental contribution of GHG emissions and the overall context of such emissions. Notably, while subdivision (b) provides a list of factors that necessarily assist public agencies in considering all relevant information, other factors can and should be considered where appropriate and supported by substantial evidence. The Natural Resources Agency, therefore, rejects this comment.

Comment 25-3

Section 15064.4 should recognize that GHG emissions can result from projects approved by neighboring cities and counties.

Response 25-3

See response to 25-2. For identical reasons, the Natural Resources Agency rejects the suggestion in this comment.

Comment 25-4

Section 15125(d) should retain regional blueprint plans and other studies to provide more evidence in CEQA documents.

Response 25-4

The Natural Resources Agency recognizes this Commenter's support of the inclusion of regional blueprint plans into Guideline 15125 (d). Section 15125 reflects existing law requiring examination of project impacts in relation to the existing environment. Subsection (d) states that lead agencies should consider whether the proposed project is inconsistent with applicable local and regional plans. That subsection provides a non-exclusive list of plans for potential consideration. It was appropriate to include Regional Blue Print plans in this section.

Regional Blueprint Plans are being developed in many of California's Metropolitan Planning Organizations through grants provided by the California Department of Transportation. While originally designed to address transportation efficiencies, Regional Blueprint Plans typically involve smart growth planning with an aim to reducing vehicle miles traveled at a regional level. As a result, Regional Blueprint Plans can provide information regarding the region's existing transportation setting and identify methods to reduce region-wide transportation-related impacts. (Scoping Plan, Appendix C, at pp. C-74-C-84.) Land use decisions impact many sectors responsible for GHG emissions, including transportation, electricity, water, waste, and others. However, the primary impact of land use development on GHG emissions relates to vehicle use. (Land Use Subcommittee of the Climate Action Team, LUSCAT Submission to CARB Scoping Plan on Local Government, Land Use, and Transportation (2008), at p. 13.) Blueprint Plans highlight this relationship between land use and transportation and how this relationship may impact a local community's and region's GHG emissions. Analysis of GHG reduction is not required by Blueprint grants but it is recommended. Therefore, Blueprint Plans provide an indication of the GHG emissions potentially created or reduced by the plan. (LUSCAT (2009), at p. 30.)

Given the large percentage of GHG emissions that result from transportation in California, a project's consistency with a Regional Blueprint Plan can provide information indicating whether the project could have significant environmental impacts related to GHG emissions. (Ibid.) Regional Blueprint Plans may, therefore, provide evidence to assist the lead agency in determining whether a project may tend to increase or decrease GHG emissions relative to the existing baseline. Thus, where such a plan has been developed and adopted by an MPO, lead agencies may find it useful to evaluate the project's consistency with that Blueprint Plan.

Notably, while section 15125(d) requires an EIR to discuss any inconsistencies of a project with the listed plans, it does not mandate a finding of significance resulting from any identified inconsistencies. The plans simply provide information regarding the project's existing setting and inconsistency may be an indication of potentially significant impacts. The determination of significance is to be made by the lead agency. Accordingly, it is appropriate to provide a range of plans, including Regional Blueprint plans, for consideration in this guideline as such plans will assist in providing clear and accurate baseline environmental setting.

Comment 25-5

Revise Section 15130(b)(1)(B) to include regional blueprints.

Response 25-5

Section 15130(b)(1)(B) offers two options for estimating the effects resulting from past, present and reasonably foreseeable projects (cumulative impacts). A lead agency may either rely on a list of such projects, or a summary of projections to estimate cumulative impacts. Existing section 15130(b)(1)(B) allows a lead agency to rely on projections in a land use document or certified environmental document that addresses the cumulative impact under consideration. The proposed amendments clarify that plans

providing such projections need not be limited to land use plans, so long as the subject plans evaluate the relevant cumulative effect. The proposed amendments also allow a lead agency to rely on information provided in regional modeling programs.

Unlike revised section 15125(d), the concept of a regional blueprint plan is not appropriate relative to section 15130(b)(1)(B) because such plans are not required to evaluate the reduction of greenhouse gases, or any other cumulative effect. However, use of these plans is not necessarily precluded by section 15130(b)(1)(B) either. If such plans address the cumulative impact under consideration, including greenhouse gas emissions, it may be permissible for a lead agency to rely on attendant projections. For the foregoing reasons, the Natural Resources Agency rejects this comment.

Comment 25-6

Revise Section 15183.5 to include more assistance and guidance on how lead agencies can develop baseline mitigation for projects to tier off of.

Response 25-6

Because GHG emissions raise a cumulative concern, analysis of such emissions in a long-range planning document lends itself to tiering and use in later project-specific environmental review. (Pub. Resources Code, § 21093.) The Legislature has created several tiering and streamlining methods that can reduce duplication in the analysis of GHG emissions. Proposed subdivision (a) clarifies existing statutory provisions in CEQA to provide that GHG analyses are appropriate subjects for tiering and streamlining. It does not establish a standard set of mitigation measures from which tiering will necessarily be appropriate in every instance, nor can it given that CEQA is a fact-sensitive analysis. Since this section compiles and establishes those environmental documents that are appropriate for purposes of tiering so that agencies grappling with this issue have a place to begin, the Natural Resources Agency rejects the suggestion in this comment.

Comment 25-7

Clarify Appendix G: GHG Emissions question (a), without a set of State standards it will be difficult to answer.

Response 25-7

Appendix G is meant to provide a starting point for agencies undertaking CEQA review. As with the existing questions, those related to greenhouse gas emissions are intended to provoke a full analysis of such emissions where appropriate. Specifically, these questions are necessary to satisfy the Legislative directive in section 21083.05 that the effects of GHG emissions be analyzed under CEQA. More detailed guidance on the context of such an analysis, however, is provided in operative sections throughout the

Guidelines. Despite the detailed provisions in the Guidelines themselves, questions related to GHG emissions appear in the checklist because some lead agencies will not seriously consider an environmental issue unless it is specifically mentioned in the checklist, even though existing law requires otherwise. Accordingly, more detail is not necessary or beneficial in this context and the Natural Resources Agency rejects this comment.

Comment 25-8

Clarify Appendix G: GHG Emissions question (b), because without a set of applicable State plans or policies, it will be difficult to answer.

Response 25-8

See Response 25-7. For identical reasons, the Natural Resources Agency rejects the suggestion in this comment.