

Letter 33

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Comment 33-1

Revise Section 15064.4(a) to add the term “net”. This would require lead agencies when conducting a GHG emissions analysis to describe, calculate, or estimate the amount of net GHG emissions resulting from the project.

Response 33-1

The Natural Resources Agency notes that existing regulation, which remains unaltered, already establishes that the physical environment at the time of the project will constitute the baseline by which a lead agency determines whether a particular impact is significant. (State CEQA Guidelines Section 15125, subd.(a).) Consequently, pursuant to section 15064.4(b)(1), if a project emits zero net greenhouse gas emissions, or causes a net decrease in such emissions, and if substantial evidence demonstrates that net effect, then a lead agency may determine that the impact less than significant.

Nothing in section 15064.4 precludes a “net” analysis where such analysis complies with the provision of section 15064, and where substantial evidence supports the ultimate conclusions and findings. However, since a “net” analysis that fully accounts for all emissions sources and decreases may only be appropriate or possible in limited cases, the Natural Resources Agency deliberately chose to draft section 15064.4 broadly. Additionally, in some situations, a true “net” analysis may not be technically feasible or scientifically possible, and determination of an appropriate baseline for determining a “net” effect may be difficult. Finally, a “net” analysis could not be used in a way that would mask the effects of emissions associated with the project. For example, if the emissions occurring in the short-term will have impacts that differ from emissions occurring in the future, those differences may need to be analyzed. Thus, for the reasons described above, the Natural Resources Agency rejects the suggestion in this comment.

Comment 33-2

Revise Section 15064.4(a)(1) to add the terms “lifecycle” and “lifecycle analysis”. Adding these terms would suggest to a lead agency to consider, in addition to other methods, conducting a lifecycle analysis.

Response 33-2

The Natural Resources Agency deliberately did not to include the concept of “lifecycle” in the proposed amendments. The Natural Resources Agency made this decision because there is no existing regulatory definition of “lifecycle,” and the term appears to be causing confusion among stakeholders. In fact, comments received during the Office of Planning and Research’s public workshop process indicate a wide variety of interpretations of that term. (Letter from Terry Rivasplata et al. to OPR, February 2, 2009, at pp. 5, 12 and Attachment; Letter from Center for Biological Diversity et al. to OPR, February 2, 2009, at pp. 17.)

Moreover, even if a standard definition of the term “lifecycle” existed, requiring such an analysis may not be consistent with CEQA. As a general matter, the term could refer to emissions that do not result, directly or indirectly, from the project. An example of such emissions could be those resulting from the manufacture of building materials. (CAPCOA White Paper, at pp. 50-51.) Analysis of lifecycle emissions, as that term is used here, may not be appropriate within a traditional CEQA analysis for several reasons. First, CEQA only requires analysis of impacts that are directly or indirectly attributable to the project under consideration. (State CEQA Guidelines, § 15064(d).) In many instances, materials would be manufactured for many different projects, and may do so whether or not one particular project proceeds. Thus, such emissions may not be “caused by” the project under consideration. Similarly, in this scenario, a lead agency may not be able to require mitigation for emissions that result from the manufacturing process. Mitigation can only be required for emissions that are actually caused by the project. (State CEQA Guidelines, § 15126.4(a)(4).)

Certainly where substantial evidence supports a fair argument that indirect emissions are attributable to a project, that evidence must be considered. Since, however, the term “lifecycle” has been used in a way that may extend beyond a project’s direct and indirect effects, that term was avoided in the development of the proposed amendments.

Finally, it appears that the comment equates a “lifecycle” analysis with a “net” analysis described in Response 33-1, above. As explained in that response, proposed section 15064.4(b)(1) would allow a lead agency to consider the extent to which a project results in an increase or a decrease in greenhouse gas emissions compared to the existing environmental setting. If an agency has performed an analysis that demonstrates that a particular process does not result in an increase in greenhouse gas emissions compared to what already occurs in the existing environment, that evidence would support a conclusion that the project will not cause an increase in greenhouse gas emissions. Thus, to the extent the comment equates the term “lifecycle” with the term “net,” the text in proposed section 15064.4(b)(1) is broad enough to encompass the type of analysis suggested, subject to the limitations described in Response 33-1. Thus, for the reasons described above, the Natural Resources Agency declines to insert the phrase “lifecycle analysis” as suggested in this comment.

Comment 33-3

Revise Section 15125(d) to include the term “integrated waste management plan”. This would add to the list of plans with which a lead agency must discuss a project’s consistency in an EIR.

Response 33-3

The primary purpose of the proposed amendments is to implement SB97, which requires guidance on the analysis and mitigation of greenhouse gas emissions. Section 15125(d), addressing the environmental setting, sets forth the requirement that an EIR discuss a project’s consistency with applicable plans. As explained in the Initial Statement of Reasons, that section was revised for the purpose of adding plans likely to include information relating to greenhouse gas emissions in a given area. (Initial Statement of Reasons, at pp. 33-34.) The comment does not indicate that integrated waste management plans would likely contain information relating to greenhouse gas emissions. Moreover, existing section 15125(d) does not contain an exclusive list of plans to be considered; rather, it contains the inclusive phrase “include, but are not limited to[.]” Thus, the Natural Resources Agency finds that the addition of “integrated waste management plans” to section 15125(d) is not necessary. The suggestion in this comment is therefore rejected.

Comment 33-4

Revise Section 15130(b)(1)(B) to include the term “integrated waste management plan”. This would add to the list of plans a lead agency may include in a discussion of cumulative impacts.

Response 33-4

The primary purpose of the proposed amendments is to implement SB97, which requires guidance on the analysis and mitigation of greenhouse gas emissions. Section 15130(b)(1)(B) provides that a lead agency may rely on a summary of projections contained in an applicable plan in performing a cumulative impacts analysis. As explained in the Initial Statement of Reasons, that section was revised for the purpose of adding plans likely to include information relating to greenhouse gas emissions in a given area and to clarify that a relevant summary may be contained in models developed for that purpose. (Initial Statement of Reasons, at pp. 43-44.) The comment does not indicate that integrated waste management plans would likely contain a summary of projections of greenhouse gas emissions. Moreover, section 15130(b)(1)(B) does not contain an exclusive list of plans to be considered; rather, it contains the inclusive phrase “may include[.]” Thus, the Natural Resources Agency finds that the addition of “integrated waste management plans” to section 15130(b)(1)(B) is not necessary. The suggestion in this comment is, therefore, rejected.

Comment 33-5

Revise Section 15130(d) to include the term “integrated waste management plan”. This would add to the list of land use documents a lead agency may use to rely on to determine no further cumulative impact analysis is required when a project is consistent with, or already adequately discussed within, a certified EIR for the list of plans specified in the subsection.

Response 33-5

The comment notes that “integrated waste management plan” is among the plans listed in existing section 15064(h)(3). That section creates a presumption that if a project is consistent with the requirements in a listed plan, that project’s incremental contribution to a cumulative project is not cumulatively considerable, and would not require preparation of an EIR. As explained in the letter from Cynthia Bryant, OPR Director, to Mike Chrisman, Secretary for Natural Resources, dated April 13, 2009, the Office of Planning and Research revised its initial recommendations to clarify which types of plans may appropriately be used for specific CEQA purposes. The Natural Resources Agency agrees that not every plan listed in each section of the Guidelines is appropriately used in every other section of the Guidelines.

Section 15130(d) provides that land use plans may be used in a cumulative impacts analysis in an EIR. An “integrated waste management plan” contains several elements relating to waste sources, waste reduction, hazardous waste and other related matters, and thus is largely not a land use plan. While an integrated waste management plan must include a siting element that, among other things, designates the location of waste facilities, that element must be consistent with applicable local general plans. (Public Resources Code, § 41720.) Because general plans are already listed in section 15130(d), it is not necessary to also include the siting element of an integrated waste management plan. Moreover, the comment does not indicate that integrated waste management plans would likely address the cumulative effect of greenhouse gas emissions. Thus, for the reasons described above, the Natural Resources Agency declines to add “integrated waste management plan” to section 15130(d).

Comment 33-6

Revise Appendix G: GHG Emissions checklist question (a) to include the term “net” GHG emissions.

Response 33-6

As explained in Response 33-1, above, nothing in the proposed amendments precludes a “net” analysis where such analysis complies with the provision of section 15064, and where substantial evidence supports the ultimate conclusions and findings. However, since a “net” analysis may only be appropriate or possible in limited cases, the Natural Resources Agency deliberately chose to draft section 15064.4 broadly. Additionally, in some situations, a true “net” analysis may not be technically feasible or scientifically possible, and determination of an appropriate baseline for determining a “net” effect may be difficult. Finally, a “net” analysis could not be used in a way that would mask the effects

of emissions associate with the project. For example, if the emissions occurring in the short-term will have impacts that differ from emissions occurring in the future, those differences may need to be analyzed. Thus, for the reasons described above, the Natural Resources Agency rejects the suggestion in this comment.

Comment 33-7

Revise Appendix G: GHG Emissions checklist question (b) to include the term “lifecycle analysis”. This would add to a list of considerations a lead agency can use when determining if a project conflicts with an applicable plan, policy, or regulation.

Response 33-7

The Natural Resources Agency declines to include the term “lifecycle analysis” in the Appendix G checklist for the reasons described in Response 33-2, above. This suggested addition is, therefore, rejected.

Comment 33-8

Revise Appendix G: GHG Emissions checklist question (b) to include the consideration of a lifecycle analysis when determining a significant impact on the environment as well as consideration of an applicable threshold of significance.

Response 33-8

The Natural Resources Agency declines to include the term “lifecycle analysis” in the Appendix G checklist for the reasons described in Response 33-2, above. Proposed section 15064.4(b)(2) would already direct lead agencies to consider the extent to which a project’s emissions exceed an applicable threshold of significance, so it is not necessary to revise question (a) as suggested. The suggested additions in this comment are, therefore, rejected.

Comment 33-9

Revise Appendix G: Utilities and Service Systems to include a question addressing a project’s solid waste management needs. This would suggest that a lead agency determine whether a project complies with an applicable integrated waste management plan.

Response 33-9

As explained in Response 33-3, above, while there is no apparent requirement that an integrated waste management plan contain policies directed at reducing greenhouse gas emissions, if a plan did contain

such requirements, existing section 15125(d) is drafted broadly to allow consideration of such plans. Thus, it is not necessary to revise the Appendix G checklist to ask about a project's consistency with integrated waste management plans.

Comment 33-10

Revise Appendix G: Utilities and Service Systems question (f) to be consistent with the California Integrated Waste Management Act of 1989. This would replace the term "landfill" with the term "solid waste facility".

Response 33-10

The Natural Resources Agency declines to amend question (f) of Appendix G, Section XVII: Utilities and Service Systems. The primary purpose of this rulemaking is to provide guidance on the analysis and mitigation of greenhouse gas emissions. Amending Appendix G to be consistent with the Integrated Waste Management Act of 1989 is beyond the scope of this rulemaking. While certain changes to Appendix G were proposed pursuant to the Natural Resources Agency's general authority to update the CEQA Guidelines, those changes were modest and were intended to address certain misapplications of CEQA in a way that hinders the type of development necessary to reduction greenhouse gas emissions. For the reasons explained above, the Natural Resources Agency, therefore, rejects this comment.

Comment 33-11

Commenter acknowledges the Guidelines do not establish a threshold of significance or prescribe assessment methodologies or mitigation measures. The Air Resources Board began an effort to recommend a statewide threshold. Any such threshold should 1) be based on scientific fact and evidence, 2) result in measurable benefits to public health and the environment, and 3) be realistic and do not unnecessarily delay the growth of California's green economy.

Response 33-11

The comment correctly notes that the proposed amendments do not include a threshold of significance. The CEQA Guidelines do not establish thresholds of significance for other potential environmental impacts, and SB97 did not authorize the development of a statewide threshold as part of this CEQA Guidelines update. Rather, the proposed amendments recognize a lead agency's existing authority to develop, adopt and apply their own thresholds of significance or those developed by other agencies or experts. As set forth in the existing section 15064.7, a threshold is "an identifiable quantitative, qualitative or performance level of a particular environmental effect, non-compliance with which means the effect will normally be determined to be significant by the agency and compliance with which means the effect normally will be determined to be less than significant." Because a threshold would be used in the determination of significance, the threshold would need to be supported with substantial

evidence. (State CEQA Guidelines, § 15064.7(b).) There is no requirement that thresholds produce any benefits, however. Additionally, while economic issues are appropriate in the determination of feasibility, it is not appropriate in the determination of significance (see, e.g., Public Resources Code, § 21002), so a threshold should not be designed with economic impacts in mind.