

Letter 36

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Comment 36-1

Revise Section 15064.4(b) to distinguish anthropogenic and biogenic GHG emissions and clarify a GHG impact assessment be based on net anthropogenic emissions.

Response 36-1

The Natural Resources Agency relied on existing law in the Health and Safety Code to define appropriate greenhouse gasses for review under CEQA. This was done to ensure consistency with AB 32- a complimentary and comprehensive statutory scheme regulating greenhouse gas emissions in California. The Legislature has not included a definition of “greenhouse gases” in CEQA, though it did include a definition in AB32. (Health & Safety Code § 38505(g).) Thus, proposed new section 15364.5 adds a definition of greenhouse gases. The specified gases are consistent with existing law as they are defined to include those identified by the Legislature in section 38505(g) of the Health and Safety Code.

Nothing in Section 15064.4(b) would preclude a lead agency from distinguishing a project’s biogenic and anthropogenic GHG emissions in an analysis provided that the analysis accounts for all project emissions. However, in many situations such an analysis may only be appropriate or possible in limited cases. The Natural Resources Agency deliberately chose to make the language of 15064.4 broad so that lead agencies retain discretion to determine the most appropriate method of analysis relative to a particular project. Since these guidelines impact all public entities that seek to approve projects within California, flexibility in this regard is preferred.

The comment suggests requiring a “net” analysis of GHG emissions. Nothing in section 15064.4 precludes a “net” analysis where such analysis complies with the provision of section 15064, and where speculation would not be needed to support the ultimate conclusions and findings. As with distinguishing emission types, a “net” analysis may only be appropriate or possible in limited cases, the Natural Resources Agency deliberately chose to make the language of 15064.4 broad so that lead agencies retain discretion to determine the most appropriate scope of review relative to a particular project. In many situations, analysis of a “net” emission cycle may not be feasible or scientifically possible, and the Natural Resources Agency believes lead agencies are best suited to make this determination. Since these guidelines impact all public entities that seek to approve projects within California, flexibility in this regard is also preferable.

For these reasons, the Natural Resources Agency rejects the suggestion in this comment.

Comment 36-2

Revise Section 15064.4(b) to allow for the option of a statewide threshold of significance for determining a project's incremental contribution to a cumulative GHG emission impact.

Response 36-2

No state agency has developed a statewide greenhouse gas emissions threshold, nor is one necessarily desirable. First, given the development of the proposed amendments and thresholds in several regional air districts, the California Air Resources Board has placed its CEQA threshold effort on hold. Second, requiring application of a particular threshold in the CEQA Guidelines would represent a major departure from CEQA. CEQA leaves the determination of significance to the lead agency. (State CEQA Guidelines, § 15064.) The precise methodology used to determine significance is also left to lead agencies. (*Eureka Citizens for Responsible Gov't v. City of Eureka* (2007) 147 Cal.App.4th 357, 371-373.) Nothing in SB97 indicated that the legislature intended to change these existing CEQA concepts.

Moreover, different thresholds of significance are applied throughout the state for different impact categories. For example, different air districts have different threshold levels of different pollutants. Thus, when acting as responsible agency for projects in different parts of the state, the commenter likely confronts environmental documents that use different thresholds. While greenhouse gases are global pollutants, local jurisdictions or regional agencies may determine that they have limited capacity for new greenhouse gas emissions within their own jurisdictions, for example, based on existing levels of emissions and projected growth, and so may decide that thresholds in their area should reflect that limitation. This circumstance is consistent with existing Guidelines section 15064(b), which acknowledges that the determination of significance may vary with a project's setting.

For these reasons, the Natural Resources Agency rejects the suggestion in this comment.

Comment 36-3

Clarify in section 15093(d) what type of specific region-wide or statewide benefits may be considered.

Response 36-3

As explained in the Initial Statement of Reasons, of subdivision (d) to section 15093 was proposed for several reasons, including reminding lead agencies that even beneficial projects may have adverse environmental impacts, and encouraging lead agencies to consider broader region-wide and statewide benefits that may result from some projects. (Initial Statement of Reasons, at pp. 31-32.) The proposed addition was not intended to signal any relative importance of regional or statewide concerns as opposed to local concerns.

To avoid such interpretation, 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). 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.

Comment 36-4

Revise Section 15125 to add a separate definition for the environmental setting of a project, constituting the baseline for CEQA analysis, which a lead agency can use to determine the significance of project’s GHG impact.

Response 36-4

The Natural Resources Agency respectfully disagrees that Section 15125 should be revised to specifically recognize a baseline from which an assessment of GHG emission impacts is based. While the Natural Resources Agency recognizes that GHG emissions present a unique challenge in CEQA analyses, it intends that the proposed amendments assist lead agencies in applying existing CEQA rules to that context. (Initial Statement of Reasons, at p. 10.)

That said, Section 15125(d) has been revised to include plans that could indicate whether a particular project’s greenhouse gas emissions may be significant. As explained in the Initial Statement of Reasons, “one potential indicator of a project’s potential GHG emissions impacts is whether the project is consistent with applicable plans that have addressed that impact[;]” thus, “the addition of plans that may address GHG emissions to the list of plans in the existing section 15125 is reasonably necessary to ensure that such analysis occurs.” (Initial Statement of Reasons, at p. 34.)

For the above reasons, the Natural Resources Agency rejects the suggestion in this comment.