

Letter 40

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Comment 40-1

Revise Section 15064.4 to include a hierarchy of analytical methods – i.e. modeling and other quantitative methods – are used when possible. A qualitative analysis should only be used as a last option.

Response 40-1

The Natural Resources Agency declines to revise section 15064.4 to require quantification whenever possible and to only allow a qualitative analysis as a last resort. As explained in the Initial Statement of Reasons, while analysis of greenhouse gas emissions presents a unique task for lead agencies, normal CEQA rules apply. (Initial Statement of Reasons, at p. 10.) Thus, the intent of the proposed amendments is to assist lead agencies in addressing analysis and mitigation of greenhouse gas emissions within CEQA's existing framework. The proposed amendment should, therefore, be interpreted in a manner consistent with the existing Guidelines, Statute and case law.

Nothing in CEQA expressly prohibits reliance on a qualitative analysis. As explained in the Initial Statement of Reasons, CEQA directs lead agencies to consider qualitative factors. (Initial Statement of Reasons, at p. 19; Public Resources Code, § 21001(f).) Further, performance standards, which may be used in the determination of significance, may be qualitative. (State CEQA Guidelines, § 15064.7.)

Further, the discretion recognized in section 15064.4 is not unfettered. A lead agency's analysis, whether quantitative or qualitative, is governed by the standards in the first portion of section 15064.4. The first sentence applies to the context of greenhouse gas emissions the general CEQA rule that the determination of significance calls for a careful judgment by the lead agency. The second sentence sets forth the requirement that the lead agency make a good-faith effort to describe, calculate or estimate the amount of greenhouse gas emissions resulting from a project. The third sentence advises that the exercise of discretion must be made "in the context of a particular project." In other words, even a qualitative analysis must demonstrate a good-faith effort to describe, calculate or estimate the greenhouse gas emissions resulting from a project.

The comment appears to express concern that a qualitative analysis would be less thorough or less informative than a quantitative analysis. To further refine the information standard applicable to either a qualitative or a quantitative analysis, the second sentence in subdivision (a) of section 15064.4 has

been revised to state that the analysis must be “based to the extent possible on scientific and factual data.” This phrase parallels the rule in section 15064(b).

Comment 40-2

Clarify Section 15064.4 by providing an example of how “performance-based standards” would be applied to the determination of significance of impacts from GHG emissions.

Response 40-2

The Natural Resources Agency declines to revise the text of section 15064.4 to include examples of performance based standards. Proposed section 15183.5(b)(1)(D) already contemplates that a plan for the reduction of greenhouse gas emissions may contain performance based standards. Where such standards are developed as part of such a plan, a lead agency would have evidence indicating that compliance with such standards would indicate that the impact of greenhouse gas emissions would be less than significant. Further, existing Guidelines section 15064.7 recognizes that a threshold of significance may be based on a “performance level.” Finally, in adopting SB375, the Legislature acknowledged that regional transportation plans, and the environmental impact reports prepared to analyze those plans, may contain performance standards that would apply to transit priority projects. (See, e.g., Public Resources Code, § 21155.2.) In light of the existing guidance related to performance based standards, the Natural Resources Agency finds that no additional revision to section 15064.4 is required.

Comment 40-3

Amend Section 15064.4(a) to include language requiring lead agencies, to the extent practicable, to use models for quantifying emissions from transportation, energy consumption and related emissions.

Response 40-3

The comment suggests an addition containing two components. The first would require quantification where practicable. The second would specify that emissions sources may include transportation and energy consumption. The Natural Resources Agency declines to incorporate the suggested text for the reasons set forth below.

As to the first component, Response 40-1, above, explained that nothing in CEQA requires quantification of impacts in all instances. Rather, CEQA leaves to lead agencies the discretion to select the most appropriate methodology for the particular project and its circumstances.

As to the second component, section 15064.4(a) instructs lead agencies to analyze the amount of greenhouse gas emissions “resulting from a project.” The existing CEQA Guidelines require that both direct and indirect effects of a project must be analyzed, and all project components and phases must

be accounted for in the analysis. (State CEQA Guidelines, §§ 15063(a)(1) (initial study must address all project phases), 15126 (EIR must address all project phases), 15064(d) (both direct and indirect effects must be addressed).) Additionally, the proposed amendments include a revision in Appendix F to clarify that analysis of a project's energy use is required. Specifying transportation and energy use in section 15064.4, however, could cause lead agencies to focus on those sources to the exclusion of others. Therefore, because the existing CEQA guidelines already require analysis of impacts from all sources during all phases, adding references to transportation and energy consumption to section 15064.4(a) is not necessary.

Comment 40-4

Revise Section 15064.4(a)(1) by striking opening sentence and add language restricting the use of qualitative approaches only in the instance where no quantitative approach is available.

Response 40-4

The Natural Resources Agency declines to delete the first sentence in section 15064.4(a)(1). That sentence is necessary to explain that lead agencies have the discretion to use models to quantify greenhouse gas emissions, and have discretion regarding which methodology or model to use. The Agency also declines to add the sentence stating that a qualitative analysis is permissible only when no quantitative analysis is possible, for the reasons described in Response 40-1.

Comment 40-5

Delete Section 15064.4(a)(2). This would limit the lead agency's discretion to rely on a qualitative analysis or performance based standard when determining the significance of impacts from GHG emissions.

Response 40-5

The Natural Resources Agency declines to delete section 15064.4(a)(2), and thereby limit a lead agency's discretion to perform a qualitative analysis. As explained in Response 40-1, above, CEQA does not require that a lead agency perform a quantitative analysis in every instance where such analysis is possible. The Initial Statement of Reasons explained that a qualitative analysis is permitted by CEQA. (Initial Statement of Reasons, at p. 19.)

Comment 40-6

Commenter states that allowing lead agencies to rely on qualitative analysis of GHG emissions is counterproductive, representing a step backwards in current practice and requirements of CEQA.

Response 40-6

The Natural Resources Agency disagrees that recognizing a lead agency's discretion to perform either a qualitative or quantitative analysis would represent a step backward in CEQA practice. As explained in Response 40-1, above, CEQA permits qualitative analysis and does not require quantitative analysis wherever possible. Many lead agencies will choose to quantify emissions, however, because, as the comment points out, many models are readily available, and as explained in the Initial Statement of Reasons, such models are already used to quantify other types of emissions. (Initial Statement of Reasons, at p. 18.) Moreover, as revised, section 15064.4 requires that either a quantitative or qualitative analysis represent 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." That analysis is subject to the standards in Article 10 of Title 14 of the California Code of Regulations, which contains "Considerations in Preparing EIRs and Negative Declarations." Thus the plain language of section 15064.4(a) and the existing standards in Article 10 of the Guidelines preclude an interpretation that would permit a lead agency to ignore readily available information of probative value.

Comment 40-7

Clarify Section 15064.4, allowing lead agencies to qualitatively analyze GHG emissions will fail to disclose potential environmental impacts of a proposed project and hinder the effectiveness of mitigation measures. Lacking a quantitative analysis, mitigation will not achieve measurable GHG emission reduction. This will conflict with trial court decisions to require public agencies using performance standards identify how the measures will be effective.

Response 40-7

As explained in Response 40-6, above, the Natural Resources Agency disagrees that recognizing a lead agency's discretion to perform a qualitative analysis would permit a lead agency to ignore potential adverse impacts. Environmental documents must contain a sufficient degree of detail to allow a lead agency to intelligently take a project's environmental impacts into account. Nothing in CEQA requires, however, that mitigation measures be quantified. Rather, as revised, section 15126.4(c) requires that a lead agency's determination that a particular measure will mitigate a project's greenhouse gas emissions must be supported with substantial evidence. For these reasons, no further revision of section 15064.4 is required in response to this comment.