

Letter 43

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Comment 43-1

Commenter recognizes the CEQA Guideline amendments overlook the significance of addressing public health issues, specifically vector control and direct impacts that GHG emissions and climate change have on vectors and their spread.

Response 43-1

The Natural Resources Agency appreciates the efforts of the Mosquito and Vector Control Association of California to protect public health in California and to raise awareness of the public health implications of project design. The Association submitted a letter to the Natural Resources Agency requesting changes to the Appendix G checklist prior to the publication of the Notice of Proposed Action in this rulemaking package. The Secretary for Natural Resources responded to that letter explaining why the proposed changes were not necessary. That letter explained in particular:

Appendix G is intended to provide a sample checklist that may assist lead agencies to evaluate the potential environmental impacts resulting from proposed projects. The checklist is only a sample and should be tailored to the lead agency's particular circumstances. (State CEQA Guidelines, § 15063(f).) Further, the analysis for a project must consider evidence of potential environmental impacts, even if such impacts are not specifically listed on the Appendix G checklist. Thus, the inclusion of vector control questions in the Appendix G checklist would not require lead agencies to include analysis of such issues in their environmental documents, nor does the lack of such questions in the checklist excuse lead agencies of such an analysis if substantial evidence warrants it.

Other aspects of the CEQA Guidelines, moreover, already require analysis of vector control issues where substantial evidence indicates that a project may cause such adverse effects. For example, section 15065(a)(4) requires a finding of significance and preparation of an environmental impact report where the "environmental effects of a project will cause substantial adverse effects on human beings, either directly or indirectly." This finding is currently reflected in section XVII(c) of the existing Environmental Checklist in Appendix G.

Your letter mentioned that vector control issues should be addressed in particular where certain mitigation measures, such as detention basins, are required to protect water quality. In that circumstance, section 15126.4(a)(1)(D) requires analysis of the potential adverse effects resulting from a project's mitigation measures. Where an EIR is prepared for a project, section 15086(a)(3) requires the lead agency to consult with, among others, "[a]ny ... local agencies which have jurisdiction by law with respect to the project or which exercise authority over resources which may be affected by the project[.]" Thus, the local vector control agency would have the opportunity to provide input on the specifics of the project and its location.

(Letter from Secretary Chrisman to John Rusmisl, July 10, 2009.) Thus, the Natural Resources Agency has not overlooked vector control issues in this rulemaking package; rather, as explained above, inclusion of vector control issues were determined to be unnecessary given the existing text.

The Association has submitted new comments specifically on the Natural Resources Agency's proposed amendments. Those specific comments and objections are addressed below.

Comment 43-2

SB 97 requires the development of CEQA Guidelines to adequately address GHG emissions and climate change and other environmental factors influencing impacts to the "resources" of public health. Commenter believes to most effectively achieve this goal is through the addition of vector control related questions in the Appendix G Initial Study Checklist.

Response 43-2

In SB97, the Legislature directed the Office of Planning and Research and the Natural Resources Agency to develop and adopt guidelines on the effects of individual projects' greenhouse gas emissions and the mitigation of those greenhouse gas emissions pursuant to CEQA. SB97's seemingly sweeping language referring to the "effects of greenhouse gas emissions" generally, enacted in section 21083.05 of the Public Resources Code, must be read in context. That section immediately follows section 21083, which required the development of guidelines for the "orderly evaluation of projects" to implement CEQA. (Public Resources Code, § 21083(a).) While CEQA's underlying purpose is protection of the environment, it does so at a micro-level by requiring analysis of environmental impacts resulting from the implementation of individual projects. (Public Resources Code, § 21002 ("public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental effects of such projects") (emphasis added).) Thus, in enacting SB97, the Legislature required the development of guidelines to analyze effects of an individual project's greenhouse gas emissions, and if those emissions would result in significant effects, guidelines to mitigate that project's significant emissions. The focus of this rulemaking package is limited, therefore, to greenhouse gas emissions specifically, and not other effects that may be caused by climate change generally.

Moreover, as explained in Response 43-1, above, the existing CEQA Guidelines already address public health issues. Further revisions are not required in response to this comment.

Comment 43-3

Revise the amendments to address: (1) the spread of vector borne diseases due to GHG emissions and climate change; (2) incorporate pest control in the Initial Study Checklist; and (3) change policy and planning strategies to minimize vectors and need for pesticides.

Response 43-3

Regarding the spread of vector-borne diseases due to climate change, as explained in the Initial Statement of Reasons, CEQA does not typically require the analysis of the effects of the environment on a project. The existing CEQA Guidelines already address the limited circumstances under which such an analysis may be appropriate.

Several comments submitted as part of the Natural Resources Agency's SB97 rulemaking process urged it to incorporate the draft California Climate Adaptation Strategy into the CEQA Guidelines. In considering such comments, it is important to understand several key differences between the California Adaptation Strategy and the California Environmental Quality Act. First, the Adaptation Strategy is a policy statement that contains recommendations; it is not a binding regulatory document. Second, the focus of the Adaptation Strategy is on how we can change in response to climate change. CEQA's focus, on the other hand, is the analysis of greenhouse gas emissions from a particular project, and mitigation of those emissions if they are significant. Given these differences, CEQA should not be viewed as the tool to implement the Adaptation Strategy; rather, as indicated in the Strategy's key recommendations, advanced programmatic planning is the primary method to implement the Adaptation Strategies.

There is some overlap between CEQA and Adaptation, however. As explained in both the Initial Statement of Reasons and in the Draft Adaptation Strategy, section 15126.2 may require the analysis of the effects of a changing climate under certain circumstances. Having reviewed all of the comments addressing the effects of climate change, the Natural Resources Agency revised the proposed amendments to include a new sentence in Section 15126.2 clarifying the type of analysis that would be required.

Specifically, the new sentence calls for analysis of placing projects in areas susceptible to hazards, such as floodplains, coastlines, and wildfire risk areas. Such analysis would be appropriate where the risk is identified in authoritative maps, risk assessments or land use plans. According to the Office of Planning and Research, at least sixty lead agencies already require this type of analysis. (California Governor's Office of Planning and Research. (January, 2009). The California Planners' Book of Lists 2009. State Clearinghouse. Sacramento, California, at p. 109.) This addition is reasonably necessary to guide lead agencies as to the scope of analysis of a changing climate that is appropriate under CEQA.

As revised, section 15126.2 would provide that a lead agency should analyze the effects of bringing development to an area that is susceptible to hazards such as flooding and wildfire (i.e., potential upset of hazardous materials in a flood, increased need for firefighting services, etc.), both as such hazards currently exist or may occur in the future. Several limitations on the analysis of future hazards, however, should apply. For example, such an analysis may not be relevant if the potential hazard would likely occur sometime after the projected life of the project (i.e., if sea-level projections only project changes 50 years in the future, a five-year project may not be affected by such changes). Additionally, the degree of analysis should correspond to the probability of the potential hazard. (State CEQA Guidelines, § 15143 (“significant effects should be discussed with emphasis in proportion to their severity and probability of occurrence”).) Thus, for example, where there is a great degree of certainty that sea-levels may rise between 3 and 6 feet at a specific location within 30 years, and the project would involve placing a wastewater treatment plant with a 50 year life at 2 feet above current sea level, the potential effects that may result from inundation of that plant should be addressed. On the other extreme, while there may be consensus that temperatures may rise, but the magnitude of the increase is not known with any degree of certainty, effects associated with temperature rise would not need to be examined. (State CEQA Guidelines, § 15145 (“If, after thorough investigation, a lead agency finds that a particular impact is too speculative for evaluation, the agency should note its conclusion and terminate the discussion of the impact”).) Lead agencies are not required to generate their own original research on potential future changes; however, where specific information is currently available, the analysis should address that information. (State CEQA Guidelines, § 15144 (environmental analysis “necessarily involves some degree of forecasting. While seeing the unforeseeable is not possible, an agency must use its best efforts to find out and disclose all that it reasonably can”) (emphasis added).)

The revision in section 15126.2 is consistent with the general objective of the Adaptation Strategy and is consistent with the limits of CEQA. Not all issues addressed in the Adaptation Strategy are necessarily appropriate in a CEQA analysis, however. Thus, the revision in section 15126.2 should not be read as implementation of the entire Adaptation Strategy. Unlike hazards that can be mapped, however, other issues in the Adaptation Strategy, such as the health risks associated with higher temperatures, may not allow a link between a project and an ultimate impact. CEQA does not generally require an analysis of the changing environment that results purely from other projects. (State CEQA Guidelines, § 15130(a)(1) (an “EIR should not discuss impacts which do not result in part from the project evaluated in the EIR”).) No evidence in the rulemaking record before the Natural Resources Agency suggests that the science has developed sufficiently to enable a lead agency to determine an individual project’s impact on, for example, increases in vector-borne diseases caused by climate change. Thus, the Natural Resources Agency declines to revise the Appendix G checklist to suggest that such analysis is required even where no tools are available to perform such an analysis. As explained in the Note preceding Appendix G, however, “[s]ubstantial evidence of potential impacts that are not listed on this form must also be considered.” Thus, if evidence exists in the record regarding a project’s significant impact on vector-borne diseases, that evidence would need to be considered in an EIR. Therefore, the Natural Resources Agency declines to revise Appendix G to include questions related to vector-borne diseases caused by climate change.

Regarding the second and third issues raised in this comment, Response 43-1, above, explained that the existing text in the CEQA Guidelines already accounts for vector-borne diseases where evidence suggests an impact. No further revisions are required to respond to this comment.

Comment 43-4

Since the draft 2009 California Climate Adaptation Strategy recognized threats related to vector-borne diseases, the CEQA Guidelines should also be revised to incorporate considerations of vector-borne disease risks and impacts to public health.

Response 43-4

As explained in Response 43-3, above, there are significant differences between the use and scope of the draft Adaptation Strategy and the CEQA Guidelines. Only certain issues raised in the Adaptation Strategy are appropriate subjects of CEQA analysis. Response 43-1, above, explains why the existing text of the CEQA Guidelines already adequately accounts for vector-borne diseases and impacts to public health. Thus, further revisions to the CEQA Guidelines are not necessary.

Comment 43-5

Amend Appendix G Initial Study Checklist to include a new item: Public Health and Safety.

Response 43-5

The proposed initial study checklist questions addressing public health concerns exceed the scope of the proposed action. Further, Response 43-1, above, explained why revision of the existing text of the CEQA Guidelines is not necessary to address public health concerns. No further revisions are required in response to this comment.

Comment 43-6

Commenter recommends amendments clearly recognize climate change and other environmental factors that influence public health impacts.

Response 43-6

As explained in Response 43-3, above, CEQA generally does not require analysis of the effects of climate change on a project. The comment does not provide any evidence that would allow a lead agency to analyze the impact of an individual project on the spread of vector-borne diseases. As explained in the Note preceding Appendix G, however, “[s]ubstantial evidence of potential impacts that are not listed on this form must also be considered.” Thus, if evidence exists in the record regarding a project’s

significant impact on vector-borne diseases, that evidence would need to be considered in an EIR. Therefore, the Natural Resources Agency declines to revise Appendix G to include questions related to vector-borne diseases caused by climate change.