

Letter 46

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Comment 46-1

Commenter requests more guidance on the use of thresholds of significance given the global nature of impacts to GHG emissions.

Response 46-1

Public Resources Code section 21000, subdivision (d), expressly directs public agencies to identify whether there are any critical thresholds for health and safety to identify those areas where the capacity of the environment is limited. A threshold is a numeric or qualitative level at which impacts are normally less than significant. (State CEQA Guidelines, § 15064.7(a); see also *Protect the Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal.App.4th 1099, 1107.) With respect to greenhouse gas emissions, the Natural Resources Agency has intentionally maintained a lead agency's discretion to determine the appropriate threshold of significance for a proposed project, rather than proscribing a uniformed approach to dealing with this issue. This approach is in keeping with existing guidance for determining and adopting thresholds and allows flexibility as projects vary and the analysis in this area will be highly fact-sensitive.

The Natural Resources Agency believes proposed section 15064.4 reflects the existing CEQA principle that there is no iron-clad definition of "significance," but has attempted, nonetheless, to identify relevant factors for lead agencies to consider when assessing the significance of greenhouse gas emissions from a proposed project. (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.) This is especially true given the global nature of greenhouse gas emissions and the potential for significant impacts from incremental contributions of such emissions. The Natural Resources Agency fully recognizes that this particular impact has a global context and that it is extremely challenging for lead agencies to determine how a single project fits within that context. With this in mind, the Natural Resources Agency has opted to provide a framework for analysis that retains a lead agency's essential discretion, rather than to proscribe a set of criteria or other requirements that would lead to uniform analysis. For the forgoing reasons, the Natural Agency rejects this comment.

The CEQA Guidelines do not establish thresholds of significance for other potential environmental impacts, and SB97 did not authorize the development of a threshold as part of this CEQA Guidelines update. As explained above, 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. For additional discussion on thresholds, please see Thematic Responses.

Comment 46-2

Section 15093(d) is too broad and may create environmental justice issues through misuse and abuse.

Response 46-2

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). The previously proposed subdivision (d) could have been interpreted to mean that lead agencies should consider region-wide and statewide environmental benefits of greenhouse gas reduction in isolation. 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 when choosing to override potentially significant environmental impacts from a project. Since the Natural Resources Agency believes lead agencies were already permitted the broad discretion to consider region-wide or statewide benefits when balancing the pros and cons of a proposed project against its potential impacts, it rejects this comment in so far as it seeks to prioritize local benefits above regional or statewide benefits, or vice versa, or in so far as it seeks to eliminate that discretion. Otherwise, the Natural Resources Agency believes it has sufficiently addressed this Commenter’s concern.

Comment 46-3

Section 15126.4(c) should emphasize reducing energy consumption on-site as opposed to directing an emissions reduction elsewhere.

Response 46-3

The Natural Resources Agency recognizes that there may be circumstances in which requiring on-site mitigation may result in various benefits to both the project and local community. However, existing CEQA law leaves the determination of the precise method of mitigation to the discretion of lead agencies. (State CEQA Guidelines, § 15126.4(a)(1)(B); see also *San Franciscans Upholding the Downtown Plan v. City & Co. of San Francisco* (2002) 102 Cal. App. 4th 656, 697.) In keeping with this principal, the Natural Resources Agency has deliberately chosen not to emphasize any one mitigation measure over another in the proposed 15126.4(c), or to create an artificial hierarchy where the mitigation of local

impacts is preferred to off-site mitigation measures. Accordingly, the Natural Resources Agency rejects this comment.

Comment 46-4

Amendments provide too much latitude to lead agencies on how to address GHG emissions. Given the global scale of the issue, a more consistent statewide approach may be more appropriate.

Response 46-4

See Response 46-1. As was the case with thresholds of significance, approaches to analyzing and mitigating greenhouse gas emissions from a project can and will legitimately vary based on project specifications, needs of a jurisdiction or entity, and policy goals sought to be achieved through the proposed project's implementation and development. Further, the evidence produced for individual records will necessarily vary depending on the project at issue, and community involvement. Existing CEQA guidelines do not proscribe set methodologies or uniformed approaches relative to analysis and mitigation of potentially significant impacts, and impacts associated with greenhouse gas emissions have not been singled out as an exception to this general rule. In large part, this discretion ensures that lead agencies take a hard look at potentially significant impacts and provide the type of environmental analysis and protection envisioned by the CEQA statute. (Pub. Res. Code section 21000.) The Natural Resources Agency respects CEQA's role as an informational document and intends that these revisions provide a framework by which lead agencies can comply with their obligations to review potentially significant impacts associated with greenhouse gas emissions in both a meaningful and flexible way.

The Natural Resources Agency is aware of the global context of greenhouse gas emissions and their associated impacts, and agrees that a consistent, state-wide approach may assist lead agencies in developing thresholds of significance and analyzing the impact of particular projects or types of projects. However, unlike AB 32, which provides a legislatively mandated statewide plan for reducing greenhouse gas emissions, CEQA's project-specific approach to analysis was not altered by the legislature for the purpose of analyzing greenhouse gases. Since facts and circumstances will vary as between proposed projects, triggering differing legal obligations relative to CEQA review, the Natural Resources Agency has attempted to guide lead agencies towards using statewide approaches where such approaches are applicable and relevant and supported by substantial evidence, while allowing for further inquiry and examination where it is necessary. Accordingly, to the extent this comment seeks to have proscribed criteria and uniform guidance that would apply to all projects, the Natural Resources Agency necessarily rejects it.