

Letter 48

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Comment 48-1

Revise Section 15064.4(b) to use mandatory language. The section contains submissive language to suggest a lead agency may or may not consider the items listed in section 15064.4(b)(1) to (3). This is inconsistent with the “fair argument” standard requires a lead agency to consider any substantial evidence in the record, therefore the lead agency does not have the discretion to consider substantial evidence supporting a fair argument.

Response 48-1

The Natural Resources Agency has further refined section 15064.4(b) in response to comments. The section now provides: “A lead agency should consider the following factors, among other, when assessing the significance of impacts from greenhouse gas emissions on the environment”. This change clarifies that, in the absence of important countervailing consideration, a lead agency is required to consider, at a minimum, the listed factors and determine the significance of any potentially significant impacts caused by greenhouse gas emissions from a proposed project.

The last sentence in Section 15064.4(b)(3) addresses the “fair argument” standard. While CEQA leaves it to the lead agency’s discretion the most appropriate methodology to analyze a project’s potential impacts, CEQA also requires an EIR be prepared whenever there is substantial evidence supporting a fair argument of potential impacts. Section 15064.4 incorporates both rules into the determination of significance of greenhouse gas emissions. No further revision to the text is required to respond to this comment.

Comment 48-2

Revise section 15064.4(b) to replace the word “may” with “shall”. Commenter suggests draft Guidelines be at least as protective as the Guidelines adopted for impacts to historic and archeological resources.

Response 48-2

As explained above, the Natural Resources Agency has further refined section 15064.4(b) to clarify that, in the absence of important countervailing consideration, a lead agency is required to consider, at a

minimum, the listed factors and determine the significance of any potentially significant impacts caused by greenhouse gas emissions from a proposed project.

As to terminology, section 15005 defines certain terms used throughout the Guidelines to indicate whether a directive is mandatory, advisory, or permissive. According to that section:

- a) “Must” or “shall” identifies a mandatory element which all public agencies are required to follow
- b) “Should” identifies guidance provided by the Secretary for Resources based on policy considerations contained in CEQA, in the legislative history of the statute, or in federal court decisions which California courts can be expected to follow. Public agencies are advised to follow this guidance in the absence of compelling, countervailing considerations.
- c) “May” identifies a permissive element which is left fully to the discretion of the public agencies involved.

The Office of Planning and Research and the Natural Resources Agency used the word “shall” or “must” where a statutory provision or rule of case law requires an agency to take a specific action. The proposed amendments use the word “should” where there is no direct authority requiring a certain action. Thus, for example, in the proposed amendments to section 15064.4, there is no statutory provision expressly requiring a lead agency “to describe, calculate, or estimate that amount of greenhouse gas emissions resulting from a project.” However, the policies underlying CEQA (i.e., informed decision-making and demonstrating that environmental considerations have been accounted for) indicate that lead agencies should do so unless there is a compelling reason not to.

Resources believes that as written, proposed section 15064.4 requires lead agencies to use their best efforts to investigate and disclose all that they reasonably can regarding a project’s potential adverse impacts. (Ibid; see also State CEQA Guidelines, § 15144.) Section 15064.4 is designed to assist lead agencies in performing that required investigation. In particular, it provides that lead agencies should quantify GHG emissions where quantification is possible and will assist in the determination of significance. For the reasons explained above, the Natural Resources Agency rejects this comment.

Comment 48-3

Section 15064.4(b)(1) is inconsistent with the existing CEQA standard requiring lead agencies to consider direct physical changes in the environment. Reason being, increasing GHG emissions would result in a direct physical change to the environment.

Response 48-3

See Responses 48-1. No further revision to the text is required to respond to this comment.

Comment 48-4

Section 15064.7 undermines the purpose of establishing thresholds of significance if lead agencies are allowed to ignore an adopted threshold of significance.

Response 48-4

See Response 48-1. No further revision to the text is required to respond to this comment.

Comment 48-5

Revise Section 15064.4(b)(3) to be consistent with Appendix G: GHG Emissions checklist question (b) to clearly require a lead agency to make a determination if a project would be inconsistent or noncompliant with regulations or requirements adopted to implement a statewide, regional, or local plan for the reduction or mitigation of GHG emissions.

Response 48-5

See Response 48-1. No further revision to the text is required to respond to this comment.