

Letter 51

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Comment 51-1

Commenter supports the overall changes to Appendix G to add forestry resources to the checklist questions related to agricultural resources. However, TNC supports additional language as suggested by CAL FIRE that would focus on potential impacts to forestlands as result of rezoning and subdivision.

Response 51-1

The Natural Resources Agency appreciates the support of the Nature Conservancy for the addition of forests related questions to Appendix G. The Agency declines to revise the checklist to expressly include subdivision as a precursor to forest conversion. As explained in Response 24-3, addressing CAL FIRE's suggested text, conversion of forest lands is already addressed in the text in proposed question (d) of the Appendix G checklist questions related to Agricultural Resources and Forestry. In suggesting the additional text, CAL FIRE indicated that lead agencies may not fully consider the reasonably foreseeable indirect effects of a rezone if there are no immediate plans to clear the land for development. Appendix G and the existing CEQA Guidelines already call for lead agencies to consider a project's indirect effects. For example, the definition of "effects" expressly includes:

Indirect or secondary effects which are caused by the project and are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect or secondary effects may include growth-inducing effects and other effects related to induced changes in the pattern of land use, population density, or growth rate, and related effects on air and water and other natural systems, including ecosystems.

(State CEQA Guidelines, § 15358.) Thus, the specific text suggested in the comment is not necessary.

Comment 51-2

Proposed section 15064.4(b)(1) should be amended to include the extent to which a project may increase or reduce GHG emissions, foregone sequestration associated with land conversion, and to require lead agencies to estimate or calculate such GHG emissions as compared to the existing environmental setting. This would broaden the section to include GHG emissions from the loss of carbon stocks and loss of future sequestration capacity.

Response 51-2

The Natural Resources Agency declines to revise section 15064.4(b)(1) to reference sequestration value. SB 97 calls on the Agency to adopt guidelines on the “mitigation of greenhouse gas emissions or the effects of greenhouse gas emissions.” (Pub. Resources Code, § 21083.05.) Thus, the primary focus of the proposed amendments is on greenhouse gas emissions. In fact, the purpose of section 15064.4, as reflected in its title, is to assist lead agencies in “Determining the Significance of Impacts from Greenhouse Gas Emissions.” A project’s impact on sequestration values does not appear to bear on the significance of a project’s greenhouse gas emissions. Thus, reference to sequestration is not appropriate in section 15064.4.

Section 15126.4(c) does recognize the role of sequestration, however, in mitigating a project’s greenhouse gas emissions. Moreover, questions regarding forestry resources were added to the sample initial study checklist in Appendix G due to the many environmental resources associated with forests, including sequestration. (Initial Statement of Reasons, at pp. 63-64.) Thus, while the Natural Resources Agency recognizes the sequestration values and other associated environmental benefits associated with forests, the purpose of section 15064.4 is to assist in the determination of the significance of a project’s greenhouse gas emissions. For that reason, the Natural Resources Agency finds that adding sequestration potential to that section is not necessary.

Comment 51-3

Commenter notes that accounting methodologies exist, and recommends that a reference table be developed, for lead agencies to estimate biological GHG emissions and lost sequestration associated with forestland and other natural land conversions.

Response 51-3

Response 51-2, above, explains why the Natural Resources Agency finds that section 15064.4 should not be revised to specifically address sequestration. The proposed amendments do, however, include questions related to forestry resources in Appendix G. Specifically, Appendix G would suggest that lead agencies consult forest protocols adopted by the Air Resources Board in analyzing forestry impacts. The comment does not indicate that other methodologies would be better or more appropriate. Thus, no further revisions are required in response to this comment.

Comment 51-4

Proposed section 15064.4 should be amended to require calculation or estimation of GHG emissions instead of allowing a qualitative analysis since the State’s overall goal is to reduce greenhouse gas emissions in the atmosphere.

Response 51-4

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).

Finally, the comment opines that the State's overall goal is the reduction of greenhouse gas emissions in the atmosphere. While AB32 does establish a goal of reducing the State's greenhouse gas emissions, CEQA is not a tool to implement AB32. CEQA's goals, among others, are to ensure that lead agencies and the public are fully informed about the environmental consequences of government decision-making. Quantification of a project's greenhouse gas emissions is not necessary in every instance to inform about the environmental consequences of a project. Thus, for the reasons stated above, the Natural Resources Agency declines to require quantification of greenhouse gas emissions in all cases.

Comment 51-5

AB32 requires that GHG reductions be “...real, permanent, quantifiable, verifiable, and enforceable.” (Health & Safety Code Section 38562(d)(1).) A qualitative assessment of GHG impacts and subsequent mitigation could undermine the state’s efforts to accurately measure and reduce GHG emissions. In effect, a qualitative approach is inexact and could create a double standard.

Response 51-5

As explained in Response 51-4, above, CEQA is not a tool to implement AB32. AB32, among other things, requires the ARB to set a quantitative statewide emissions target and to develop regulations that would require reductions in order to achieve that target. Thus, quantification of emissions plays a key role in AB32’s statutory scheme. The purpose of CEQA, on the other hand, is to ensure informed decision-making. (Public Resources Code, § 21002.1(a).) Nothing in CEQA or SB97, which required the development of regulations to address analysis of greenhouse gas emissions, requires that potential impacts be quantified. Because AB32 and CEQA are different statutory schemes, and because the CEQA Guidelines cannot authorize any activity that is prohibited by other laws, the CEQA Guidelines will not undermine regulations promulgated under AB32. Similarly, section 15064.4 does not create a double standard because regulations promulgated under AB32 will apply only to certain sectors, whereas the CEQA Guidelines will apply to all projects subject to CEQA. No revision of the proposed amendments is required in response to this comment.

Comment 51-6

In the case of land conversions, the absence of a requirement that a lead agency estimate or calculate GHG emissions would result in inaccurate and inconsistent assessments, leading to an inability to effectively mitigate or minimize GHG impacts.

Response 51-6

The existing CEQA Guidelines require environmental documents to 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 either impacts or 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 be supported with substantial evidence. Thus, the Natural Resources Agency disagrees that recognizing a lead agency’s discretion to perform a qualitative analysis will necessarily preclude effective mitigation of greenhouse gas emissions. No further revision of section 15064.4 is required in response to this comment.

Comment 51-7

Proposed section 15126.4 (c) should be amended to require mitigation to be “...*real, permanent, quantifiable, verifiable and enforceable*” consistent with GHG reduction standards of AB32.

Response 51-7

The comment suggests that the CEQA Guidelines incorporate AB32’s standards for greenhouse gas reduction into the standards for greenhouse gas mitigation under CEQA. The text of section 15126.4(c) would require that lead agencies consider “feasible” means of mitigating greenhouse gas emissions. Use of the word “feasible” requires the lead agency to find that any measure would be “capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social, and technological factors.” (State CEQA Guidelines, § 15364.) The text of section 15126.4(c) has been further revised in response to comments to clarify that mitigation must be “supported by substantial evidence and subject to monitoring or reporting[.]” This revision addresses the commenter’s concern regarding verifiability. Further, all mitigation must be enforceable as stated in existing section 15126.4(a)(2). Therefore, it is not necessary to further state that off-site measures must be “enforceable.” As explained above, in Response 51-6, nothing in CEQA requires that mitigation measures be quantified. Finally, mitigation measures must be roughly proportional to the project’s impacts, so the degree of a project’s impact will determine whether mitigation must be permanent. (State CEQA Guidelines, § 15126.4(a).) For the reasons stated above, the Natural Resources Agency finds that the concerns raised in this comment are addressed by the proposed revisions and the existing language in the Guidelines, and no further revision is required.

Comment 51-8

Because of the uniqueness of forestlands and the likelihood of inadequate mitigation, section 15126.4(c) should explicitly state any off-site mitigation be required to take place within the forest sector.

Response 51-8

Section 15126.4(c) addresses “Mitigation Measures Related to Greenhouse Gas Emissions,” and so is designed to assist lead agencies in determining how to mitigate a project’s greenhouse gas emissions. That section does not address impacts to forest resources specifically. Additionally, with few exceptions, CEQA does not limit the discretion of a lead agency to choose the most appropriate measures to mitigate a project’s significant adverse environmental impacts. The Natural Resources Agency cannot impose additional restrictions in the CEQA Guidelines that are not authorized by statute or recognized in case-law. Therefore, the Natural Resources Agency cannot revise section 15126.4(c) to require that off-site mitigation for impacts to forest resources take place within the forest sector. The suggestion is rejected.

As a practical matter, a lead agency may determine that it can most easily mitigate impacts to forest resources, which could involve indirect impacts to biological resources, water quality, and other impacts, by mitigating within the forestry sector. (State CEQA Guidelines, § 15021(d).)

Comment 51-9

Appendix G Initial Study Checklist: Section VIII Hazards, should include questions to assess a project's impact on increased fire risk. Suggest language would expand question (h) to include areas that are projected to have an increased risk of wildfire due to climate change.

Response 51-9

The Natural Resources Agency declines to incorporate the suggested text into question (h) related to wildfire hazards because the added text is unnecessary. First, the suggested text relates to ways that urban and suburban development in wildfire areas increases the risk and difficulty in fighting wildfires. Those impacts are already encompassed in the existing text of question (h), which asks: "Expose people or structures to a significant risk of loss, injury or death involving wildland fires, including where wildlands are adjacent to urbanized areas or where residences are intermixed with wildlands?" No evidence is presented to suggest that the existing text is not sufficient. Additionally, adding more specific language to that question could cause readers to ignore causes of wildfire risk that are specifically listed. Finally, the Note proposed to be added to Appendix G makes clear that the questions are intended to provoke "thoughtful assessment of impacts" and that "[s]ubstantial evidence of potential impacts that are not listed on this form must also be considered." Thus, because the broad language in question (h) already encompasses the concerns expressed in this comment, no further revisions are necessary in response to this comment.