

Letter 55

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Comment 55-1

The most difficult issue facing a lead agency is determining when an increase in GHG emissions is significant and agrees. GHG impacts are almost always cumulative.

Response 55-1

The Natural Resources Agency concurs that a lead agency's determination of significance is a difficult part of the analysis of greenhouse gas emissions. For that reason, the text of the proposed section 15064.4 recognizes that the determination of significance "calls for a careful judgment by the lead agency," and "in the context of the particular project," after making "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." The Natural Resources Agency also concurs that in most cases, analysis of the effects of greenhouse gas emissions will be a cumulative impacts analysis.

Comment 55-2

Commenter supports giving lead agencies the discretion to determine how to analyze GHG emissions and support its decision with substantial evidence.

Response 55-2

The Natural Resources Agency appreciates the support of the Department of Water Resources for the proposed amendments' recognition of lead agency discretion.

Comment 55-3

Commenter appreciates maintaining the flexibility lead agencies are given to apply a programmatic approach. The amendments generally facilitate approaches to energy and transportation and do not unreasonably constrain the ability of lead agencies to adopt other approaches to analysis for a range of projects.

Response 55-3

The Natural Resources Agency appreciates the support of the Department of Water Resources for the proposed amendments recognition of the ability to address greenhouse gas emissions at a programmatic level. The proposed amendments were necessarily drafted in broad and general language; however, the Office of Planning and Research and the Natural Resources Agency both strongly support agency efforts to address greenhouse gas emissions at a programmatic level.

Comment 55-4

Commenter appreciates retaining the lead agency's discretion to choose a programmatic approach or a project specific approach to analyzing GHG emissions.

Response 55-4

As explained in Response 55-4, the Natural Resources Agency strongly supports addressing greenhouse gas emissions in programmatic plans. The proposed amendments are intended to reflect the diversity of plans that agencies may use and tailor to their own circumstances.

Comment 55-5

Section 15064.4(b)(3) could be interpreted as limiting a state agency to only plans of statewide application. When read in conjunction with 15064(h)(3) and 15183.5, however, the sections maintain a lead agency's discretion and provide flexibility as long as the lead agency provides specific requirements that will avoid or substantially lessen the cumulative problem within the geographic area the project is located.

Response 55-5

As explained in the Initial Statement of Reasons, section 15064.4(b)(3) is intended to address a wide variety of plans, and not be limited to plans that only have a statewide, regional or local application. Operations plans, for example, might also qualify. The key elements of that section require the project to comply with regulations or requirements that were adopted through a public process to reduce greenhouse gas emissions.

Comment 55-6

Commenter appreciates the discretion given to lead agencies to choose the most appropriate model or methodology to analyze GHG emissions and preserves the option of a quantitative analysis.

Response 55-6

The Natural Resources Agency appreciates the support of the Department of Water Resources for the recognition in the proposed amendments of a lead agency's ability to perform a quantitative or qualitative analysis. The Natural Resources Agency has revised that section make clear that an agency may perform either a quantitative analysis or a qualitative analysis, or both, as may be appropriate to the project. For example, as the comment notes, some emissions sources of a project may be readily modeled, while others may require a qualitative approach. The text has also been revised to clarify that regardless of which method is chosen, the analysis must be based to the extent possible on scientific and factual data.

Comment 55-7

Lead agencies should have discretion to consider case-specific factors in analyzing projects with a long-term climate benefit but short-term emissions. Specifically, Section 15064.4 allows a lead agency to consider the extent to which a project may increase or decrease GHG emissions as compared to the existing environmental setting. The reasoning in Initial Statement of Reasons regarding that all phases of the project must be considered in the analysis is supported.

Response 55-7

As explained in the Initial Statement of Reasons, an analysis of greenhouse gas emissions must account for all project phases. (Initial Statement of Reasons, at p. 20; see also State CEQA Guidelines, §§ 15063(a) (“[a]ll phases of project planning, implementation, and operation must be considered in the initial study...”), 15126 (“[a]ll phases of a project must be considered when evaluating its impact on the environment: planning, acquisition, development, and operation”).) The analysis must also be supported with substantial evidence. Thus, an agency could not assume, for example, that because a project may result in a long-term climate benefit, short term construction impacts would not need to be analyzed. Further, if substantial evidence suggests any differences between emissions occurring in the short term as opposed to long-term emissions, those differences would need to be accounted for in the analysis. With those considerations in mind, however, the proposed amendments are intended to reflect existing law requiring that all project phases be accounted for in the analysis.

Comment 55-8

Commenter agrees with the decision to not establish a hierarchy of mitigation, allowing a lead agency to decide what mitigation is most technologically and economically feasible in the context of an individual project.

Response 55-8

The Natural Resources Agency appreciates the support of the Department of Water Resources for the proposed amendments' recognition of lead agency discretion in determining appropriate mitigation. The proposed subdivision (c), regarding mitigation of greenhouse gas emissions, has been revised to state that only measures that are not otherwise required may qualify as mitigation. It has also been revised to clarify that any measures must be supported with substantial evidence and be capable of monitoring or reporting. Those revisions are designed to be consistent with existing CEQA law regarding mitigation and will not affect a lead agency's discretion in choosing the most appropriate mitigation for a particular project.

Comment 55-9

Commenter agrees with maintaining the lead agencies discretion with regards to thresholds of significance as this area of analysis is a developing area of science and law.

Response 55-9

The Natural Resources Agency appreciates the support of the Department of Water Resources for the proposed amendments recognition of discretion regarding the application of thresholds.