

Letter 63

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Comment 63-1

Revise the Guidelines to create a nexus between CEQA and the California Climate Adaptation Strategy.

Response 63-1

Several comments submitted as part of the Natural Resources Agency's SB97 rulemaking process urged it to incorporate the draft 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, for example, other effects associated with climate change, such as the health risks associated with higher temperatures, may not allow a link between a project and an ultimate impact. Habitat modification and changes in agriculture and forestry resulting from climate change similarly do not appear to be issues that can be addressed on a project-by-project basis in CEQA documents. Water supply variability is an issue that has already been addressed in depth in recent CEQA cases. (See, e.g., *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 434-435 (“If the uncertainties inherent in long-term land use and water planning make it impossible to confidently identify the future water sources, an EIR may satisfy CEQA if it acknowledges the degree of uncertainty involved, discusses the reasonably foreseeable alternatives—including alternative water sources and the option of curtailing the development if sufficient water is not available for later phases—and discloses the significant foreseeable environmental effects of each alternative, as well as mitigation measures to minimize each adverse impact.”).) Further, legislation has been developed to ensure that lead agencies identify adequate water supplies to serve projects many years in the future under variable water conditions. (See, e.g., Water Code, § 10910 et seq.; Government Code, § 66473.7.)

The Natural Resources Agency finds that the revised text of section 15126.2 provides the guidance suggested in this comment. No further changes to the text are required in response to this comment.

Comment 63-2

Adaptation is implicated by the CEQA Guideline amendments but the amendments inexplicably fail to include guidance on implementing the state's adaptation goals.

Response 63-2

As explained above, CEQA should not be viewed as the tool to implement the California Climate Adaptation Strategy; rather, as indicated in the Strategy's key recommendations, advanced programmatic planning is the primary method to implement the Adaptation Strategies. Nevertheless, section 15126.2(a) has been revised as explained in Response 63-1, above. No further response is required.

Comment 63-3

Commenter is concerned about a lack of guidance for lead agencies to make decisions regarding new biological reserves and adaptive management in areas affected by climate change.

Response 63-3

As explained in Response 63-1, in response to comments the Natural Resources Agency revised section 15126.4 to provide a lead agency guidance on an analysis of 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. To the extent that new reserves and adaptive management are addressing in Habitat Conservation Plans or Natural Communities Plans, lead agencies would consider their projects' consistency with such plans pursuant to section 15125(d). To the extent an individual project may impact species or habitats and substantial evidence indicates that such impacts may occur, a lead agency would have to consider such impacts. No revision is required in response to this comment.

Comment 63-4

Commenter is concerned about a lack of guidance for lead and responsible agencies to respond to areas subjected to flooding, inundation and other effects on proposed coastal projects.

Response 63-4

See above response.

Comment 63-5

Commenter is concerned about a lack of guidance for lead agencies to respond to changes expected to occur in the state's water cycle and management strategies.

Response 63-5

CEQA already requires analysis of future water supplies, which requires some degree of forecasting. (See, e.g., State CEQA Guidelines, § 15155; Water Code, § 10910 (a water supply assessment must address whether an adequate water supply can be projected to exist for a project and all other water demands during normal, dry and multiple dry years).) As information develops about the impact of climate change on water supplies, that information would be factored into the required water supply analysis. No further revision is required to respond to this comment.

Comment 63-6

The Guidelines are a tremendous disservice to lead agencies and project proponents by failing to include guidance on climate adaptation.

Response 63-6

See Response 63-1.

Comment 63-7

Commenter anticipates by ignoring adaptation in the guidelines ensures litigation and at some point the Guidelines will be needed to be amended to provide guidance on climate adaptation.

Response 63-7

As information develops about the impacts of climate change, that information would be factored into a CEQA analysis. As explained in Response 63-1, Section 15126.4 was amended to provide lead agencies additional guidance on such an analysis. Furthermore, as directed by SB 97, the Natural Resources Agency will periodically update the CEQA Guidelines to incorporate new information or criteria established by the State Air Resources Board pursuant to AB 32.

Comment 63-8

Commenter recommends the Guidelines recognize the capacity of wetlands to sequester carbon and include guidance on significant impacts to wetlands.

Response 63-8

The Natural Resources Agency declines to revise the amendments to reference sequestration value of wetlands. Section 15126.4(c) does recognize the role of sequestration, however, in mitigating a project's greenhouse gas emissions.

SB 97 calls on the Agency to adopt guidelines on the "mitigation of greenhouse gas emissions or the effects of greenhouse gas emissions." (Public 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 is to assist lead agencies in "Determining the Significance of Impacts from Greenhouse Gas Emissions." Where methodologies and models exist to address the greenhouse gas emissions associated with land use changes, such emissions would appropriately be considered. A project's impact on sequestration values does not, however, appear to bear on the significance of a project's greenhouse gas emissions.

As for guidance on assessing impacts to wetlands, CEQA already requires a lead agency to consider impacts to wetlands. (State CEQA Guidelines, Appendix G, Section IV question (c).)

Comment 63-9

Commenter recommends the Guidelines recognize the capacity of grasslands and deserts to sequester carbon and include consideration of significant impacts to grasslands and deserts.

Response 63-9

As explained above, Section 15126.4(c) recognizes the role of sequestration in mitigating a project's greenhouse gas emissions. Further, section 15064.4(b)(1) already directs a lead agency to consider the extent to which a project increases or decreases greenhouse gas emissions compared to the existing environmental setting. Impacts to grasslands and deserts that would cause increases in greenhouse gas emissions would, therefore, be addressed. Because the CEQA Guidelines must necessarily be drafted using general language, and the comment does not suggest that the general language would not address such impacts, the Natural Resources Agency declines to make further revisions in response to this comment.