

Letter 68

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Comment 68-1

Clarify Section 15064(h)(3) to remedy a lead agency's overreliance on plans or programs for GHG analysis which have no regulatory effect on a specific project.

Response 68-1

Section 15064(h)(3) provides a lead agency may determine that a project's incremental contribution to a cumulative effect is not cumulatively considerable if the project will comply with the requirements in a previously approved plan or mitigation program. The section establishes a presumption that projects that are consistent with a listed plan will not cause a cumulatively considerable incremental contribution to a significant cumulative impact.

The additional clarification being made by the Natural Resources Agency to this section simply provides further examples of appropriate plans and programs that may be considered relative to such analysis. As explained in the Initial Statement of Reasons, the existing Guidelines text includes several criteria that define which plans or programs may create such a presumption. To satisfy those criteria, a plan or program must (1) have been previously adopted, (2) contain specific requirements that avoid or substantially lessen the cumulative program within a defined geographic area, (3) be either specified in law or approved by a public agency with jurisdiction over affected resources. (Initial Statement of Reasons at pg. 11.)

The amendments do not alter CEQA's existing fair argument standard. "If there is substantial evidence that the possible effects of a particular project are still cumulatively considerable notwithstanding that the project complies with the specified plan or mitigation program addressing the cumulative problem, an EIR must be prepared for the project." (State CEQA Guidelines at Section 15064(h)(3).)

Comment 68-2

Revise Section 15064(h)(3) to state: "The applicable plan elements must apply to the project, be mandatory (i.e., not voluntary or incentive-based), and be undertaken before or concurrently with the start of the project." This change would require lead agencies to ensure that plans actually result in reduced cumulative emissions from the project.

Response 68-2

As explained above, and as noted in the comment, the Natural Resources Agency proposes to amend section 15064(h)(3) to require a lead agency to demonstrate how a project will comply with the specified plan or program addressing the cumulative problem. The addition would state: “When relying on a plan, regulation or program, the lead agency should explain how implementing the particular requirements in the plan, regulation or program ensure that the project’s incremental contribution to the cumulative effect is not cumulatively considerable.” In essence, the addition would require a lead agency to draw a link between the project and the specific provisions of a binding plan or program.

The Natural Resources Agency declines to incorporate the suggested revision because it finds that the suggested text would not be any more effective than the Natural Resources Agency’s proposed amendment. The comment suggests requiring that the plan apply to the project; the Natural Resources Agency’s proposed text would require the agency to demonstrate how the plan addresses the project’s incremental contribution. The comment’s suggested text could be interpreted to require that the plan, regulation or program specifically identify the project under consideration. This requirement would be a departure from existing practice, and does not appear necessary to effectuate a cumulative impacts analysis. The suggested text would also require that the plan, regulation or program be mandatory. The Natural Resources Agency’s proposed addition refers to “requirements” in a plan, regulation or program. The word “requirements” ensures that the plan, regulation or program is “mandatory” as suggested. Finally, the comment provides no reasoning to support the suggestion that the plan requirements must be implemented before or concurrently with the start of the project. The purpose of this regulation is to ensure that a project’s cumulative impacts are properly analyzed. If a plan, regulation or program ensures that a project’s incremental contribution to a cumulative problem is less than significant, the timing of implementation is not relevant. Therefore, the Natural Resources Agency declines to incorporate the suggested text into section 15064(h)(3).

Comment 68-3

Revise 15183.5(b)(1) to indicate that Greenhouse Gas Emission Reduction Plans being relied upon should include all the elements described.

Response 68-3

As explained in the Initial Statement of Reasons, section 15183.5(b) is designed to avoid confusion regarding what types of plans may be used to determine that a project’s incremental contribution of greenhouse gas emissions is not cumulatively considerable. (Initial Statement of Reasons, at pp. 54-55.) As the comment notes, the Natural Resources Agency derived the criteria in that section from other existing requirements in CEQA. The word “may” was originally proposed to signal to lead agencies that the criteria are non-exclusive, and plans may contain other elements. The Natural Resources Agency concurs with the suggestion in the comment, however, that at least the specified criteria should be included in the plan. Thus, the Natural Resources Agency has revised the text of proposed section

15183.5 to indicate that a plan for the reduction of greenhouse gas emissions, if used for the purposes described in sections 15064(h)(3) and 15130(d), should contain the listed criteria.