

## Letter 70

Jay Norvell  
Chief  
Caltrans, Division of Environmental Analysis

August 27, 2009

### **Comment 70-1**

Commenter recognizes the Resources reasoning to not include adaptation in the Guidelines but supports its inclusion as the statewide approach and other guidance continue to develop.

### **Response 70-1**

Several comments submitted as part of the Natural Resources Agency's SB97 rulemaking process urged it to incorporate the draft California Climate Adaptation Strategy ("Adaptation Strategy") into the CEQA Guidelines. In considering such comments, it is important to understand several key differences between the 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, however, other issues in the Adaptation Strategy, 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.

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 70-2**

Revise Section 15064(h)(3) to include “statewide transportation plan” in addition to the revisions proposed on January 8, 2009, by OPR to include the list of plans that may be considered.

**Response 70-2**

The comment notes that the Office of Planning and Research's preliminary draft of recommended Guidelines would have added a number of plans to section 15064(h)(3). That section creates a presumption that if a project is consistent with the requirements in a listed plan, that project's incremental contribution to a cumulative project is not cumulatively considerable, and would not require preparation of an EIR. As explained in the letter from Cynthia Bryant, OPR Director, to Mike Chrisman, Secretary for Natural Resources, dated April 13, 2009, OPR revised its recommendations to clarify which types of plans may appropriately be used for specific CEQA purposes. The Natural Resources Agency does not intend to revise section 15064(h)(3) to insert the deleted plans. Those plans are not appropriate for inclusion in that section because they do not include binding requirements to reduce a cumulative problem to a less than significant level. The State Transportation Plan does not appear designed to reduce a particular environmental impact to a less than significant level. Thus, the Natural Resources Agency declines to revise section 15064(h)(3) to include "statewide transportation plan."

**Comment 70-3**

Commenter supports the discretion for lead agencies to choose their methodology and approach to assessing GHG emission impacts in section 15064.4.

**Response 70-3**

The Natural Resources Agency appreciates the support of the Department of Transportation for section 15064.4. 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, 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. No further revision is required in response to this comment.

**Comment 70-4**

Section 15093(a) appears to already address justifying local adverse impacts in light of region-wide or statewide environmental benefits.

**Response 70-4**

The Natural Resources Agency concurs that region-wide and statewide environmental benefits can be considered in subdivision (a) of section 15093. The Natural Resources Agency has further refined Section 15093 in response to this, and similar, comments. Specifically, it has added "region-wide or

statewide environmental benefits” to the other benefits listed in section 15093(a), and deleted the proposed subdivision (d). The previously proposed subdivision (d) could have been interpreted to mean that lead agencies should consider region-wide and statewide environmental benefits in isolation. Listing region-wide and statewide environmental benefits among the other benefits enumerated in subdivision (a) placed those benefits within the proper context of the section governing statements of overriding considerations. This change clarifies that lead agencies must balance region-wide and statewide environmental benefits, just like the other listed benefits, against a project’s significant adverse impacts in making a statement of overriding considerations. This change still advances the policy objective of encouraging lead agencies to consider benefits of a project that may extend beyond just a local jurisdiction.

#### **Comment 70-5**

Revise Section 15125(d) to include “statewide transportation plan” and have the list of plans that may be considered consistent with Section 15130(b)(1)(B) and (d).

#### **Response 70-5**

As explained in Response 70-2, above, the different sections of the CEQA Guidelines serve different purposes, so not every plan mentioned in every section is appropriate for use in every other section. “The California Transportation Plan 2025 (CTP) is a policy plan designed to guide transportation investments and decisions at all levels of government and by the private sector to enhance our economy, support our communities, and safeguard our environment for the benefit of all.” (California Transportation Plan (2025), at p. 1.) Section 15125 reflects existing law requiring examination of project impacts in relation to the existing environment. It contains a non-exclusive list of plans that should be considered as part of an environmental analysis. Notably, that list includes “regional transportation plans.” According to the Regional Transportation Plan Guidelines, one function of a regional transportation plan is to promote “consistency between the California Transportation Plan, the regional transportation plan and other plans developed by cities, counties, districts, Native American Tribal Governments, and State and Federal agencies in responding to Statewide and interregional transportation issues and needs.” (Regional Transportation Plan Guidelines (2007), at p. 16.) Thus, the policies in the California Transportation Plan should be reflected in the applicable regional transportation plan. Addition of the California Transportation Plan to section 15125(d) would be redundant. The Natural Resources Agency therefore declines to add “statewide transportation plan” to section 15125(d).

Similarly, sections 15130(b)(1)(B) and (d), as revised, also specifically refer to regional transportation plans. Thus, addition of “statewide transportation plan” is not necessary in those sections for the same reason. Additionally, the California Transportation Plan does not appear to contain any summary of projections useful in a cumulative impacts analysis, nor is it a land use plan. For these reasons, the Natural Resources Agency declines to revise sections 15130(b)(1)(B) and (d) to include “statewide transportation plan.”

**Comment 70-6**

Commenter recognizes a mitigation hierarchy is not necessarily the best approach for section 15126.4, but if one is established, it should be permissive so that lead agencies have flexibility balance goals and maintain the discretion to require offsite mitigation where on-site mitigation may not be preferable.

**Response 70-6**

The Natural Resources Agency appreciates the support of the Department of Transportation for section 15126.4(c)'s recognition of a lead agency's discretion to choose the most appropriate mitigation for a particular project. That section has not been revised to create a hierarchy of mitigation. No further response is required to this comment.

**Comment 70-7**

Revise Section 15130(b)(1)(B) to allow for discussion of, or at least recognize, the use of statewide projections like those of ARB in the Scoping Plan or Energy Commission GHG inventories. It may prove otherwise impossible to rely on tracking GHG emissions for past, present, and future projects.

**Response 70-7**

The proposed amendments to section 15130(b)(1)(B) expressly state: "A summary of projections contained in an adopted local, regional or statewide plan, or related planning document, that describes or evaluates conditions contributing to the cumulative effect." While certain plans are listed as examples, the text does not provide an exclusive list. Thus, lead agencies may, as the comment suggests, make use of statewide inventories of greenhouse gas emissions in performing a cumulative impacts analysis. No change to the proposed amendments is required in response to this comment.

**Comment 70-8**

Revise Section 15152(h)(7) to recognize tiering can be done off a statewide plan, for example, a statewide transportation plan, that adequately addresses GHG emissions.

**Response 70-8**

The Natural Resources Agency proposes no changes to section 15152. Thus, this comment does not relate to the proposed action. The Natural Resources Agency notes that existing rules regarding tiering, including those contained in section 15152, would govern whether lead agencies could tier from an analysis associated with a statewide transportation plan. No revisions are required in response to this comment.

**Comment 70-9**

Commenter supports the addition of the preamble to the Appendix G Checklist.

**Response 70-9**

The Natural Resources Agency appreciates the support of the Department of Transportation for the addition of the preamble to the Appendix G Checklist. No revisions are required in response to this comment.

**Comment 70-10**

Commenter requests LOS remain in Appendix G: Transportation/Traffic Checklist. Traffic is a necessary component of an environmental analysis.

**Response 70-10**

The Natural Resources Agency has received many comments related to level of service in the transportation section of Appendix G. The proposed amendments continue to recognize in question (b) of the transportation section that congestion management programs designate levels of service for certain roadways, and so lead agencies should analyze whether a project will conflict with an applicable congestion management program. Regardless of whether a congestion management program applies to a particular location, question (a) asks whether a project will conflict with a plan or policy that establishes a measure of effectiveness for the circulation system as a whole. Thus, project impacts to a circulation system must still be analyzed. As explained in the Initial Statement of Reasons, however, congestion, by itself, does not necessarily indicate an environmental impact. In fact, evidence presented to the Natural Resources Agency indicates that efforts to relieve traffic congestion may lead to even greater environmental impacts than might result from congestion. (See, e.g., Cervero, Robert. (July, 2001). *Road Expansion, Urban Growth, and Induced Travel: A Path Analysis*. Journal of the American Planning Association, Vol. 69 No. 2. American Planning Association (confirming “induced demand” phenomenon associated with capacity improvements).) The comment states that “more congestion does equate to more greenhouse gas emissions[;]” however, no evidence is provided to support that claim. No further revision is required in response to this comment.

**Comment 70-11**

Revise Appendix G: Transportation/Traffic Checklist question (d) to be more specific in assessing whether the project may adversely affect the safety of the circulation system.

**Response 70-11**

The existing text in question (d) already asks whether a project would increase hazards. The comment does not provide any explanation indicating why the proposed text, which would simply ask about the safety of the circulation system, would lead to any better analysis of the safety issue. Thus, the Natural Resources Agency declines to incorporate the suggested change because no change is necessary.

**Comment 70-12**

Revise Appendix G: Transportation/Traffic Checklist question (e) to be more specific in assessing whether the project may adversely affect a pedestrian and/or bicycle circulation system, including policies, plans, or programs.

**Response 70-12**

The Natural Resources Agency has revised the existing question (g) to respond to this and other comments urging that Appendix G address impacts to alternative transportation facilities. In particular, as revised, that question would ask whether a project would “Conflict with adopted policies, plans, or programs regarding public transit, bikeways, or pedestrian facilities, or otherwise substantially decrease the performance or safety of such facilities?” Indirect effects of a project, and the effects of mitigation measures, are already required to be analyzed by the existing CEQA Guidelines; therefore, the Appendix G need not specifically include such references. (State CEQA Guidelines, §§ 15064(d), 15126.4(a)(1)(D).) Because the text of existing question (g) has been revised to incorporate the concerns raised in this comment, no further response is required.

**Comment 70-13**

Revise Appendix G: Transportation/Traffic Checklist question (f) to be more specific in assessing whether a project may cause a degradation of performance in transit systems.

**Response 70-13**

The Natural Resources Agency has revised the existing question (g) to respond to this and other comments urging that Appendix G address impacts to alternative transportation facilities. In particular, as revised, that question would ask whether a project would “Conflict with adopted policies, plans, or programs regarding public transit, bikeways, or pedestrian facilities, or otherwise substantially decrease the performance or safety of such facilities?” Because the text of existing question (g) has been revised to incorporate the concerns raised in this comment, no further response is required.

**Comment 70-14**

Revise Appendix G: Recreation Checklist to include a question addressing adverse affects to accessing neighborhoods or regional parks.

**Response 70-14**

The proposed revision to the Appendix G questions related to recreation falls outside of the scope of the proposed action. The proposed action is primarily intended to comply with SB97, which required the development of guidelines on the analysis and mitigation of greenhouse gas emissions. The Natural Resources Agency, therefore, declines to incorporate the suggested changes at this time.

**Comment 70-15**

Revise Appendix G: Mandatory Findings of Significance to be consistent with Section 15065(a)(1) .

**Response 70-15**

The proposed revision to the Appendix G questions related to recreation falls outside of the scope of the proposed action. The proposed action is primarily intended to comply with SB97, which required the development of guidelines on the analysis and mitigation of greenhouse gas emissions. The Natural Resources Agency, therefore, declines to incorporate the suggested changes at this time.