

## Letter 75

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### **Comment 75-1**

Clarify section 15064(h)(3). This section is problematic when analyzing GHG emissions given the issue global and is cumulative in nature. Defining the geographic area for a significant GHG impact may be appropriately addressed in this section.

### **Response 75-1**

The issue at hand is confusion regarding the appropriate geographic scope of analysis for determining the significance of greenhouse gas emissions. The Natural Resources Agency intentionally left it to the discretion of the lead agency. However, in an effort to provide consistency and certainty, the proposed amendments are designed to assist a lead agency to that end.

Subsection 15064(h)(3) provides in relevant part: “A lead agency may determine that a project’s incremental contribution to an overall cumulative effect is not cumulatively considerable if the project will comply with the requirements in a previously adopted plan or mitigation program (including, but not limited to, water quality control plan, air quality attainment or maintenance plan, integrated waste management plan, habitat conservation plan, natural community conservation plan, plans or regulations for the reduction of greenhouse gas emissions) that provides specific requirements that will avoid or substantially lessen the cumulative problem within the geographic area in which the project is located...”

First, existing subsection 15064(h)(3) already allows an agency to find that a project’s potential cumulative impacts are less than significant due to compliance with requirements in certain listed plans or mitigation programs. (*Communities for a Better Environment v. California Resources Agency* (2002) 103 Cal. App. 4<sup>th</sup> 98, 111) In effect, this section created a rebuttable presumption that compliance with certain plans and regulations reduces a project’s potential incremental contribution to a cumulative effect to a level that is not cumulatively considerable.

Second, section 15125 reflects existing law requiring examination of project impacts in relation to the existing environment. Subsection (d) states that lead agencies should consider whether the proposed project is inconsistent with applicable local and regional plans. That subsection provides a non-exclusive list of plans for potential consideration. Notably, while section 15125(d) requires an EIR to discuss any inconsistencies of a project with the listed plans, it does not mandate a finding of significance resulting from any identified inconsistencies. The plans simply provide information regarding the project’s existing setting and inconsistency may be an indication of potentially significant impacts. The

determination of significance is to be made by the lead agency. Accordingly, it is appropriate to provide a range of plans for consideration in this guideline as such plans will assist in providing clear and accurate baseline environmental setting.

Third, proposed new section 15064.4(b) lists several factors that a lead agency should consider in its analysis. However, the Natural Resources Agency further revised that section to clarify that it also recognizes a lead agency's ability to consider other factors that may be relevant to a particular project or jurisdiction. Relevant to this comment, 15065.4(b)(1) allows a lead agency to consider the extent to which a project results in an increase or decrease in emissions compared to the existing baseline. This section's reference to the "existing environmental setting" reflects existing law requiring that impacts be compared to the environment as it currently exists. (State CEQA Guidelines, Section 15125.) When read in conjunction with the sections 15064 and 15125, a lead agency may use information contained within applicable plans to support a determination. For a lead agency to rely upon such plans to support a finding of insignificance or for mitigation, however, section 15064(h)(3) and section 15064.4(b)(3) both require that the plan include binding requirements that will actually improve the cumulative condition.

In sum, to the extent a lead agency should be able to consider whether a project results in an overall increase or decrease in greenhouse gas emissions, the proposed section 15064.4(b)(1) already allows such consideration. To the extent a lead agency should consider reductions resulting from other projects in determining the significance, such consideration may be appropriate under section 15130(b)(1)(B).

#### **Comment 75-2**

Clarify section 15064(h)(3) that the list of plans must be adopted by the public agency with jurisdiction over the affected resources and identify what agency this may be for GHG emissions.

#### **Response 75-2**

The amendments to subsection 15054(h)(3) simply provides further examples of appropriate plans and programs that may be considered relative to such analysis. Of course, such plans or programs must meet the parameters identified in the guideline, which include being "adopted by the public agency with jurisdiction over the affected resources."

#### **Comment 75-3**

Clarify section 15064.4(b)(3). The list of plans seems to be problematic as local plans may potentially contradict state or regional plans. Listing local plans may suggest that regional or state plans do not apply which is contradictory to the regional emphasis of climate change and land use planning.

### **Response 75-3**

The commenter correctly states clarification is necessary because of the wide variety of plans currently being adopted by public agencies. To that end, the Natural Resources Agency proposed amendments to 15064(h)(3), 15064.4(b), 15130(d), and proposed new section 15183.5 to clarify the appropriate use of plans in a CEQA analysis for greenhouse gas emissions.

As explained in the Initial Statement of Reasons, subsection 15064.4(b) suggests consideration of the extent to which a project complies with a plan or regulation to reduce GHG emissions. (Initial Statement of Reasons at pg. 22.) Furthermore, subsection 15064.4(b)(3) is intended to be read in conjunction with section 15064(h)(3) and proposed section 15183.5.

The Natural Resources Agency has intentionally left it to the discretion of the lead agency to identify applicable plans. The list simply provided examples of appropriate plans and programs that may be considered relative to a GHG emission analysis. Of course, such plans or programs must meet the parameters identified in the guideline, which include being “adopted by the public agency with jurisdiction over the affected resources.” Furthermore, to rely on any such plan, the lead agency is required to demonstrate how specific requirements will result in reductions of GHG emissions to a less than significant level. Finally, an EIR is required to discuss any inconsistencies of a project with the listed plans. (State CEQA Guidelines, section 15125.) It does not, however, mandate a finding of significance resulting from inconsistencies.

### **Comment 75-4**

Revise section 15064.4(b)(3) to clarify an “applicable” local plan which a lead agency may consider the extent to which the project complies with for reducing or mitigating GHG emissions.

### **Response 75-4**

As explained in Response 75-2, subsection 15064.4(b)(3) is intended to be read in conjunction with subsection 15064(h)(3).

Specifically, subsection 15064(h)(3) provides: “A lead agency may determine that a project’s incremental contribution to an overall cumulative effect is not cumulatively considerable if the project will comply with the requirements in a previously adopted plan or mitigation program (including, but not limited to, water quality control plan...plans or regulations for the reduction of greenhouse gas emissions) that provides specific requirements that will avoid or substantially lessen the cumulative problem within the geographic area in which the project is located. Such plans or programs must be specified in law or adopted by the public agency with jurisdiction over the affected resources through a public review process...*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.*” (Emphasis added.)

Hence, the commenter's suggestion would only add redundancy to a preexisting standard. The Natural Resources Agency, therefore, rejects this comment.

#### **Comment 75-5**

Clarify the purpose of section 15183.5. This section seems to be contradict or be inconsistent with section 15064.4(b)(3). The commenter points out a lead agency could interpret section 15183.5 as allowing any public agency to adopt its own GHG Reduction plan regardless if it is the public agency with jurisdiction over the affected resource.

#### **Response 75-5**

As explained in the Initial Statement of Reasons, proposed section 15183.5 addresses both tiering and streamlining of greenhouse gas emission analysis, as well as the proper use plans in a CEQA analysis to reduce greenhouse gas emissions. (Initial Statement of Reasons at pg. 54.) The commenter correctly points out, for a Greenhouse Gas Reduction Plan to apply it must be approved or adopted by a public agency with jurisdiction over the affected resource. As stated in Response 75-3, the proposed section is intended to be read in conjunction with section 15065(h)(3) and section 15064.4(b). As explained in the Initial Statement of Reasons, "the criteria set out in proposed subsection (b)(1) are designed to ensure that a greenhouse gas reduction plan would satisfy the requirements described in sections 15064(h)(3) and 15130(d). (pg. 55 et seq.)

#### **Comment 75-6**

Clarify Appendix G checklist questions for GHG Emissions. Commenter suggests a lead agency could misinterpret "any applicable plan, policy or regulation of an agency" with respect to GHG emissions.

#### **Response 75-6**

In response to comments such as this, the Natural Resources Agency further revised Appendix G, Section VII, subsection (b) to provide: "[would the project] conflict with an applicable plan, policy, or regulation adopted for the purpose of reducing the emissions of greenhouse gases?" This clarification is necessary to satisfy the requirements of relying on such plan, policy, or regulation pursuant to sections 15064(h)(3), 15064.4(b), and proposed section 15183.5(b).