

Letter 79

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August 27, 2009

Comment 79-1

Revise Sections 15064 and 15064.4(b)(3) to be consistent with the standards set forth under Section 15162.

Response 79-1

Several points made in this comment merit discussion. The first sentence in this comment states that sections 15064 and 15064.4(b)(3) have “been added to address cumulatively considerable effects if a project does not comply with a local or regional plan adopted.” This comment misstates the purpose of those sections. As explained in the Initial Statement of Reasons, those amendments would provide that “[i]f such plans reduce community-wide emissions to a level that is less than significant, a later project that complies with the requirements in such a plan may be found to have a less than significant impact.” (Initial Statement of Reasons, at p. 22.) Thus, those sections are directed at projects that are consistent with a plan, not projects that are not consistent with a plan.

The second sentence in the comment states: “It states that an EIR must be prepared if a project has potential effects outside an adopted plan.” (Emphasis in original.) That comment misstates the effect of the proposed revisions to those sections. Both sections provide: “If there is substantial evidence that the possible effects of a particular project are still cumulatively considerable notwithstanding” compliance with the specified plan, mitigation program or requirements addressing the cumulative problem, “an EIR must be prepared for the project.” This text reflects the rule compliance with requirements or a plan does not relieve an agency of the duty to consider whether substantial evidence supports a fair argument of significant impacts that occur either outside the plan, as the comment suggests, or despite compliance with the plan.

Finally, the third sentence suggests that those sections should be amended to reflect section 15162. Section 15162 implements Public Resources Code section 21166, which states the circumstances in which supplemental or subsequent environmental review may be required following certification of an EIR or adoption of a negative declaration. Sections 15064 and 15064.4 address the determination of significance, and may be used to determine whether an EIR may be required in the first instance. The proposed amendments do not alter the rules governing subsequent environmental review. Therefore, section 15162 would continue to apply as indicated by its own terms. No revision to sections 15064 or 15064.4 are necessary.

Comment 79-2

Revise Section 15093(b) to allow preparation of a Negative Declaration or Mitigated Negative Declaration.

Response 79-2

The Natural Resources Agency does not propose to amend section 15093(b). To the extent the comment suggests further revision of proposed section 15093(d), the Natural Resources Agency has deleted that subdivision, and instead has revised section 15093(a) to provide that a lead agency may consider “region-wide and statewide environmental benefits” in making a statement of overriding considerations. The Natural Resources Agency declines to revise section 15093 to allow the preparation of a negative declaration or mitigated negative declaration. Section 15093 implements Public Resources Code section 21081(b), which requires an agency to find that “specific overriding economic, legal, social, technological, or other benefits of the project outweigh the significant effects on the environment” if an agency chooses to approve a project with significant effects. An agency would only adopt a statement of overriding considerations if a project has significant and unavoidable effects. An agency could not adopt a negative declaration or mitigated negative declaration if a project would have significant and unavoidable effects. (Public Resources Code, § 21080(c)-(d).) Therefore, the Natural Resources Agency cannot revise section 15093 as suggested.

Comment 79-3

Clarify Section 15126.4(c)(3) to (5) to provide more specific guidance on mitigation and the use of offsets.

Response 79-3

15126.4(c) provides in relevant part:

Consistent with section 15126.4(a), lead agencies shall consider feasible means, supported by substantial evidence and subject to monitoring or reporting, of mitigating the significant effects of greenhouse gas emissions. Measures to mitigate the significant effects of greenhouse gas emissions that may include, among others but not be limited to:

- (1) Measures in an existing plan or mitigation program for the reduction of emissions that are required as part of the lead agency’s decision;
- (2) Reductions in emissions resulting from a project through implementation of project features, project design, or other measures, such as those described in Appendix F;
- (3) Off-site measures, including offsets that are not otherwise required, to mitigate a project’s emissions;

(4) Measures that sequester greenhouse gases; and

(5) In the case of the adoption of a plan, such as a general plan, long range development plan, or plan for the reduction of greenhouse gas emissions reduction plan, mitigation may include the identification of specific measures that may be implemented on a project-by-project basis. Mitigation may also include the incorporation of specific measures or policies found in an adopted ordinance or regulation that reduces the cumulative effect of emissions.

This section incorporates existing requirements and guidance on mitigation measures and mitigation plans. It also retains the discretion vested in lead agencies to determine which mitigation measures are “feasible,” and which are appropriate given the particular project being considered. Further, it makes use of any recommended mitigation contingent on a host of factors including requiring any such measures level of efficacy be supported by substantial evidence, and prohibiting the use of mitigation that is already required for the project to proceed. Consequently, this new subsection (c) acknowledges that “off-site measures, including offsets that are not otherwise required, to mitigate a project’s emissions” may be appropriate, but does not provide a set method or process for lead agencies relative to this question; as such methodologies and processes are within the lead agency’s purview. Since this question provides appropriate guidance, without limiting or unduly restricting the discretion CEQA vests in lead agencies to consider and adopt “feasible” mitigation measures, the Natural Resources Agency rejects this comment.

Comment 79-4

Revise Section 15183.5(b)(2) to allow for preparation of a Negative Declaration or Mitigated Negative Declaration, if applicable.

Response 79-4

See Response 79-1. The purpose of section 15183.5(b) is to assist lead agencies in determining what types of plans may be used in a cumulative impacts analysis pursuant to sections 15064(h)(3) and 15130(d). Therefore, the restriction in section 15064(h)(3) would have to apply to section 15183.5(b) as well. Further, that subdivision is not a “tiering” provision. Tiering and streamlining provisions of the State CEQA Guidelines that may apply in the context of greenhouse gas emissions are described in section 15183.5(a). Therefore, the Natural Resources Agency rejects this comment.