

Letter 90

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President
Transportation Solutions and Defense Education Fund

November 10, 2009

Comment 90-1

Revise Section 15064.4(a) to replace “should” with “shall”. The section would read “A lead agency shall make a good faith-effort...”

Response 90-1

Section 15005 of the State CEQA Guidelines provides the following guidance on terminology:

- (a) “Must” or “shall” identifies a mandatory element which all public agencies are required to follow.
- (b) “Should” identifies guidance provided by the Secretary for Resources based on policy considerations contained in CEQA, in the legislative history of the statute, or in federal court decisions which California courts can be expected to follow. Public agencies are advised to follow this guidance in the absence of compelling, countervailing considerations.
- (c) “May” identifies a permissive element which is left fully to the discretion of the public agencies involved.

The Office of Planning and Research and the Natural Resources Agency used the word “shall” or “must” where a statutory provision or rule of case law mandates that an agency take a specific action. For example, section 15126.4(c), as revised, states that “lead agencies shall consider feasible means ... of mitigating the significant effects of greenhouse gas emissions.” This mandatory requirement mirrors the requirement in Public Resources Code section 21002.1(b) that “[e]ach public agency shall mitigate or avoid the significant effects on the environment that it carries out or approves whenever it is feasible to do so.” The proposed amendments use the word “should” when there is not direct authority requiring a certain action, but policies underlying CEQA justify the action absent compelling countervailing considerations. Thus, for example, in the proposed amendments to section 15064(h)(3), there is no statutory provision expressly requiring a lead agency to document how compliance with a plan reduces an impact to a less than significant level. However, the policies underlying CEQA (i.e., informed decision-making and demonstrating that environmental considerations have been accounted for) indicate that lead agencies should do so unless there is a compelling reason not to (i.e., the link is so

obvious that making the demonstration would merely be repetitive). This same reasoning applies to the provision in proposed section 15064.4 noted in the comment. This guidance is based on policy considerations set out in the Initial Statement of Reasons. Therefore, the Natural Resources Agency declines to revise section 15064.4 as suggested.

Comment 90-2

Commenter requests guidance on analysis of the “No Project Alternative” for a regional transportation plan.

Response 90-2

The Natural Resources Agency does not propose to amend section 15126.6 regarding the “No Project Alternative.” Therefore, this comment goes beyond the scope of the proposed action. The proposed amendments address how an agency should analyze and mitigate its project’s greenhouse gas emissions, and so would apply to environmental review of regional transportation plans. No further revisions are required in response to this comment.