

## Letter 29

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### **Comment 29-1**

Commenter requests proposed Guideline sections to undergo a general editing process to clear grammatical errors.

### **Response 29-1**

The Natural Resources Agency notes the commenter's grammatical suggestions to the proposed amendments. The Natural Resources Agency further notes that the suggestions relate to the Office of Planning and Research's proposed amendments, as transmitted to the Natural Resources Agency on April 13, 2009, and not the text of the Natural Resources Agency's proposed amendments as described in its Notice of Proposed Action. As explained in the Initial Statement of Reasons, the primary purpose of this rulemaking is to amend and adopt guidelines for the analysis and mitigation of greenhouse gas emissions and the effects of greenhouse gas emissions. (Initial Statement of Reasons at pg. 1.) The grammatical and stylistic suggestions attached to this comment largely address portions of the CEQA Guidelines that are not proposed to be amended as part of this rulemaking process. Because those suggestions are not specifically directed at the proposed amendments or to the procedures followed by the Natural Resources Agency in proposing or adopting the proposed amendments, the Natural Resources Agency summarily dismisses those irrelevant comments as a group. (Government Code, § 11346.9(a)(3).)

A few suggestions do appear to be intended to address the proposed amendments specifically, however, and responses to those specific suggestions are addressed below.

### **Comment 29-2**

Clarify Section 15126.4(c)(3) to require that the use of off-site measures be verifiable and only be allowed if they contribute towards achieving the goals of AB 32.

### **Response 29-2**

The Natural Resources Agency determined that additional clarification of the standards that apply to any mitigation, whether it occurs on-site or off-site, is appropriate. The Natural Resources Agency revised

proposed subsection 15126.4(c) to clarify that all mitigation be supported with substantial evidence and be capable of monitoring or reporting. Thus, no further revision to 15126(c)(3) is necessary.

To clarify, the proposed amendments are not tied specifically to AB 32. Regulations implementing AB 32 may be relevant in the *analysis* of the significance of a project's greenhouse gas emissions as provided in sections 15064(h)(3) and 15064.4(b)(3). Those sections are not limited to AB 32, however, so long as a regulation meets the criteria established in those sections, a lead agency may consider how compliance with that regulation affects the significance of a project's emissions. While no federal statutes or regulations have yet been adopted, if such requirements are established in the future, a lead agency may consider whether they satisfy the criteria in section 15064(h)(3). If a project's emissions are found to be significant, the lead agency must mitigate those emissions below significance as it see's appropriate given the conditions of the project.

As explained in the Initial Statement of Reasons, off-site mitigation may be appropriate under various circumstances. (Initial Statement of Reasons at pg. 38.) Proposed new subsection 15126.4(c) includes a specific reference to subsection (a) of that section, which governs mitigation generally. The purpose of that cross-reference is to ensure that mitigation for greenhouse gas emissions is treated consistently with existing CEQA rules.

#### **Comment 29-3**

Clarify Section 15126.4(c)(4) to add measures that sequester additional GHG gases or ensure surplus sequestration of greenhouse gases.

#### **Response 29-3**

CEQA requires "...mitigation measures must be consistent with all applicable constitutional requirements." (CEQA Guidelines Section 15126.4(a)(4).) Furthermore, case law establishes specific requirements with regards to mitigation. (*Nollan v. California Coastal Commission*, 483 U.S. 825 (1987).) (Essential nexus), (*Dolan v. City of Tigard*, (512 U.S. 374 (1994).) (Roughly proportional). To require additional measures beyond what is necessary to reduce an impact below a level of significance is not consistent with standing CEQA principles and directly conflicts with case law. The Natural Resources Agency, therefore, rejects the suggestion in this comment.

#### **Comment 29-4**

Revise Section 15183.5(b)(2) so that an EIR is not exclusively required for a GHG Reduction Plan to enable tiering.

#### **Response 29-4**

As explained in the Initial Statement of Reasons, the purpose of section 15183.5(b) is to provide guidance to lead agencies on when a plan for the reduction of greenhouse gas emissions may be appropriately relied on *in the context* of 15064(h)(3) and 15130(d). (Initial Statement of Reasons at pg. 53 to 54.) (Emphasis added.) Prior to publishing its Notice of Proposed Action and the proposed amendments, the Natural Resources Agency revised OPR's proposal in this section to provide that a "greenhouse gas reduction plan, once adopted following certification of an EIR or adoption of an environmental document, may be used in the cumulative impacts analysis of later projects." (Emphasis added.) The addition of the phrase "or adoption of an environmental document" therefore responds to this comment. No further revision is required.