

Letter 37

Kent Norton
President
Association of Environmental Professionals

August 26, 2009

Comment 37-1

Commenter recognizes AB 32 and SB 97 are different kinds of laws and point out each the intent of each law. AB 32 is designed to reduce the state's overall GHG emissions; SB 97 is designed to inform the public about environmental effects of specific projects. AB 32 empowers the state with regulations; SB 97 empowers the public with information. AB 32 focuses on regulations and program; SB 97 focuses on project. AB 32 confronts global warming and climate change; SB 97 confronts physical changes to the environment at a finite geographic area.

Response 37-1

The comment notes several differences between AB 32 and CEQA. As explained in the Thematic Responses, the proposed amendments deliberately avoided linking the two statutes because, in essence, CEQA requires consideration of impacts on the environment, not compliance with a statute. However, the proposed amendments do recognize that other statutes and regulations play a role in the determination of significance. (Initial Statement of Reasons, at p. 22; see also *Communities for a Better Environment v. California Resources Agency* (2002) 103 Cal.App.4th 98, 111 (“a lead agency's use of existing environmental standards in determining the significance of a project's environmental impacts is an effective means of promoting consistency in significance determinations and integrating CEQA environmental review activities with other environmental program planning and regulation”).) Thematic responses addressing the relationship between CEQA, AB 32 and SB 375 are provided in the Final Statement of Reasons to provide further clarity on the relationship between those statutes.

Comment 37-2

Comment recognizes the inherent problem of applying a CEQA analysis to determine if a project's impact to GHG emissions is significant. A project is likely to be found contributing GHG emissions above the baseline, incrementally contributing to an overall cumulative effect. Yet, a single project is not likely to have an influence on global warming or climate change in a perceptible manner at a local geographic scale.

Response 37-3

The Initial Statement of Reasons recognizes that the analysis of greenhouse gas emissions will in nearly all cases be a cumulatively impacts analysis. (Initial Statement of Reasons, at p. 44.) In other words, the question is not whether one project will adversely affect global climate, but rather whether one project in addition to other past, present and reasonably foreseeable projects will cause cumulatively significant emissions of greenhouse gases. The Initial Statement of Reasons also explained that the proposed amendments to the CEQA Guidelines do not suggest a zero threshold. (Initial Statement of Reasons, at p. 20; *CBE, supra*, 103 Cal.App.4th at 120 (CEQA does not contain a “one molecule” rule).) Finally, the Initial Statement of Reasons recognized that the analysis of greenhouse gas emissions under CEQA is challenging; however, it is not impossible. (Initial Statement of Reasons, at p. 10.) Consistent with existing CEQA law, the proposed amendments recognize that the determination of significance of greenhouse gas emissions, and the development of appropriate mitigation if those emissions are significant, requires lead agencies to make a judgment call after thorough investigation and consideration of all evidence in the record.

Comment 37-3

Commenter recognizes the limitations of CEQA and AB 32 and acknowledges the amendments offer a reasonable approach to addressing GHG emissions in the best interest of parties involved in the CEQA process.

Response 37-3

The Natural Resources Agency appreciates the support of the Association of Environmental Professionals for the proposed amendments.

Comment 37-4

Commenter believes further statutory changes should be made to allow the CEQA review process to concentrate on projects with significant GHG effects and avoid unproductive CEQA review of small projects.

Response 37-4

The Natural Resources Agency acknowledges the comment that changes to CEQA should be made to avoid unproductive CEQA review of small projects and to concentrate on projects with significant greenhouse gas effects. Beyond that acknowledgment, the Agency notes that a project’s overall size does not necessarily indicate the significance of its greenhouse gas emissions. More importantly, the Agency notes that the CEQA statute and Guidelines already contain many exemptions from which small projects may benefit. For example, sections 21159.20 to 21159.28 of the Public Resources Code contain

provisions for exemptions of certain types of housing projects. Sections 21155 to 21155.3 were also recently enacted to allow streamlining for projects that are consistent with a sustainable communities strategy or alternative planning strategy. The CEQA Guidelines also contain numerous categorical exemptions, including the urban in-fill exemption.

Comment 37-5

Commenter suggests a statutory approach to clarifying the manner which projects necessary to implement AB 32 should be treated under CEQA.

Response 37-5

As explained in the Initial Statement of Reasons, the Natural Resources Agency interprets SB97 to mean that the traditional CEQA rules apply to the analysis and mitigation of greenhouse gas emissions. (Initial Statement of Reasons, at p. 10.) Thus, projects necessary to the implementation of AB32 would be treated the same as all other projects.

Comment 37-6

Commenter believes the amendments will strengthen CEQA and provide the necessary guidance to lead agencies. In particular: 15064.4, 15064.7, 15093, 15126.4(c), 15183.5, Appendix F, and Appendix G: Forestry and GHG Emission questions.

Response 37-6

The Natural Resources Agency appreciates the support of the Association of Environmental Professionals for many of the key elements of the proposed amendments. The revised text does not weaken or eliminate any of those specified provisions.

Comment 37-7

Commenter recognizes a dilemma in how to appropriately incorporate GHG emissions in the Guidelines and reasonably supports approach to analyzing GHG emissions. Threading GHG emissions throughout the Guidelines would treat GHG emissions indifferently to other environmental effects but in doing so may hinder the attainment of AB 32 goals. However, partitioning GHG emissions may unintentionally diminish the importance of a project's other environmental effects. The proposed Guidelines strike a fair balance between the two approaches.

Response 37-7

The Natural Resources Agency appreciates the support of the Association of Environmental Professionals for the approach taken to the development of the proposed amendments. Notably, the Natural Resources Agency and the Office of Planning and Research interpret SB 97 to require the development of guidelines to address analysis and mitigation of greenhouse gas emissions in a way that is consistent with existing CEQA rules. Thus, the proposed amendments do not intend to treat the effects of greenhouse gas emissions differently than any other potential impact under CEQA.

Comment 37-8

Commenter recognizes and appreciates the attempt made to anticipate requirements of SB 375 to incorporate regional and local land use and transportation planning.

Response 37-8

The Natural Resources Agency appreciates the support of the Association of Environmental Professionals for the proposed amendments.

Comment 37-9

Establishing an appropriate threshold of significance for greenhouse gas emissions is critical. Commenter is concerned if a GHG threshold is set at a low level, projects will be unnecessarily required to undergo CEQA review.

Response 37-9

The Natural Resources Agency acknowledges that thresholds of significance play an important role in the CEQA process. Several clarifications are warranted in response to this comment.

First, AB32 did not require analysis of greenhouse gas emissions in the CEQA process. CEQA already requires analysis and mitigation of any adverse environmental effect caused by a project. (Public Resources Code, § 21002.) Second, thresholds of significance are only a tool to be used in determining whether a project has a significant effect; a threshold does not independently create any new requirements. Third, even a “high” threshold would not relieve agencies of the requirement to consider any evidence indicating that a project may have a significant effect despite falling below a threshold. (*Protect the Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal.App.4th 1099, 1109; *Mejia v. City of Los Angeles* (2005) 130 Cal.App.4th 322, 342.)

Comment 37-10

Commenter believes absent adequate statutory guidance, arriving at a commonly accepted threshold is unrealistic but the Guidelines help shape the discussion of significance to the extent SB 97 allows.

Response 37-10

The Natural Resources Agency concurs that the proposed amendments are consistent with SB 97 and existing CEQA law.

Comment 37-11

The Guidelines amendments should include guidance on the analysis of the indirect effects of GHG emissions.

Response 37-11

As explained in the Initial Statement of Reasons, the analysis of greenhouse gas emissions should follow existing CEQA rules. Changes to the CEQA Guidelines were only proposed where the analysis or mitigation of greenhouse gas emissions should differ in some respect from other impacts. (Initial Statement of Reasons, at p. 10.) The comment notes that the existing Guidelines already define indirect effects. That definition, in section 15358(a)(2), will apply to the analysis of greenhouse gas emissions just as it does to other potential impacts. The Natural Resources Agency disagrees that reiteration of the definition of indirect effects is necessary because the proposed amendments are intended to be read in conjunction with the existing guidelines. Further, reiteration of existing Guidelines provision would not satisfy the nonduplication standard in the Administrative Procedure Act. (Government Code, § 11349(f).)

Comment 37-12

The Guidelines should address how to assess the significance of projects that comply with the regulations and requirements of AB 32 or the Scoping Plan.

Response 37-12

The proposed amendments do specifically address compliance with regulations and requirements to reduce greenhouse gas emissions in several places. Most notably, sections 15064(h)(3) and 15064.4(b)(3) both recognize the role that compliance with environmental regulations plays in the determination of significance. Specifically, both sections provide that a lead agency may consider compliance with such regulations, and if relying on regulations to determine that an impact is less than significant, the lead agency must explain how that particular regulation addresses the impact of the project. Both sections also recognize that a lead agency must still consider whether any evidence

supports a fair argument that a project may still have a significant impact despite compliance with the regulation. The Initial Statement of Reasons explained that the Scoping Plan, by itself, would not qualify as a regulation or requirement for the purposes of those sections because the Plan must be implemented through the adoption of binding regulations. Thus, the Natural Resources Agency finds that the proposed amendments contain adequate guidance regarding compliance with regulations implementing AB 32.

Comment 37-13

Revise the proposed amendments to address the effects or vulnerability of climate change impacts on the project or the significant environmental effect a project might cause by bringing development and people a likely area affected by global warming and climate change. This would reinforce Section 15126.2(a).

Response 37-13

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, for example, other effects associated with climate change, 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. Water supply variability is an issue that has already been addressed in depth in recent CEQA cases. (See, e.g., *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 434-435 (“If the uncertainties inherent in long-term land use and water planning make it impossible to confidently identify the future water sources, an EIR may satisfy CEQA if it acknowledges the degree of uncertainty involved, discusses the reasonably foreseeable alternatives—including alternative water sources and the option of curtailing the development if sufficient water is not available for later phases—and discloses the significant foreseeable environmental effects of each alternative, as well as mitigation measures to minimize each adverse impact.”).) Further, legislation has been developed to ensure that lead agencies identify adequate water supplies to serve projects many years in the future under variable water conditions. (See, e.g., Water Code, § 10910 et seq.; Government Code, § 66473.7.) The Natural Resources Agency declines to further revise the text in response to this comment.

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 37-14

Revise Section 15064.4(a) to recognize a lead agency’s broad discretion to consider all relevant factors in determining the significance of the project’s greenhouse gas emissions.

Response 37-14

The comment essentially contains two suggestions: (1) that the Guidelines recognize that a lead agency has “broad” discretion, and (2) that the Guidelines should allow a lead agency to consider “all relevant factors.”

As to the first suggestion, adding the word “broad” to this section would not alter any existing CEQA rules regarding the limits of a lead agency’s discretion. Section 15064.4(a) recognizes that lead agencies have the discretion to choose the most appropriate methodology in analyzing an impact. That discretion is limited, however, in several respects. First, a lead agency’s analysis must reflect a good faith effort at full disclosure, and the methodology chosen must provide sufficient information to meaningfully inform decision-makers and the public about a project’s potential impacts. (State CEQA Guideline, § 15151.) Second, a lead agency does not have discretion to ignore any information presented to it regarding a project’s potential impacts. Because adding the word “broad” could, therefore, incorrectly imply that existing rules limiting a lead agency’s discretion in the determination of significance may not apply in the context of greenhouse gas emissions, the Natural Resources Agency declines to incorporate the suggestion.

Regarding the suggestion to add the phrase “consider all relevant factors,” the Natural Resources Agency finds that the addition is not necessary. Section 15064.4(a) already states that a lead agency would exercise its discretion “in the context of a particular project.” That phrase reflects the rule stated in section 15064(b) that there is no iron clad definition of significance and that the determination of significance calls for careful judgment. Additionally, the Natural Resources Agency has further revised that section to state that the lead agency must base its analysis on factual and scientific data. Thus, that section already implicitly recognizes that all relevant factors must be accounted for in the determination of significance.

Comment 37-15

Revise Section 15064.4(a)(1), second sentence to add the term “methodology”. This would be added to clarify that a lead agency has the discretion to choose which model or methodology to use for the purpose of quantifying GHG emissions.

Response 37-15

The Natural Resources Agency has revised the text of Section 15064.4(a)(1) as suggested in the comment.

Comment 37-16

Revise Section 15064.4(b)(2) to include thresholds of significance adopted by ARB and local air districts. This would specifically reference thresholds developed by ARB and local air districts when a lead agency is assessing the significance of impacts from GHG emissions on the environment.

Response 37-16

The Natural Resources Agency declines to incorporate the suggested text. First, while the Air Resources Board has done some preliminary work on the development of a threshold of significance, it has decided to not continue with that effort. Therefore, at this time, the Air Resources Board has not adopted any thresholds of significance. Second, while some regional air districts are in the process of developing suggested thresholds of significance, it is not necessary to specify in the text of the Guidelines that thresholds may be developed by such districts. The text of that section is sufficiently broad to allow lead agencies to consider air district thresholds if they exist.

Comment 37-17

Revise Section 15064.4(b)(3) to include a reference to the AB 32 Scoping Plan. This would specifically reference the Scoping Plan could be considered when assessing the extent to which a project complies with relevant regulations or requirements for the reduction or mitigation of GHG emissions.

Response 37-17

The Natural Resources Agency declines to incorporate the proposed text. Section 15064.4(b)(3) already refers to a “statewide ... plan for the reduction or mitigation of greenhouse gas emissions.” The comment does not provide any evidence to suggest confusion about whether the Scoping Plan would be such a plan, and nothing in the rulemaking record reveals such confusion. Further, the Initial Statement of Reasons specifically explains how regulations and requirements adopted to implement the Scoping Plan could be used as provided in section 15064.4(b)(3). (Initial Statement of Reasons, at p. 22.) Moreover, the proper focus of that section is on the requirements and regulations, and not the plan that it implements. Adding the phrase “including ... the AB 32 Scoping Plan” could potentially be misinterpreted as allowing a lead agency to rely on the Scoping Plan itself.

Comment 37-18

Add the phrase “or the significance of the project’s emissions” to Section 15064.4(b)(3).

Response 37-18

The Natural Resources Agency declines to incorporate the suggested text. The phrase “incremental contribution” in section 15064.4(b)(3) already addresses the concept of significance. If the project’s incremental contribution of greenhouse gas emissions is not cumulatively considerable, those emissions would not be significant. (See State CEQA Guidelines, § 15064(h)(2).)

Comment 37-19

Revise Section 15064.4 to add subsection (c). This would require lead agencies to limit discussion of indirect effects of GHG emissions to reasonably foreseeable – i.e. future – physical changes. The revision is necessary to avoid any misunderstanding as to the scope of the indirect impacts defined by Section 15358(a)(2).

Response 37-19

The Natural Resources Agency declines to incorporate the suggested text. As explained in Response 37-11, above, the existing CEQA Guidelines already address the concept of indirect effects. As noted in the comment, section 15358 defines indirect effects. Section 15064(d) explains the limits of an analysis of indirect effects. Nothing before the Natural Resources Agency suggests that those existing rules do not adequately address the indirect effects of greenhouse gas emissions. Therefore, no further guidance is needed.

Comment 37-20

Commenter supports amendment to 15093 allowing lead agencies to consider region-wide or statewide benefits and further advances the State to meet goals of AB 32 and SB 375.

Response 37-20

The Natural Resources Agency appreciates the support of the Association of Environmental Professionals for the inclusion of “region-wide and statewide environmental benefits” among the benefits that can be considered in a statement of overriding considerations.

The Natural Resources Agency received many comments supporting and objecting to proposed subdivision (d) of section 15093 which would allow an agency to consider statewide and region-wide environmental benefits in a statement of overriding considerations. The Natural Resources Agency agrees that such benefits are appropriately considered in a statement of overriding consideration, but also agrees that the creation of a new subdivision only addressing such benefits could create confusion about its proper application. Therefore, the Natural Resources Agency has proposed to revise Section 15093(a) to include “region-wide and statewide environmental benefits” among the other benefits that may be balanced against a project’s adverse environmental impacts, but to delete the previously proposed subdivision (d). The proposed revision maintains the policy objective, noted in the comment, to encourage lead agencies to consider broader benefits of a project in the context of its potential adverse impacts. No further modification is required to respond to this comment.

Comment 37-21

Revise Section 15126.2(a) to reinforce that a lead agency, when preparing an EIR, should include in the analysis of any significant environmental effects the project might cause by bringing development and people into an area affected by global warming or climate change, specifically subdivisions adjacent to coastal marsh or wetlands, identify inundation or flooding as a result of sea level to be a significant effect.

Response 37-21

The Natural Resources Agency has revised section 15126.2(a) as described in Response 37-13, above. The revised sentence is somewhat different from the text suggested in this comment; however, the revised text accomplishes the policy goal suggested in this comment of providing additional guidance regarding the appropriate analysis under CEQA of the effects of a changing climate on a project.

Comment 37-22

Clarify Section 15126.4(c) that a lead agency is only required to consider feasible means of mitigation for GHG emissions that are found to be significant. This would help clarify a zero emissions threshold is not appropriate.

Response 37-22

The Natural Resources Agency has incorporated the suggested addition of the word “significant” into the revised text of section 15126.4(c).

Comment 37-23

Revise Section 15126.4(c)(1) to expand the subsection to include “offsets” as a means to reduce GHG emissions as part of a lead agency’s decision.

Response 37-23

The Natural Resources Agency declines to incorporate the suggested text because section 15126.4(c)(3) already specifically refers to “offsets”. Where applicable, the provisions in subdivisions (c)(1) and (c)(3) should be read in conjunction.

Comment 37-24

Clarify Section 15126.4(c)(2) to reinforce “other measures” a lead agency may rely on for reducing GHG emissions be sufficiently related to GHG emissions.

Response 37-24

The Natural Resources Agency declines to incorporate the suggested text. The lead-in sentences in subdivision (c) clearly indicate that the measures in subdivisions (c)(1) through (c)(5) relate to greenhouse gas emissions. Therefore, the suggested addition is not necessary.

Comment 37-25

Clarify Section 15126.4(c)(3) to reinforce if a lead agency relies on the use of offsets, or off-site mitigation, to reduce a project's GHG emissions be effective, verifiable, and enforceable, and supported by substantial evidence.

Response 37-25

The comment suggests two changes: (1) that the substantial evidence must support the use of off-site measures, and (2) that off-site measures must be effective, verifiable and enforceable.

The text of section 15126.4(c) has been revised to state that all measures to address greenhouse gas emissions must be supported with substantial evidence and capable of monitoring or reporting. Because this revised text would apply to off-site measures, it adequately addresses the concern raised in the comment.

The comment further asks that the Guidelines require that off-site mitigation be effective, verifiable, and enforceable. The text of section 15126.4(c) already requires that lead agencies consider "feasible" means of mitigating greenhouse gas emissions. Use of the word "feasible" requires the lead agency to find that any measure, including offsets, would be "capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social, and technological factors." (State CEQA Guidelines, § 15364.) The text of section 15126.4(c) has been further revised in response to comments to clarify that mitigation must be "supported by substantial evidence and subject to monitoring or reporting[.]" This revision addresses the commenter's concern regarding verifiability. Finally, all mitigation must be enforceable as stated in existing section 15126.4(a)(2). Therefore, it is not necessary to further state that off-site measures must be "enforceable." For the reasons stated above, the Natural Resources Agency finds that the concerns raised in this comment are addressed by the proposed revisions and the existing language in the Guidelines. The precise text suggested by the comment is, therefore, not necessary.

Comment 37-26

Delete Section 15130(f) so the Guidelines are consistent and do not treat GHG emissions any different from any other environmental effect. Otherwise, the amendment may suggest CEQA review is required for every project that has any GHG effect, regardless of significance.

Response 37-26

In response to this and similar comments, the Natural Resources Agency has deleted proposed section 15130(f).

Comment 37-27

Revise Section 15130(f) to state the intent of Public Resources Code Section 21083 and 21083.05 do not require a detailed GHG analysis solely due to the emissions of the project. Clarify that subsection (b)(1) is not necessary, and when analyzing the effects of GHG emissions, a lead agency need only consider reasonably foreseeable physical changes.

Response 37-27

As explained in Response 37-27, above, subdivision (f) has been deleted. The proposed additions, moreover, are not necessary. Because existing section 15130(b)(1) already allows lead agencies to choose either a list approach or a summary of projections approach, it is not necessary to state further that a list approach is not required. Also, section 15064(d) already states that in “evaluating the significance of the environmental effect of a project, the lead agency shall consider direct physical changes in the environment which may be caused by the project and reasonably foreseeable indirect physical changes in the environment which may be caused by the project.” Therefore, to avoid conflicts with existing Guidelines text, the Natural Resources Agency declines to make the suggested change.

Comment 37-28

Clarify Section 15183.5(a) to specify only significant effects of GHG emissions are required to be mitigated.

Response 37-28

The Natural Resources Agency has revised the text of section 15183.5(a) as suggested.

Comment 37-29

Clarify Section 15183.5(b) to specify only significant effects of GHG emissions are required to be mitigated.

Response 37-29

The Natural Resources Agency has revised the text of section 15183.5(b) as suggested.

Comment 37-30

Commenter supports amendments to Appendix F striking reference to “initial and life cycle energy costs”.

Response 37-30

The Natural Resources Agency appreciates the support of the Association of Environmental Professionals of the revisions to Appendix F.

Comment 37-31

Revise Appendix F (I) to add “but are not limited to:” so that the mentioned methods to achieve the goal of conserving energy not are misleading a lead agency to only consider what is listed in this section.

Response 37-31

The Natural Resources Agency declines to incorporate the suggested text. First, the addition does not appear to be necessary to achieve the goal mentioned in the comment of preserving lead agency discretion in determining significance. Second, even if the existing text in Appendix F limited the means of energy conservation to just the enumerate methods, there is nothing suggesting that there are other means of achieving efficiency that should be included.

Comment 37-32

Clarify Appendix F (II). Commenter suggests grammatical changes and inserts to references in other areas of Appendix F lead agencies should consider when determining potentially significant energy implications a project may have.

Response 37-32

The Natural Resources Agency declines to incorporate the suggested changes. The existing text is not ambiguous, so the suggested additional text is not necessary.

Comment 37-33

Clarify Appendix F (II) to clearly state that lead agency has the ultimate authority and responsibility of determining environmental impacts associated with energy consumption.

Response 37-33

The Natural Resources Agency declines to incorporate the suggested text. The Public Resources Code requires a lead agency to consider mitigation measures to “reduce the wasteful, inefficient, and unnecessary consumption of energy”. (Public Resources Code, § 21100(b)(3).) Nothing in that requirement or in Appendix F limits a lead agency’s discretion in determining whether a project’s energy use will cause significant impacts. The proposed text, therefore, is not necessary.

Comment 37-34

Clarify or revise Section 15130 (d). Proposed amendments inadvertently neglected OPR’s recommendation to include “but not limited to...regional transportation plans, GHG reduction plans...” If Resources chooses to reject this recommendation, it should provide a reason for doing so.

Response 37-34

The Natural Resources Agency has revised the text of Section 15130(d) as suggested. The Final Statement of Reasons contains the rationale supporting that text. As explained in the Notice of Proposed Changes, the omission of those revisions from the text published on July 3, 2009, was an inadvertent error.

Comment 37-35

Clarify changes to Appendix G, informational introduction. Proposed amendments appear to suggest removing a substantial part of the checklist form “Evaluation of Environmental Impacts”. If Resources chooses to reject this recommendation, it should provide a reason for doing so.

Response 37-35

The Natural Resources Agency has revised the text to clarify that the Natural Resources Agency does not propose to delete the existing section on Evaluation of Environmental Impacts in the proposed amendments. The Agency did not intend to remove that section.

Comment 37-36

Clarify statement in Initial Statement of Reasons, page 68; paragraph 3. The legislative authority for the proposed amendments is referred to as “the mitigation of greenhouse gas emissions and the effects of greenhouse gas emissions.” The correct quote is “the mitigation of greenhouse emissions or the effects of greenhouse gas emissions.” Commenter suggests Resources address if this change should modify the reasoning in light of this error.

Response 37-36

The Natural Resources Agency has revised the explanation of the legislative authority for the proposed amendments in the Final Statement of Reasons. As the comment correctly notes, SB97 states that the Guidelines must address “the mitigation of greenhouse emissions or the effects of greenhouse gas emissions.” The Natural Resources Agency does not interpret that language to require only guidance regarding mitigation to the exclusion of guidance on the effects of greenhouse gas emissions. A lead agency may only impose mitigation where the effects of a project are significant. Therefore, in order to provide guidance on the mitigation of greenhouse gas emissions, guidance on determining the effects of greenhouse gas emissions is also necessary. Further, the misquote appeared in an explanation of why the guidelines refer to greenhouse gas emissions instead of “climate change.” SB97 refers only to greenhouse gas emissions, thus, the Guidelines appropriately addressed mitigation and analysis of greenhouse gas emissions. Thus, no modification of the reasoning in the Initial Statement of Reasons is required.