

Letter 53

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Comment 53-1

Commenter suggests the carbon financial market, created by a GHG cap-and-trade program, may be determined and controlled by lead agencies by means of the CEQA process. Lead agencies are not qualified or properly trained in financial regulation and if the CEQA process is used, there will be no state or federal oversight.

Response 53-1

The purpose of this rulemaking is to amend CEQA Guidelines for the analysis and mitigation of greenhouse gas emissions and the effects of greenhouse gas emissions. (Public Resources Code, §21083.05.) This comment suggests that CEQA lead agencies will administer a GHG cap-and-trade program. AB 32, however, designates the California Air Resources Board as the state agency with regulatory authority to design and implement market-based mechanisms to reduce GHG emissions.

The proposed amendments do not establish a “cap-and-trade” program. The Air Resources Board’s Preliminary Draft Regulation for a California Cap-and-Trade Program was just released on November 24, 2009; however, that regulatory action is completely separate from the proposed amendments. Further, because it is a preliminary draft only, the Natural Resources Agency’s proposed amendments cannot at this point specifically address whether that program would have any application in the CEQA process. Public Resources Code section 21083.05(c) requires that the CEQA Guidelines be periodically updated “to incorporate new information or criteria established by the State Air Resources Board” pursuant to AB32. Thus, if necessary, guidance on mitigation can be updated after formulation of the Cap and Trade Program is complete. However, nothing in the proposed amendments would specifically address cap and trade issues.

Proposed section 15126.4(c)(3) recognizes that “offsets” may be used as mitigation for greenhouse gas emissions, subject to several conditions. While the purchasing of offsets may involve financial transactions, so do many other forms of mitigation for other types of impacts (i.e. infrastructure improvements). No revisions are required in response to this comment.

Comment 53-2

Commenter suggests projects, under the CEQA Guidelines, may or may not be a determining factor for an industry to have the right to trade or bank emission credits but land use will be.

Response 53-2

As explained above, the rules which may apply to a Cap and Trade Program are undergoing a separate development process, described in statute and delegated to the State Air Resources Board. Please also note that proposed section 15126.4(c)(3) expressly recognizes a lead agency's ability to mitigate a project's greenhouse gas emissions using offsets. This comment is not seeking additional changes to the text, no further response is necessary.

Comment 53-3

Commenter suggests the lack of regulations have led to the collapse of the country's economy.

Response 53-3

The Natural Resources Agency notes the commenter's concern. As explained in Response 53-1, above, mitigation is subject to several requirements. It must, for example, be supported with substantial evidence, be enforceable, and be subject to monitoring. (See State CEQA Guidelines, §15126.4(a).) No revision is required in response to this comment.

Comment 53-4

Commenter suggests that California's cap-and-trade program will not estimate the cost and effect of a cap-and-trade program. Therefore, SB 97 is regulating a review process without the benefit of financial forecasting.

Response 53-4

As explained in Response 53-1, the development of California's cap-and-trade program is being developed under a separate process, described in statute and delegated to the California Air Resources Board. Public Resources Code section 21083.05(c) requires that the CEQA Guidelines be periodically updated "to incorporate new information or criteria established by the State Air Resources Board" pursuant to AB32.

As explained in the Initial Statement of Reasons, this rulemaking package responds to the California Legislature's directive in SB 97. The amendments are designed to provide guidance on the analysis and mitigation of greenhouse gas emissions within existing CEQA rules. As indicated in the Notice of Proposed Action and Initial Statement of Reasons, the Natural Resources Agency considered the potential economic impact of the proposed amendments and determined that there would be no

adverse economic impact. The Natural Resources Agency documented this conclusion using the Form 399 Economic and Fiscal Impact Statement, which was reviewed by the Department of Finance, and is publicly available as part of the rulemaking file.

Comment 53-5

Commenter claims “science” determines climate change and sells cap-and-trade. Commenter opines that there is no science in the CEQA regulations.

Response 53-5

The State CEQA Guidelines requires that a lead agency should make a good-faith effort, *based to the extent possible on scientific and factual data* in determining the significance of their project’s greenhouse gas emissions. (State CEQA Guidelines, §§15064, 15064.7, and Appendix G.) An agency is required to determine whether the project may have a significant effect based on substantial evidence in light of the whole record. (Public Resources Code, §21082.2.)

The Guidelines provide the framework and requirements for environmental review pursuant to CEQA. Consistent with CEQA, the Guidelines do not mandate the use of any particular methodology. Rather, they recognize a lead agency’s discretion to choose the most appropriate methodology.

As expressed throughout the Guidelines, complying with CEQA requires an interdisciplinary approach. CEQA requires an agency to review the effects of projects on numerous environmental resources, including air, water, fish, and wildlife. A proper review requires coordination across a variety of professional disciplines. Thus, by requiring a multi-disciplinary scientific inquiry, CEQA clearly requires a decision to be based on factual and scientific evidence.

Comment 53-6

Commenter claims the proposed amendments include no mechanism to verify the credibility of lead agencies and consultancies to address the environmental effects resulting from the carbon market and the Climate Registry.

Response 53-6

Lead agency decisions must be supported with substantial evidence. To the extent the use of offsets would cause environmental impacts, those impacts would also have to undergo environmental review as part of the agency’s consideration of the project. (State CEQA Guidelines, §15126.4(a)(1)(D).)

The purpose of this rulemaking is to amend and adopt CEQA Guidelines for the analysis and mitigation of greenhouse gas emissions and the effects of greenhouse gas emissions. (Public Resources Code

§21083.05.) Creation of a Cap and Trade system is not part of this rulemaking activity. However, proposed section 15126.4(c)(3) expressly recognizes a lead agency's ability to mitigate a project's greenhouse gas emissions using offsets. The use of offsets would still require that current greenhouse gas emissions be reduced to mitigate a project's significant greenhouse gas emissions.

Comment 53-7

Commenter suggests that lead agencies have a limited ability to identify and adequately review projects. Thus, the burden of proof is on the resident or property owner residing within 500 feet of a project.

Response 53-7

This comment does not address any provision of the amendments or the Natural Resources Agency's rulemaking process. Though responses to comments such as this are not required, the Natural Resources Agency provides the following response.

CEQA requires a lead agency to determine whether its project may have any adverse environmental impact. A lead agency should make a good-faith effort, *based to the extent possible on scientific and factual data*, to determine whether any impact is significant. (State CEQA Guidelines, §15064.) A lead agency is required to determine whether the project may have a significant effect based on substantial evidence in light of the whole record. (Public Resources Code §21082.2(a).)

Furthermore, CEQA requires a lead agency allow time and opportunity for review of its draft environmental document. (State CEQA Guidelines §15203(a).)

Finally, the geographic scope of a CEQA analysis is determined by the lead agency. (See State CEQA Guidelines, §15125.) Depending on the characteristics of the project, surrounding conditions, and nature of a particular environmental impact, the scale of analysis varies according to what is necessary to adequately address such an impact.

Comment 53-8

Commenter claims that many environmental documents are not processed through the State Clearinghouse for comment by outside agencies. Commentor also claims lead agency processing results in Negative Declarations and Mitigated Negative Declarations.

Response 53-8

The State Clearinghouse was established within the Office of Planning and Research to serve as the point of contact in state government to receive and distribute environmental documents prepared under the National Environmental Protection Act and to coordinate the environmental review process under CEQA *when state agencies are involved*. (State CEQA Guidelines, §15205: Review by State

Agencies, emphasis added.) Neither the Office of Planning and Research or State Clearinghouse are required to review CEQA documents but instead circulate them *for review* to state agencies likely to be interested in the projects and receives and transmits comments from those state agencies to the agencies responsible for preparing the CEQA documents. CEQA requires adoption of a Negative Declaration if no substantial evidence indicates any potential adverse environmental impacts, or if such impacts can be mitigated. (Public Resources Code §21080(c).)

Comment 53-9

Commenter concludes that the only way the public is heard is through litigation.

Response 53-9

The Natural Resources Agency disagrees. Public involvement is an essential feature of the CEQA review process. In fact, the California Supreme Court has stated that members of the public hold a “privileged position” in the CEQA process. (*Concerned Citizens of Costa Mesa v. 32nd District Agricultural Association* (1986) 42 Cal. 3d 929.) The environmental review process established by CEQA provides ample opportunities for the public to participate throughout scoping (State CEQA Guidelines, §15083) public notice and public review of CEQA documents (State CEQA Guidelines, §§15072, 15087) and public hearings, and by requiring agencies to respond to public comments in Final EIRs (State CEQA Guidelines, §15088).

This comment does not address any provisions in the proposed amendments, no revisions are required.

Comment 53-10

Commenter claims that the appeal process is expensive and not within the financial capabilities of deprived areas. Thus, environmental justice issues are not heard.

Response 53-10

The Natural Resources Agency is only required to respond to comments concerning the proposed action (i.e., the text of the proposed amendments) or to the procedures followed in proposing or adopting the proposed action. (Government Code, §11346.9(a)(3).) Comments on CEQA’s substantive and procedural requirements are neither directed at the regulations nor at the Natural Resources Agency’s process for adopting those regulations.

Comment 53-11

Commenter claims that General Plans are not revised as needed to reflect growth and quality of life issues and will not be adequate to determine a Cap and Trade market.

Response 53-11

Comments regarding the requirements of General Plan Updates are beyond the scope of this rulemaking. No response is required to address this comment.

Comment 53-12

Commenter claims that the quality of life in a big city has been dissipated to a level of confinement and restriction, both of which are not considered under CEQA.

Response 53-12

See above response.

Comment 53-13

Commenter claims that the City of Los Angeles has numerous issues associated with listing oilfields and landfills. This presents a concern with inventorying the City's GHG emissions. No State registry for both federal and state oil well and landfills is readily available.

Response 53-13

This comment is directed at a lead agency's ability to identify a project's sources of GHG emissions and determine their significance. As directed by SB 97, the Office of Planning and Research and the Natural Resources Agency developed amendments to the CEQA Guidelines to assist lead agencies in that effort.

Specifically, Section 15064.4(a) states: "The determination of the significance of greenhouse gas emissions calls for a careful judgment by the lead agency consistent with the provisions in section 15064. A lead agency should make a good-faith effort, based to the extent possible on scientific and factual data, to describe, calculate or estimate the amount of greenhouse gas emissions resulting from a project. A lead agency shall have discretion to determine, in the context of a particular project, whether to: (1) Use a model or methodology to quantify greenhouse gas emissions resulting from a project, and which model or methodology to use. The lead agency has discretion to select the model or methodology it considers most appropriate provided it supports its decision with substantial evidence. The lead agency should explain the limitations of the particular model or methodology selected for use; and/or (2) Rely on a qualitative analysis or performance based standards." This section has been further revised to clarify that regardless of which method the lead agency chooses to determine the significance of a project's greenhouse gas emissions, the analysis must be based, "to the extent possible on scientific and factual data." Section 15064.4 is not meant to provide an exhaustive list of all potential sources of greenhouse gas emissions, but rather a framework for analyzing the significance of greenhouse gas emissions from a proposed project given the availability of scientific and other data.

Notably, CEQA only requires review of discretionary actions. It does not require the development of any particular potential source of greenhouse gas emissions.

Comment 53-14

Commenter claims that mitigating methane has been an issue. No expertise is required in the determination of mitigation.

Response 53-14

Section 15126.4(c) requires mitigation of significant greenhouse gas emissions. It also requires that any mitigation be supported with substantial evidence. CEQA does not require any particular type of level of expertise in developing mitigation. No revisions are required in response to this comment.

Comment 53-15

Commenter claims that the lack of expertise consequently prevents Urban Runoff Management Plans from being solidified.

Response 53-15

Comments regarding the development and implementation of Urban Runoff Management Plans are beyond the scope of this rulemaking. No response is required.

Comment 53-16

Commenter claims that the State Clearinghouse is not designed to be a scientific information clearinghouse, thus, there is no depository for the basis of science.

Response 53-16

As explained in Response 53-5, CEQA requires an interdisciplinary approach to environmental analysis. CEQA requires an agency to review the effects of its actions on numerous environmental resources, including air, water, fish, and wildlife. A proper review requires coordination across a variety of professional disciplines.

Furthermore, as explained in Response 53-8, neither the Office of Planning and Research or State Clearinghouse are required to review CEQA documents but instead circulate them *for review* to state agencies likely to be interested in the projects and receives and transmits comments from those state agencies to the agencies responsible for preparing the CEQA documents. The Natural Resources Agency, does however, maintain the California Environmental Resource Evaluation System (CERES),

within contains the Land Use Planning Information Network (LUPIN) which holds data sources on land use, text of CEQA, regulations, advisories, CEQA court cases, or other information related to CEQA.

Comment 53-17

Commenter recognizes the complexity of a GHG analysis and the decision-making process. Scientific terms are unfamiliar to the public.

Response 53-17

Environmental analysis is a complex and technical process. However, EIRs should be written in plain language so that the public can understand the documents and participate in the process. (State CEQA Guidelines, §15140.)

Again, as explained in Response 53-7, the geographic scope of a CEQA analysis is determined by the lead agency. (See Section 15125, Environmental Setting, of the State CEQA Guidelines.) Depending on the characteristics of the project, surrounding conditions, and nature of a particular environmental impact, the scale of analysis varies according to what is necessary to adequately address such an impact.

This comment does not indicate that the definition of greenhouse gases will not be understood by lead agencies. Therefore, no revision is required in response to this comment.

Comment 53-18

Commenter claims that current economic conditions have strained local government resources. This constraint limits a lead agency's ability to properly analyze and determine the significance of impacts.

Response 53-18

The proposed amendments do not add any substantive requirements beyond what CEQA already requires. CEQA does allow lead agencies to charge fees to cover the cost of compliance for private projects. (State CEQA Guidelines, §15045.)

As this comment is not directed at the amendments or the Natural Resources Agency's rulemaking process, no further response is required to address this comment.

Comment 53-19

Local Government Operations Protocol is a method for tracking progress, not to establish sources and "uses".

Response 53-19

The comment implies the protocols are not appropriate for purposes of CEQA review.

The Climate Action Reserve, in partnership with the California Air Resources Board and ICLEI – Local Governments for Sustainability, have made protocols available and is continuing to further refine existing protocols in response to public input and is advancing the development of new sector specific protocols. The information derived from the protocols may prove useful in a CEQA analysis. The Local Government Protocol was developed to enable local governments to measure and report GHG emissions associated with government operations in a consistent fashion. The Protocol, in essence, provides the principles, approach, methodology, and procedures needed to develop a local government operations GHG emissions inventory.

Nothing in the amendments or in CEQA, however, requires a lead agency to use specific protocols or methods. Lead agencies have discretion to choose among the multiple methods to determine the significance of greenhouse gas emissions. (State CEQA Guidelines, §§15064, 15064.4) Furthermore, the protocols require a project to be either administered by a certified technician or pass performance and regulatory tests. This comment does not address any provision of the proposed amendments, so no revision is required.

Comment 53-20

Allowing a lead agency to exercise its “careful judgment” to determine the significance of an environmental effect implies there are no standards or scientific basis to support a decision.

Response 53-20

CEQA requires that lead agencies support their findings with substantial evidence in the public record. (State CEQA Guidelines, §15064.) CEQA does not require the application of any particular standards to the determination of significance.

Comment 53-21

Commenter asks how lead agencies will determine a project’s “leakage”. Schools are not mentioned and many are located on old oilfields, of which, LAUSD is a large property owner.

Response 53-21

The comment does not appear to be directed at the amendments or the Natural Resources Agency rulemaking process. Assuming “leakage” is referring to “GHG emission”, Section 15064.4 provides lead agencies a framework for analyzing the significance of greenhouse gas emissions from a proposed

project given the availability of scientific and other data. No further revision to the text is necessary to respond to this comment.

Comment 53-22

Commenter asks if “leakage decisions” will be left to the investigative press to uncover.

Response 53-22

Comments regarding CEQA’s substantive and procedural requirements are beyond the scope of this rulemaking. No response is required.

Comment 53-23

Commenter asks who is qualified to determine what “environmental change” means, how “substantial” is measured, and what qualifies as evidence.

Response 53-23

Section 15064 of the State CEQA Guidelines addresses how lead agencies may determine whether a project will cause a substantial adverse environmental change. Section 15064(b) in particular states that the determination of significance calls for a careful judgment based on available scientific and factual data. The State CEQA Guidelines contain several definitions that address the commenter’s questions. (See, e.g., State CEQA Guidelines, §§ 15358 (“effects”), 15360 (“environment”), 15382 (“significant effect on the environment”).) The State CEQA Guidelines also define “substantial evidence” to mean “enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached.” (State CEQA Guidelines, § 15384(a).) This comment does not suggest any changes to the proposed amendments, so no further revisions are required.

Comment 53-24

Commenter is concerned that the discretion given to lead agencies to determine significance of greenhouse gas emissions will be open to abuse and corruption.

Response 53-24

The proposed amendments are consistent with the general CEQA rule that lead agencies have discretion to choose the most appropriate methodology to assess the impacts of their projects. (See, e.g., *Eureka Citizens for Responsible Gov’t v. City of Eureka* (2007) 147 Cal.App.4th 357, 371-373.) The discretion recognized in section 15064.4 is not unfettered. A lead agency’s analysis would be governed by the

standards in the first portion of section 15064.4. The first sentence applies to the context of greenhouse gas emissions the general CEQA rule that the determination of significance calls for a careful judgment by the lead agency. (Proposed § 15064.4(a) (“[t]he determination of the significance of greenhouse gas emissions calls for a careful judgment by the lead agency consistent with the provisions in section 15064”).) The second sentence sets forth the requirement that the lead agency make a good-faith effort to describe, calculate or estimate the amount of greenhouse gas emissions resulting from a project. That sentence has been further revised, as explained in greater detail below, to provide that the description, calculation or estimation is to be based “to the extent possible on scientific and factual data.” The third sentence advises that the exercise of discretion must be made “in the context of a particular project.” Thus, as provided in existing section 15146, the degree of specificity required in the analysis will correspond to the degree of specificity involved in the underlying project. In other words, even a qualitative analysis must demonstrate a good-faith effort to disclose the amount and significance of greenhouse gas emissions resulting from a project.

Further, the discretion recognized in proposed section 15064.4 would not enable a lead agency to ignore evidence submitted to it as part of the environmental review process. For example, if a lead agency proposes to adopt a negative declaration based on a qualitative analysis of the project’s greenhouse gas emissions, and a quantitative analysis is submitted to that lead agency supporting a fair argument that the project’s emissions may be significant, an EIR would have to be prepared. The same holds true if a lead agency proposes to adopt a negative declaration based on a quantitative analysis, and qualitative evidence supports a fair argument that the project’s emissions may be significant. (*Berkeley Keep Jets Over the Bay Com. v. Board of Port Comm.* (2001) 91 Cal.App.4th 1344, 1382; *Oro Fino Gold Mining Corp. v. County of El Dorado* (1990) 225 Cal. App. 3d 872, 881-882 (citizens' personal observations about the significance of noise impacts on their community constituted substantial evidence that the impact may be significant and should be assessed in an EIR, even though the noise levels did not exceed general planning standards).) Similarly, even if an EIR is prepared, a lead agency would have to consider and resolve conflicts in the evidence in the record. (State CEQA Guidelines, § 15151 (“EIR should summarize the main points of disagreement among the experts”); *Protect the Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal.App.4th 1099, 1109.)

This comment does not recommend any specific revisions to section 15064.4, and based on the reasons stated above, no further revision is necessary.

Comment 53-25

Commenter claims that no public agencies are acting on greenhouse gas issues; only private consultants, initiatives, and non-profit corporations.

Response 53-25

Comments regarding the collective actions addressing greenhouse gas emissions are beyond the scope of this rulemaking. No response is required.

Comment 53-26

Commenter claims that organizations like the Western Climate Initiative, a non-governmental organization, designing a regional cap-and-trade program does not provide a public process. Access to information and supportive documents are restricted.

Response 53-26

This comment is not directed at the amendments or the Natural Resources Agency rulemaking process. Further, the Western Climate Initiative is a collaboration of independent jurisdictions working together to identify, evaluate, and implement policies to address climate change at a regional level. No further response is necessary to address this comment.

Comment 53-27

Commenter requests clarification on who determines a threshold of significance and how “experts” are defined.

Response 53-27

Nothing in CEQA requires that thresholds be developed by experts or expert agencies; however, “thresholds can be drawn from existing environmental standards, such as other statutes or regulations.” (*Id.* at p. 1107.) Regardless of who develops the threshold, if an agency adopts a threshold, it must be supported with substantial evidence. (State CEQA Guidelines, § 15064.7(b).) Additionally, “thresholds cannot be used to determine automatically whether a given effect will or will not be significant[;]” “[i]nstead, thresholds of significance can be used only as a measure of whether a certain environmental effect “will normally be determined to be significant” or “normally will be determined to be less than significant” by the agency. (Guidelines, § 15064.7, subd. (a), italics added.)” (*Protect the Historic Amador Waterways, supra*, 116 Cal.App.4th at pp. 1108-1109.) Proposed subdivision (c) of section 15064.7 recognizes the principles described above by expressly recognizing that experts and expert agencies may be developing thresholds that other public agencies may find useful in their own CEQA analyses, but requiring, as a safeguard, that any such threshold be supported with substantial evidence. In other words, compliance with a threshold cannot be used to foreclose consideration of substantial evidence supporting a fair argument that an impact is significant despite compliance with a threshold. (*Protect the Historic Amador Waterways, supra*, 116 Cal.App.4th at pp. 1108-1109.) Proposed section 15064.7(c) is consistent with these principles. No further revisions are required in response to this comment.

Comment 53-28

Commenter requests clarification on how “substantial evidence” is defined.

Response 53-28

As explained in Response 53-23, the State CEQA Guidelines Section 15384 defines “substantial evidence” to include “[a] enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion... [b]facts, reasonable assumptions predicted upon facts, and expert opinion supported by fact.”

Comment 53-29

Commenter requests clarification of the role regional entities play that are not part of the State Clearinghouse distribution list for environmental review, yet, play a role in determining key factors in a cap-and-trade program.

Response 53-29

As explained in Response 53-1, the proposed amendments do not establish a “cap-and-trade” program. The Air Resources Board’s Preliminary Draft Regulation for a California Cap-and-Trade Program was just released on November 24, 2009; however, that regulatory action is completely separate from the proposed amendments. Further, because it is a preliminary draft only, the Natural Resources Agency’s proposed amendments cannot at this point specifically address whether that program would have any application in the CEQA process. Public Resources Code section 21083.05(c) requires that the CEQA Guidelines be periodically updated “to incorporate new information or criteria established by the State Air Resources Board” pursuant to AB32. Thus, if necessary, guidance on mitigation can be update after formulation of the Cap and Trade Program is complete. However, nothing in the proposed amendments would specifically address cap and trade issues.

This comment is not directed at the amendments or the Natural Resources Agency rulemaking process. No further response is necessary to address this comment.

Comment 53-30

Commenter requests clarification of how renewable energy issues between neighboring jurisdictions are resolved and account for greenhouse gas emissions.

Response 53-30

The amendment to section 15086 is a technical revision to correctly refer to the California Air Resources Board. This comment does not address any provision in the proposed amendments, therefore, no further response is required.

Comment 53-31

Clarify how region-wide is defined. In the context of GHG emissions, the impact is not contained within a physical border.

Response 53-31

The proposed amendments do not contain any geographic limitation, and are intended to apply to the extent that CEQA otherwise applies.

A precise definition of “region-wide” is not necessary to apply section 15093. That section provides a non-exclusive set of examples of benefits that a lead agency may consider in deciding whether to adopt a project with significant effects. In context, “region-wide” would include benefits that apply at a less than statewide level.

Comment 53-32

Clarify requirements for lead agencies when determining the environmental setting. Commenter is concerned lead agencies will use generic language, in place of a scientific foundation, to determine the environmental setting which may lead to a financial market in a cap-and-trade program.

Response 53-32

State CEQA Guidelines Section 15125(a) provides: “...lead agencies are required to include a description of the physical environmental conditions in the vicinity of the project, as they exist at the time of the notice of preparation is published, or if no notice of preparation is published, at the time environmental analysis is commenced, from both a local and regional perspective. This environmental setting will normally constitute the baseline physical conditions by which a lead agency determines whether an impact is significant.” The description should be based on facts, but should not be highly technical. (State CEQA Guidelines, §§15147, 15149.)

This comment suggests that CEQA could set the environmental baseline for a cap-and-trade program. First, CEQA is not a mechanism to implement a cap and trade program. Second, as explained in Response 53-1, AB 32 designated the California Air Resources Board as the state agency with regulatory authority to design and implement the Cap-and-Trade program.

Comment 53-33

Revise Section 15125 to include methane mitigation plans.

Response 53-33

Section 15125(d) contains a non-exclusive list of plans that may apply to a project. If a methane mitigation plan applied to a project, a lead agency could consider consistency with such a plan. No further revision to the text is necessary to address this comment.

Comment 53-34

Clarify revisions to Section 15126.2(c), Title 24 is the Building Standards Code.

Response 53-34

Reference to Title 24 in Section 15126.2(c) was an error. The Natural Resources Agency has made a correction to properly reference Title 14, California Code of Regulations.

Comment 53-35

A project-by-project approach to mitigate greenhouse gas emissions is not realistic nor does it account for the migration of greenhouse gases.

Response 53-35

The comment questions the effectiveness of mitigating GHG emissions and appropriate geographic scope of analysis for determining the significance of GHG emissions.

CEQA's substantive mandate requires that "public agencies should not approve projects as proposed if there are ... feasible mitigation measures available which would substantially lessen the significant environmental effects of such projects[.]" (Public Resources Code, § 21002.)

SB 97 specifically called on the Office and Planning and Research and Natural Resources Agency to develop guidelines addressing the mitigation of greenhouse gas emissions. In doing so, however, the Legislature did not alter a lead agency's ability to require mitigation where the impacts of a project's greenhouse gas emissions are significant. Thus, as explained in the Initial Statement of Reasons, existing CEQA rules, as described above, apply to the mitigation of greenhouse gas emissions, and require mitigation of a project's significant greenhouse gas emissions.

CEQA defines "environment" to include "the physical conditions that exist within the area which will be affected by a proposed project, including land, air, water, minerals, flora, fauna, noise, or objects of historic or aesthetic significance." (Public Resources Code, § 21060.5 (emphasis added).) That definition includes no geographic limitation; rather, the only limitation is the whether the project will affect an area's physical conditions.

Comment 53-36

Commenter asks how mitigation is enacted and enforced in the case of a policy or plan.

Response 53-36

State CEQA Guidelines §15126.4(a)(2) provides: “Mitigation measures must be fully enforceable through permit conditions, agreements, or other legally-binding instruments. In the case of the adoption of a plan, policy, regulation, or other public project, mitigation measures can be incorporated into the plan, policy, regulation, or project design.” No revision to the proposed amendments is necessary in response to this comment.

Comment 53-37

Commenter requests clarification of how the plans listed in the section on cumulative impacts are included in yearly progress reports or included in updated elements of a plan.

Response 53-37

As explained in the Initial Statement of Reasons, the listed plans would be expected to yield information such as inventories of existing emissions and projections of future emissions. (Initial Statement of Reasons, at p. 44.) The plans may, therefore, provide substantial evidence to assist lead agencies in analyzing cumulative impacts. CEQA does not require progress reports for such plans.

Comment 53-38

Commenter requests clarification of how effectiveness is measured in the plans listed.

Response 53-38

The listed plans may contain information about statewide, regional and/or local emissions inventories and projections. For example, the amendments to section 15130(b)(1)(B) would add regional transportation plans and plans for the reduction of greenhouse gas emissions to the types of plans that may be considered in a cumulative impacts analysis.

For additional discussion, see Response 53-37.

Comment 53-39

Access to information is restricted if it costs time and money.

Response 53-39

Comments regarding the access to information from non-governmental organizations are beyond the scope of this rulemaking. No response is required.

Comment 53-40

Clarify the parameters for guiding a lead agency to determine if a project's incremental contributions of GHG emissions are cumulatively considerable.

Response 53-40

Section 15064(h)(1) states "[A]n EIR must be prepared if the cumulative impact may be significant and the project's incremental effect, though individually limited, is cumulatively considerable. "Cumulatively considerable" means that the incremental effects of an individual project are significant when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects." (See also State CEQA Guidelines, §15065(a)(3) (defining "cumulatively considerable".))

Comment 53-41

Commenter requests clarification of how requirements are enacted to ensure a project's consistency with a community plan, general plan, or zoning ordinance and what qualifications are required to interpret requirements to ensure a project's consistency with a community plan, general plan, or zoning ordinance.

Response 53-41

Section 15183 applies to projects that are consistent with a community plan, general plan, or zoning ordinance for which an EIR was prepared. If mitigation measures were adopted as part of that original EIR, a mitigation monitoring and reporting program would also have to be adopted which would address reporting and enforcement. (State CEQA Guidelines, § 15097.) No revisions to the proposed amendments are required in response to this comment.

Comment 53-42

Commenter requests clarification of whether variances to this requirement are allowable and how those variances affect a cap-and-trade program.

Response 53-42

See Response 53-1. If a project causes impacts that were not addressed in the EIR for the community plan, general plan, or zoning ordinance, those impacts would have to be analyzed. (State CEQA Guidelines, § 15183(b).)

Comment 53-43

Commenter requests clarification in the event of fraud, who is responsible – lead agency, local government, state agencies, the public, or defendant.

Response 53-43

Comments regarding the responsibilities of lead agencies are beyond the scope of this rulemaking. No response is required.

Comment 53-44

Commenter requests clarification on who is required to produce travel patterns and when a “special situation” can exist.

Response 53-44

Regarding the “special situation”, the Natural Resources Agency assumes the comment is directed at the proposed new Section 15183.5(c). Section 21159.28 of the Public Resources Code contains a specific limitation on the analysis of cars and light duty trucks on global warming and the regional transportation network and growth inducing impacts for certain types of residential projects that are consistent with a Sustainable Communities Strategy or an Alternative Planning Strategy. The proposed amendments recognize that specific limitation in proposed new Section 15183.5(c). As indicated in that section, cumulative impacts resulting from other sources of greenhouse gas emissions should still be analyzed. Whether “travel patterns” are relevant to a particular environmental analysis will be decided by the lead agency.

Comment 53-45

Commenter requests clarification if GHGs are measured in terms of concentrations in the air, water, land, and other forms.

Response 53-45

Proposed amendment to add Section 15364.5 provides a definition of “greenhouse gas emissions”. Please note this list is not meant to be exclusive. The location of those gases would likely depend on the individual project under consideration.

Comment 53-46

Commenter requests clarification on how greenhouse gases are defined in a forest fire.

Response 53-46

In terms of CEQA, a forest fire is generally not the result of “project” (as defined by Public Resources Code §21065) and so would not be subject to CEQA review. If a project proposed incineration, the lead agency may need to assess and estimate the amount of carbon being released as a result of the burn. (State CEQA Guidelines §§15064, 15064.4.)

Comment 53-47

Commenter suggests the energy efficiency requirements in Appendix F: Energy Conservation are too speculative to be considered.

Response 53-47

The Natural Resources Agency respectfully disagrees. An energy analysis is not speculative and mitigating a project’s impact on energy resources is possible. Further, revisions to Appendix F include a cross-reference to section 21100(b)(3) of the Public Resources Code to direct lead agencies to the statutory directive of their obligation to “reduce the wasteful inefficient, and unnecessary consumption of energy.” The comment also appears to address a specific development project. Such comments exceed the scope of this rulemaking. Furthermore, the AB 32 Scoping Plan specifically recognizes the value of energy savings through measures related to water use and solid waste disposal. (Scoping Plan, Appendix C, at pp. C-158 to C-160.)

Comment 53-48

Revise Appendix F: Energy Conservation, to further address energy implications of water and recycled water.

Response 53-48

The proposed amendments to Appendix F include energy implications of water. (See, e.g. Appendix F, §II.D.2.) The Natural Resources Agency believes these revisions adequately address the concern in this comment.

Comment 53-49

Clarify the role of lead agencies in terms of analyzing the effects of the ocean in Appendix G: Initial Study Checklist.

Response 53-49

Existing Appendix G, section VIII, question (f), asks whether a project would “substantially degrade water quality.” That question is not limited by its terms, and so could include impacts to oceans. The geographic extent of an environmental analysis will depend on the specific characteristics of the project under consideration. No revision to the proposed amendments is required in response to this comment.

Comment 53-50

Appendix G should account for soil’s role in GHG emissions, as well as effects related to groundwater and oceans.

Response 53-50

The effect of greenhouse gas emissions will depend on the nature of the project under consideration. Thus, if substantial evidence indicates that a project may cause changes in the soil that result in greenhouse gas emissions, or that a project’s greenhouse gas emissions may cause effects related to groundwater or oceans, the lead agency would have to consider such evidence. The Natural Resources Agency deliberately kept the Appendix G checklist questions related to greenhouse gas emissions broad so that lead agencies would consider all relevant evidence and potential impacts. No further revision is necessary in response to this comment.

Comment 53-51

Revise Appendix G: Initial Study Checklist – Transportation/Traffic questions to include recreational trails.

Response 53-51

The Natural Resources Agency declines to incorporate specific reference to “recreational trails” in the Appendix G, Section XVI: Transportation/Traffic checklist. Recreational facilities are already addressed in Appendix G, Section XV: Recreation.

Comment 53-52

Revise Appendix G: Initial Study Checklist – Transportation/Traffic to include parking.

Response 53-52

The Natural Resources Agency declines to retain the parking question in the Appendix G Initial Study Checklist. Case law recognizes that parking impacts are not necessarily environmental impacts. (*San Franciscans Upholding the Downtown Plan v. City and County of San Francisco* (2002) 102 Cal. App. 4th 656, 697.) Therefore, the question related to parking is not relevant in the initial study checklist. However, if there is substantial evidence indicating a potential for adverse environmental impacts from a project related to parking capacity, such as for example attendant air quality issues that result from cars idling while searching for parking spots, the lead agency must address such potential impacts regardless of whether the checklist contains parking questions. (*Protect the Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal.App.4th 1099, 1109.) The Natural Resources Agency, therefore, rejects this comment.

Comment 53-53

Commenter believes the proposed amendments contribute to the destruction of the Constitutions of the United States and California by regulations that silence the voice of the people.

Response 53-53

The Natural Resources Agency finds the amendments advance a coordinated policy for reducing greenhouse gas emissions by providing guidance on how state and local agencies should analyze, and when necessary, mitigate greenhouse gas emissions. In doing so, the amendments provide greater predictability to California public agencies and businesses and help achieve the state’s greenhouse gas emission reduction goals. The proposed amendments do not remove any of CEQA’s many provisions requiring public agencies to involve the public in the environmental review process. Rather, the proposed amendments will assist lead agencies in ensuring that analysis, and mitigation, of greenhouse gases occurs in a transparent process. This comment does not suggest any specific revisions to the proposed amendments, no revision is required.