

Letter 57

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Comment 57-1

Commenter recommends that the proposed amendments not be adopted due to two fundamental flaws: (1) the amendments fail to adequately address mitigation of GHG emissions or the effects of GHG emissions; and, (2) the amendments exceed the legislative authority granted by SB 97 and could result in increased impacts on the environment.

Response 57-1

The Natural Resources Agency disagrees that the proposed amendments are fundamentally flawed. The Initial Statement of Reasons explains in detail the necessity and authority for each proposed change to the existing CEQA Guidelines. Proposed new sections 15064.4 and 15126.4(c) each address determining the effects of greenhouse gas emissions and mitigation of greenhouse gas emissions, respectively. Proposed new section 15183.5 addresses tiering and streamlining of the analysis and mitigation of greenhouse gas emissions, consistent with both SB97 and other legislative directives. The remainder of the proposed amendments update provisions in the existing CEQA Guidelines to accommodate the analysis of greenhouse gas emissions and the efforts of public agencies to reduce such emissions and/or increase sequestration of such emissions. Notably, while the primary focus of this rulemaking package remains implementation of SB 97, the Natural Resources Agency also acts pursuant to its general authority granted in section 21083(f) of the Public Resources Code, which requires updates to the Guidelines every two years. The Natural Resources Agency will respond to specific objections to the proposed amendments below.

Comment 57-2

Section 15126.4(c) provides no guidance for mitigating the effects of greenhouse gases recognized by AB 32.

Response 57-2

The phrase “effects of greenhouse gas emissions,” by itself, in SB 97 does not indicate a legislative directive to fundamentally change the type of analysis required in CEQA. The comment quotes from AB 32, which includes legislative findings regarding potential adverse impacts associated with global warming. Those legislative findings further provide that AB 32 “will continue [the State’s] tradition of

environmental leadership by placing California at the forefront of national and international efforts to reduce emissions of greenhouse gases.” (Health and Safety Code, § 38501(c).) Thus, the Legislature indicated in AB32 that greenhouse gas emissions are a cause of the effects associated with global warming.

Later, in SB 97, the Legislature directed the Office of Planning and Research and the Natural Resources Agency to develop and adopt guidelines on the effects of individual projects’ greenhouse gas emissions and the mitigation of greenhouse gas emissions pursuant to CEQA. SB 97’s seemingly sweeping language referring to the “effects of greenhouse gas emissions” generally, enacted in section 21083.05 of the Public Resources Code, must be read in context. That section immediately follows section 21083, which required the development of guidelines for the “orderly evaluation of projects” to implement CEQA. (Public Resources Code, § 21083(a).) While CEQA’s underlying purpose is protection of the environment, it does so at a micro-level by requiring analysis of environmental impacts resulting from the implementation of individual projects. (Public Resources Code, § 21002 (“public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental effects of such projects”) (emphasis added).) Thus, in enacting SB97, the Legislature required the development of guidelines to both analyze effects of an individual project’s greenhouse gas emissions, and if those emissions would result in significant effects, to mitigate that project’s significant emissions.

Comments 57-2 through 57-5, appear to urge analysis of the effects of other projects, and climate change generally, on individual projects. As explained in the Initial Statement of Reasons, CEQA does not typically require the analysis of the effects of the environment on a project. The existing CEQA Guidelines already address the limited circumstances under which such an analysis may be appropriate.

Several comments submitted as part of the Natural Resources Agency’s SB97 rulemaking process urged it to incorporate the draft California Climate Adaptation Strategy (“Adaptation Strategy”) into the CEQA Guidelines. In considering such comments, it is important to understand several key differences between the Adaptation Strategy and the California Environmental Quality Act. First, the Adaptation Strategy is a policy statement that contains recommendations; it is not a binding regulatory document. Second, the focus of the Adaptation Strategy is on how we can change in response to climate change. CEQA’s focus, on the other hand, is the analysis of greenhouse gas emissions from a particular project, and mitigation of those emissions if they are significant. Given these differences, CEQA should not be viewed as the tool to implement the Adaptation Strategy; rather, as indicated in the Strategy’s key recommendations, advanced programmatic planning is the primary method to implement the Adaptation Strategies.

There is some overlap between CEQA and the Adaptation Strategy, however. As explained in both the Initial Statement of Reasons and in the Adaptation Strategy, section 15126.2 may require the analysis of the effects of a changing climate under certain circumstances. 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 57-3

Lead agencies, when preparing an EIR, may include analysis of the project’s potential to generate GHGs. However, EIRs continually conduct inadequate analyses on the effects of GHGs, even where the Appendix G Initial Study Checklist contains questions that would be relevant to such an analysis.

Response 57-3

The comment correctly notes that the sample Initial Study checklist in Appendix G contains several questions that could address various effects of climate change. Such analysis would be limited, however, as described in Response 57-2, above. No further revisions are required in response to this comment.

Comment 57-4

Commenter observes EIRs contain an extensive discussion of GHG emissions but do not address the environmental effects of those GHG emissions – i.e. reduced snowpack, sea level rise, etc.

Response 57-4

As explained in Response 57-2, above, section 15126.2(a) has been revised to clarify when an environmental impact report should address hazards related to a changing climate. That analysis is subject to several limitations, including the availability of reliable information regarding the extent of various hazards. The analysis of any particular project’s effects on the environment (such as sea-level rise, flooding risks and habitat modification) are similarly limited to what is reasonably feasible. (State CEQA Guidelines, § 15151.) As Comment 57-7, below, notes, such information may not yet exist. No further revisions are required in response to this comment.

Comment 57-5

Commenter states guideline amendments do not comply with SB 97's directive to provide lead agencies with guidance on mitigating the effects of GHG emissions such as rising sea levels, flooding, diminishing snowpack, and changing local ecologies.

Response 57-5

Section 15126.2(a) has been revised to require analysis of the potential significant effects of locating development in areas that are susceptible to hazards such as sea-level rise, flooding and wildfires, where such hazards are appropriately mapped or otherwise identified. To the extent substantial evidence ties specific impacts such as altered habitat to a particular project, such impacts would also have to be analyzed. However, pure speculation is not required. (State CEQA Guidelines, § 15145.) No further revisions are required in response to this comment.

Comment 57-6

Commenter states the amendments do not focus on mitigating the effects of GHG emissions and many amendments are contrary to the basic concept of that CEQA "...should afford the fullest possible protection to the environment within the reasonable scope of the statutory language." (*Friends of Mammoth v. Board of Supervisors*, 8 Cal. 3d 247.)

Response 57-6

This comment is primarily introductory in nature. Specific objections are addressed in detail below. Notably, as explained in Response 57-1, above, while the primary purpose of this rulemaking package is to implement SB 97, the Natural Resources Agency is also acting pursuant to the more general authority provided in section 21083(f) to update the CEQA Guidelines at least every two years.

Comment 57-7

Section 15064.4 neglects the effects of GHGs. Commenter acknowledges the technological limits to determine an individual project's contribution to climate change. However, an environmental analysis should be required to take into account, for example, a reasonable range for expected sea level rise and estimates regarding future reduction in snowpack per SB 221 (Kuehl, 2001) and SB 610 (Costa, 2001).

Response 57-7

SB97 specifically called for guidelines on the "mitigation of greenhouse gas emissions or the effects of greenhouse gas emissions." (Pub. Resources Code, § 21083.05.) Because CEQA only requires mitigation of significant adverse environmental impacts (Public Resources Code section 21002), proposed new section 15064.4 sets forth guidelines on how to determine whether a project's greenhouse gas

emissions are significant. As explained in Response 57-2, above, section 15126.2(a) has been revised to address when an environmental impact report should analyze potential significant effects resulting from hazards such as sea-level rise. As also explained in that response, the Legislature has already provided a specific procedure for analyzing potential uncertainties involved in long-term water supply planning for individual projects. No further revisions are required in response to this comment.

Comment 57-8

Revise Section 15064.4 to address the specific effects of GHGs.

Response 57-8

The Natural Resources Agency declines to further revise section 15064.4. That section was developed in response to Legislative direction in SB 97 to provide guidance on determining the significance of a project's greenhouse gas emissions. The "effects" to which the comment refers are addressed in the revision to section 15126.2(a), as described in Response 57-2, above. No further revision is required in response to this comment.

Comment 57-9

Section 15064.7 is redundant and superfluous. The expertise of specialized agencies, such as air districts, would likely be addressed in section 15125(d).

Response 57-9

CEQA encourages lead agencies to "identify any critical thresholds for the health and safety of the people of the state[.]" (Public Resources Code, § 21000(d).) Section 15064.7 provides procedures for the adoption of formal thresholds of significance by individual agencies. Proposed section 15064.7(c) would recognize a lead agency's ability to rely on thresholds developed by others, so long as those thresholds are supported with substantial evidence. The Initial Statement of Reasons specifically acknowledged that several air districts throughout the state are developing thresholds of significance for greenhouse gas emissions. (Initial Statement of Reasons, at p. 25.) The Initial Statement of Reasons also acknowledged the efforts of experts, such as the California Air Pollution Control Officers Association. (*Ibid.*)

Section 15125(d) instructs lead agencies to discuss any inconsistencies between a project and relevant plans. Such plans may, or may not include thresholds of significance. Because section 15064.7(c) and 15125(d) serve different purposes, they are not duplicative or redundant.

Comment 57-10

Section 15064.7 may result in lead agencies becoming overly reliant on thresholds developed by other agencies without an understanding of the research and technical background legitimizing the threshold.

Response 57-10

The Natural Resources Agency respectfully disagrees that section 15064.7(c) will encourage uninformed decision-making. On the contrary, that section, by requiring that lead agency's ensure that any threshold they adopt is supported with substantial evidence, ensures that lead agencies do not blindly follow other agencies. No revision is required in response to this comment.

Comment 57-11

Commenter is concerned a when a threshold becomes the "standard" it may become widespread and is then gradually applied beyond its intended use despite substantial evidence suggesting otherwise.

Response 57-11

Section 15064.7(c) expressly requires that any threshold be supported with substantial evidence. Further, CEQA case-law already provides that an agency cannot rely on thresholds in a way that would foreclose consideration of impacts. (*Protect the Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal.App.4th 1099, 1109.) No revisions are required in response to this comment.

Comment 57-12

Clarify Section 15064.7(c) to require any standard to be adopted by an agency be supported by substantial evidence and undergo adequate peer review or public review prior to becoming a standard.

Response 57-12

Section 15064.7(c) allows a lead agency to adopt a threshold developed by another agency or by experts, but only if the decision to adopt a threshold of significance is supported with substantial evidence. This meaning is clear from the context of the section. Subdivision (a) defines a threshold as a "level of a particular environmental effect, non-compliance with which means the effect will normally be determined to be significant by the agency and compliance with which means the effect normally will be determined to be less than significant." Subdivision (b) further requires that any threshold be "developed through a public review process and be supported by substantial evidence." No revision is required in response to this comment.

Comment 57-13

Revise Section 15064.7(c) to require a lead agency when adopting a threshold of significance or standard is supported by substantial evidence.

Response 57-13

The Natural Resources Agency rejects the proposed text for two reasons. First, the word “standard” would inject a new term into a section devoted to “thresholds of significance.” Further, no apparent benefit would result from replacing the term “thresholds” with the term “standard.” Second, the focus of subdivision (c) is to ensure that a lead agency’s decision to adopt a particular threshold is supported with substantial evidence. If a lead agency’s decision that a particular threshold represents the level at which an effect will normally not be significant is supported with substantial evidence, that threshold level must necessarily be supported with substantial evidence. Thus, the proposed revision is not necessary and is, therefore, rejected.

Comment 57-14

Clarify Section 15064.7(c) to provide a standard for the term “expert” when a lead agency relies on a threshold of standard developed by an expert for determining significance.

Response 57-14

The Natural Resources Agency declines to develop standards for “experts” as that term is used in section 15064.7(c), because doing so is not necessary. Thresholds of significance must be supported with substantial evidence; however, nothing in CEQA requires that such evidence be developed by any particular type of expert with any particular qualification. On the contrary, the existing CEQA Guidelines provide that “an EIR is not a technical document that can be prepared only by a registered professional.” (State CEQA Guidelines Section 15149(b).)

No revision is required in response to this comment.

Comment 57-15

Delete Section 15093(d). Public Resources Code Section 21081(b) already provides considerations of benefits of the project outweighing significant environmental effects of a project and administrative direction to maintain the public record. That section is now silent as to considering region-wide or state-wide benefits. SB 97 does not direct Resources to develop guidance pertaining to this section.

Response 57-15

Section 21081(b) of the Public Resources Code provides a non-exclusive list of benefits that may be considered in a Statement of Overriding Considerations. As explained in the Initial Statement of

Reasons, certain projects that provide greenhouse gas emissions reduction benefits on a larger statewide or region-wide scale may nevertheless have significant adverse impacts. (Initial Statement of Reasons, at pp. 31-32.) The Office of Planning and Research and the Natural Resources Agency therefore proposed amending section 15093 to expressly allow a lead agency to consider such “statewide and region-wide benefits” among the “other benefits” specifically listed in section 21081(b). In response to comments raising concern that the proposed subdivision (d) would create new standards or preferences for statewide and region-wide benefits, the Natural Resources Agency has revised subdivision (a) to place statewide and regional benefits in the context of the other listed benefits. This addition does not exceed the scope of SB 97 because a project’s statewide and region-wide benefits may be a proper consideration of the effects of a project’s greenhouse gas emissions in a statement of overriding considerations. Moreover, as explained in Response 57-1, above, the Natural Resources Agency is also acting on its general authority to regularly update the CEQA Guidelines pursuant to section 21083(f) of the Public Resources Code. The Natural Resources Agency, therefore, rejects the suggestion to not adopt the proposed revisions to the section 15093(a).

Comment 57-16

Revise Section 15125(d) by removing the added plans from the list lead agencies are required to consider. The phrase “...included but not limited to...” already indicates the list is not meant to be exhaustive.

Response 57-16

The Natural Resources Agency disagrees that section 15125(d) should not be updated as proposed. As explained in the Initial Statement of Reasons, “one potential indicator of a project’s potential GHG emissions impacts is whether the project is consistent with applicable plans that have addressed that impact[;]” thus, “the addition of plans that may address GHG emissions to the list of plans in the existing section 15125 is reasonably necessary to ensure that such analysis occurs.” (Initial Statement of Reasons, at p. 34.)

Comment 57-17

Commenter suggests if changes to section 15125(d) are made, those changes should only address plans that are specified in law, including “congestion management plans”.

Response 57-17

As explained in Response 57-16, above, section 15125(d) has been revised to include plans that could indicate whether a particular project’s greenhouse gas emissions may be significant. Nothing in CEQA limits consideration of plans to those that are specified in law. Consistency with congestion management programs could be analyzed pursuant to that section because, as the comment notes, that

section provides a non-exclusive list. Moreover, question (b) of the Transportation and Traffic section of the Appendix G checklist would specifically ask about compliance with an applicable congestion management program. Therefore, no further revision to section 15125(d) is required in response to this comment.

Comment 57-18

Revise Section 15125 to limit the list of plans to those that are fully vetted by technical experts and the general public.

Response 57-18

The Natural Resources Agency disagrees that regional blueprint plans and plans for the reduction of greenhouse gas emissions should not be considered pursuant to section 15125(d). First, both plans would be subject to public review. (See, e.g., proposed section 15183.5(b)(1)(F).) Second, because of such public review, such plans would be properly vetted. Notably, that section requires consideration of consistency with the listed plans, but does not require a determination of significance based on a potential inconsistency. Ultimately, substantial evidence must support a lead agency's determination regarding a project's impacts. No revision is required in response to this comment.

Comment 57-19

While expanding section 15125 may appear exhaustive, it does not ensure that all relevant plans, including congestion management programs, will not be ignored.

Response 57-19

The listed plans are proposed for inclusion in section 15125(d) in order to ensure a full analysis of a project's potential greenhouse gas impacts as explained in Response 57-16. Congestion Management Programs are not ignored in the CEQA Guidelines. On the contrary, question (b) of the Transportation and Traffic section of the Appendix G Initial Study checklist has been revised to encourage lead agencies to consider a project's consistency with a CMP.

Comment 57-20

Amendments to Section 15125(d) should not be adopted.

Response 57-20

The Natural Resources Agency respectfully declines the suggestion to not adopt the proposed changes to section 15125(d), for the reasons explained in Responses 57-16 through 57-19, above.

Comment 57-21

Amendments to Section 15130 are inappropriate for two reasons: they limit the scope of plans and limit public review.

Response 57-21

The Natural Resources Agency disagrees that the amendments to 15130 are inappropriate. This comment is introductory in nature. Responses to specific objections are provided below.

Comment 57-22

Section 15183.5 fails to adequately address impacts due to GHG emissions. Reliance on a plan designed to only address activities within a jurisdictional boundary will not sufficiently address the effects of GHG emissions.

Response 57-22

The proposed amendments to section 15130 are consistent with Public Resources Code section 21100(e), which provides: “Previously approved land use documents, including, but not limited to, general plans, specific plans, and local coastal plans, may be used in cumulative impact analysis.” General plans and specific plans address very local conditions, but the Legislature has recognized their utility in a cumulative impacts analysis. Thus, even if a plan for the reduction of greenhouse gas emissions is prepared for only city or county level, it may still provide useful information for a cumulative impacts analysis. Thus, the Natural Resources Agency rejects the suggestion that only plans addressing a wide geographic area may be used in a cumulative impacts analysis because such a limitation would be inconsistent with controlling statutory authority.

Comment 57-23

Section 15183.5 is so open-ended that it cannot supply appropriate information for a cumulative impacts analysis.

Response 57-23

Section 15183.5(b) has been revised to provide that plans for the reduction of greenhouse gas emissions “should” incorporate the listed criteria. This revision addresses the concern in the comment that such plans are too open-ended. Further, section 15130(b)(1)(B), which is the subject of this comment, is designed to assist a lead agency in developing information for an adequate cumulative impacts analysis. Thus, because it is not limited to consideration of one or any of the listed plans, each cumulative

impacts analysis would be judged based on the substantial evidence supporting the analysis, not the adequacy of any of the listed plans. No further revision is required in response to this comment.

Comment 57-24

Use of a plan for the reduction of greenhouse gas emissions is inappropriate because section 15183.5(b) does not require full examination by technical experts and public review.

Response 57-24

Section 15183.5(b) has been revised to clarify that a plan for the reduction of greenhouse gas emissions “should” satisfy all of the listed criteria. Criterion (f) provides that such plans “[b]e adopted in a public process following environmental review.” This safeguard addresses the concern specified in the comment that such plans may not undergo adequate review. No further revision is required in response to this comment.

Comment 57-25

Revise Section 15183.5(b)(1) to require the plan elements listed in the subsection.

Response 57-25

Section 15183.5(b) has been revised to provide that plans for the reduction of greenhouse gas emissions “should” incorporate the listed criteria. The word “should” indicates that lead agencies are advised to follow the guidance unless there is some compelling reason not to do so. (State CEQA Guidelines, § 15005.) The Natural Resources Agency declines to use the word “shall” because no statute or rule of case-law indicates that all of the listed criteria are mandatory. No further revision is required in response to this comment.

Comment 57-26

Commenter questions the adequacy of an environmental document prepared and used under Section 15183.5(b)(2). Commenter questions whether a negative declaration or a notice of exemption would qualify as adequate.

Response 57-26

The Natural Resources Agency disagrees that plans for the reduction of greenhouse gas emissions would most likely be adopted with negative declarations. The type of environmental document that is prepared would depend entirely upon the scope and potential impacts that would result from plan implementation. The phrase “environmental document” is defined in the existing CEQA Guidelines

section 15361 to include: “Initial Studies, Negative Declarations, draft and final EIRs, documents prepared as substitutes for EIRs and Negative Declarations under a program certified pursuant to Public Resources Code Section 21080.5, and documents prepared under NEPA and used by a state or local agency in the place of an Initial Study, Negative Declaration, or an EIR.” A notice of exemption is not included in the definition of “environmental document.”

Comment 57-27

Revise Section 15183.5 to require GHG Reduction Plans be subject to public review and adopted only after a public hearing.

Response 57-27

Section 15183.5(b) has been revised to clarify that a plan for the reduction of greenhouse gas emissions “should” satisfy all of the listed criteria. Criterion (f) provides that such plans “[b]e adopted in a public process following environmental review.” The Natural Resources Agency declines to require that such plans be adopted in a public hearing because, as provided in section 15202, “CEQA does not require formal hearings at any stage of the environmental review process.” No further revision is required in response to this comment.

Comment 57-28

Commenter supports Appendix G preamble, amendment to Agricultural and Forest Resources, and Appendix F.

Response 57-28

The Natural Resources Agency appreciates the support of the Appendix G preamble, amendment to Agricultural and Forest Resources, and Appendix F.

Comment 57-29

Commenter recommends changes to Appendix G: Transportation/Traffic be rejected. As proposed, amendments remove cumulative considerations of impacts to transportation unless the capacity of the transportation system was exceeded.

Response 57-29

This comment refers in particular to revisions to question (a) of Transportation and Traffic section of the Appendix G Initial Study Checklist. That question has been further revised to refocus the question from the capacity of the circulation system to a project’s consistency with a plan or policy establishing a

measure of effectiveness for the circulation system. This revision addresses the comment's concern regarding the incremental effect of a project on the capacity of the circulation system. No further revision is required in response to this comment.

Comment 57-30

Amendments to Appendix G: Transportation/Traffic suggests that only the final increment of increased demand on the transportation system would be considered significant.

Response 57-30

As explained in Response 57-29, above, the question has been revised to avoid focus on the capacity of the circulation system. Further, as provided in the "Evaluation of Environmental Impacts" section preceding the individual checklist questions, the evaluation must address both cumulative and project-specific impacts. No further revision is required in response to this comment.

Comment 57-31

Commenter suggests changes to Appendix G: Transportation/Traffic will mislead lead agencies to inadequately mitigate transportation impacts. Impact analysis under the auspice of exceeding capacity would only require the final project to mitigate its transportation impacts. This would contradict CEQA standards for mitigation be directly related to an impact and must be proportional to the impact. (*Nollan v. California Coastal Commission* (1987) 483 U.S. 825 and *Dolan v. City of Tigard*, (1994) 512 U.S. 374)

Response 57-31

As explained in Response 57-29, above, the question has been revised to avoid focus on the capacity of the circulation system. Further, as provided in the "Evaluation of Environmental Impacts" section preceding the individual checklist questions, the evaluation must address both cumulative and project-specific impacts. Thus, mitigation could be required for both project-specific and cumulative impacts. No further revision is required in response to this comment.

Comment 57-32

Revisions to Appendix G: Transportation/Traffic checklist is contrary to CEQA and counterproductive to the goal of reducing GHG emissions. Congestion may lead to increased greenhouse gas emissions.

Response 57-32

The Initial Statement of Reasons explained that the existing questions related to traffic level of service do not necessarily relate to environmental harms. In fact, evidence before the Natural Resources Agency indicates that roadway capacity improvements can lead to even greater levels of greenhouse gas emissions due to the phenomenon of “induced demand.” Traffic is thought to behave more like a gas than a liquid; it expands to fill available space. The underlying theory behind induced demand, in simple terms, is an increase in roadway capacity reduces the generalized cost of travel by reducing the time cost of travel, thus, when any good is reduced in cost the quantity demand of that good will increase. (See Noland, Robert, et al. (2001). A Review of the Evidence for Induced Travel and Changes in Transportation and Environmental Policy in the United States and the United Kingdom. U.S. Environmental Protection Agency, at p. 2.) Research provides strong evidence to support roadway improvements and new transportation capacity induces demand, both due to short-term effects and long-term changes in land use development patterns. As the results illustrate, reduction in travel time correlates with increased highway use and has a decentralizing effect on urban development. (See Cervero, Robert. (2001). Road Expansion, Urban Growth, and Induced Travel: A Path Analysis. Journal of the American Planning Association, Vol. 69 No. 2. American Planning Association, at p. 2), and (Noland, et al., at p. 9 to 15.) Given an increase in roadway capacity and effect on land use development patterns, analysis indicates that persons within metropolitan areas tend to be more likely to drive alone to work, live and work at lower densities, and generate higher rates of VMT. (Noland, et al. at p. 15.) The problems associated with roads are not the fault of road investments *per se*. Rather, they stem from the *use* of roads, new and old alike, and a lack of integrated land use planning coupled with growth management. (Cervero, at p. 25.) In fact, the comment itself acknowledges that free-flow conditions may lead to greater greenhouse gas emissions. Instead of mandating that all lead agencies use a particular methodology to analyze transportation impacts, the proposed revisions recognize a lead agency’s discretion to choose the methodology that is most appropriate for local circumstances. No further revisions are required in response to this comment.

Comment 57-33

Commenter requests that a question regarding adequate parking be retained in the Appendix G checklist. Inadequate parking adversely impacts local neighborhoods, causes controversy, and increases emissions due to cruising.

Response 57-33

The Natural Resources Agency declines to retain the question regarding the adequacy of parking in the Appendix G checklist. As explained in the Initial Statement of Reasons, CEQA case-law recognizes that parking adequacy is not necessarily an environmental impact. The evidence before the Natural Resources Agency leads to the same conclusion. A lack of parking may lead to “cruising” behavior, as the comment notes, which may result in traffic and air impacts. On the other hand, parking supply has been observed to cause “induced demand” similar to that described above, which too can result in air

and traffic impacts. The California Air Pollution Control Officers Association CEQA White Paper, for example, suggests reducing available parking as a way to reduce greenhouse gas emissions. (Greg Tholen, et al. (January, 2008). CEQA & Climate Change: Evaluating and Addressing Greenhouse Gas Emissions from Projects Subject to the California Environmental Quality Act. California Air Pollution Control Officers Association, at Appendix B, pp. 8-9.) Parking analyses do not typically address either air quality or traffic impacts; rather, such analyses often focus on the number of parking spaces necessary to satisfy peak demand, which is often established by a local agency as a parking ratio (i.e., one space per 250 square feet of office space). (See, e.g., Shoup, Donald. (1999). In Lieu of Required Parking. Journal of Planning Education and Research, Vol. 18 No. 4. Association of Collegiate Schools of Planning, at p. 309.) Thus, the question in Appendix G related to parking adequacy would not necessarily lead to the development of information addressing any environmental impacts.

Deletion of the question related to parking adequacy will not allow lead agencies to ignore substantial evidence supporting a fair argument that the secondary effects of a project's parking may cause adverse environmental impacts. Moreover, the deletion from Appendix G would not permit local agencies to ignore binding standards in municipal codes and General Plan. Finally, as indicated in the Note, Appendix G is a sample only, and lead agencies are free to devise environmental checklists that are most appropriate for particular local circumstances.

Thus, because there is not a clear relationship between "parking adequacy" and an environmental impact, the Natural Resources Agency finds that analysis of the secondary effects of parking behaviors are best addressed in the relevant subject areas (i.e., traffic and air quality). Since Appendix G already contains questions addressing traffic and air quality effects of a project, the question related to parking adequacy is not necessary.

Comment 57-34

Mass transit in many areas of the state is not a practical alternative and could result in an overall increase in emissions of NOx and particulate matter.

Response 54-34

The purpose of the proposed amendments is not to increase traffic congestion, decrease available parking, or encourage mass transit use. Rather, as explained in the Initial Statement of Reasons, the purpose of the proposed amendments related to the transportation questions in Appendix G is to ensure that traffic analysis reflects the lead agency's choice of the most appropriate methodology to address impacts to the circulation system as a whole. (Initial Statement of Reasons, at pp. 64-65.) Additionally, the question related to parking adequacy is proposed for deletion because it is not an appropriate proxy for environmental impacts such as traffic and air quality. No revisions are required in response to this comment.

Comment 57-35

Commenter suggests revisions to Appendix G: Transportation/Traffic Checklist includes questions to address impacts to pedestrian and bicycle circulation systems and interfere with any transit route.

Response 57-35

Question (a) in the transportation section of the Appendix G checklist has been proposed to be amended to ensure analysis of impacts on the “relevant components of the circulation system, including but not limited to intersections, streets, highways and freeways, pedestrian and bicycle paths, and mass transit[.]” No further revision is required in response to this comment.

Comment 57-36

Commenter recommends proposed amendments to Appendix G: Transportation/Traffic be rejected.

Response 57-36

For the reasons specifically described in Responses 57-29 to 57-35, above, the Natural Resources Agency declines the suggestion to reject all changes to the transportation section of Appendix G.

Comment 57-37

Revise Appendix G: Section IV - Biological Resources question (c) to include a lead agency consider adverse impacts to buffer areas needed for habitat retreated necessitated by rising sea levels.

Response 57-37

As explained in Response 57-2, above, the primary focus of CEQA is the effect of an individual project on the environment. CEQA does not generally require an analysis of the changing environment that results purely from other projects. (State CEQA Guidelines, § 15130(a)(1) (an “EIR should not discuss impacts which do not result in part from the project evaluated in the EIR”).) No evidence in the rulemaking record before the Natural Resources Agency suggests that the science has developed sufficiently to enable a lead agency to determine an individual project’s impact on, for example, habitat retreat caused by climate change. Thus, the Natural Resources Agency declines to revise the Appendix G checklist to suggest that such analysis is required even where no tools are available to perform such an analysis. As explained in the Note preceding Appendix G, however, “[s]ubstantial evidence of potential impacts that are not listed on this form must also be considered.” Thus, if evidence exists in the record regarding a project’s significant impact on habitat, that evidence would need to be considered in an EIR. Therefore, the Natural Resources Agency declines to incorporate the suggested text into Appendix G.

Comment 57-38

Revise Appendix G: Section IX – Hydrology and Water Quality to require consideration of changes in sand deposition/beach replenishment, rising sea levels, and flood hazards due to increased peak flood events.

Response 57-38

As explained in Response 57-2, above, section 15126.2(a) has been revised to require analysis of locating developing in areas susceptible to hazards, such as sea level rise and flooding, where such hazardous areas are identified in authoritative maps or planning documents. Because section 15126.2(a) has been revised, changes to Appendix G are not required. Further, there is no evidence indicating that sand deposition and beach replenishment are environmental impacts. As explained in Response 57-37, above, the Note will be added preceding Appendix G to clarify that “[s]ubstantial evidence of potential impacts that are not listed on this form must also be considered.” Thus, if evidence exists in the record indicating that a project may cause adverse impacts related to sand deposition and beach replenishment, that evidence would need to be considered in an EIR. No further revisions are required in response to this comment.

Comment 57-39

Amend Appendix G: Section XVII – Utilities and Service Systems (d) to require a lead agency take into account changing precipitation patterns and climate change when assessing water supplies available to serve the project.

Response 57-39

CEQA already requires analysis of future water supplies, which requires some degree of forecasting. (See, e.g., State CEQA Guidelines, § 15155; Water Code, § 10910 (a water supply assessment must address whether an adequate water supply can be projected to exist for a project and all other water demands during normal, dry and multiple dry years).) As information develops about the impact of climate change on water supplies, that information would be factored into the required water supply analysis. Therefore, the suggested changes to Appendix G related to water supply are not necessary, and the suggestion is rejected.