

## Letter 69

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### **Comment 69-1**

Comment supports the inclusion of forestry resources in Appendix G because the environmental values that forests embody, and notes that inclusion is consistent with the ARB Scoping Plan.

### **Response 69-1**

The Natural Resources Agency appreciates the support for inclusion of forest resources in the Appendix G Initial Study Checklist. As explained in the Initial Statement of Reasons

Forestry questions are appropriately addressed in the Appendix G checklist for several reasons. First, forests and forest resources are directly linked to both GHG emissions and efforts to reduce those emissions. For example, conversion of forests to non-forest uses may result in direct emissions of GHG emissions. [Citations omitted.] Such conversion would also remove existing carbon stock (i.e., carbon stored in vegetation), as well as a significant carbon sink (i.e., rather than emitting GHGs, forests remove GHGs from the atmosphere). [Citation omitted.] Thus, such conversions are an indication of potential GHG emissions. Changes in forest land or timberland zoning may also ultimately lead to conversions, which could result in GHG emissions, aesthetic impacts, impacts to biological resources and water quality impacts, among others. Thus, these additions are reasonably necessary to ensure that lead agencies consider the full range of potential impacts in their initial studies. In the same way that an EIR must address conversion of prime agricultural land or wetlands as part of a project (addressing the whole of the action requires analyzing land clearance in advance of project development), so should it analyze forest removal.

Additionally, the Legislature has declared that “forest resources and timberlands of the state are among the most valuable of the natural resources of the state” and that such resources “furnish high-quality timber, recreational opportunities, and aesthetic enjoyment while providing watershed protection and maintaining fisheries and wildlife.” (Public Resources Code, § 4512(a)-(b).) Because CEQA defines “environment” to include “land, air, water, minerals, flora, fauna, noise, [and] objects of historic or aesthetic significance” (Public Resources Code, section 21060.5), and because forest resources have been declared to be “the most valuable of the natural resources of the state,” the addition of forestry

questions to Appendix G is appropriate both pursuant to SB97 and the Natural Resources Agency's general authority to update the CEQA Guidelines pursuant to Public Resources Code § 21083(f).

#### **Comment 69-2**

Revise Section 15064.4(b)(1) to address the loss of sequestration capacity and carbon stocks in the determination of significance of greenhouse gas emissions.

#### **Response 69-2**

The Natural Resources Agency declines to revise section 15064.4(b)(1) to reference sequestration value. SB 97 calls on the Agency to adopt guidelines on the "mitigation of greenhouse gas emissions or the effects of greenhouse gas emissions." (Pub. Resources Code, § 21083.05.) Thus, the primary focus of the proposed amendments is on greenhouse gas emissions. In fact, the purpose of section 15064.4 is to assist lead agencies in "Determining the Significance of Impacts from Greenhouse Gas Emissions." Where methodologies and models exist to address the greenhouse gas emissions associated with land use changes, such emissions would appropriately be considered. A project's impact on sequestration values does not, however, appear to bear on the significance of a project's greenhouse gas emissions. Thus, reference to sequestration is not appropriate in section 15064.4.

Section 15126.4(c) does recognize the role of sequestration, however, in mitigating a project's greenhouse gas emissions. Moreover, questions regarding forestry resources were added to the sample initial study checklist in Appendix G due to the many environmental resources associated with forests, including sequestration. (Initial Statement of Reasons, at pp. 63-64.) Thus, while the Natural Resources Agency recognizes the sequestration values and other associated environmental benefits associated with forests, the purpose of section 15064.4 is to assist in the determination of the significance of a project's greenhouse gas emissions. For that reason, the Natural Resources Agency finds that adding sequestration potential and carbon stocks to that section is not necessary.

Finally, the Natural Resources Agency declines to revise section 15064.4 to require quantification whenever possible and to only allow a qualitative analysis as a last resort. As explained in the Initial Statement of Reasons, while analysis of greenhouse gas emissions presents a unique task for lead agencies, normal CEQA rules apply. (Initial Statement of Reasons, at p. 10.) Thus, the intent of the proposed amendments is to assist lead agencies in addressing analysis and mitigation of greenhouse gas emissions within CEQA's existing framework. The proposed amendment should, therefore, be interpreted in a manner consistent with the existing Guidelines, Statute and case law.

Nothing in CEQA expressly prohibits reliance on a qualitative analysis. As explained in the Initial Statement of Reasons, CEQA directs lead agencies to consider qualitative factors. (Initial Statement of Reasons, at p. 19; Public Resources Code, § 21001(f).) Further, performance standards, which may be used in the determination of significance, may be qualitative. (State CEQA Guidelines, § 15064.7.)

Further, the discretion recognized in section 15064.4 is not unfettered. A lead agency's analysis, whether quantitative or qualitative, is 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. 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. The third sentence advises that the exercise of discretion must be made "in the context of a particular project." In other words, even a qualitative analysis must demonstrate a good-faith effort to describe, calculate or estimate the greenhouse gas emissions resulting from a project.

The comment appears to express concern that a qualitative analysis would be less thorough or less informative than a quantitative analysis. To further refine the information standard applicable to either a qualitative or a quantitative analysis, the second sentence in subdivision (a) of section 15064.4 has been revised to state that the analysis must be "based to the extent possible on scientific and factual data." This phrase parallels the rule in section 15064(b).

Therefore, for the reasons described above, the Natural Resources Agency declines to further revise section 15064.4.

### **Comment 69-3**

Revise Section 15126.4(c) to establish a mitigation hierarchy emphasizing on-site mitigation before off-site mitigation such as offsets.

### **Response 69-3**

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.) The statute defines feasible to mean "capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors." (Public Resources Code, § 21061.1.) The Legislature further provided that a lead agency may use its lawful discretion to mitigate significant impacts to the extent provided by other laws:

In mitigating or avoiding a significant effect of a project on the environment, a public agency may exercise only those express or implied powers provided by law other than this division. However, a public agency may use discretionary powers provided by such other law for the purpose of mitigating or avoiding a significant effect on the environment subject to the express or implied constraints or limitations that may be provided by law.

(Public Resources Code, § 21004.) Cities and counties may rely on their constitutional police powers, for example, while the ability of other agencies to require mitigation may be limited by the scope of their

statutory authority. Mitigation is also subject to constitutional limitations; i.e., there must be a nexus between the mitigation measure and a legitimate public interest, and the mitigation must be roughly proportional to the impact of the project. (*Nollan v. California Coastal Comm'n* (1987) 483 U.S. 825; *Dolan v. City of Tigard* (1994) 512 U.S. 374; State CEQA Guidelines, § 15126.4(a)(4).)

CEQA itself imposes very few limitations on a lead agency's discretion to impose mitigation. For example, agencies may not mitigate the effects of a housing project by reducing the proposed number of units if other feasible mitigation measures are available. (Public Resources Code, § 21159.26.) Similarly, the Legislature has prescribed specific types of mitigation in only very limited circumstances; i.e., impacts to archeological resources and oak woodlands. (Public Resources Code, §§ 21083.2, 21083.4.) Within the scope of a lead agency's existing authority, the CEQA Guidelines already contain provisions that recognize a lead agency's obligation to balance various factors in determining how or whether to carry out a project. (State CEQA Guidelines, § 15021(d).) Further, the Guidelines already require that "[w]here several measures are available to mitigate an impact, each should be discussed and the basis for selecting a particular measure should be identified." (State CEQA Guidelines, § 15126.4(a)(1)(B).)

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 discretion, authority or limitations on the imposition of mitigation where the impacts of a project's greenhouse gas emissions are significant. Thus, as explained in the Initial Statement of Reasons, the existing CEQA rules apply to the mitigation of greenhouse gas emissions.

The Natural Resources Agency, therefore, rejects the suggestion to revise the Guidelines to include a priority of mitigation measures.

#### **Comment 69-4**

Section 15126.4(c)(3) should be revised to require mitigation for impacts to forest resources to be targeted within the forest sector.

#### **Response 69-4**

Section 15126.4(c)(3) recognizes that off-site measures may be appropriate to mitigate a project's greenhouse gas emissions. That section does not address impacts to forest resources specifically. Moreover, CEQA leaves to lead agencies the decision of which mitigation measures are best to reduce an impact, provided that substantial evidence supports the lead agency's determination. (Public Resources Code, § 21081.5.) As a practical matter, lead agencies may determine that mitigation of forestry impacts, which could involve indirect impacts to biological resources, water quality, and other impacts, by mitigating within the forestry sector. (State CEQA Guidelines, § 15021(d).) The Natural

Resources Agency cannot, however, revise this section to require mitigation to occur within the forest sector, and so this suggestion is rejected.

#### **Comment 69-5**

Refine section 15126.4(c)(3) to require that offsets be “real, permanent, quantifiable, verifiable, enforceable and additional” and otherwise meet ARB requirements.

#### **Response 69-5**

The comment suggests that the CEQA Guidelines incorporate AB32’s standards for greenhouse gas reduction into the standards for greenhouse gas mitigation under CEQA. The text of section 15126.4(c) would require 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 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. Further, 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.” Nothing in CEQA requires that mitigation measures be quantified. Mitigation measures must be roughly proportional to the project’s impacts, so the degree of a project’s impact will determine whether mitigation must be permanent. (State CEQA Guidelines, § 15126.4(a).) Finally, nothing in SB97 indicates that mitigation measures to address greenhouse gas emissions should satisfy requirements developed for the Air Resources Board to implement AB32. 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, and no further revision is required.

#### **Comment 69-6**

Commenter supports the addition of forestry resources in Appendix G and supports the recommendations made by CalFire.

#### **Response 69-6**

The Natural Resources Agency appreciates the support for the addition of questions related to forestry resources in Appendix G. Question (d) would ask whether the project would “[r]esult in the loss of forest land or conversion of forest land to non-forest use?” In answering this question, Appendix G already advises that “[a]ll answers must take account of the whole action involved, including off-site as well as on-site, cumulative as well as project-level, indirect as well as direct, and construction as well as operational impacts.” (State CEQA Guidelines, Appendix G, “Evaluation of Environmental Impacts,” ¶ 2.)

Thus, additional questions are not necessary. Specific responses to comments submitted by the Department of Forestry and Fire Protection are addressed in the Final Statement of Reasons.

**Comment 69-7**

Add to the Appendix G: Agriculture and Forest Resources section of the checklist a question to address the potential loss of sequestration capacity as result of a project.

**Response 69-7**

The Natural Resources Agency declines to incorporate the suggested question regarding sequestration into the Appendix G questions related to greenhouse gas emissions. As explained in the Initial Statement of Reasons, the questions related to greenhouse gas emissions in Appendix G “are necessary to satisfy the Legislative directive in section 21083.05 that the effects of GHG emissions be analyzed under CEQA.” (Initial Statement of Reasons, at p. 64.) The sequestration value of forests and other vegetation could fall within the more general questions related to forestry, agriculture and biology in other sections of Appendix G. No further revisions are required in response to this comment.

**Comment 69-8**

Commenter recognizes the changes to Appendix G: Transportation/Traffic checklist question (a) but requests to revise question (a) to rely primarily on the number of trips generated and miles traveled.

**Response 69-8**

The Natural Resources Agency has revised the text of question (a) in the Appendix G questions related to transportation. As explained in the Notice of Proposed Changes, the revised text “would refocus the question from the capacity of the circulation system to the performance of the circulation system as indicated in an applicable plan or ordinance.” While the revised text requires a lead agency to consider the effect of a project on traffic at intersections, streets, highways and freeways, it allows the lead agency to do so using its own methodology and in the context of the entire circulation system.

The revised text of question (a) recognizes a lead agency’s discretion to choose the most appropriate methodology to assess impacts within its jurisdiction. Specifying a particular mode of analysis would limit that discretion. Absent a legislative directive to use a specific methodology, the Natural Resources Agency chooses to emphasize a lead agency’s discretion in the Appendix G checklist. The Natural Resources Agency therefore declines the suggestion to specify a particular measure of transportation impacts.