Letter 71

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Comment 71-1

Commenter supports some of the changes to the Guidelines but expresses concern regarding whether the remaining amendments adequately ensure full analysis and mitigation of greenhouse gas emissions. Similar concerns are raised regarding the Initial Statement of Reasons.

Response 71-1

Comment 71-1 is introductory in nature. Responses to specific comments are provided below.

Comment 71-2

Section 15064.4(a) does not fully convey the Natural Resources Agency's apparent intent that GHG emissions be quantified where possible and is contrary to CEQA's mandate that lead agencies provide in their environmental review sufficient information to intelligently accounts for the environmental consequences of a project.

Response 71-2

As explained in the Initial Statement of Reasons, while analysis of greenhouse gas emissions presents a unique task for lead agencies, CEQA's existing rules continue to apply. (Initial Statement of Reasons, at p. 10.) Thus, the purpose 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 amendments should, therefore, be interpreted in a manner consistent with the existing Guidelines, statute and case law. Responses to specific concerns regarding the text of section 15064.4(a) are provided below.

Comment 71-3

Section 15064.4(a) may be interpreted to make quantification of greenhouse gas emissions entirely discretionary, and exercising discretion to omit quantitative data is contrary to CEQA.

Response 71-3

Proposed section 15064.4(a) states that a lead agency has discretion to perform either a quantitative analysis or a qualitative analysis of greenhouse gas emissions in determining the significance of those emissions. The comment opines that leaving the choice of methodology entirely to the discretion of lead agencies is contrary to the requirement that a lead agency use its best efforts to find out and disclose all that it reasonably can. To paraphrase, the comment suggests that by recognizing a lead agency's discretion to perform a qualitative analysis, section 15064.4(a) would permit a lead agency to evade a thorough analysis of the effects of greenhouse gas emissions. For the reasons set forth below, the Natural Resources Agency respectfully disagrees.

First, nothing in CEQA prohibits use of a qualitative analysis or requires the use of a quantitative 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(g).) Further, the existing CEQA Guidelines recognize that thresholds of significance, which are used in the determination of significance, may be qualitative or performance standards. (State CEQA Guidelines, § 15064.7.) Moreover, even where quantification is technically or theoretically possible, "CEQA does not require a lead agency to conduct every test or perform all research, study, and experimentation recommended or demanded by commentors." (State CEQA Guidelines, § 15204(a); see also *Ass'n of Irritated Residents v. County of Madera* (2003) 107 Cal.App.4th 1383, 1396-1398; *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1996) 27 Cal.App.4th 713, 728.)[1]

Second, the comment fails to recognize the distinction between the determination of significance and the informational standards governing the preparation of environmental documents. The purpose of section 15064.4 is to assist the lead agency in determining whether a project's greenhouse gas emissions may be significant, which would require preparation of an EIR, and if an EIR is prepared, to determine whether such emissions are significant, which would require the adoption of feasible mitigation or alternatives. The existing CEQA Guidelines contain several provisions governing the informational standards that apply to various environmental documents. Conclusions in an initial study, for example, must be "briefly explained to indicate that there is <u>some evidence</u> to support" the conclusion. (State CEQA Guidelines, § 15063(d) (emphasis added).) Similarly, if an EIR is prepared, a determination that an impact is not significant must be explained in a "statement <u>briefly</u> indicating the reasons that various possible significant effects of a project" are in fact not significant. (State CEQA Guidelines, § 15128 (emphasis added).) If the impact is determined to be significant, the impact "should

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[1] Second, as administrative regulations, the development of the proposed regulations is governed by the Administrative Procedures Act. Government Code section 11340.1(a) states the Legislature's intent that administrative regulations substitute "performance standards for prescriptive standards wherever performance standards can be reasonably expected to be as effective and less burdensome, and that this substitution shall be considered during the course of the agency rulemaking process." Thus, absent authority in CEQA that would prohibit a qualitative analysis, section 15064.4 appropriately recognizes a lead agency's discretion to determine what type of analysis is most appropriate to determine the significance of a project's greenhouse gas emissions.

be discussed with emphasis in proportion to their severity and probability of occurrence." (State CEQA Guidelines, § 15143.) The explanation of significance in an EIR must be "prepared with a sufficient degree of analysis to provide decisionmakers with information which enables them to make a decision which intelligently takes account of environmental consequences" and must demonstrate "adequacy, completeness, and a good faith effort at full disclosure." (State CEQA Guidelines, § 15151.) In sum, while proposed section 15064.4(a) reflects the requirement that a lead agency base its significance determination on substantial evidence, whether quantitative, qualitative or both, it does not, as the commenter appears to fear, alter the rules governing the sufficiency of information in an environmental document.

Third, the discretion recognized in section 15064.4 is not unfettered. A lead agency's analysis, whether quantitative or qualitative, 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.

Finally, 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.)

In sum, the proposed section 15064.4(a) appropriately reflects the standards in CEQA governing the determination of significance and the discretion CEQA leaves to lead agencies to determine how to analyze impacts. The Administrative Procedure Act does not permit regulation that exceeds the scope of authority provided in statute. Thus, the Natural Resources Agency declines to revise proposed section 15064.4(a) to delete the discretion to perform a qualitative analysis.

Comment 71-4

Section 15064.4(a) may be interpreted to allow a lead agency to omit quantifiable data in favor of potentially vague and uninformative qualitative analysis or performance based descriptions of project impacts.

Response 71-4

The comment appears to express concern that a qualitative analysis would be less thorough or less informative than a quantitative analysis. As explained in Response 71-3, above, section 15064.4(a) requires any analysis to demonstrate a good-faith effort to describe, calculate or estimate a project's greenhouse gas emissions. 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). Proposed section 15064.4(a) has been further refined to clarify that a lead agency may perform either a qualitative or quantitative analysis, or both, as circumstances required. The Natural Resources Agency finds that these clarifications respond to the concerns regarding the quality of a qualitative analysis.

Comment 71-5

Allowing lead agencies to omit quantifiable data in a project's GHG emission analysis is in direct contravention of CEQA's requirement that a lead agency use its best efforts to find out and disclose all that it reasonably can – reference to existing Section 15144 and 15151.

Response 71-5

As explained in Response 71-3, above, the existing CEQA Guidelines contain several provisions that set forth the informational standards applicable to various environmental documents. Further, proposed section 15064.4(a) itself requires that any analysis must reflect a good faith effort. Thus the plain language of section 15064.4(a) and the existing standards in Article 10 of the Guidelines preclude an interpretation that would permit a lead agency to ignore readily available information of probative value.

Comment 71-6

Section 15064.4(a) could be interpreted to allow lead agencies to omit quantitative data in every instance.

Response 71-6

As explained in Responses 71-3 through 71-5, above, section 15064.4(a) cannot be read to state that one type of analysis is appropriate in every instance. On the contrary, that section expressly states that the type of analysis may depend on "the context of a particular project." Given the multitude of different project types and sizes, and different agencies subject to CEQA, the CEQA Guidelines, which are general by necessity, cannot specify precisely when a quantitative analysis may be required or a qualitative analysis may be appropriate.

The following hypothetical examples may illustrate, however, how section 15064.4(a) could operate:

> **Project 1**: a small habitat restoration project is proposed in a remote part of California. Workers would drive to the site where they would camp for the duration of the project. Some gas-powered tools and machinery may be required. Cleared brush would either be burned or would decay naturally.
>
> **Project 2**: a large commercial development is proposed in an urban context. Heavy-duty machinery would be required in various construction phases spanning many months. Following construction, the development would rely on electricity, water and wastewater services from the local utilities. Natural gas burners would be used on site. The development would employ several hundred workers and attract thousands of customers daily. A traffic study has been prepared for the project. The local air quality management district's guidance document recommends that projects of similar size and character should use of URBEMIS, or another similar model, to estimate the air quality impacts of the development.

In the context of Project 2 a quantitative analysis would likely be appropriate. The URBEMIS model, which would likely be used to analyze other emissions, could also be used to estimate emissions from both project-related transportation and on-site indirect emissions (landscaping, hot-water heaters, etc.) Modeling is typically done for projects of like size and character. Other models are readily available to estimate emissions associated with utility use. In the context of Project 2, a lead agency may find it difficult to demonstrate a good faith effort through a purely qualitative analysis. (See, e.g., Berkeley Keep Jets Over the Bay Com. v. Board of Port Comm. (2001) 91 Cal.App.4th 1344, 1370.)

In the context of Project 1, however, a qualitative analysis may be appropriate. Project 1's emissions are not easily modeled, and the Project is small in scale. While it may be technically possible, quantification of the emissions may not reveal any additional information that indicates the significance of those emissions or how they may be reduced that could not be provided in a qualitative assessment of emissions sources. (See, e.g., Public Resources Code, § 21003(f) ("public agencies involved in the

environmental review process be responsible for carrying out the process in the most efficient, expeditious manner in order to conserve the available financial, governmental, physical, and social resources with the objective that those resources may be better applied toward the mitigation of actual significant effects on the environment").)

Finally, as explained in Response 71-3, above, a lead agency may not refuse to consider substantial evidence in the record regarding a project's impacts. Thus, if quantitative data supports a fair argument that a project's greenhouse gas emissions may be significant, a lead agency must evaluate that evidence in an EIR.

Comment 71-7

Commenter recommends changes to Section 15064.4. This would require lead agencies to conduct a quantitative analysis of greenhouse gas emissions whenever it is reasonably feasible to do so, and only allow qualitative or performance based standards to be used to further describe project emissions or where quantification is not possible.

Response 71-7

The Natural Resources Agency rejects the suggested revisions. The suggested revisions would require a quantitative analysis unless a project's emissions cannot be quantified based on available models or methodologies. As explained in Responses 71-3 through 71-6, above, no authority exists to require a quantitative analysis wherever possible. CEQA does require a good-faith effort at full disclosure, and proposed section 15064.4 requires such effort for both qualitative and quantitative analyses.

Comment 71-8

Section 15093(d) may signal to lead agencies that region-wide or statewide benefits are more important than local adverse environmental effects.

Response 71-8

The Office of Planning and Research recommended, and the Natural Resources Agency proposed, the addition of subdivision (d) to section 15093 for several reasons, including reminding lead agencies that even beneficial projects may have adverse environmental impacts, and encouraging lead agencies to consider broader region-wide and statewide benefits that may result from some projects. (Initial Statement of Reasons, at pp. 31-32.) The proposed addition was not intended to signal the importance of regional or statewide concerns relative to local concerns.

To avoid such interpretation, the Natural Resources Agency has further refined Section 15093 in response to this and similar comments. Specifically, it has added "region-wide or statewide environmental benefits" to the other benefits listed in section 15093(a), and deleted the proposed

subdivision (d). Listing region-wide and statewide environmental benefits among the other benefits enumerated in subdivision (a) places those benefits within the proper context of the section governing statements of overriding considerations. This change clarifies that lead agencies must balance region-wide and statewide environmental benefits, just like the other listed benefits, against a project's significant adverse impacts in making a statement of overriding considerations. This change still advances the policy objective of encouraging lead agencies to consider benefits of a project that may extend beyond just a local jurisdiction. No further revision is required in response to this comment.

Comment 71-9

Section 15093(a) requires that lead agencies support a finding that regional or statewide benefits outweigh unavoidable adverse impacts. No such language is included in Section 15093(d).

Response 71-9

As explained in Response 71-8, by placing "region-wide and statewide environmental benefits" in subdivision (a), the Guidelines acknowledge that lead agencies may weigh those benefits in considering a project's adverse environmental impacts and deciding whether to approve the project. No further revision is required in response to this comment.

Comment 71-10

Section 15093(d) unnecessarily raises environmental justice concerns and creates a potential conflict with existing Section 15093(a).

Response 71-10

As explained in Response 71-8, section 15093 has been revised. Though proposed subdivision (d) was not intended to create environmental justice concerns, as indicated in Comment 71-11, the revision should resolve any such concerns by providing for consideration of region-wide and statewide environmental benefits in the context of a project's adverse environmental impacts, local or otherwise.

Comment 71-11

Delete Section 15093(d). Commenter recommends changes to existing Section 15093(a). This would add language for lead agencies to consider balancing a project's region-wide or statewide environmental benefits to unavoidable adverse localized environmental impacts.

Response 71-11

The Natural Resources Agency accepts the revision proposed in this comment, with one modification. For consistency with the rest of subdivision (a), the phrase "region-wide and statewide environmental benefits" is added to both sentences as indicated in the Notice of Proposed Changes distributed on October 23, 2009.

Comment 71-12

Section 15126.4 should provide lead agencies with more specific guidance that addresses the unique issues related to mitigation of GHG emissions.

Response 71-12

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 the impact it addresses, 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.)

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.

Responses to specific suggestions regarding mitigation of greenhouse gas emissions are provided below.

Comment 71-13

The commenter recommends that the Guidelines specifically remind lead agencies that to qualify as mitigation, off-site measures must occur as a result of the project. Commenter suggests that to be adequate, off-site mitigation of GHG emissions must occur as a result of the project.

Response 71-13

Relatively little authority addresses the question of how close of a causal connection must exist between off-site emissions reductions and project implementation in order to be adequate mitigation under CEQA. As explained in Response 71-12, above, the CEQA statute requires lead agencies to mitigate or avoid the significant effects of proposed projects where it is feasible to do so. While the CEQA statute does not define mitigation, the State CEQA Guidelines define mitigation to include:

> (a) Avoiding the impact altogether by not taking a certain action or parts of an action.
>
> (b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation.
>
> (c) Rectifying the impact by repairing, rehabilitating, or restoring the impacted environment.
>
> (d) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action.
>
> (e) Compensating for the impact by replacing or providing substitute resources or environments.

(State CEQA Guidelines, § 15370.) As subdivision (e) implies, off-site measures may constitute mitigation under CEQA, and such measures have been upheld as adequate mitigation in CEQA case law. (See, e.g., *California Native Plant Society v. City of Rancho Cordova* (2009) 172 Cal. App. 4th 603, 619-626.)

Whether on-site or off-site, to be considered mitigation, the measure must be tied to impacts resulting from the project. Section 21002 of the Public Resources Code, the source of the requirement to

mitigate, states 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[.]" Similarly, section 21081(a)(1) specifies a finding by the lead agency in adopting a project that "[c]hanges or alterations have been required in, or incorporated into, the project which mitigate or avoid the significant effects on the environment." Both statutory provisions expressly link the changes to be made (i.e., the "mitigation measures") to the significant effects of the project. Courts have similarly required a link between the mitigation measure and the adverse impacts of the project. (*Save Our Peninsula Comm. v. Monterey County Bd. of Supervisors* (2001) 87 Cal. App. 4th 99, 128-131 (EIR must discuss "the history of water pumping on [the off-site mitigation] property and its feasibility for providing an actual offset for increased pumping on the [project] property").) The text of sections 21002 and 21081, and case law requiring a "nexus" between a measure and a project impact, together indicate that "but for" causation is a necessary element of mitigation. In other words, mitigation should normally be an activity that occurs in order to minimize a particular significant effect. Or, stated another way and in the context of greenhouse gas emissions, emissions reductions that would occur without a project would not normally qualify as mitigation.

Notably, this interpretation of the CEQA statute and case law is consistent with the Legislature's directive in AB 32 that reductions relied on as part of a market-based compliance mechanism must be "in addition to any greenhouse gas emission reduction otherwise required by law or regulation, and any other greenhouse gas emission reduction that otherwise would occur." (Health and Safety Code, § 38562(d)(2).) While AB 32 and CEQA are separate statutes, the additionality concept may be applied analytically in the latter as follows: greenhouse gas emission reductions that are otherwise required by law or regulation would appropriately be considered part of the existing baseline. Pursuant to section 15064.4(b)(1), a new project's emissions should be compared against that existing baseline.

Thus, in light of the above, and in response to concerns raised in this comment and others, the Natural Resources Agency has revised section 15126.4(c)(3) to state that mitigation may include: "Off-site measures, including offsets that are not otherwise required, to mitigate a project's emissions[.]" This provision is intended to be read in conjunction with the statutory mandate in Public Resources Code sections 21002 and 21081 that mitigation be tied to the effects of a project.

This provision would not limit the ability of a lead agency to create, or rely on the creation of, a mechanism, such as an offset bank, created prospectively in anticipation of future projects that will later rely on offsets created by those emissions reductions. The Initial Statement of Reasons referred, for example, to community energy conservation projects. (Initial Statement of Reasons, at p. 38.) Such a program could, for example, identify voluntary energy efficiency retrofits that would not occur absent implementation of the program, and then fund the retrofits through the sale of offsets that would occur as a result of the retrofit. Emissions reductions that occur as a result of a regulation requiring such reduction, on the other hand, would not constitute mitigation.

The Natural Resources Agency therefore, finds that the revision in section 15126.4(c)(3) responds to the concern raised in this comment.

Comment 71-14

The commenter suggests that off-site mitigation is only effective when it occurs as a result of the project as already articulated in CEQA case law.

Response 71-14

The Natural Resources Agency has revised section 15126.4(c)(3) in response to this comment as described in Response 71-13, above. As explained in that response, the Natural Resources Agency expressly finds that its revised text would not preclude establishment of, or reliance on, mitigation banks, offsets or other mechanisms that would allow lead agencies to mitigate the significant effect of greenhouse gas emissions by requiring the project to fund emissions reductions that would not otherwise occur. Notably, the Natural Resources Agency interprets *San Bernardino Valley Audubon Society v. Metropolitan Water District* (1999) 71 Cal.App.4th 382, 397, to be limited to its facts. That case does not hold generally that mitigation banks do not constitute mitigation under CEQA. Rather, based on the specific features of that particular mitigation banking program, which was adopted using a mitigated negative declaration, the court found that substantial evidence supported a fair argument that adverse impacts may result.

Comment 71-15

Ancillary benefits of actions project proponents were required to implement should not qualify as mitigation.

Response 71-15

The Natural Resources Agency need not opine on the adequacy of any particular proposed mitigation program as part of this rulemaking activity. The legal adequacy of any particular measure adopted to mitigate a project's significant effects is a matter to be determined by the lead agency in the first instance, subject to judicial review.

Nevertheless, the Natural Resources Agency has revised the text of section 15126.4(c)(3), and the basis for this revision is described above in Responses 71-13 and 71-14.

Comment 71-16

Add Section 15126.4(c)(6) to clarify that GHG emissions must be additional to qualify as mitigation. This would require lead agencies to distinguish emission reductions that would have occurred whether or not the project is approved. Such emissions do not constitute mitigation for purposes of Section 15126.4(c).

Response 71-16

The Natural Resources Agency has revised the text of section 15126.4(c)(3) in response to this and similar comments. The basis for this revision is described above in Responses 71-14 and 71-15, above. The Natural Resources Agency declines to adopt the precise text suggested in this comment. While the suggested text is stated in the negative, the enumerated list in subdivision (c), and the lead-in sentence that precedes it, are both stated in the affirmative. This construction parallels the definition of "mitigation" in section 15370, which is also stated in the affirmative and is non-exclusive. Because the revision accomplishes essentially the same policy objective, the Natural Resources Agency finds that the precise text suggested in this comment is not necessary in light of the revised text.

Comment 71-17

Remove the reference to "offsets" in Section 15126.4(c)(3) because of the high degree of uncertainty concerning the method's effectiveness as mitigation.

Response 71-17

This comment does not accurately characterize the Initial Statement of Reasons' discussion of offsets. Though the comment opines that offsets are highly uncertain and of questionable legitimacy, the Initial Statement of Reasons cites to several sources discussing examples of offsets being used in a CEQA context. Further, the ARB Scoping Plan describes offsets as way to "provide regulated entities a source of low-cost emission reductions, and … encourage the spread of clean, efficient technology within and outside California." (Scoping Plan, Appendix C, at p. C-21.) The Natural Resources Agency finds that the offset concept is consistent with the existing CEQA Guidelines' definition of "mitigation," which includes "[r]ectifying the impact by repairing, rehabilitating, or restoring the impacted environment" and "[c]ompensating for the impact by replacing or providing substitute resources or environments." (State CEQA Guidelines, §§ 15370(c), (e).)

While the proposed amendments recognize offsets as a potential mitigation strategy, they do not, as the comment suggests, imply that offsets are appropriate in every instance. The efficacy of any proposed mitigation measure is a matter for the lead agency to determine based on the substantial evidence before it. Use of the word "feasible" in proposed Section 15126.4(c) requires the lead agency to find that any measure, including offsets, would be "capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social, and technological factors." (State CEQA Guidelines, § 15364.)

Further, in response to comments expressing concern about the potential efficacy of offsets and other mitigation strategies listed in Section 15126.4(c), the Natural Resources Agency has revised that section to expressly require that any measures, in addition to being feasible, must be supported with substantial evidence and be capable of monitoring or reporting. (See Revised Section 15126.4(c) (October 23, 2009).) This addition reflects the requirements in Public Resources Code section 21081.5 that findings

regarding mitigation be supported with substantial evidence and the monitoring or reporting requirement in section 21081.6.

Thus, the Natural Resources Agency finds that by expressly requiring that any mitigation measure be feasible, supported with substantial evidence, and capable of monitoring or reporting, section 15126.4(c) adequately addresses the concern stated in the comment that offsets may be of questionable legitimacy. However, because offset programs may provide an efficient means of reducing emissions and may spur reductions innovation, the Natural Resources Agency declines to delete the word offsets from section 15126.4(c)(3).

Comment 71-18

The Natural Resources Agency should clarify the use of offsets in the Initial Statement of Reasons rather than explicitly including the term in the Guidelines. Offsets are already understood to be a subset of off-site mitigation and are not a defined term, raising questions of legitimacy.

Response 71-18

Policy considerations and legal authority supporting the inclusion of offsets in section 15126.4(c) are described in Response 71-17, above. The Natural Resources Agency finds that the term "offset" need not be further defined in light of the existing definition of "mitigation" in section 15370 of the State CEQA Guidelines. No further revision of the text is required in response to this comment.

Comment 71-19

Commenter recommends language to Section 15126.4(c)(3) that would strike "including offsets" as an option for mitigating GHG emissions referenced in the Guidelines.

Response 71-19

The Natural Resources Agency rejects the proposed deletion of the term "offsets" from section 15126.4(c) for the reasons described in Responses 71-17 and 71-18, above.

Comment 71-20

Revise Section 15126.4(a)(1)(B) to include specific language on effectiveness of mitigation. This would require lead agencies to discuss the effectiveness of a measure where several measures are available to mitigate an impact.

Response 71-20

The text of proposed section 15126.4(c), addressing mitigation of greenhouse gas emissions, already requires that mitigation measures be effective. The first sentence of that section requires that mitigation be "feasible." Further, the statue 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 (emphasis added); see also State CEQA Guidelines § 15364 (adding "legal" factors to the definition of feasibility.) A recent decision of the Third District Court of Appeal confronting questions regarding the effectiveness of a mitigation measure explained: "concerns about whether a specific mitigation measure 'will actually work as advertised,' whether it 'can … be carried out,' and whether its 'success … is uncertain' go to the feasibility of the mitigation measure[.]" (*California Native Plant Society v. City of Rancho Cordova* (2009) 172 Cal. App. 4th 603, 622-623.) Thus, by requiring that lead agencies consider feasible mitigation of greenhouse gas emissions, section 15126.4(c) already requires that such measures be effective.

In part in response to concerns expressed in this and similar comments, the Natural Resources Agency revised the first sentence in section 15126.4(c) to clarify that a lead agency's feasible mitigation must be supported with substantial evidence and be capable of monitoring or reporting. As described above, the Natural Resources Agency finds that the proposed text addressing the mitigation of greenhouse gas emissions adequately encompasses the concept of a measure's effectiveness. Thus, the revision suggested in this comment is rejected.

Comment 71-21

Commenter recommends that the Guidelines affirm the existing authority of a lead agency to exercise its discretion to determine which mitigation measures of project should be implemented. This should be done to support the work of lead agencies that have set forth a preference for on-site mitigation of GHG emissions and mitigation that also results in co-benefits.

Response 71-21

As explained in Response 71-12, above, CEQA does not expand existing authorities or grant lead agencies additional authority to mitigate a project's significant impacts; rather, the statute allows lead agencies to use the authority they already have pursuant to some other source of law for the purpose of mitigating significant impacts. As the comment notes, 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).) Additionally, public agencies are directed to adopt their own implementing procedures, consistent with CEQA and the State CEQA Guidelines, which could set forth the types of mitigation that a particular agency finds to be most appropriate for projects

subject to its approval. (State CEQA Guidelines, § 15022.) There is no authority to support the suggestion that the Natural Resources Agency state in the State CEQA Guidelines that all lead agencies have the authority to prioritize types of mitigation measures. Each lead agency must determine the scope of its own authority based on its own statutory or constitutional authorization. Because the Guidelines already state that a lead agency should balance various factors in deciding how to carry out a project, no further clarification is necessary. The Natural Resources Agency, therefore, rejects the suggestion to revise the Guidelines to include specific authorization to develop a priority of mitigation measures.

Comment 71-22

Revise Section 15126.4 to support the decision by a lead agency to exercise its authority and require additional on-site or local mitigation where a project proponent initially proposed to mitigate GHG impacts entirely through carbon offsets.

Response 71-22

As explained in Response 71-21, above, a lead agency's authority to change a proposed project to mitigate its significant effects depends on authority other than CEQA. Where that agency's authority allows such consideration, existing Guidelines section 15021(d) recognizes the agency's obligation to consider a number of factors. The suggestion in the comment that the suggested text would allow a lead agency to require additional mitigation is not consistent with CEQA. Section 21004 of the Public Resources Code provides authority to mitigate or avoid only "significant" effects of a project. Further, section 15126.4(a)(4)(B) recognizes the constitutional requirement that mitigation be "roughly proportional" to the project's impact. Because the CEQA Guidelines cannot authorize a lead agency to require mitigation beyond what is necessary to reduce an impact to a less than significant level, the Natural Resources Agency rejects the suggestion in this comment. (Public Resources Code, §§ 21002, 21004; State CEQA Guidelines, § 15126.4(a)(3).)

Comment 71-23

Revise Section 15126.4(c) to include a subparagraph (7) that would clarify a lead agency's discretion to determine which mitigation measures are most beneficial for the local community.

Response 71-23

The Natural Resources Agency declines to incorporate the suggested text into the proposed amendments for the reasons described in Responses 71-21 and 71-22, above.

Comment 71-24

Commenter suggests Section 15130(b) is conceptually flawed and may present unnecessary hurdles to a cumulative impact analysis. The list of plans only addresses step one of a cumulative impact analysis – determining the extent of a cumulative problem. However, the plans may not be useful to serve this purpose lacking a sufficient analysis or in the case such plans do not yet exist.

Response 71-24

The Natural Resources Agency disagrees that the text in the proposed amendments to Section 15130(b)(1)(B) will create hurdles in the analysis of cumulative impacts. As explained in the Initial Statement of Reasons, the proposed amendments are designed to assist lead agencies by allowing them to look at plans other than "land use plans" that may provide a summary of projections. (Initial Statement of Reasons, at pp. 43-44.) Further, the proposed amendments would allow lead agencies to supplement any such projections with additional information, such as models. As also explained in the Initial Statement of Reasons, however, a lead agency should look first to information that has been vetted through a public process. (*Ibid*.) Contrary to the suggestion in the comment, nothing in the proposed amendments states or implies that such plans are a prerequisite to an adequate cumulative impacts analysis. Rather, the text as proposed encourages lead agencies to look first to such plans, but then to supplement the information from the plans, if any, with additional information.

Comment 71-25

Commenter observes few, if any local or regional planning documents – with an EIR - contain a summary of projections related to GHG emissions. Therefore, proposed changes to Section 15130(b)(1) do not provide guidance on a meaningful and manageable analysis of a statewide or global cumulative effect. Other methods of discussing the cumulative problem of GHG emissions exist, such as reference to authoritative scientific analysis such as IPCC reports.

Response 71-25

The Natural Resources Agency disagrees with the commenter's assessment of what is required in a cumulative impacts analysis. Section 15130(a)(2) of the existing CEQA Guidelines provides that a lead agency must determine whether a project's incremental effect together with the effects of other projects (i.e., the cumulative effect) is significant. This is the first step in the cumulative impacts analysis. Nothing in SB 97 or any other law allows a lead agency to dispense with this step by assuming that the effects of greenhouse gas emissions are significant. The proposed amendments are designed to assist lead agencies in making that initial determination.

The Natural Resources Agency also disagrees that the proposed amendments do not assist lead agencies in performing a manageable analysis. The proposed amendments would specifically allow a lead agency to supplement any information contained in a land use or other plan with "additional information". A lead agency could, therefore, rely on authoritative scientific analyses as such "additional information."

Comment 71-26

Revise Section 15130 to include subparagraph (b)(6). This would amend the Guidelines to recognize that for purposes of a climate change analysis, requiring reliance on local documents to describe the extent of a global problem may be inappropriate.

Response 71-26

The Natural Resources Agency declines to incorporate the suggested text into the proposed amendments. As explained in Responses 71-24 and 71-25, above, the proposed amendments would already allow a lead agency to supplement any summary of projections in a plan or environmental document with "additional information." No limitation is placed on the type of information that could be used in that context. Therefore, the suggested text is not necessary.

Comment 71-27

Commenter suggests that the effects of GHG emissions do not fit within the scope of Section 15183. Commenter suggests compliance with existing development density and zoning does not indicate the amount of a project's GHG emissions. Projects that comply with development densities can have vastly different carbon footprints depending on the project's characteristics, so a project's greenhouse gas emissions will always be "peculiar to the project". Section 15183 should be revised to remove reference to GHG emissions because GHG impacts will always be peculiar to the project.

Response 71-27

Section 15183 of the State CEQA Guidelines makes specific the streamlining process created by the Legislature in section 21083.3 of the Public Resources Code. Those sections generally provide that once an impact has been analyzed in an EIR for a General Plan, Community Plan or Zoning action, the lead agency need not re-analyze the same impact for projects that are consistent with the earlier planning or zoning action. The comment, in essence, suggests that those sections are inappropriate as applied to the effects of greenhouse gas emissions.

Looking to the text of section 21083.3, the Natural Resources Agency finds no limitation on the type of impact to which it applies. Rather, the Legislature determined that environmental review for projects that are consistent with a density or general plan designation shall be limited to only those effects that are (1) peculiar to the project site or project and which were not previously addressed as significant effects, or (2) will be more significant than previously analyzed. (Public Resources Code, § 21083.3(a)-(b).) The comment further suggests that greenhouse gas emissions will always be peculiar to the project or project site. No evidence is presented to support that conclusion, and given the breadth of the statutory text in Section 21083.3, the Natural Resources Agency cannot limit the applicability of that statutory streamlining provision in the greenhouse gas emissions context.

As explained in the Initial Statement of Reasons, land use plans, policies and regulations addressing greenhouse gas emissions may be appropriately considered to be "uniformly applied development policies[.]" (Initial Statement of Reasons, at p. 50.) In fact, many jurisdictions have adopted policies addressing greenhouse gas emissions and climate change in their general plans. (Office of Planning and Research, The California Planner's Book of Lists (January 2009) ("Book of Lists"), at pp. 92-100; see also Scoping Plan, at p. 26.) Further, the California Air Pollution Control Officers Association recently released model general plan policies that can be used to address the effects of greenhouse gas emissions. (California Air Pollution Control Officers' Association, *Model Policies for Greenhouse Gases in General Plans: A Resource for Local Government to Incorporate General Plan Policies to Reduce Greenhouse Gas Emissions*, June 2009.) Thus, the Natural Resources Agency disagrees that references to greenhouse gas emissions should be removed from section 15183.

Comment 71-28

The proposed amendments to Section 15183 suggest that a single policy or regulation may be sufficient to be "uniformly applied development policies" which would enable a finding that a project's greenhouse gas emissions are not peculiar to the project or project site. Projects typically have multiple sources of greenhouse gas emissions, thus requiring a collection of measures that address the project's carbon footprint. Therefore, relying on a single policy or regulation is not sufficient in terms of reducing GHG emissions.

Response 71-28

The Natural Resources Agency concurs that the reference to requirements for reducing greenhouse gas emissions should not be stated in the singular form as originally proposed. Thus, the proposed text in section 15183(g)(8) has been revised to clarify that such requirements may be contained in land use plans, policies or regulations. Stating the subject in the plural form provides consistency with the other examples stated in subdivision (g). The revision will also ensure that a lead agency may consider the requirements contained in multiple plans, policies and regulations in determining whether the effects of greenhouse gas emissions are peculiar to a project or parcel.

The Natural Resources Agency does not concur with the comment's assertion that a single policy or regulation could not mitigate the effects of greenhouse gas emissions from future projects. That determination is left to lead agencies, with a finding based on substantial evidence, as provided in section 21083.3(d). Also, the existence of "uniformly applied development policies" is not a prerequisite to relying on section 15183 as implied in the comment. Rather, such policies may be used to demonstrate that a project does not have effects that are peculiar. No further revisions are required in response to this comment.

Comment 71-29

Revise Section 15183(g)(8) to only reference Section 15183.5 for requirements for GHG emissions. This would eliminate the reference to land use plans, policies, and regulations.

Response 71-29

As explained in Response 71-28, the Natural Resources Agency has revised the text of the proposed amendments to section 15183(g)(8) in response to Comment 71-28 so that the description of land use plans, policies and regulations is plural.

The Natural Resources Agency declines to adopt the text suggested in this comment, however. The suggested text would cross-reference to the description of plans for the reduction of greenhouse gas emissions in section 15183.5(b). That section contains criteria designed to ensure a proper analysis of cumulative effects. The text of section 21083.3, however, indicates that uniformly applied development policies or standards may be more limited than the plan criteria described in section 15183.5(b).

Comment 71-30

Commenter observes a single policy or regulation only addresses a part of a project's emissions. If a lead agency relies on a single policy or regulation, a substantial amount a project's GHG emissions may not be adequately addressed in the project's GHG emission analysis.

Response 71-30

As explained in Response 71-27, section 15183 interprets an existing statutory streamlining provision. That provision states that environmental effects that are analyzed in an EIR for a general plan, community plan or zoning action need not be re-analyzed in later project-specific environmental review. Thus, environmental review for a specific development project would only have to address impacts that were not already addressed in the prior EIR or that could not be substantially mitigated through the imposition of uniformly applied development policies. The comment appears to address the latter circumstance. As explained in Response 71-28, above, section 21083.3(d) charges the lead agency with determining, based on substantial evidence, whether a uniformly applied development policies would substantially mitigate a particular effect. Therefore, whether a particular ordinance would be sufficient to address the effect, or whether a suite of policies and regulations would be required, depends on the facts and evidence before the lead agency.

Comment 71-31

Clarify a single ordinance addressing a subset of a project's carbon footprint cannot be used to exempt the remaining emissions due to that portion of the project from further review.

Response 71-31

As explained Response 71-30, above, whether a single ordinance is sufficient to give rise to the streamlining provision in section 21083.3 depends on whether substantial evidence supports a finding that the ordinance will substantially mitigate a particular effect.

Comment 71-32

Section 15183.5(b) is too permissive to be an effective mechanism for discouraging reliance on plans that are inadequate to meet the requirements of Section 15064(h)(3) and 15130(d).

Response 71-32

As explained in the Initial Statement of Reasons, section 15183.5(b) is designed to avoid confusion regarding what types of plans may be used to determine that a project's incremental contribution of greenhouse gas emissions is not cumulatively considerable. (Initial Statement of Reasons, at pp. 54-55.) As the comment notes, the Natural Resources Agency derived the criteria in that section from other existing requirements in CEQA. The word "may" was originally proposed to signal to lead agencies that the criteria are non-exclusive, and plans may contain other elements. The Natural Resources Agency concurs with the suggestion in the comment, however, that at least the specified criteria should be included in the plan. Thus, the Natural Resources Agency has revised the text of proposed section 15183.5 to indicate that a plan for the reduction of greenhouse gas emissions, if used for the purposes described in sections 15064(h)(3) and 15130(d), should contain the listed criteria.

Comment 71-33

Revise Section 15183.5(b)(1) to change the word "may" to "should" to adequately comply with the requirements of Section 15064(h)(3).

Response 71-33

As explained in Response 71-32, above, section 15183.5(b) has been revised as suggested. No further revision is required in response to this comment.

Comment 71-34

Section 15183.5(c) creates ambiguity by stating only that a lead agency "should" consider whether environmental documents for projects described in Public Resources Code Sections 21155.2 and 21159.28 result in greenhouse gas emissions from sources other than cars and light duty trucks. The text should be revised to replace the word "should" with "must" so lead agencies are required to analyze GHG emissions from other direct and indirect sources.

Response 71-34

The Natural Resources Agency declines to incorporate the text suggested in this comment. A lead agency is generally required to analyze a project's greenhouse gas emissions if there is any substantial evidence supporting a fair argument that such emissions may result in a significant adverse environmental impact. Use of the word "should" signals that a lead agency should consider whether a project could result in other emissions unless there is some compelling reason to not consider whether there are other sources (i.e., the project's only source of emissions is associated with cars and light duty trucks). Evidence in the record determines what must be analyzed. Therefore, the suggestion to replace "should" with "must" is rejected.

Comment 71-35

Proposed Guidelines are statutorily mandated under SB 97 to provide explicit guidance on the effects of climate change on projects. Justification that the Guidelines already require lead agencies to analyze the potential effects of climate change on the project is contrary to SB 97 and undermines the State's current efforts to adapt to climate change.

Response 71-35

The Initial Statement of Reasons explains the Natural Resources Agency's position that existing CEQA law already supports an analysis of climate change impacts under certain circumstances. (Initial Statement of Reasons, at pp. 68-69.) In particular, Section 15126.2 already requires an analysis of placing a project in a potentially hazardous location. Further, several questions in the Appendix G checklist already ask about wildfire and flooding risks. Many comments on the proposed amendments asked for additional guidance, however.

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. Notably, that analysis is subject to limitations regarding forecasting and speculation. 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 apply to the analysis of future hazards, however. 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").)

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 71-36

Guidance regarding impact of climate change on a project is necessary given the release of the Draft Climate Adaptation Strategy.

Response 71-36

The text of section 15126.2 has been revised in order to provide guidance on when an EIR should address the effects of placing a project in a location that is susceptible to hazards. That revision 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.

Comment 71-37

Commenter recognizes no legitimate basis for excluding reference to the considerations of the effects of climate change from the Proposed Guidelines. Sufficient data is available and there is a clear need to proactively plan for climate change through land use processes.

Response 71-37

Section 15126.2 has been revised in response to this and similar comments. For the reasons described above in Response 71-35, the Natural Resources Agency finds that the revision adequately responds to the concerns raised in the comment, and no further response is necessary.

Comment 71-38

Revise Section 15126.2(a) to encourage a lead agency to discuss the effect of climate change on relevant resources for the lifetime of the project and expand the requirements of an EIR to analyze any significant environmental effects the project might cause by bringing development and people into the area affected to include the effects of climate change.

Response 71-38

Section 15126.2 has been revised in response to this and similar comments. For the reasons described above in Response 71-35, the Natural Resources Agency finds that the revision adequately responds to the concerns raised in the comments preceding this precise suggested text. The Natural Resources Agency declines to incorporate the precise language suggested in this comment for several reasons. First, the Agency's revised text provides more guidance about where to find information regarding potential hazards, rather than simply raising the possibility of hazards resulting from climate change. Second, the revised text focuses on areas that are susceptible to hazards. The word "susceptible" is used to signal that hazards existing today and those that are reasonably expected to occur in the future. Such hazards may include hazards that result from the effects of climate change or other causes. The appropriate focus in this section, however, is on the potential interaction between the project and the hazard, and not the cause of the hazard. Because the revised text addresses the concerns raised by the commenter, and provides more detailed guidance, the Natural Resources Agency declines to further revise the text in response to this comment.

Comment 71-39

Revise Appendix G: GHG Emissions to include question (c). This would suggest a lead agency consider whether a project places additional demands on resources that are projected to be adversely affected by climate change.

Response 71-39

The Natural Resources Agency declines to revise Appendix G to add the suggested question. The Appendix G checklist already asks lead agencies to consider both the direct, indirect and cumulative effects of all project phases on a variety of resources. Thus, the effect of a project on a resource that is projected to be adversely affected by climate change is already required to be analyzed if there is evidence indicating that the project's effect will be significant and adverse.

Comment 71-40

Revise Appendix G: GHG Emissions to include question (d). This would suggest a lead agency should consider a project which brings development into areas that are projected to be adversely affected by climate change thus creating a significant hazard to the public.

Response 71-40

The Natural Resources Agency declines to revise Appendix G to add the suggested question. Instead, the text of section 15126.2 itself has been revised as described in Response 71-35. The revised text is more appropriate because it provides guidance on where to find reliable information regarding areas that are susceptible to hazards.

Comment 71-41

Commenter supports addition of forestry resources in Appendix G Initial Study Checklist and finds the amendments consistent with the ARB AB 32 Scoping Plan. This addition recognizes the role of forests in climate change and the impacts of converting forest lands to non-forest use.

Response 71-41

The Natural Resources Agency appreciates the support of the inclusion of forestry resources in the Appendix G questions. Those questions are not proposed for further revision. Therefore, no further response is required.

Comment 71-42

The proposed change to Appendix G: Transportation/Traffic (a) does not have a clear relationship to environmental effects. That question still relies on *capacity standards* as a proxy for environmental impacts.

Response 71-42

In response to this and similar comments, 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 Natural Resources Agency finds that the revised text responds to the concerns raised in this comment, and no further revision is required.

Comment 71-43

Using capacity as an indicator for potential environmental impacts is problematic. Capacity relative to demand or use have no direct association with significant environmental effects; alternative modes of transportation may reduce environmental impacts while also reducing the system's capacity; capacity might suggest a project is allowed to increase traffic up to a threshold whether or not there are adverse environmental effects; most common mitigation for inadequate capacity can result in substantial adverse environmental impacts.

Response 71-43

As explained in Response 71-42, above, the Natural Resources Agency revised the text of question (a) to refocus the question on consistency with a measure of effectiveness in an applicable plan, ordinance or policy. Focus on consistency is appropriate in light of existing CEQA Guidelines section 15125(d), which requires a discussion of consistency with existing land use plans. Additionally, the question would allow consideration of the circulation system as a whole, so that projects are considered in their proper context.

As discussed in the proposed Note preceding the Appendix G questions, Appendix G is a sample only. A lead agency can and should alter it to fit its unique circumstances. Moreover, changes to the questions in Appendix G do not alter the "fair argument standard". In other words, where substantial evidence supports a fair argument of a potential adverse impact, a lead agency must consider that potential impact regardless of whether the Appendix G questions address that impact. (*Protect the Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal.App.4th 1099, 1109.) No further revisions are required in response to this comment.

Comment 71-44

Commenter suggests, for the same reasons as using the capacity standard, Level of Service standards in checklist question (b) is problematic.

Response 71-44

Question (b) asks whether a project is consistent with an applicable congestion management program. In this regard, the question implements the directive in section 15125(d) that lead agencies analyze inconsistencies between the proposed project and applicable regional plans. The reference to level of service in that question reflects the requirement in the Government Code that a congestion management program establish level of service standards for certain designated roadways. (Government Code, § 65089(b)(1).) If a project is within a designated "in-fill opportunity zone," level of service standards would not apply. (Government Code, § 65088.4.) The Natural Resources Agency cannot change the requirements for congestion management programs that are set out in statute. The proposed amendments to question (b), however, seek to put level of service standards in their proper context within a congestion management program. To the extent the comment suggests that level of service should be deleted from question (b) altogether, for the reasons described above, the Natural Resources Agency declines to adopt the suggestion.

Comment 71-45

Revise Appendix G: Transportation/Traffic checklist questions to use measures directly related to environmental impacts of a project. Commenter recommends two measures: auto trips generated (ATG) and vehicle miles traveled (VMT).

Response 71-45

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.

Comment 71-46

Commenter supports a preliminary proposal made by the Office of Planning and Research to account for vehicle trips, vehicle volume, and vehicle miles traveled rather than level of service or capacity of the existing circulation system. If not reinstated, commenter suggests the checklist questions be more open-ended to permit a range of appropriate local metrics.

Response 71-46

As explained in Response 71-45, above, the Natural Resources Agency revised question (a) to recognize a lead agency's discretion to choose the most appropriate methodology for analyzing impacts to its

circulation system. The revised text is substantially similar to the language suggested in this comment. Notably, the Office of Planning and Research explained why it revised its preliminary proposal regarding traffic impacts analysis in its letter transmitting the proposed Guidelines amendments to the Natural Resources Agency. That letter explained:

> After considering public input, OPR recommends inclusion of revised questions in the Environmental Checklist that recognize the following: (a) the necessity of assessing traffic impacts on intersections, streets, highways and freeways, (b) a lead agency's discretion to choose methodology, including LOS, to assess traffic impacts, (c) existing requirements in Congestion Management Programs, General Plans, ordinances, and elsewhere, and (d) traffic impacts include impacts to pedestrian, non-vehicular and mass-transit circulation.

In light of the above, the Natural Resources Agency finds that no further revision is required in response to this comment.

Note:

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 the content of the Initial Statement of Reasons are neither directed at the text of the regulations nor at the Resources Agency's process for adopting those regulations. Though responses to comments on the Initial Statement of Reasons are not required, the Natural Resources Agency provides the following responses.

Comment 71-47

Commenter disagrees with the opening statement in the section entitled "What Causes GHG Emissions?" in Initial Statement of Reasons. The statement "…incremental contribution of GHG emissions is immeasurable…" is incorrect and internally inconsistent. The incremental contributions of GHGs from a particular source are frequently measurable and should be quantified. A statement on the relationship between GHG emissions, atmospheric concentrations, and impacts of global warming should be included in the following section.

Response 71-47

The Natural Resources Agency did not intend to imply that quantification of greenhouse gas emissions is not possible. On the contrary, the Initial Statement of Reasons explained in a later section that many methods are available that would allow quantification of many types of projects. (Initial Statement of Reasons, at pp. 17-18.) As used in the quoted text, the word "immeasurable" conveys that there are many sources of greenhouse gas emissions throughout the world. The Initial Statement of Reasons

already explains that sources are both natural and man-made, so the text suggested in the comment is not necessary. However, to avoid any confusion, the word "immeasurable" has been deleted from the Final Statement of Reasons.

Comment 71-48

Revise Statement of Reasons reference to "urban growth" to "suburban and exurban growth" to accurately describe the majority of California's transportation-related emissions.

Response 71-48

The features described in the quoted section (density, jobs/housing balance, and single occupant vehicle travel) can be found in urban, suburban and ex-urban areas. The change suggested in the comment would imply that transportation-related emissions would only occur in suburban and ex-urban areas, and not in established urban areas. To avoid any confusion, the quoted sentence will be revised in the Final Statement of Reasons as follows:

"Emissions attributable to transportation ~~are largely a~~ result largely from development that increases, rather than decreases, vehicle miles traveled: ~~of the majority of California's urban growth characterized by travel-inducing features:~~ low density, unbalanced land uses separating jobs and housing, and a focus on single-occupancy vehicle travel."

Comment 71-49

Revise the Statement of Reasons to reflect that climate change impacts are measures as a function of increased atmospheric concentrations of GHGs, not increased GHG emissions.

Response 71-49

The suggested changes to the text of the Initial Statement of Reasons do not address the text of the proposed amendments. The comment does not suggest that the quoted text in the Initial Statement of Reasons is incorrect or misleading, nor does the comment cite to any authority supporting its suggested revisions. The Natural Resources Agency, therefore, declines to revise the Initial Statement of Reasons as suggested.

Comment 71-50

The section in the Initial Statement of Reasons entitled "Why is California Involved in GHG Regulation?" is unclear and suggests all GHG regulations stems from AB 32. GHG impacts are not analyzed under CEQA because of AB 32 but because global warming is a cumulative environmental problem and a

project approved under CEQA may incrementally contribute to increases in atmospheric concentrations of GHGs.

Response 71-50

Read in context, the discussion under the heading "Why is California Involved in GHG Regulation" merely summarizes potential effects of global warming on California. It is not intended to, nor should it be read to, imply that the authority for analyzing greenhouse gas emissions under CEQA arises from AB 32. Thematic responses addressing the relationship between CEQA, AB 32 and SB 375 are provided in the Final Statement of Reasons to provide further clarity on this point.

Comment 71-51

Any discussion on why the State is involved in GHG regulation should be viewed more holistically and includes historical perspectives that emphasize the long-held recognition of the threats of climate change.

Response to Comment 71-51

The Final Statement of Reasons contains a revised discussion of the historical background on the analysis of greenhouse gas emissions.

Comment 71-52

Section "What is California Doing to Reduce its GHG Emissions?" is unclear about the relationship between CEQA, SB 375, and AB 32. The most important point the Statement of Reasons should make on this topic would be to clearly state that there is an independent duty to analyze global warming impacts under CEQA.

Response 71-52

Thematic responses addressing the relationship between CEQA, AB 32 and SB 375 are provided in the Final Statement of Reasons to provide further clarity on this point.

Comment 71-53

Section "What is California Doing to Reduce its GHG Emissions: Specific Comments on Current Text on CEQA & SB 97" has a negative implication that an activity that is regulated under AB 32 or SB 375 will not result in significant GHG emissions. The first sentence of that section should be deleted.

Response 71-53

The Natural Resources Agency agrees that the sentence could be misread and has deleted it from the Final Statement of Reasons. Thematic responses addressing the relationship between CEQA, AB32 and SB375 are provided in the Final Statement of Reasons to provide further clarity.

Comment 71-54

Relying on AB 32 for determining significance cannot be made in the abstract and cannot be responsibly asserted in the Statement of Reasons. Regulations under AB 32 are still under development and therefore it is inappropriate to rely on such regulations to reach a determination of significance.

Response 71-54

As indicated in Response 71-53, above, the first sentence under the heading "CEQA and SB97" will be deleted. To the extent the comment implies that regulations implementing AB 32 could not, as a matter of law, be used in the determination of significance under CEQA, the Natural Resources Agency disagrees. As explained in the Initial Statement of Reasons,

> Once [regulations implementing AB32] are adopted and being implemented, they may, where appropriate, be used to assist in the determination of significance, similar to the current use of air quality, water quality and other similar environmental regulations. (CBE, supra, 103 Cal. App. 4th at 111 ("a lead agency's use of existing environmental standards in determining the significance of a project's environmental impacts is an effective means of promoting consistency in significance determinations and integrating CEQA environmental review activities with other environmental program planning and regulation").)

Thematic responses addressing the relationship between CEQA, AB32 and SB375 are provided in the Final Statement of Reasons to provide further clarity.

Comment 71-55

Relying on SB 375 is not appropriate to assume, that because a project complies with law, the project does not result in significant GHG emissions.

Response 71-55

As indicated in Response 71-54, above, the first sentence under the heading "CEQA and SB97" will be deleted. Thematic responses addressing the relationship between CEQA, AB32 and SB375 are provided in the Final Statement of Reasons to provide further clarity.

Comment 71-56

Revise Statement of Reasons to remove ambiguity on Legislature's intent. SB 97 "…constitutes the Legislature's *recognition* that GHG emissions and the effects of GHG emissions are appropriate subjects for CEQA analysis."

Response 71-56

The Natural Resources Agency agrees that SB97 did not create the obligation to address greenhouse gas emissions as a CEQA issue. The Final Statement of Reasons contains a revised discussion of the historical background on the analysis of greenhouse gas emissions.

Comment 71-57

Initial Statement of Reasons, Section 15064.4 improperly suggests that compliance with AB 32 early action measures could satisfy Section 15064(h)(3). The early action measures are an array of policies and are not designed to comprehensively address the range of emissions resulting from a particular type of project and address its cumulative effects. Statement of Reasons, remove reference to early action measures for determining significance.

Response 71-57

The comment suggests that regulations implementing the Air Resources Board's Early Action Measures can never be used in a cumulative impacts analysis as provided in Section 15064(h)(3). Regulations may play a role in the determination of significance of project impacts. Whether a particular regulation would address a particular project's incremental contribution of greenhouse gas emissions depends entirely on the regulation and the facts surrounding the project. As amended, section 15064(h)(3) would require the lead agency to demonstrate how compliance with the regulation ensures that the project's incremental contribution is not cumulatively considerable. Further, under the existing text in that section, any substantial evidence indicating that the project would have a significant impact despite compliance with the regulation would require preparation of an EIR. For these reasons, the Natural Resources Agency rejects the suggested deletion.

Comment 71-58

The Statement of Reasons should track existing regulatory text to avoid ambiguity through new, undefined language. Under Section 15064(h)(3) a lead agency must do more than "govern" a project's emissions. The lead agency must "provide specific requirements that will avoid or substantially less the cumulative problem".

Response 71-58

The comment appears to take the word "govern" in the Initial Statement of Reasons out of context. A full explanation of the proposed amendments to section 15064(h)(3) is provided in pages 11-14 of the Initial Statement of Reasons. The comment does not suggest that the actual text of section 15064(h)(3) is ambiguous. The Natural Resources Agency finds that the proposed revision to the text of the Statement of Reasons is not necessary.

Comment 71-59

The Initial Statement of Reasons suggests that a project with large construction phase impacts need not consider feasible near-term mitigation. Thus, feasible opportunities to reduce emissions are missed. Suggestion that construction-related impacts can be ignored for certain types of projects is flawed and should be removed.

Response 71-59

The comment refers to a hypothetical example in the Initial Statement of Reasons. Contrary to the implication in the comment, the purpose of the hypothetical is to show that all project phases should be included and documented in an analysis to determine the net effect of the project's greenhouse gas emissions. The Natural Resources Agency does not intend that construction emissions of a project may be ignored. To the extent that the near-term emissions have a different environmental effect than long term emissions, those potential effects would need to be addressed in the analysis. The Natural Resources Agency will revise the text of the example to make this clear in the Final Statement of Reasons; however, because the example may assist lead agencies in determining how to apply section 15064.4, the example will remain in the Statement of Reasons.

Comment 71-60

The Statement of Reasons vaguely states consistency with the Scoping Plan "may" not be appropriate for determining significance should be revised to provide the Scoping Plan "is" not appropriate for determining significance under CEQA.

Response 71-60

Clarification of the description of the Scoping Plan is appropriate. The text of section 15064.4(b)(3) states that compliance with "regulations or requirements" may be considered in the determination of the significance of the project's greenhouse gas emissions. The Scoping Plan does not contain binding regulations or requirements, and so "compliance" with the Scoping Plan would not be a basis for determining significance under section 15064.4(b)(3). This clarification has been made in the Final Statement of Reasons.

Comment 71-61

Comparing a project to a blueprint scenario does not indicate whether the project would result in an increase or decrease in emissions.

Response 71-61

The discussion in the Initial Statement of Reasons regarding Regional Blueprint Plans on page 33 explains that such plans "can provide information regarding the region's existing transportation setting" among other things. (Emphasis added.) Read in proper context, the quoted sentence cannot be read to suggest that emissions of a project should be compared to a hypothetical development scenario. Also, section 15125(d) requires a discussion of inconsistencies with such plans; that section does not require a finding of significance if a project is not consistent with the listed plans.

Comment 71-62

The explanation in the Initial Statement of Reasons for removal of the term "lifecycle" contains numerous misstatements that go well beyond the scope of the proposed Guideline change. If that term needs to be removed to avoid ambiguity, the Statement of Reasons should say so.

Response 79-62

The Natural Resources Agency must explain any proposed amendments in the Initial Statement of Reasons. Here, the Initial Statement of Reasons explained that the term "lifecycle" was proposed to be removed from Appendix F to avoid confusion regarding how that term would be interpreted, particularly in the context of greenhouse gas emissions. Because the proposed amendments must be consistent with existing CEQA statute and case law, the Initial Statement of Reasons set forth the Natural Resources Agency's position that deletion of the word "lifecycle" from Appendix F is consistent with CEQA because CEQA may not require "lifecycle" emissions, at least to the extent suggested by the noted commentators. The explanation is, therefore, appropriate to inform the public of why the proposed change is being made. Specific perceived misstatements are addressed below.

Comment 71-63

Whether a project applicant has "direct control" over a particular emission source is not relevant to a CEQA analysis. Lifecycle emissions are a subset of indirect effects caused by a project. Section 15126.2(a) requires analysis of direct and indirect significant effects of the project on the environment. Lead agency should provide evidence to support a finding that the materials used in the construction of a project has already been adequately mitigated. To simply presume a lifecycle analysis could lead to double-counting, absent substantial evidence, is contrary to CEQA's substantial evidence standard.

Including information lifecycle emissions where feasible will lead to making more informed decisions. By improperly precluding a consideration of emissions associated with construction materials should not be mitigated is contrary to the standards of review under CEQA.

Section 15144 directs lead agencies preparing CEQA documents to use their best efforts to find out and disclose all that they reasonably can. If, after such an effort, a lead agency finds that it cannot calculate lifecycle or out-of-state emissions, it need only explain the basis for the inability to assess these emissions conclude its analysis. However, when models become available, to calculate these emissions, this should be part of a CEQA analysis.

Response 71-63

The quoted portion of the Initial Statement of Reasons was intended to refer to the cause and effect relationship between a project and ultimate impacts. As explained in the Initial Statement of Reasons, CEQA only requires analysis of impacts that result from implementation of the project under consideration. (State CEQA Guidelines, §§ 15064(d) (examine effects "caused by" the project), 15126.4(a)(4)(B) (mitigation must be "roughly proportional" to the effects of the project).) The comment is correct, however, that emissions need not be under the applicant's or lead agency's "direct control". Both direct and indirect emissions must be analyzed. The discussion explaining removal of the term "lifecycle" has been revised in the Final Statement of Reasons to reflect this explanation.