

## Letter 76

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### **Comment 76-1**

Development of the program's cap-and-trade framework will imply that the atmosphere's GHG carrying capacity is a tradable commodity and not a public trust resource.

### **Response 76-1**

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

Proposed section 15126.4(c)(3) expressly recognizes a lead agency's ability to mitigate a project's greenhouse gas emissions using offsets. The use of offsets would still require that existing greenhouse gas emissions be reduced to mitigate a project's significant greenhouse gas emissions. Thus, to the extent that anything is treated as a commodity, it is the ability of an emitter of greenhouse gases to reduce to those emissions, and not the atmosphere's carrying capacity.

The Natural Resources Agency does not express an opinion as to whether air is a resource subject to the public trust doctrine. CEQA does not treat public trust resources differently than other resources, however. Section 21060.5 of the Public Resources Code defines "environment" to mean "the physical conditions that exist within the area which will be affected by a proposed project, including land, air, water, minerals, flora, fauna, noise, or objects of historic or aesthetic significance." Nothing in SB97 indicated any intent to treat public trust resources differently that other resources falling within the existing definition of environment, so the Natural Resources Agency does not have authority to treat such resources differently in the CEQA Guidelines. No revisions to the proposed amendments are required in response to this comment.

**Comment 76-2**

Commenter does not support the use of offsite mitigation or offsets for use of such measures could lead to environmental justice impacts.

**Response 76-2**

The Natural Resources Agency acknowledges the concern that allowing the use of offsets may raise environmental justice concerns. In particular the comment raises the concern that allowing offsets would allow the concentration of industrial emissions in neighborhoods that are already adversely impacted by polluting facilities. The Natural Resources Agency disagrees that off-site mitigation or offsets would result in adverse impacts to local communities that are already adversely affected by polluting industries.

First, the use of offsets or off-site measures would be used to mitigate new emissions from new projects or existing projects for which a new discretionary approval is required. As explained above in Response 76-1, actual reductions in greenhouse gas emissions would have to result in order for the offset or off-site measure to be used as mitigation. To the extent those reductions occur at existing facilities, neighboring residents may also benefit from such reductions.

Second, to the extent that a project relying on off-site measures to mitigate its greenhouse gas emissions also produces other pollutants that may adversely affect neighboring residents, those other pollutants would need to be analyzed in the CEQA process, and mitigated if those other emissions cause a significant impact.

Third, to the extent that a process leading to the reduction of greenhouse gas emissions would lead to an increase in other pollutants, the potential form those other pollutants would need to be analyzed as part of the CEQA process. (State CEQA Guidelines, § 15126.4(a)(1)(D) (the adverse effects caused by mitigation measures must be analyzed).)

Thus, for the reasons described above, the Natural Resources Agency finds that allowing the use of off-site measures, as contemplated in proposed section 15126.4(c)(3), will not cause adverse environmental justice impacts. No revision to the proposed amendments is required in response to this comment.

**Comment 76-3**

A California program should prohibit the trading of toxic substances, even if they are greenhouse gas emissions.

**Response 76-3**

The proposed amendments do to authorize the trading of toxic substances. The production, use and disposal of toxic substances are governed by statutes other than CEQA, and the proposed amendments do not interpret or make specific those other statutes. As explained in Response 76-1, above, actual

reductions in greenhouse gas emissions would have to result in order for the offset or off-site measure to be used as mitigation. Such emissions reductions could only be used for the purpose of mitigating greenhouse gas emissions of a project. A project that proposed to emit toxic substances would need to mitigate such emissions in other ways. No revision to the proposed amendments is required in response to this comment.