

Letter 77

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Comment 77-1

Commenter supports the broad approach taken and retaining the discretion of lead agencies.

Response 77-1

The Natural Resources Agency note commenter's support and takes no further action on this comment.

Comment 77-2

Commenter appreciates treating impacts to GHG emission as a cumulative issue and the encouragement to use a programmatic approach to analysis where possible.

Response 77-2

The Natural Resources Agency note commenter's support and takes no further action on this comment.

Comment 77-3

Commenter appreciates the list of plans that may be relied upon and the discussion in the Initial Statement of Reasons for clarifying that by complying with the AB 32 Scoping Plan or a lead agency's own GHG Emissions Reduction Plan, a conclusion that a project's incremental contribution is not cumulatively considerable can be supported.

Response 77-3

The Natural Resources Agency notes commenter's support and takes no further action on this comment.

It should be noted, existing subdivision (h)(3) already allows an agency to find that a project's potential cumulative impacts are less than significant due to compliance with requirements in certain listed plans or mitigation programs. (*Communities for a Better Environment v. California Resources Agency* (2002) 103 Cal.App.4th 98, 111) In effect, this section presently creates a rebuttable presumption that compliance with appropriate plans and regulations reduces a project's potential incremental

contribution to a cumulative effect to a level that is not cumulatively considerable. The additional clarification being made by the Natural Resources Agency to this section simply provides further examples of appropriate plans and programs that may be considered relative to such analysis, and is therefore, not inconsistent with existing law. Please note that the Initial Statement of Reasons did not suggest that the Scoping Plan, by itself, could be used in section 15064(h)(3). Regulations implementing the Scoping Plan might be appropriately considered, however.

Comment 77-4

Commenter supports maintaining a lead agency's discretion to choose the most appropriate approach and methodology to assess a project's GHG emissions.

Response 77-4

The Natural Resources Agency notes commenter's support and takes no further action on this comment.

Comment 77-5

Commenter supports allowing lead agencies to rely on thresholds developed by other experts or agencies.

Response 77-5

The Natural Resources Agency notes commenter's support and takes no further action on this comment.

Comment 77-6

Revise Section 15364.5, definition of Greenhouse Gas to be consistent with AB 32 and the Scoping Plan.

Response 77-6

The Natural Resources Agency deliberately relied on existing law in the Health and Safety Code to define appropriate greenhouse gasses for review under CEQA. This was done to ensure consistency with AB 32- a complimentary and comprehensive statutory scheme regulating greenhouse gas emissions in California. The Legislature has not included a definition of "greenhouse gases" in CEQA, though it did include a definition in AB32. (Health & Saf. Code, § 38505(g).) Thus, proposed new section 15364.5 adds a definition of greenhouse gases. The specified gases are consistent with existing law as they are defined to include those identified by the Legislature in section 38505(g) of the Health and Safety Code.

Notably, the definition in AB32 states that GHG "includes all of the following...." In so stating, the Legislature implies that other gases may also be considered GHGs. The ARB's Scoping Plan also acknowledges that other gases contribute to climate change. (Scoping Plan, at p. 11.) In fact, the EPA's

Endangerment Finding explained that several other gases share attributes with GHGs but would not be appropriate for regulation under the Clean Air Act at this time. (EPA Endangerment Finding, at pp. 18896-98.) Therefore, similar to the statutory definition of GHGs in AB32, the proposed definition in the Proposed Amendments is not exclusive to the six primary GHGs. The purpose of a more expansive definition is to ensure that lead agencies do not exclude from consideration GHGs that are not listed, so long as substantial evidence indicates that such non-listed gases may result in significant adverse effects. This approach is consistent with the Supreme Court's directive that CEQA be interpreted to provide the fullest possible protection to the environment. (*Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal. 3d 376, 390.)