

## Letter 78

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### **Comment 78-1**

Commenter supports amendments to add Section 15064.4 having maintained the lead agency's discretion.

### **Response 78-1**

The Natural Resources Agency appreciates the commenter's support.

### **Comment 78-2**

Clarify the discussion in Initial Statement of Reasons regarding "consistency with a plan or regulation." The commenter specifically suggests that the ARB Scoping Plan should be relied upon by a lead agency during in this interim period before regulations are adopted.

### **Response 78-2**

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 response.

As explained in the Thematic Responses, the proposed amendments deliberately avoided linking AB 32 and CEQA because, in essence, CEQA requires consideration of impacts on the environment, not compliance with a statute. However, the proposed amendments do recognize that other statutes and regulations play a role in the determination of significance. (Initial Statement of Reasons, at p. 22; see also *Communities for a Better Environment v. California Resources Agency* (2002) 103 Cal.App.4th 98, 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 on the relationship between those statutes.

While greenhouse gas emissions present a unique analytical challenge for CEQA lead agencies, existing CEQA rules apply to that analysis. Thus, as provided in proposed new section 15064.4, a lead agency must evaluate all substantial evidence before it regarding the potential adverse impacts resulting from a project's greenhouse gas emissions. A project's compliance with existing regulatory requirements may be relevant in the analysis, but is not the sole determinant of significance for CEQA purposes. The Third District Court of Appeal, in *Communities for a Better Environment v. Resources Agency* (2002) 103 Cal.App. 4th 98, 110-114, concurred with a trial court observation that "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." The court further explained, however, that lead agencies have a "duty under the fair argument approach to look at evidence beyond the regulatory standard" to any evidence that a project may have a significant effect on the environment. (*Id.* at 113.) The proposed amendments recognize this role for regulatory standards in proposed new Section 15064.4(b)(3), which provides that a lead agency should consider the extent to which a project complies with regulations addressing greenhouse gas emissions. Thus, to the extent the comment suggests that a project's emissions should be considered in light of emissions reductions mandated by AB32, the above explains how regulations implementing AB32 would be relevant in the analysis. Please note, however, that the Initial Statement of Reasons explained that because the Scoping Plan is conceptual, compliance with that plan is not an appropriate measure of a project's significance.

### **Comment 78-3**

Commenter supports the changes in Appendix G: Transportation/Traffic to elicit more information about a project's effect on the overall circulation system in the context of the region.

### **Response 78-3**

The Natural Resources Agency appreciates the support for the revisions.