

Sacramento Hearing

Natural Resources Agency
1st Floor Auditorium
1416 Ninth Street
Sacramento, CA 95814

August 18, 2009

Comment SAC-1

American Planning Association

Commenter supports the amendment to add Section 15183.5 on tiering and streamlining greenhouse gas analysis.

Response SAC-1

The Natural Resources Agency notes the commenter's support of proposed amendment to add Section 15183.5. As the comment is not seeking additional changes to the text, no further response is required.

Comment SAC-2

Commenter recommends the Guidelines amendments incorporate provisions to address climate change adaptation.

Response SAC-2

The Natural Resources Agency received many comments requesting the Guidelines amendments incorporate the consideration of impacts cause by climate change. In response, section 15126.2 was further revised to clarify the type of analysis that would be required. The sentence provides: "Similarly, the EIR should evaluate the impacts of locating development in other areas susceptible to hazardous conditions (e.g. floodplains, coastlines, wildfire areas, etc.) as identified in authoritative hazard maps, risk assessment or in land use plans addressing such hazards areas." Several limitations on the analysis of future hazards, however, should apply. For example, such an analysis may not be relevant if the potential hazard would likely occur sometime after the life of the project (i.e. if sea-level projections any project changes 50 years in the future, a five-year project may not be affected by such change.) Additionally, the degree of analysis should correspond to the probability of the potential hazard. (State CEQA Guidelines, section 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 within 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”) (emphasis added).)

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 SAC-3

Commenter recommends the Guidelines amendments incorporate provisions related to mitigation sequencing, specifically a hierarchy or mitigation.

Response SAC-3

The Natural Resources Agency received many comments both supporting and objecting to inclusion in the Guidelines a hierarchy of mitigation for greenhouse gas emissions. Having reviewed and considered all such comments, the Natural Resources concluded that CEQA leaves it to the lead agency’s discretion to determine the most appropriate mitigation for a project’s significant impacts. The Natural Resources Agency determined, however, that additional clarification of the standards that apply to any mitigation is appropriate. Therefore, it further revised section 15126.4(c) to clarify that all mitigation must be supported with substantial evidence and be capable to monitoring or reporting.

Comment SAC-4

Commenter recognizes the importance of incorporating adaptation and mitigation with the release of the 2009 Draft California Adaptation Strategy.

Response SAC-4

Several comments submitted as part of the Natural Resources Agency’s SB97 rulemaking process made reference to or urged incorporating the draft Adaptation Strategy into the CEQA Guidelines. In considering such comments, it is important to understand several key differences between the California Adaptation Strategy and the California Environmental Quality Act. First, the Adaptation Strategy is a policy statement that contains recommendations; it is not a binding regulatory document.

Second, the focus of the Adaptation Strategy is on how we can change in response to climate change. CEQA's focus, on the other hand, is the analysis of greenhouse gas emissions from a particular project, and mitigation of those emissions if they are significant. Given these differences, CEQA should not be viewed as the tool to implement the Adaptation Strategy; rather, as indicated in the Strategy's key recommendations, advanced programmatic planning is the primary method to implement the Adaptation Strategies.

There is some overlap between CEQA and Adaptation, however. As explained in both the Initial Statement of Reasons and in the Draft Adaptation Strategy, section 15126.2 may require the analysis of the effects of a changing climate under certain circumstances. 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. 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. See Response SAC-2 for additional discussion.

Comment SAC-5

Provide a stronger link in the proposed amendments between the Adaptation Strategy and CEQA. Many of the adaptation strategies directly involve the CEQA process and others can be implemented successfully through the CEQA process. A roadmap for lead agencies to best implements the adaptation strategies.

Response SAC-5

See Response SAC-4. No further revisions to the text are necessary to respond to this comment.

Comment SAC-6

Commenter requests an explanation to the CEQA community when adaptation will be incorporated into the Guidelines and how a roadmap and linkage between the Adaptation Strategy and CEQA will be made.

Response SAC-6

The Natural Resources Agency finds that the revised text of section 15126.2 provides the guidance suggested in this comment. See Responses SAC-2 and SAC-4. No further changes to the text are required in response to this comment.

Comment SAC-7

Revise Section 15126.2(a) to encourage lead agencies, when preparing an EIR, incorporate impacts of climate change on the project.

Response SAC-7

Section 15126.2(a) was revised to clarify the type of analysis that would be required to assess impacts as a result of a changing climate. The sentence provides: "Similarly, the EIR should evaluate the impacts of locating development in other areas susceptible to hazardous conditions (e.g. floodplains, coastlines, wildfire areas, etc.) as identified in authoritative hazard maps, risk assessment or in land use plans addressing such hazards areas." The Natural Resources Agency finds that the revised text to section 15126.2(a) provides the guidance suggested in this comment. No further changes to the text are required to respond to this comment.

Comment SAC-8

Commenter believes incorporating impacts of climate change in the Guidelines is in the spirit of existing Guidelines and consistent with CEQA case law.

Response SAC-8

See Response SAC-4.

Comment SAC-9

Commenter believes on-site mitigation is more certain than off-site mitigation.

Response SAC-9

The definition of "mitigation" in State CEQA Guidelines §15370(e) implies that offsite 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.)

Some comments expressed concern about the reliability and efficacy of some mitigation strategies. In response to such comments, the Natural Resources Agency further revised section 15126.4(c) 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.

The text of proposed section 15126.4(c), addressing mitigation of greenhouse gas emissions, also requires that mitigation measures be effective. The first sentence of that section requires that mitigation be “feasible.” Further, 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 (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.

Comment SAC-10

Commenter directs attention to recent news articles quoting State officials expressing skepticism about the effectiveness of mitigation credits and offsets.

Response SAC-10

The Initial Statement of Reasons cites several sources discussing examples of the use of offsets in a CEQA context. (Initial Statement of Reasons at pg. 38.) Further, the ARB Scoping Plan describes offsets as a 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 pg. C-21.) Finally, 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 impacts environment.” and “[c]ompensating for the impact by replacing or providing substitute resources or environments.” (CEQA State Guidelines, Sections 151370(e), (e).)

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.

Comment SAC-11

Commenter requests the Guidelines establish a hierarchy of mitigation, where on-site mitigation is preferred to off site mitigation. Where off site mitigation is allowed, credits and offsets should be verifiable, enforceable, and effective.

Response SAC-11

The Natural Resources Agency received many comments both supporting and objecting to inclusion in the Guidelines a hierarchy of mitigation for greenhouse gas emissions. Having reviewed and considered all such comments, the Natural Resources concluded that CEQA leaves it to the lead agency's discretion to determine the most appropriate mitigation for a project's significant impacts. The Natural Resources Agency determined, however, that additional clarification of the standards that apply to any mitigation is appropriate. Therefore, it further revised section 15126.4(c) to clarify that all mitigation must be supported with substantial evidence and be capable to monitoring or reporting. Additionally, measures that are not otherwise required may constitute mitigation for the purposes of that subdivision.

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).) The Natural Resources Agency cannot, however, state in the 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.

As explained above, 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. No further revisions to the text are required to respond to this comment.

Comment SAC-12

Commenter suggests that mitigation for cultural resources establishes a precedent for sequencing mitigation in the Guidelines. Preservation is preferred to resource recovery in the Guidelines addressing cultural resources.

Response SAC-12

SB 97 did not authorize the Natural Resources Agency to establish a hierarchy of mitigation for greenhouse gas emissions. The Guidelines provisions addressing cultural resources are based on statutory provisions that specify types of mitigation. (Public Resources Code, §21085.2.)

Comment SAC-13

Defenders of Wildlife

Commenter requests incorporation of adaptation into the Guideline amendment process.

Response SAC-13

See Response SAC-2. No further revision to the text is required to respond to this comment.

Comment SAC-14

Commenter raises a concern over how the recommendations in the Adaptation Strategy will be implemented. State agencies have responded to this concern the Strategy will be implemented through the CEQA process.

Response SAC-14

See Response SAC-4.

Comment SAC-15

Commenter suggests because State agencies will be relying on CEQA, it is an indication a nexus between the CEQA and the Adaptation Strategy is needed.

Response SAC-15

See Response SAC-4.

Comment SAC-16

Commenter indicates that this rulemaking will clarify case law and ongoing litigation prior to Senate Bill 97.

Response SAC-16

The Natural Resources Agency notes the commenter's support. As this comment is not seeking additional changes to the text, no further response is necessary.

Comment SAC-17

Commenter iterates the need to incorporate adaptation into the Guidelines to avoid further litigation. Not doing so would be a disservice to lead agencies and project proponents.

Response SAC-17

The Natural Resources Agency notes the commenter's concern. In response to comments similar to this, the Natural Resources Agency further revised Section 15126.2 to provide lead agencies with guidance specific to the type of analysis required to address impacts as a result of a changing climate. See Responses Sac-2 and SAC-4 for additional discussion.

Comment SAC-18

Commenter recognizes the need to address climate change impacts in terms of how the State must be in compliance with CEQA to address impacts like sea level rise on transportation and biodiversity as examples.

Response SAC-18

As explained above, the Natural Resources Agency made further revisions to Section 15126.2 to provide lead agencies with guidance on the type of analysis required to address impacts as a result of a changing

climate. Furthermore, Appendix G contains several questions already asking about flooding and wildfire risks. See Responses SAC-2 and SAC-4 for additional discussion.

Comment SAC-19

Revise Section 15064.4 to require quantification of greenhouse gas emissions. Commenter believes allowing qualitative assessments will be inadequate to achieve the emission reductions needed.

Response SAC-19

The comment appears to express concern that a qualitative analysis would be less thorough or less informative than a quantitative analysis. 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. The Natural Resources Agency disagrees.

The discretion recognized in section 15064.4 is not unfettered. A lead agency's analysis, whether quantitative or qualitative, is governed by the standards of the first portion of section 15064.4. Specifically, subsection 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 subsection (a) of section 15064.4(a) has been revised to state the analysis must be "based to the extent possible on scientific and factual data." This phrase parallels the rule in section 15064(b). The Natural Resources Agency finds that this clarification responds to the concern regarding the quality of a qualitative analysis.

Comment SAC-20

Revise Section 15126.4 to establish a preference for on-site mitigation over off-site mitigation. Clarify Section 15126.4 to state that if off-site mitigation is allowed, the mitigation should be surplus.

Response SAC-20

The Natural Resources concluded that CEQA leaves it to the lead agency's discretion to determine the most appropriate mitigation for a project's significant impacts. See Response SAC-3 for additional discussion.

CEQA requires "...mitigation measures must be consistent with all applicable constitutional requirements." (CEQA Guidelines Section 15126.4(a)(4).) Furthermore, case law establishes specific requirements with regards to mitigation. (*Nollan v. California Coastal Commission*, 483 U.S. 825 (1987).) (Essential nexus), (*Dolan v. City of Tigard*, (512 U.S. 374 (1994).) (Roughly proportional). To require additional measures beyond what is necessary to reduce an impact below a level of significance is not

consistent with standing CEQA principles and would directly conflict with case law. The Natural Resources Agency, therefore, rejects this comment.

In response to this and similar comments, however, the Natural Resources Agency revised section 15126.4(c)(3) to provide that mitigation may include: "offsite measures, including offsets that are not otherwise required, to mitigate a project's emissions[.]" This revision would ensure that reductions in emissions result from a change in the project. For additional discussion, see the Thematic Responses. The Natural Resources Agency finds that this revision will adequately address the concern raised in this comment; therefore, no further revision is required.

Comment SAC-21

Revise Section 15130 to specify that reliance on a plan should not substitute for a comprehensive cumulative impact analysis. A land use plan may not adequately address all the projects that are allowed and so would not necessarily provide an adequate cumulative impact analysis.

Response SAC-21

The Natural Resources Agency disagrees that the text in the proposed amendments to Section 15130(b)(1)(B) will allow a lead agency to avoid a comprehensive cumulative impact analysis. 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 SAC-22

Commenter supports the inclusion of forestry resources in the Appendix G: Initial Study Checklist.

Response SAC-22

The Natural Resources Agency notes the commenter's support of amending the Appendix G Initial Study Checklist to include the consideration of impacts to forest resources.

Comment SAC-23**Sacramento Area Bicycle Advocates**

Revise Appendix G: Transportation/Traffic Checklist questions to remove Level of Service (LOS). The metric is not an evaluation of an environmental impact; it is a measure of motorist delay or convenience.

Response SAC-23

Appendix G, Section XVI, Transportation/Traffic checklist 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) do seek to put level of service standards in their proper context within a congestion management program, however. 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 SAC-24

Commenter claims that mitigating impacts to LOS typically involves increasing roadway capacity. That supposed mitigation does have an environmental impact: increased capacity results in more vehicle trips and fewer trips by bike or foot. Thus, the mitigation is worse than the impact.

Response SAC-24

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 has further revised the transportation questions in Appendix G’s checklist. Section XVI, subsection (f), now asks whether a project: “Conflict[s] with adopted policies, plans, or programs regarding public transit, bikeways, or pedestrian facilities, or otherwise substantially decreases the performance or safety of such facilities.” Consequently, if a lead agency has a plan or

policy in place relative to pedestrian or bicycle mobility, or transit operations, subsection (f) will provide suggested guidance on how a lead agency may approach analysis of potential impacts relative to the criteria and parameters contained in such policies or plans.

Finally, CEQA already requires a lead agency to consider if a mitigation measure would cause one or more significant effects and further discuss those effects before approving a project. (State CEQA Guidelines Section 15126.4(a)(D).) No further revision to the text is required to respond to this comment.

Comment SAC-25

Commenter claims that treating a decrease in LOS as an environmental impact only escalates global warming.

Response SAC-25

See Response SAC-23.

Comment SAC-26

Commenter claims that traffic safety is an environmental impact and traffic crashes have an adverse impact on human beings. Yet, traffic safety is given cursory coverage in Appendix G.

Response SAC-26

In response to this and other comments raising safety concerns, the Natural Resources Agency revised existing question (g) to specifically ask whether a project would “substantially decrease the ... safety of [transit, bikeway, or pedestrian] facilities?”

Notably, existing question (d) already asks whether a project would increase hazards due to design features or incompatible uses.

Thus, in light of the existing question (d) and the revisions to existing question (g), the CEQA Guidelines contain several tools to examine safety issues. No further revisions are required in response to this comment.

Comment SAC-27

Commenter claims that traffic safety is primarily related to traffic speeds, distracted driving, and driving under the influence of narcotics. Traffic speeds are related to road capacity and design. Appendix G does not mention these factors.

Response SAC-27

See Response SAC-26. Also, CEQA addresses changes in the physical environment that result from a project. Distracted driving and driving under the influence of narcotics, on the other hand, result from unlawful human behavior. As the comment notes, speed relates to roadway design, which is covered in question (d).

Comment SAC-28

East Bay Bicycle Coalition

Commenter requests reevaluation of the reliance upon LOS and address other measures such as vehicle miles traveled.

Response SAC-28

In response to public comments, the Natural Resources Agency further refined Appendix G, Section XVI question (a) to shift the focus from the capacity of the circulation system to consistency with applicable plans, policies, and other objective measures of effectiveness.

Question (b) still refers to level of service standards, but does so in the context of a congestion management program. Government Code section 65088, and following, requires Congestion Management Agencies, in urbanized areas, to adopt Congestion Management Programs covering that agency's cities and county, and in consultation with local governments, transportation planning agencies, and air quality management districts. A CMP must, pursuant to statute, contain level of service standards for certain designated roadways. A CMP must also include a land use analysis program to assess the impact of land use decisions on the regional transportation system. A CMA may require that land use analysis to occur through the CEQA process. Thus, level of service standards cannot be deleted from the Appendix G checklist altogether.

The proposed amendments did amend question (b) to put level of service standards in the broader context of the entire CMP, which should also contain travel demand measures and other standards affecting the circulation system as a whole. Beyond this amendment, however, the Natural Resources Agency cannot remove level of service standards entirely from the Appendix G checklist.

As explained above, the Natural Resources Agency's proposed amendments to question (a) would recognize a lead agency's discretion to choose its own methodology for analyzing impacts to the circulation system. Thus, if adopted through a public process in a plan, policy or ordinance, a lead agency could use non-LOS measures of effectiveness. No further revision to the text is required in response to this comment.

Comment SAC-29

Commenter claims that LOS is not an environmental impact. Rather, the Guidelines need to address reducing greenhouse gas emissions through increase bicycle access and safety not through capacity measures and widening roadways.

Response SAC-29

See Response SAC-28.

Comment SAC-30**East Bay Bicycle Coalition**

Commenter suggests that the need for the Guidelines need to address traffic safety for bicyclists and pedestrians.

Response SAC-30

See Response SAC-26

Comment SAC-31

Commenter acknowledges that the proposed Guidelines amendments are encouraging lead agencies to consider other factors but fails to directly address the issue by having the term “capacity” in Appendix G: Transportation/Traffic checklist question (a).

Response SAC-31

In response to comments, the Natural Resources Agency revised the proposed amendments to the Appendix G, Section XVI - Transportation/Traffic checklist. Subsection (a) changes the focus from an increase in traffic at a given location to the effect of a project on the overall circulation system in the project area. Specifically, the change to subsection (a) recognizes that the lead agency has discretion to choose its own metric of analysis of impacts to intersections, streets, highways and freeways. (Pub. Resources Code, § 21081.2(e); *Eureka Citizens for Responsible Government v. City of Eureka*, (2007) 147 Cal.App.4th 357, 371-373 (lead agency has discretion to choose its methodology).) However, this discretion does not allow a lead agency to rely on speculative or unreasonable methodologies or measures for analysis.

Comment SAC-32

Commenter recognizes the advantage of having “effect of a project on the overall circulation system” in the Appendix G: Transportation/Traffic checklist.

Response SAC-32

The Natural Resources Agency notes the commenter's support. No further response to this comment is necessary.

Comment SAC-33

The explanatory language in Initial Statement of Reasons regarding proposed amendments to Appendix G: Transportation/Traffic checklist suggests restriping a bike lane may improve the overall effectiveness of the circulation system doing so may create congestion at intersections which would be problematic from the perspective of a traffic engineer. "Capacity" in the Guidelines is a stumbling block.

Response SAC-33

In response to comments, the Natural Resources Agency further revised the Appendix G, Section XVI. Subsection (a) changes the focus from an increase in traffic at a given location to the effect of a project on the overall circulation system in the project area. Specifically, the change to subsection (a) recognizes that the lead agency has discretion to choose its own metric of analysis of impacts to intersections, streets, highways and freeways. (Pub. Resources Code, § 21081.2(e); *Eureka Citizens for Responsible Government v. City of Eureka*, (2007) 147 Cal.App.4th 357, 371-373 (lead agency has discretion to choose its methodology).) However, this discretion does not allow a lead agency to rely on speculative or unreasonable methodologies or measures for analysis.

Comment SAC-34

Commenter believes LOS is an obstacle to developments that encourage pedestrian and bicycle mobility, such as transit oriented design. The term "capacity" will continue to be an obstacle.

Response SAC-34

Question (b) of Appendix G, Section XVI still refers to level of service standards, but does so in the context of a congestion management program. Government Code section 65088, and following, requires Congestion Management Agencies, in urbanized areas, to adopt Congestion Management Programs covering that agency's cities and county, and in consultation with local governments, transportation planning agencies, and air quality management districts. A CMP must, pursuant to statute, contain level of service standards for certain designated roadways. A CMP must also include a land use analysis program to assess the impact of land use decisions on the regional transportation system. A CMA may require that land use analysis to occur through the CEQA process. Thus, level of service standards cannot be deleted from the Appendix G checklist altogether.

The proposed amendments did amend question (b) to put level of service standards in the broader context of the entire CMP, which should also contain travel demand measures and other standards

affecting the circulation system as a whole. Beyond this amendment, however, the Natural Resources Agency cannot remove level of service standards entirely from the Appendix G checklist.

With respect to the commenter's concern on "capacity", see Response SAC-33 for additional discussion.

Comment SAC-35

Commenter urges the need for the CEQA Guidelines to consider bicycle and pedestrian safety. Revise Appendix G: Transportation/Traffic checklist questions and clarify explanatory language in Statement of Reasons.

Response SAC-35

In response to this and other comments raising safety concerns, the Natural Resources Agency revised existing question (g) to specifically ask whether a project would "substantially decrease the ... safety of [transit, bikeway, or pedestrian] facilities?"

Notably, existing question (d) already asks whether a project would increase hazards due to design features or incompatible uses.

Thus, in light of the existing question (d) and the revisions to existing question (g), the CEQA Guidelines contain several tools to examine safety issues. No further revisions are required in response to this comment.

Comment SAC-36

San Francisco Bicycle Coalition

Commenter promotes the use of bicycling as a strategy to reducing greenhouse gas emissions.

Response SAC-36

The Natural Resources Agency notes the commenter's recognition of bicycling being a strategy for reducing greenhouse gas emissions. As this comment is not directed at a particular amendment nor making a suggested change to the Guidelines, no further response is required.

Comment SAC-37

Commenter recommends removing Level of Service from the Appendix G: Initial Study Checklist.

Response SAC-37

See Response SAC-28.

Comment SAC-38

Commenter marginally supports amendments to Appendix G: Transportation/Traffic checklist question (b). LOS is an interesting social effect, not environmental. Congestion management, as an environmental concern, is questionable.

Response SAC-38

See Response SAC-28.

Comment SAC-39

Revise Appendix G: Transportation/Traffic checklist question (a). Replace focus on roadway capacity with a broader direction to consider locally adopted measures of effectiveness. Strike "...exceed the capacity of existing circulation system..." and focus language on conflicts with applicable local plan, ordinance, or policy.

Response SAC-39

In response to comments, the Natural Resources Agency further revised the Appendix G, Section XVI. Subsection (a) changes the focus from an increase in traffic at a given location to the effect of a project on the overall circulation system in the project area. Specifically, the change to subsection (a) recognizes that the lead agency has discretion to choose its own metric of analysis of impacts to intersections, streets, highways and freeways. (Pub. Resources Code, § 21081.2(e); *Eureka Citizens for Responsible Government v. City of Eureka*, (2007) 147 Cal.App.4th 357, 371-373 (lead agency has discretion to choose its methodology).) However, this discretion does not allow a lead agency to rely on speculative or unreasonable methodologies or measures for analysis. Please note the revision does not focus solely on local plans. Projects may impact circulation systems beyond one locality, so reference to other local or regional plans might also be appropriate.

Comment SAC-40

Revise Appendix G: Transportation/Traffic checklist (a). Remove the term "capacity". Capacity is about facilitating the fast convenient movement of motor vehicles and conflicts with the goals of SB 97 and the State's work to address climate change.

Response SAC-40

See Response SAC-39.

Comment SAC-41

Commenter recommends striking “Traffic” from the title of Appendix G Section XVI. The term is redundant or inappropriate for the purposes of CEQA in that it reinforces an automobile oriented perspective for the consideration of circulation and access.

Response SAC-41

The section title reflects the suggestion in Public Resources Code section 21081.2(e) that traffic impacts are appropriately analyzed in CEQA. Therefore, the Natural Resources Agency declines the suggestion to remove the word traffic.

Comment SAC-42

Revise Appendix G: Transportation/Traffic. Replace Level of Service with other metrics such as auto trip generation or vehicle miles traveled.

Response SAC-42

See Response SAC-28.

Comment SAC-43

Commenter recommends removing Level of Service, if not now then soon.

Response SAC-43

See Response SAC-28.

Comment SAC-44**Western States Petroleum Association**

Commenter suggests there is no scientific basis linking GHG emissions from a particular project to the specific physical localized environmental effects. Therefore, the analysis of impacts from GHG emissions must be evaluated in a broader context than most environmental impacts under CEQA.

Response SAC-44

The Initial Statement of Reasons summarized many sources of greenhouse gas emissions and the effects that those collective emissions are having and are expected to have in the future. (Initial Statement of Reasons, at pp. 4-6.) The Initial Statement of Reasons also recognizes that greenhouse gas emissions may result in cumulative impacts that are well suited for programmatic analysis and mitigation. (*Id.* at pp. 53-55.) While the Natural Resources Agency recognizes that greenhouse gas emissions present a

unique challenge in CEQA analyses, it intends that the proposed amendments assist lead agencies in applying existing CEQA rules to that context. (Initial Statement of Reasons, at p. 10.) This comment does not call for any further changes to the proposed amendments.

Comment SAC-45

Commenter recommends an individual project's impacts on climate change must be viewed in the context of the statewide reductions under AB 32, as well as statewide or at least sector-wide GHG emissions.

Response SAC-45

As explained above, 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.

The comment also suggests that a project's emissions should be viewed in the context of sector-wide emissions. This comment appears to reflect the requirement that a lead agency consider cumulative impacts (i.e., the impacts resulting from a project's emissions when added to other past, present and reasonably foreseeable future emissions). The proposed amendments originally contained a new subdivision (f) that would have been added to Section 15130 on cumulative impacts. That subdivision is no longer proposed for adoption because it merely restated the law that cumulative effects of a project must be analyzed. However, the remainder of the rulemaking package does contain several provisions addressing the analysis of greenhouse gas emissions as a cumulative effect. For example, Section 15064(h)(3) and 15130(d) would encourage lead agencies to use existing plans for the reduction of greenhouse gas emissions in cumulative impacts analysis. Additionally, Section 15130(b)(1)(B) is proposed for amendment to allow lead agencies to use projections of emissions contained in certain

plans and models. Thus, the proposed amendments would allow a lead agency to consider a project in the context of other emissions resulting from the same or other sectors. Because the comment appears to support the proposed amendments, no further response is required.

Comment SAC-46

Revise proposed amendments to recognize the importance of the AB 32 Scoping Plan.

Response SAC-46

Reliance on compliance with a plan to demonstrate that a project's incremental contribution to a cumulative problem will not be cumulatively considerable, as provided in section 15064(h)(3) and section 15064.4(b)(3), requires that the plan include binding requirements that will actually improve the cumulative condition. As explained in the Initial Statement of Reasons, the Scoping Plan "is conceptual at this stage and relies on the future development of regulations to implement the strategies identified in the Scoping Plan." (Initial Statement of Reasons, at p. 21.) The Scoping Plan may provide a summary of statewide projections that could be used in a cumulative impacts analysis as provided in section 15130(b)(1)(B). Given the above, the Natural Resources Agency has determined that no further revisions to the CEQA Guidelines are necessary to recognize the Scoping Plan.

Comment SAC-47

Revise proposed amendments to reflect mandated measures and reductions under AB 32. Lead agencies should be able to rely on the AB 32 Scoping plan when determining the significance of environmental impacts when project emission sources are covered by the AB 32 Scoping Plan.

Response SAC-47

As explained in Response SAC-46, above, and in the Initial Statement of Reasons, at page 21, once adopted by the California Air Resources Board, regulations implementing the Scoping Plan may be relevant in an analysis of a project's greenhouse gas emissions, as provided in sections 15064(h)(3) and 15064.4(b)(3). No further revision of the Guidelines is necessary to response to this comment.

Comment SAC-48

Revise Sections 15064(h)(3) and Section 15064.4 to include a qualitative evaluation of whether a project will result in a net increase in energy efficiency or decrease in carbon intensity of the underlying economic activity or the State's overall carbon footprint.

Response SAC-48

The Natural Resources Agency did not revise section 15064(h)(3) or section 15064.4 to include the specific suggestions in this comment for several reasons. First, section 15064(h)(3) addresses the use of plans and regulations in the analysis of cumulative impacts, but does not address qualitative factors generally. The proposed revisions would, therefore, not be appropriate in that section. Second, section 15064.4 addresses the determination of the significance of greenhouse gas emissions. The energy efficiency and carbon intensity associated with a project, standing alone, do not appear to provide information relating to the significance of the greenhouse gases emitted from any particular proposed project. Third, energy efficiency, and by implication carbon intensity, is already addressed in Appendix F of the CEQA Guidelines. Therefore, the Natural Resources Agency has determined that further revision of the CEQA Guidelines is not required in response to this comment. Fourth, a decrease in the state's overall carbon footprint could already be considered in proposed section 15064.4(b)(1), which allows a lead agency to consider the extent to which a project results in an increase or decrease in emissions compared to the existing environmental setting.

Notably, energy efficiency and carbon intensity could be appropriate considerations in the development of a plan for the reduction of greenhouse gas emissions. Such a plan could provide, for example, that in an effort to reach jurisdiction-wide emissions targets, new development must achieve certain specified energy efficiency standards. In that context, an individual project's energy efficiency would play a role in the determination of significance by demonstrating compliance with a plan addressing a cumulative problem as provided in section 15064(h)(3) and 15183.5(b).

Comment SAC-49

Commenter is concerned by categorizing project features, project design and other measures that may be incorporated as mitigation in section 15126.4(c)(2), the proposed amendments imply that a proposed project that includes such features will be considered significant by default. A proposed project with such features should be presumed to be insignificant.

Response SAC-49

As provided in existing section 15126.4(a), mitigation is only required for impacts that are determined to be significant. Thus, changes in project features or design would only be required if the analysis under proposed section 15064.4 determines that the project as proposed would have significant effects. The Natural Resources Agency disagrees that the text in section 15126.4(c)(2) creates a presumption that any project that incorporates greenhouse gas reducing features automatically has a significant effect. On the contrary, that section is consistent with existing section 15126.4(a)(1)(A) which recognizes that project proponents may propose their own mitigation measures.

Moreover, incorporation of measures to reduce energy consumption or greenhouse gas emissions does not create a presumption that the impact of a project is less than significant, absent the analysis called

for in section 15064.4. Significantly, that section has been revised to clarify that the analysis must be supported with scientific and factual data. Further, substantial evidence must support a lead agency's conclusion that any measures incorporated into a project reduce potential impacts related to its greenhouse gas emissions to a less than significant level. Section 15126.4(c) has been revised to clarify that requirement.

No further revision to section 15126.4(c)(2) is necessary in response to this comment.

Comment SAC-50

CalFire

Commenter suggests amendments to Appendix G: Agriculture and Forest Resources capture the immediate impacts of forestland conversion but do not address the impacts associated with rezoning or subdividing forestlands. Impacts of rezoning or subdividing forestlands are not speculative but reasonably foreseeable. Suggested amendments to Appendix G would encourage lead agencies to address the effects of rezoning or subdividing forestlands as early as possible in the CEQA process.

Response SAC-50

The comment suggests numerous additions to the Appendix G checklist regarding forestry impacts. The Natural Resources Agency revised the proposed amendments to those Appendix G checklist questions to add a reference to "timberland zoned Timberland Production." The Agency declines, however, to further revise the text because the Agency finds it to be unnecessary. Conversion, for example, is already addressed in the text in question (d).

In suggesting the additional text, the comment indicates that lead agencies may not fully consider the reasonably foreseeable indirect effects of a rezone if there are no immediate plans to clear the land for development. As indicated above, Appendix G and the existing CEQA Guidelines already call for lead agencies to consider a project's indirect effects. For example, the definition of "effects" expressly includes:

Indirect or secondary effects which are caused by the project and are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect or secondary effects may include growth-inducing effects and other effects related to induced changes in the pattern of land use, population density, or growth rate, and related effects on air and water and other natural systems, including ecosystems.

(State CEQA Guidelines, §15358.) Thus, the specific text suggested in the comment is not necessary.

Comment SAC-51

Clarify that the list of trustee agencies is not exclusive and that other agencies meet the requirements for being a trustee agency. Lead agencies frequently do not consult with CalFire. Amend CEQA Guidelines to establish CalFire as a trustee agency for timberlands under statutory authority for protecting timberlands from fire and resource exploitation under Public Resources Code.

Response SAC-51

Public Resources Code section 21070 defines a “trustee agency” to mean “a state agency that has jurisdiction by law over natural resources affected by a project, that are held in trust for the people of the State of California.” Thus, an agency must exercise jurisdiction over natural resources, that are also trust resources, affected by the project. Whether an agency meets the definition of a trustee agency is a matter of law. No published decision has considered whether CAL FIRE is a trustee agency.

Amending the definition of trustee agency in the CEQA Guidelines to expressly list CALFIRE would not answer the concern expressed in the comment, however. Specifically, the comment states that the CEQA Guidelines need to be amended to ensure that lead agencies consult with CAL FIRE when the resources it protects and maintains are potentially impacted. The CEQA Guidelines already require such consultation. Section 15073(c), for example, states that prior to adopting a negative declaration, the lead agency shall provide notice plus a copy of the initial study to each responsible agency, trustee agency “and every other public agency with jurisdiction by law over resources affected by the project.” Additionally, the Public Resources Code requires that notice of intent to adopt a negative declaration be sent through the State Clearinghouse if a “state agency otherwise has jurisdiction by law with respect to the project.” (Pub. Resources Code, § 21082.1(c)(4)(B).) Thus, the failure of lead agencies to notify CAL FIRE appears to result from a failure to follow existing law, and not a failure of the Guidelines to list CAL FIRE as a trustee agency.

Notably, a lead agency’s failure to follow required procedure can produce harsh results in a lawsuit. For example, the court in *Fall River Wild Trout Foundation v. County of Shasta* (1999) 70 Cal.App.4th 482, 493, presumed a prejudicial error when an agency failed to give required notice to other potentially concerned agencies. In that case, the agency that failed to receive notice was a trustee agency; however, the holding of the case turned on the fact that an agency that was required to receive notice did not. Failure to inform an agency that was required to receive notice, therefore, “deprived the [lead agency] of information necessary to informed decision making and informed public participation.” (*Ibid.*) Thus, a lead agency that fails to provide notice to CAL FIRE of a project with a potential effect on resources over which CAL FIRE exercises jurisdiction commits a prejudicial abuse of discretion. Because the existing statute and CEQA Guidelines already require CAL FIRE to receive notice of projects affecting forest resources, the Natural Resources Agency finds that amendment of the definition of trustee agency is not necessary at this time.

Comment SAC-52**Planning and Conservation League**

Commenter supports amendments to include forest resources in Appendix G checklist.

Response SAC-52

The Natural Resources Agency notes the commenter's support of the amendments to Appendix G, Section II, including the consideration of forest resources.

Comment SAC-53

Commenter is concerned that section 15064.4(a) makes using either a quantitative or qualitative analysis of greenhouse gas emissions entirely discretionary.

Response SAC-53

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(f).) Further, the existing CEQA Guidelines recognize that thresholds of significance, which are used in the determination of significance, may be expressed as quantitative, qualitative or performance-based 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 Irrigated 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.)

Notably, 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.

Comment SAC-54

Section 15064.4(a) may result in lead agencies inadvertently choosing a lesser standard to analyze the environmental effects of a particular project.

Response SAC-54

The comment does not appear to distinguish 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 some evidence 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 briefly 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 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 comment appears to fear, alter the rules governing the sufficiency of information in an environmental document.

Comment SAC-55

Revise Section 15064.4(a) to establish a priority for lead agencies to quantify GHG emissions where possible and establish the use of qualitative standards or performance-based standards can be used for additional informational purposes that’s not necessarily given by strictly quantifying the emissions from a project.

Response SAC-55

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 SAC-53 and SAC-54, above, the Natural Resources Agency is aware of no authority to require a quantitative analysis wherever possible. What is required is a good-faith effort at full disclosure. Section 15064.4 requires such effort for both qualitative and quantitative analyses.

Comment SAC-56

Commenter recognizes the value of considering a project’s region-wide or statewide context. However, doing so in section 15093(d) will result in unnecessary environmental justice concerns.

Response SAC-56

As explained in the Initial Statement of Reasons, was 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 any relative importance of regional or statewide concerns as opposed to local concerns.

To avoid such interpretation, the Natural Resources Agency has further refined Section 15093 in response to 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) placed 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.

Though proposed subdivision (d) was not intended to create environmental justice concerns, the revision should resolve any such concerns by ensuring that region-wide and statewide environmental benefits are considered in the context of a project's adverse environmental impacts, local or otherwise.

Comment SAC-57

Delete Section 15093(d) and address region-wide and statewide benefits in subdivision (a).

Response SAC-57

In response to comments, the Natural Resources Agency further refined Section 15093 to incorporate proposed amendment to subsection (d) with subsection (a). 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. See Response SAC-56, above, for additional discussion.

Comment SAC-58

Commenter is concerned that the amendments to Section 15126.4 are insufficient. Commenter suggests including language on the issue of "additionality". Revise Section 15126.4 to acknowledge a lead agency may prioritize mitigation strategies for the purposes of achieving the most effective mitigation strategies. Commenter recommends the Guidelines highlight the discretion of a lead agency to prioritize on site versus off site mitigation, not simply any strategy that is proposed to reduce greenhouse gas emissions.

Response SAC-58

Relatively little authority addresses the question of whether off-site emissions reductions must be "additional" in order to be adequate mitigation under CEQA. 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[.]” This language expressly links 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 section 21002 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 with or without a project would not normally qualify as mitigation.

“Off-site measures, including offsets are not otherwise required, to mitigate a project’s emissions[.]”

Notably, this interpretation of the CEQA statute and case law is consistent with the Legislature’s directive in AB32 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 AB32 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). This provision is intended to be read in conjunction

with the statutory mandate in Public Resources Code section 21002 that mitigation be tied to the effects of a project. Notably, offsets created pursuant to AB32's market-based compliance mechanism would have to be in addition to existing requirements. This provision would not, however, 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 to subdivision (c)(3) responds to the concern raised in this comment.

Comment SAC-59

Commenter questions the use of offsets as mitigation. The term is undefined in the Guidelines and is a relatively new concept. Commenter suggests addressing offsets in the Statement of Reasons and removing the term from the Guidelines.

Response SAC-59

As described below, policy considerations and legal authority support the inclusion of offsets in section 15126.4(c). 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.

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.) Finally, 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 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 SAC-60

Revise Section 15183.5 to specify a lead agency is required to analyze the remaining greenhouse gas emissions not addressed by the CEQA streamlining provisions provided in SB 375.

Response SAC-60

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. The Natural Resources Agency, therefore, rejects the suggestion to replace “should” with “must”.

Comment SAC-61

Commenter claims that an essential flaw in the Guidelines is not addressing the environmental effects of climate change on the project.

Response SAC-61

The Natural Resources Agency received many comments requesting the Guidelines amendments incorporate the consideration of impacts caused by climate change. In response, section 15126.2 was further revised to clarify the type of analysis that would be required. The sentence provides: “Similarly, the EIR should evaluate the impacts of locating development in other areas susceptible to hazardous conditions (e.g. floodplains, coastlines, wildfire areas, etc.) as identified in authoritative hazard maps, risk assessment or in land use plans addressing such hazardous areas.” Several limitations on the analysis of future hazards, however, should apply. For example, such an analysis may not be relevant if the potential hazard would likely occur sometime after the life of the project (i.e. if sea-level projections any project changes 50 years in the future, a five-year project may not be affected by such change.) Additionally, the degree of analysis should correspond to the probability of the potential hazard. (State CEQA Guidelines, section 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 within 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”) (emphasis added).)

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 SAC-62

Revise Section 15126.2 to add reference to the 2009 Draft California Adaptation Strategy.

Response SAC-62

Several comments submitted as part of the Natural Resources Agency’s SB97 rulemaking process made reference to or urged incorporating the draft Adaptation Strategy into the CEQA Guidelines. In considering such comments, it is important to understand several key differences between the California Adaptation Strategy and the California Environmental Quality Act. First, the Adaptation Strategy is a policy statement that contains recommendations; it is not a binding regulatory document. Second, the focus of the Adaptation Strategy is on how we can change in response to climate change.

CEQA's focus, on the other hand, is the analysis of greenhouse gas emissions from a particular project, and mitigation of those emissions if they are significant. Given these differences, CEQA should not be viewed as the tool to implement the Adaptation Strategy; rather, as indicated in the Strategy's key recommendations, advanced programmatic planning is the primary method to implement the Adaptation Strategies.

There is some overlap between CEQA and Adaptation, however. As explained in both the Initial Statement of Reasons and in the Draft Adaptation Strategy, section 15126.2 may require the analysis of the effects of a changing climate under certain circumstances. 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. 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. See Response SAC-2 for additional discussion.

Comment SAC-63

Allan Lind and Associates

Commenter requests clarification of whether the Guidelines amendments apply to CEQA-equivalent review processes.

Response SAC-63

The proposed amendments do not alter requirements governing certified regulatory programs. The Fourth District Court of Appeal, in *City of Arcadia v. State Water Resources Control Bd.* (2006) 135 Cal. App. 4th 1392, recently explained:

The guidelines for implementation of CEQA (Cal. Code Regs., tit. 14, § 15000 et seq.) do not directly apply to a certified regulatory program's environmental document. (2 Kostka & Zischke, *Practice Under the Cal. Environmental Quality Act*, supra, § 21.10, p. 1086.) However, "[w]hen conducting its environmental review and preparing its documentation, a certified regulatory program is subject to the broad policy goals and substantive standards of CEQA." (*Ibid.*)

(*Id.* at 1422.) Thus, the substantive standards of CEQA underlying the proposed amendments, including the requirement to analyze project impacts and mitigate those impacts if they are significant, would continue to apply to certified regulatory programs.

Comment SAC-64

Commenter requested clarification of whether a project is being approved through a CEQA-equivalent process would have to recognize the proposed Guideline amendments for greenhouse gas emissions.

Response SAC-64

See Response SAC-63.

Comment SAC-65

Commenter requests that the Guidelines clearly explain how CEQA applies to projects that are required for implementation of AB32.

Response SAC-65

As a general matter, CEQA requires analysis and mitigation of a project's significant adverse environmental impacts, even if that project may be considered environmentally beneficial overall. As the Third District Court of Appeal recently explained:

“[I]t cannot be assumed that activities intended to protect or preserve the environment are immune from environmental review. [Citations.]” There may be environmental costs to an environmentally beneficial project, which must be considered and assessed.

(*Cal. Farm Bureau Fed. v. Cal. Wildlife Cons. Bd.* (2006) 143 Cal. App. 4th 173, 196.) Nothing in SB97 altered this rule. Thus, lead agencies must consider whether the greenhouse gas emissions resulting from facilities that produce fuel consistent with the low carbon fuel standard may be significant, and if so, whether any feasible measures exist to mitigate those emissions. If such emissions are found to be significant and unavoidable, proposed amendments to section 15093 would expressly allow lead agencies to consider the region-wide and statewide environmental benefits of a project in determining whether project benefits outweigh its adverse environmental impacts.

Notably, CEQA only applies to discretionary projects. Thus, to the extent that a regulation “requires” a project such that implementation is a ministerial duty, CEQA would not apply. (State CEQA Guidelines, § 15268.)

No further revision is required in response to this comment.

Comment SAC-66

Commenter suggests the Guidelines amendments may hinder the State's ability to meet its renewable energy goals by discouraging the development of new power plants.

Response SAC-66

The comment argues that requiring analysis and mitigation of greenhouse gas emissions associated with certain new power generation facilities may discourage new energy development. It points to two potential benefits of new power facilities: (1) supporting the use of renewable power by providing system reliability, and (2) displacing less efficient power generators from the power system.

As explained above, CEQA requires analysis and mitigation of a project's significant adverse environmental impacts, even if that project may be considered environmentally beneficial overall. To the extent a project would result in actual reductions in greenhouse gas emissions compared to the existing environmental setting, and substantial evidence demonstrates that reduction, proposed section 15064.4(b)(1) would allow a lead agency to consider that decrease in determining whether the project's emissions are significant.

Comment SAC-67

Commenter recommends that the Guidelines provide consideration to a more systematic examination of a particular project where it fits in the context of statewide policies and goals.

Response SAC-67

See Responses SAC-65 and SAC-66, above.

Comment SAC-68

Clarify the relationship of indirect effects and CEQA with respect to GHG emissions. The indirect effect of GHG emissions extend beyond the project site and the geographic area affected.

Response SAC-68

As explained in the Initial Statement of Reasons, the analysis of greenhouse gas emissions should follow existing CEQA rules. Changes to the CEQA Guidelines were only proposed where the analysis or mitigation of greenhouse gas emissions should differ in some respect from other impacts. (Initial Statement of Reasons, at p. 10.) Section 15064(d) explains the limits of an analysis of indirect effects. Nothing before the Natural Resources Agency suggests that those existing rules do not adequately address the indirect effects of greenhouse gas emissions. Section 15358(a)(2), already defines indirect effects and will apply to the analysis of greenhouse gas emissions just as it does to other potential impacts. The Natural Resources Agency disagrees that reiteration of the definition of indirect effects is

necessary because the proposed amendments are intended to be read in conjunction with the existing guidelines. Further, reiteration of existing Guidelines provision would not satisfy the nonduplication standard in the Administrative Procedure Act. (Government Code, § 11349(f).) Therefore, no further guidance is needed.

Comment SAC-69

Commenter recommends the Guidelines to direct lead agencies to consider how CEQA obligations could change after 2012 when AB 32 regulations are expected to be implemented.

Response SAC-69

In accordance with SB 97, the Natural Resources Agency is required to periodically update the CEQA Guidelines to incorporate new information or criteria established by the California Air Resources Board (CARB) pursuant to AB 32. As of the date Resources initiated its rulemaking to adopt amendments to the CEQA Guidelines, CARB was in its initial stages of developing regulations pursuant to AB 32. Amendments to section 15064(h)(3) and section 15064.4(b)(3), recognize that regulations implementing AB32 may be relevant in determining the significance of greenhouse gas emissions, and are drafted broadly enough to account for a changing regulatory environment.

Comment SAC-70

California Independent Energy Producers Association

Commenter recommends that greenhouse gas emissions associated with new power plants should be addressed on a systematic level. Analysis of a power plant on a project-by-project level may delay new power plant siting and lead to serious system reliability issues.

Response SAC-70

To the extent this comment suggests that the CEQA Guidelines should contain language that addresses a specific industry or type of project, the Natural Resources Agency declines to revise the proposed amendments as suggested. The proposed amendments must be broad enough to encompass all types of projects that may be proposed. The concepts expressed in the proposed amendments should apply broadly enough to allow the California Energy Commission or local lead agencies to evaluate unique power generation projects. For example, section 15064.4, on the determination of significance of greenhouse gas emissions, states that the determination of significance “calls for a careful judgment by the lead agency,” and “in the context of the particular project,” after making “a good-faith effort, based to the extent possible on scientific and factual data, to describe, calculate or estimate the amount of greenhouse gas emissions resulting from a project.” Section 15064.4(b)(1), in particular, states that agencies should consider the extent to which the project results in an increase or a decrease in greenhouse gas emissions compared to the existing environmental setting. This section reflects the existing CEQA rule in section 15125 of the State CEQA Guidelines that project impacts should normally

be compared against the environment as it exists at the time that environmental review is performed. (Initial Statement of Reasons, at p. 20.) In performing this analysis, a lead agency would need to account for all project components, and both direct and indirect impacts. (State CEQA Guidelines, §§ 15358, 15378.) Thus, to the extent that a project would cause changes in greenhouse gas emissions in an existing system, and substantial evidence substantiates such changes, those changes may be considered pursuant to section 15064.4(b)(1).

No further revisions are necessary in response to this comment.

Comment SAC-71

Commenter supports Section 15064.4(a) which gives a lead agency the discretion to consider both a qualitative and quantitative approaches. Commenter recommends that the reference in section 15064.4(b)(1) to environmental setting should be deleted. The subsection may be interpreted to read a lead agency consider the local environment immediate to the project location rather than the GHG emissions of a system as a whole.

Response SAC-71

The Natural Resources Agency appreciates the commenter's support of Section 15064.4(a).

The Natural Resources Agency, however, declines to delete "environmental setting" from subsection (b)(1). Section 15064.4(b)(1) advises lead agencies to consider the extent to which a project would increase or decrease greenhouse gas emissions compared to the existing environmental setting. The "setting" to be described varies depending on the project and the potential environmental resources that it may affect. In *Friends of the Eel River v. Sonoma County Water Agency* (2003) 108 Cal. App. 4th 859, for example, the lead agency failed to adequately describe the environmental setting by limiting its discussion primarily to the southern portions of its water system. Framing the setting narrowly resulted in impacts to the northern portion of the water system being ignored. Finding that section 15125 is to be construed broadly to ensure the fullest protection to the environment, the court in that case held that the lead agency was required to disclose that increase use of the southern portion of the water system would require greater diversions from the northern portion, and to analyze the impacts on species in the northern portion of the system. (*Id.* at pp. 873-875.) In the context of power generation, to the extent that a project may cause changes in greenhouse gas emissions in an existing power system, and substantial evidence substantiates such changes, those changes may be considered pursuant to section 15064.4(b)(1). Thus, section 15064.4(b)(1) does ensure that decision-makers and the public will be fully informed of a project's potential impacts related to greenhouse gas emissions.

Comment SAC-72**San Francisco County Transportation Authority**

Commenter finds the amendments to Appendix G: Transportation/Traffic checklist will support lead agencies undergoing review of smart growth projects, transit first project, and others that advance local climate plan goals.

Response SAC-72

The Natural Resources Agency notes Commenter's support. As explained in the Notice of Proposed Changes, the revised text to Section XVI "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." Revisions to Section XVI question (a) provide greater latitude of choices for performance standards. Similarly, revisions to question (b) put level of service standards in the broader context of an entire congestion management plan, which should also contain travel demand measures and other standards affecting the circulation system as a whole.

Comment SAC-73

Commenter recommends removing the explicit reference to automobile level of service or delay at intersections as an appropriate measure of transportation impacts.

Response SAC-73

The Natural Resources Agency acknowledges the concern expressed by this and other comments concerning the use of level of service metrics in a CEQA analysis. The Office of Planning and Research and the Natural Resources Agency have participated in extensive outreach with stakeholder groups to revise question (a) in the transportation section of Appendix G to accomplish the following goals:

- Assess traffic impacts on intersections, streets, highways and freeways as well as impacts to pedestrian, non-vehicular and mass-transit circulation
- Recognize a lead agency's discretion to choose methodology, including LOS, to assess traffic impacts
- Consistent with existing requirements in congestion management programs, general plans, ordinances, and elsewhere

In response to public comments submitted on proposed amendments, the Natural Resources Agency further refined question (a) to shift the focus from the capacity of the circulation system to consistency with applicable plans, policies, and other objective measures of effectiveness.

Question (b) still refers to level of service standards, but does so in the context of a congestion management program. Government Code section 65088, and following, requires Congestion

Management Agencies, in urbanized areas, to adopt Congestion Management Programs covering that agency's cities and county, and in consultation with local governments, transportation planning agencies, and air quality management districts. A CMP must, pursuant to statute, contain level of service standards for certain designated roadways. A CMP must also include a land use analysis program to assess the impact of land use decisions on the regional transportation system. A CMA may require that land use analysis to occur through the CEQA process. Thus, level of service standards cannot be deleted from the Appendix G checklist altogether.

The proposed amendments did amend question (b) to put level of service standards in the broader context of the entire CMP, which should also contain travel demand measures and other standards affecting the circulation system as a whole. Beyond this amendment, however, the Natural Resources Agency cannot remove level of service standards entirely from the Appendix G checklist.

Comment SAC-74

Commenter finds that the proposed amendments to Appendix G: Transportation/Traffic will encourage lead agencies to consider other, more appropriate transportation measures, given the context of the project.

Response SAC-74

As explained above, the Natural Resources Agency's proposed amendments to question (a) would recognize a lead agency's discretion to choose its own methodology for analyzing impacts to the circulation system. Thus, if adopted through a public process in a plan, policy or ordinance, a lead agency could use non-LOS measures of effectiveness. No further response is required to address this comment.

Comment SAC-75

The Appendix G: Transportation/Traffic checklist should be revised to focus more broadly on how the transportation system performance may be negatively impacted by a project, and not on whether the project may exceed the capacity of the existing transportation system.

Response SAC-75

As explained in Response SAC-73, in response to public comments submitted on proposed amendments, the Natural Resources Agency further refined question (a) to shift the focus from the capacity of the circulation system to consistency with applicable plans, policies, and other objective measures of effectiveness. No further response is necessary to address this comment.

Comment SAC-76

The Appendix G: Transportation/Traffic checklist should be revised to recognize a broad range of transportation measures and allow flexibility for a lead agency to choose the most appropriate given the context of the project.

Response SAC-76

See Response SAC-73.

Comment SAC-77

Nature Conservancy

Commenter supports the addition of forestry resources to Appendix G: Agriculture and Forest Resources.

Response SAC-77

The Natural Resources Agency appreciates the commenter's support of revisions to Appendix G, Section II to include forest resources.

Comment SAC-78

Section 15064.4 should require lead agencies to quantify emissions.

Response SAC-78

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(f).) Further, the existing CEQA Guidelines recognize that thresholds of significance, which are used in the determination of significance, may be expressed as quantitative, qualitative or performance-based 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 Irrigated 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.)

Notably, 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.

Comment SAC-79

Commenter recommends incorporating adaptation to climate change impacts in the Guidelines but recognizes time constraints.

Response SAC-79

The Natural Resources Agency received many comments requesting the Guidelines amendments incorporate the consideration of impacts cause by climate change. In response, section 15126.2 was further revised to clarify the type of analysis that would be required. The sentence provides: “Similarly, the EIR should evaluate the impacts of locating development in other areas susceptible to hazardous conditions (e.g. floodplains, coastlines, wildfire areas, etc.) as identified in authoritative hazard maps,

risk assessment or in land use plans addressing such hazards areas.” Several limitations on the analysis of future hazards, however, should apply. For example, such an analysis may not be relevant if the potential hazard would likely occur sometime after the life of the project (i.e. if sea-level projections any project changes 50 years in the future, a five-year project may not be affected by such change.) Additionally, the degree of analysis should correspond to the probability of the potential hazard. (State CEQA Guidelines, section 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 within 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”) (emphasis added).)

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 SAC-80

Commenter supports comments made by CalFire to revise Guidelines to address impacts of rezoning and subdivisions as it relates to conversion of forest lands.

Response SAC-80

As explained in Response SAC-50, the Natural Resources Agency revised the proposed amendments to those Appendix G checklist questions to add a reference to “timberland zoned Timberland Production.” The Agency declines, however, to incorporate the suggested text by CalFire because the Agency finds it to be unnecessary. See Response SAC-50 for additional discussion.

Comment SAC-81**East Bay Bicycle Coalition**

Revise Appendix G: Transportation/Traffic checklist question (a). The term “bicycle paths” is outdated and should be changed to “bikeways”. Bikeways is a broader term, encompassing all aspects of the bicycle transportation system and consistent with CalTrans Highway Design Manual.

Response SAC-81

Revisions to Appendix G, Section XVI question (a) calls for discussion of consistency with an applicable plan, ordinance, or policy. The question, however, is not intended to be exclusive and encourages lead agencies to consider other aspects of a circulation system in an analysis. Furthermore, the revisions refocus question (a) to allow consideration of the circulation system as a whole, which includes the components of the bicycle infrastructure. The commenter’s suggestion would not provide more clarity to lead agencies when assessing impacts. The Natural Resources Agency, therefore, rejects this comment.

Comment SAC-82

Revise Appendix G: Transportation/Traffic checklist. Delete the example of “bicycle racks”. Having this in the checklist may suggest a bike rack is adequate mitigation and does not address bicycle or pedestrian safety.

Comment SAC-82

In response to comments, the Natural Resources Agency further revised checklist question (f). The question now provides: “(would the project) conflict with adopted policies, plans, or programs regarding public transit, bikeways, or pedestrian facilities, or otherwise substantially decrease the performance or safety of such facilities?” The Natural Resources Agency this revision sufficiently addresses this comment. No further revision to the text is required to respond to this comment.