

Letter 103

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Comment 103-1

Commenter is concerned that the listed plans in Section 15064(h)(3) do not address groundwater management. Public agencies do not have complete jurisdiction over a basin and, therefore, mitigation cannot be fully enforceable.

Response 103-1

Section 15064(h)(3) as proposed to be amended provides “[A] lead agency may determine that project’s incremental contribution to a cumulative effect is not cumulatively considerable if the project will comply with the requirements in a previously approved plan or mitigation program (including, but not limited to, water quality control plan, air attainment or maintenance plan, integrated waste management plan, habitat conservation plan, natural community conservation plan, plans or regulations for the reduction of greenhouse gas emissions) that provides specific requirements that will avoid or substantially lessen the cumulative problem within the geographic area in which the project is located.”

The comment suggests a plan for groundwater management be added to this list. First, the Natural Resources Agency intentionally left it to the discretion of the lead agency to determine which plans apply under Section 15064(h)(3). Second, the Natural Resources Agency amended this section to include the phrase “including, but not limited to” with the express intent that this list should not be assumed to be exhaustive. To that end, nothing in the amendments prohibits a lead agency from utilizing a plan which addresses groundwater management if applicable under this section. For the reasons above, the Natural Resources Agency rejects this comment.

Comment 103-2

Commenter believes that water governance is not clearly defined, the public does not know their rights, and public agencies are not certain as to their jurisdictional issues such as water rights, contamination, and methane mitigation.

Response 103-2

The Natural Resources Agency is only required to respond to comments concerning the proposed action (i.e., the text of the proposed amendments) or to the procedures followed in proposing or adopting the

proposed action. (Government Code, § 11346.9(a)(3).) Comments on California's overall water governance, contamination, and mitigation do not address this rulemaking. Though responses to comments such as this are not required, the Natural Resources Agency provides the following response.

The primary purpose of the proposed amendments is to update the CEQA Guidelines on the analysis and mitigation of greenhouse gas emissions. The amendments to certain sections provide clarity and guidance to lead agencies on what would constitute an adequate analysis and appropriate mitigation. To that end, should a lead agency determine a project's methane emissions to be significant, mitigation under CEQA would be required to be fully enforceable. (State CEQA Guidelines Section 15126.4(a)(2).) This comment is not seeking to further revise the amendments or Guidelines, no further response is necessary to address this comment.

Comment 103-3

Commenter states that an Integrated Regional Water Management Plan may list projects in a particular region but the jurisdiction is limited to the property owner residing within its boundaries. Only some issues are addressed by the plan, suggesting that fact alone requires an EIR but rarely is the case. The only resolution is having the citizen take judicial action.

Response 103-3

The Natural Resources Agency is only required to respond to comments concerning the proposed action (i.e., the text of the proposed amendments) or to the procedures followed in proposing or adopting the proposed action. (Government Code, § 11346.9(a)(3).) Comments on jurisdictional boundaries and the adequacy of an Integrated Regional Water Management Plan are not relative to this rulemaking. Though responses to comments such as this are not required, the Natural Resources Agency provides the following response.

To the extent that the comment suggests that not all plans would fully address a project's cumulative impacts, section 15064(h)(3) contains two safeguards. First, as explained in the Initial Statement of Reasons: In addition to augmenting the list of plans and regulations that give rise to the presumption that a project's contribution is not cumulatively considerable, the Proposed Amendments also contain explanatory language designed to ensure that the plan or regulation relied on in a cumulative impacts analysis actually addresses the cumulative effect of concern. This language is necessary to avoid misapplication of subdivision (h)(3). ... Thus, by requiring that lead agencies draw a link between the project and the specific provisions of a binding plan or regulation, section 15064(h)(3) would ensure that cumulative effects of the project are actually addressed by the plan or regulation in question. [¶] Demonstrating that compliance with a plan addresses a cumulative problem is already impliedly required by CEQA. For example, an initial study must include sufficient information to support its conclusions. (State CEQA Guidelines, § 15063(d)(3).) Similarly, section 15128 requires a lead agency to explain briefly the reasons that an impact is determined to be less than significant and therefore was not

analyzed in an EIR. The added sentence, therefore, reflects existing law and is necessary to ensure that plans are not misapplied in a CEQA analysis.

Second, the last sentence in Section 15064(h)(3) states: "If there is substantial evidence that the possible effects of a particular project are still cumulatively considerable notwithstanding that the project complies with the specified plan or mitigation program addressing the cumulative problem, an EIR must be prepared for the project." That sentence implements the holding in the *Communities for a Better Environment v. Resources Agency* (2002) 103 Cal.App.4th 98, 115-116 ("CBE") case requiring incorporation of the fair argument standard into a lead agency's consideration of the effect of a project's consistency with regulations. Thus, if substantial evidence indicates that a particular plan does not address the cumulative effects of a project, then an EIR would need to be prepared. No further revisions are required to address the concern raised in this comment.

Comment 103-4

Commenter questions the meaning of the phrase "careful judgment" in Section 15064.4(a).

Response 103-4

The phrase "careful judgment" in Section 15064.4(a) calls this to the attention of the lead agency. Similar to Section 15064(b), proposed Section 15064.4 on the determination of significance of GHG emissions reflects the existing CEQA principle that there is no iron-clad definition of "significance". To that end, Section 15064.4 is designed to assist a lead agency in performing a CEQA review to investigate and disclose all that it reasonably can with regards to a project's potential adverse impacts.

Comment 103-5

Commenter questions a lead agency's discretion to use a model or methodology because the public will not have an understanding of the science involved to support a decision. Lacking a "State Clearinghouse for the Depository of Scientific and Factual Data" the public will be at a disadvantage to access information.

Response 103-5

The State CEQA Guidelines specifically site, where appropriate, that a lead agency should make a good-faith effort, *based to the extent possible on scientific and factual data*. (Section 15064, 15064.7, Appendix G.) A lead agency is required to determine whether the project may have a significant effect based on substantial evidence in light of the whole record. (Section 21082.2 of the Public Resource Code.) Lastly, lead agencies are required EIR's to be written in plain language so that the public can rapidly understand the documents. (See State CEQA Guidelines Section 15140.)

If this comment suggests the creation of a “State Clearinghouse for the Depository of Scientific and Factual Data”, the Natural Resources Agency declines to do so. The Natural Resources Agency does however maintain the California Environmental Resource Evaluation System (CERES), which contains the Land Use Planning Information Network (LUPIN) which holds data sources on land use, text of CEQA, regulations, advisories, CEQA court cases, or other information related to CEQA. This comment is not seeking additional revisions to the amendments, so no further response is necessary.

Comment 103-6

Commenter questions the phrases “among others” and “relevant public agency” in Section 15064.4. These are undefined.

Response 103-6

Section 15064.4 addresses the determination of the significance of greenhouse gas emissions. As explained in the Initial Statement of Reasons, this section is designed to assist a lead agency with fulfilling its requirements under CEQA to investigate and mitigate potential adverse impacts. To that end, the Natural Resources Agency provided a list of factors a lead agency should consider when conducting an analysis on GHG emissions. The phrase “among others” expressly implies this list is not exhaustive. Should factors not listed be appropriate in the context of a project’s conditions or characteristics, the lead agency is free to employ them.

Subsection 15064.4(b)(3) is intended to be read in conjunction with subsection 15064(h)(3), as proposed to be amended, and proposed section 15183.5. Those sections each indicate that local and regional plans may be developed to reduce GHG emissions. If such plans reduce community-wide emissions below a level that is significant, a later project that complies with the requirements in such a plan may be found to have a less than significant impact. The phrase “relevant public agency” is meant to clarify that should a lead agency rely on 15064.4(b)(3), it can only do so if the particular public agency that has developed and adopted a regulation or requirements has authority to do so. The comment is not seeking to make additional revisions to the amendments, no further response is necessary to address this comment.

Comment 103-7

Commenter questions the validity of Section 15064.7. Lacking a procedure for review, comment, and feedback, there will be no sound scientific foundation on which to base decisions.

Response 103-7

The Natural Resources Agency respectfully disagrees. Proposed subdivision (c) of section 15064.7 recognizes that experts, such as the California Air Pollution Control Officer’s Association, and expert

agencies may be developing thresholds that other public agencies may find useful in their own CEQA analyses, but requiring, as a safeguard, that any such threshold be supported with substantial evidence. In other words, compliance with a threshold cannot be used to foreclose consideration of substantial evidence supporting a fair argument that an impact is significant despite compliance with a threshold. (*Protect the Historic Amador Waterways, supra*, 116 Cal.App.4th at pp. 1108-1109.)

Nothing in CEQA requires that thresholds must be developed by experts or expert agencies; however, “thresholds can be drawn from existing environmental standards, such as other statutes or regulations.” (*Id.* at p. 1107.) Regardless of who develops the threshold, if an agency adopts a threshold, it must be supported with substantial evidence. (State CEQA Guidelines, § 15064.7(b).) Additionally, “thresholds cannot be used to determine automatically whether a given effect will or will not be significant[;]” “[i]nstead, thresholds of significance can be used only as a measure of whether a certain environmental effect “will *normally* be determined to be significant” or “*normally* will be determined to be less than significant” by the agency. (Guidelines, § 15064.7, subd. (a), italics added.)” (*Protect the Historic Amador Waterways, supra*, 116 Cal.App.4th at pp. 1108-1109.) Proposed section 15064.7(c) is consistent with these principles, no further revisions to the text is required to respond to this comment.

Comment 103-8

Commenter believes all environmental documents should be processed by the State Clearinghouse for regional offices to comment. Rural regions are at a greater disadvantage while urban regions are in a more advantageous position to receive benefits. Lacking an administrative record and scientific depository, the CEQA process is irrelevant.

Response 103-8

The Natural Resources Agency is only required to respond to comments concerning the proposed action (i.e., the text of the proposed amendments) or to the procedures followed in proposing or adopting the proposed action. (Government Code, § 11346.9(a)(3).) Comments on CEQA’s substantive and procedural requirements are not relative to this rulemaking. Though responses to comments such as this are not required, the Natural Resources Agency provides the following response.

Existing State CEQA Guidelines sections 15205 and 15206 describe when an environmental document must be circulated through the State Clearinghouse. To the extent the comment suggests that environmental benefits in one region may cause environmental harm in another region, section 15093 would only be relevant if a lead agency has already analyzed all potentially significant impacts and determines to proceed with a project despite its significant and unavoidable impacts. Thus, any adverse environmental impacts would be analyzed. No further revisions are necessary in response to this comment.

Comment 103-9

Commenter suggests that lead agencies should be required to disclose geographic areas or jurisdictions that are not enforceable and to list jurisdictions that have multiple agencies. Streamlining jurisdictional responsibilities would enhance the process.

Response 103-9

The Natural Resources Agency is only required to respond to comments concerning the proposed action (i.e., the text of the proposed amendments) or to the procedures followed in proposing or adopting the proposed action. (Government Code, § 11346.9(a)(3).) Comments on CEQA's substantive and procedural requirements are not relative to this rulemaking. Though responses to comments such as this are not required, the Natural Resources Agency provides the following response.

A lead agency is required to include a description of the physical environmental conditions in the vicinity of the project. (State CEQA Guidelines, § 15125.) Furthermore, the Guidelines recognize the importance of the regional setting when assessing environmental impacts. (*Id.* at § 15125(c).) In determining whether to prepare an EIR, a lead agency must formally consult with responsible and trustee agencies. Additionally, lead agencies may also informally consult with any other agency with jurisdiction over resources affected by the proposed project. (Public Resources Code, §21080.3.) No further revisions are required in response to this comment.

Comment 103-10

Commenter suggests expanding the list of plans referenced in Section 15126.2(a) to include landfills and oil fields and/or methane zone hazards. These categories are not usually addressed in land use plans.

Response 103-10

The Natural Resources Agency declines to expand the list of plans reference in Section 15126.2(a). That list is not exclusive. Should an authoritative hazard map, which is not exclusive to land use plans, be applicable to an area proposed for development, the lead agency may take that into consideration. The Natural Resources Agency believes the revisions to this section are adequate to address the changes this comment seeks.

Comment 103-11

Commenter states oil fields are difficult to map and records are often destroyed.

Response 103-11

The Natural Resources Agency is only required to respond to comments concerning the proposed action (i.e., the text of the proposed amendments) or to the procedures followed in proposing or adopting the

proposed action. (Government Code, § 11346.9(a)(3).) The comment is not directed at the rulemaking and general in nature, no response is required.

Comment 103-12

Commenter believes uses of nonrenewable resources in the initial and continued phases of a project commit future generations to similar uses. Lead agencies should be required to assess environmental damage as a result of committing resources to fill this continuing need for resources.

Response 103-12

The Natural Resources Agency is only required to respond to comments concerning the proposed action (i.e., the text of the proposed amendments) or to the procedures followed in proposing or adopting the proposed action. (Government Code, § 11346.9(a)(3).) Section 15126.2(b), to which the comment refers, is not proposed for revision in this rulemaking activity.

Comment 103-13

Commenter requests how the public is made aware of CEQA requirements in light of Section 15127 (Limitations on Discussion of Environmental Impacts). The National Environmental Policy Act are federal requirements, not state, and most ordinances and policy changes do not undergo CEQA review.

Response 103-13

The Natural Resources Agency is only required to respond to comments concerning the proposed action (i.e., the text of the proposed amendments) or to the procedures followed in proposing or adopting the proposed action. (Government Code, § 11346.9(a)(3).)

Section 15127 applies in a limited number of instances and is read in conjunction with Section 15126.2(c). Specifically, section 15127 puts an additional content requirement for the types of projects listed in that section. The Natural Resources Agency does not propose to amend that section as part of this rulemaking activity.

Comment 103-14

Commenter believes sequestration is a method guided by geographic and geological considerations. The Guidelines should state that sequestration is only allowed in non-hazardous areas because California is highly susceptible to earthquakes.

Response 103-14

This comment suggests the amendments further define the appropriateness and applicability of sequestration as a mitigation method for GHG emissions. The Natural Resources Agency declines to do so. As explained in the Initial Statement of Reasons, sequestration may be appropriate means to mitigate a project's GHG emissions below a level of significance. (Initial Statement of Reasons, at pg. 38.), (Section 15126.4(c)(4).) Consistent with Section 15126.4(a), a lead agency must support its choice of and its determination of the effectiveness of, any reduction measure with substantial evidence. If there is evidence in the record to support a fair argument that sequestration in a seismically active or hazardous area will result in adverse impacts, that evidence would need to be considered. (State CEQA Guidelines, §15126.4(a)(1)(D).)

Comment 103-15

Commenter requests that the consumption of energy associated with water use be considered.

Response 103-15

Appendix F addresses the energy implications of a project and is a mandatory element of a CEQA review. Amendments made to Appendix F further recognize water as having a related role in a project's energy consumption. Consistent with the direction of section 21100(b)(3) of the Public Resources Code, should a project's water related energy consumption be excessive or inefficient, CEQA would require a lead agency addresses these issues.

Comment 103-16

Commenter requests that groundwater contamination be addressed. Groundwater is likely to become a more significant resource in the future, particularly in light of climate change and shifting weather patterns. Drought and 50-year, 100-year, and 500-year impacts need to be considered across multi-state regions. The loss of Sierra-Nevada snowpack is a loss of water to the state.

Response 103-16

Water supply variability, including groundwater supply, is an issue that has already been addressed in depth in recent CEQA cases. (See, e.g., *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 434-435 ("If the uncertainties inherent in long-term land use and water planning make it impossible to confidently identify the future water sources, an EIR may satisfy CEQA if it acknowledges the degree of uncertainty involved, discusses the reasonably foreseeable alternatives-including alternative water sources and the option of curtailing the development if sufficient water is not available for later phases-and discloses the significant foreseeable environmental effects of each alternative, as well as mitigation measures to minimize each adverse impact.")) Further,

legislation has been developed to ensure that lead agencies identify adequate water supplies to serve projects many years in the future under variable water conditions. (See, e.g., Water Code, § 10910 et seq.; Government Code, § 66473.7; see also State CEQA Guidelines, § 15155.) Thus, further revision of the CEQA Guidelines is not required in response to this comment.

Comment 103-17

Commenter believes there is little governance in the State Water Plan and it does not adequately address the complexity of the state's water issues.

Response 103-17

The Natural Resources Agency is only required to respond to comments concerning the proposed action (i.e., the text of the proposed amendments) or to the procedures followed in proposing or adopting the proposed action. (Government Code, § 11346.9(a)(3).) Comments on California State Water Law are beyond the scope of this rulemaking. No response is required to address this comment.

Comment 103-18

Commenter believes that the amendments avoid the controversial issue of desalination and only a fraction of "greenhouse gas emissions" are discussed while other aspects such as sea level rise or water and air contamination due to forest fires are ignored.

Response 103-18

SB 97 directed the Office of Planning and Research and the Natural Resources Agency to develop and adopt amendments specific for greenhouse gas emissions. Nothing in that directive indicated intent to develop amendments for issues surrounding desalination or general air contaminants. To the extent this comment suggests the Natural Resources Agency should do so, the comment goes beyond the scope of this rulemaking.

The comment seemingly indicates the amendments do not adequately address greenhouse gas emissions. The Natural Resources Agency disagrees and believes the amendments fulfill the directive in SB 97. Of the other concerns raised, as explained in Response 103-16, the amendments to Section 15126.4(a) are intended to clarify the type of analysis that would be required when considering impacts from a changing climate, which specifically include sea level rise and wildfire risk areas. Appendix G Section IX specifically addresses potential hydrologic and water quality impacts. Therefore, multiple tools are available to lead agencies to satisfy the requirements of a CEQA review.

Comment 103-19

Commenter believes that geology and soils are not addressed as groundwater recharge assets as a vehicle of consumption.

Response 103-19

The Natural Resources Agency is only required to respond to comments concerning the proposed action (i.e., the text of the proposed amendments) or to the procedures followed in proposing or adopting the proposed action. (Government Code, § 11346.9(a)(3).) Comments on an area's geologic and soil characteristics and groundwater recharge capabilities exceed the scope of this rulemaking. Though responses to comments such as this are not required, the Natural Resources Agency provides the following response.

Appendix G has multiple sections addressing geology, soils, and groundwater. For example, Section IX: Hydrology and Water Quality question (b) provides: “[would the project] substantially deplete groundwater supplies of interfere substantially with groundwater recharge such that there would be a net deficit in aquifer volume or a lowering of the local groundwater table level (e.g. the production rate or preexisting nearby wells would drop to a level which would not support existing land uses or planning uses for which permits have been granted)?”

Comment 103-20

Commenter states recycled water is not discussed in CEQA. There is no consumer protection in the process of selling, processing, and reselling wastewater. Thus, there is no plan or guarantee that the paying public will receive return on their investment.

Response 103-20

The Natural Resources Agency is only required to respond to comments concerning the proposed action (i.e., the text of the proposed amendments) or to the procedures followed in proposing or adopting the proposed action. (Government Code, § 11346.9(a)(3).) Comments on recycled water exceed the scope of this rulemaking. Though responses to comments such as this are not required, the Natural Resources Agency provides the following response.

Comment 103-21

Commenter believes the public will remain unaware of a growing industry to resell wastewater that has already been paid for.

Response 103-21

See Response 103-20, above.

Comment 103-22

Commenter believes environmental documents produced for renewable energy projects do not accurately reflect the requirements of a CEQA review. An energy project in one county will have an EIR but the energy is consumed in another. There is no requirement to distribute the document to the public affected in the other county.

Response 103-22

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 to do so. The proposed amendments must be broad enough to encompass all types of projects that may be proposed.

In general, CEQA does require a lead agency to consult with trustee and responsible agencies that may be involved in the approval process. In addition, when preparing an EIR, the lead agency must consult and seek comments from every public agency that has jurisdiction by law with respect to the project; each city or county that borders on a city or county within which the project is located; and state and federal and local agencies which exercise authority over resources that may be affected by the project. (Public Resources Code Sections 21104, 21153; State CEQA Guidelines Section 15086.)

Comment 103-23

Commenter states renewable energy projects require vast amounts of land, transmission lines, associated efficiency issues, and have unique environmental impacts. They are proven to need subsidies to be affordable.

Response 103-23

The Natural Resources Agency is only required to respond to comments concerning the proposed action (i.e., the text of the proposed amendments) or to the procedures followed in proposing or adopting the proposed action. (Government Code, § 11346.9(a)(3).) Comments on the details and characteristics of renewable energy projects exceed the scope of this rulemaking or CEQA in general. No response is required to address this comment.

Comment 103-24

Commenter states energy conservation is a loose term and energy efficiency is not addressed in Section 15126.4.

Response 103-24

The proposed amendments must be broad enough to encompass all types of projects that may be proposed. Section 15126.4(c)(2) refers to Appendix F. Appendix F reflects the requirement to analyze and mitigate energy impacts of a project. To further amend Section 15126.4 to reference energy efficiency is duplicative, thus, unnecessary. No further response is necessary to address this comment.

Comment 103-25

Commenter believes long-term adopted plans of water, forests, and oceans are missing from Section 15065. The only information available to the public is through academic institutions and the CEQA regulations are written to put the burden of proof on the public.

Response 103-25

The Natural Resources Agency is only required to respond to comments concerning the proposed action (i.e., the text of the proposed amendments) or to the procedures followed in proposing or adopting the proposed action. (Government Code, § 11346.9(a)(3).) The purpose of this rulemaking is to provide guidance to lead agencies on the analysis and mitigation of greenhouse gas emissions. (Public Resources Code, § 21083.05.) To that end, listing plans in section 15065 as the comment suggests exceeds the scope of this rulemaking activity. Lastly, while this comment is unrelated to the rulemaking, in interest of thoroughness the Office of Planning and Research is required to implement a public assistance and information program to help agencies implement CEQA. A product of which is a computerized database of all environmental documents it receives for state review. In addition, the Natural Resources Agency maintains the California Environmental Resource Evaluation System (CERES), within is contained the Land Use Planning Information Network (LUPIN) which holds data sources on land use, text of CEQA, regulations, advisories, CEQA court cases, or other information related to CEQA.

Comment 103-26

Commenter suggests the comparable approved plans in Section 15130 need to fit the same criteria. Examples given are geographic areas are different, water quality is different, and air is different. Thus, "adequately addressed" is not defined.

Response 103-26

Section 15130(d) states that previously approved land use documents may be used in a cumulative impacts analysis. That section operates similarly to section 15064(h)(3). Thus, if a project is consistent with a plan that addresses a cumulative problem, a prior EIR prepared for that plan may be used in the cumulative impacts analysis. Section 15130(d) cross references to the tiering provision described in section 15152. The term "adequately addressed" is defined in section 15152(f).

Comment 103-27

Commenter states “environment” is not defined nor is “environment” stated within a boundary of a project.

Response 103-27

CEQA does provide a definition of “environment”. State CEQA Guidelines Section 15360 provides: “[t]he physical conditions which exist within the area which will be affected by a proposed project including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic significance. The area involved shall be the area in which significant effects would occur either directly or indirectly as a result of the project. The “environment” includes both natural and man-made conditions.”

Comment 103-28

Commenter suggests amendments to Section 15183 add “Water Element Plans”, “Fire and Forestry Plans”, and “Methane Hazard Zone Mitigation Plans”.

Response 103-28

The statutory basis for existing State CEQA Guidelines section 15183 is Public Resources Code section 21083.3. As explained in the Initial Statement of Reasons, “[s]ection 21083.3 of the Public Resources Code provides that projects that are consistent with a General Plan, Community Plan or Zoning may not need to analyze cumulative effects that have already been analyzed in an EIR on the prior planning or zoning action.” (Initial Statement of Reasons, at p. 50.) Section 21083.3 does not extend those streamlining benefits to “water element plans,” “forestry plans,” or “methane hazard zone mitigation plans,” however. Because the CEQA Guidelines are administrative regulations, the Natural Resources Agency cannot enlarge the scope of the existing legislatively created streamlining provision. For these reasons, the Natural Resources Agency rejects this comment.

Comment 103-29

Commenter states all information, including monitoring, be publically available and deadlines be established for reporting and publishing monitoring activities.

Response 103-29

The Natural Resources Agency is only required to respond to comments concerning the proposed action (i.e., the text of the proposed amendments) or to the procedures followed in proposing or adopting the proposed action. (Government Code, § 11346.9(a)(3).) Though responses to comments such as this are not required, the Natural Resources Agency provides the following response.

Public involvement is an essential feature of the CEQA review process. (Article 13. Review and Evaluation of EIRs and Negative Declarations.) In fact, the California Supreme Court has stated that

members of the public hold a “privileged position” in the CEQA process. (*Concerned Citizens of Costa Mesa v. 32nd District Agricultural Association* (1986) 42 Cal. 3d 929.) The environmental review process established by CEQA provides ample opportunities for the public to participate throughout scoping (State CEQA Guidelines, § 15083) public notice and public review of CEQA documents (State Guidelines, §§ 15072 and 15087) and public hearings, and by requiring agencies to respond to public comments in Final EIRs (Guidelines Section 15088.) Any reporting deadlines would be established by the lead agency in the mitigation monitoring and reporting program. (State CEQA Guidelines, § 15097.)

Comment 103-30

Commenter believes Programmatic EIRs are problematic because of exemptions, variances, conditional uses, and amendments. Too many projects are found to fall within one of these categories, making the use of PEIR ineffective.

Response 103-30

Proposed section 15183.5(a) recognizes that certain tiering and streamlining provisions may be useful in the context of greenhouse gas emissions. The extent to which variances and other changes in circumstances must be taken into account would be governed by the specific provisions referenced in section 15183.5(a). No revision to that section is required in response to this comment.

Comment 103-31

Commenter suggests the use of Programmatic EIRs be reconsidered to be only allow projects that conform to its requirements.

Response 103-31

See Response 103-30, above.

Comment 103-32

Commenter suggests the Section 15364.5 (Definition of Greenhouse Gases) be expanded to include underground and above ground aspects.

Response 103-32

The Natural Resources Agency declines to further revise Section 15364.5.

As explained in the Initial Statement of Reasons, the definition of greenhouse gas emissions in the proposed amendments includes each of the gases that are included in the definition of greenhouse gas emissions created by the Legislature in AB32. (Initial Statement of Reasons, at p. 58.) Notably, the federal Environmental Protection Agency limited its proposed endangerment finding to those same six

listed gases. It did so because the six gases are well studied, and have been the focus of climate change research. (Federal Register, v. 74, 18886, 18895 (April 24, 2009).) Also, the list of gases in section 15364.5 is non-exclusive.

Comment 103-33

Commenter states that baseline energies need to be included as the major source of decreasing existing baseline energies such as coal, natural gas, and oil.

Response 103-33

The comment appears to refer to Appendix F, Energy Conservation. Assuming the comment intended to imply *renewable* energies need to be included as a *factor* for decreasing existing baseline *greenhouse gas emissions from sources of energies* such as coal, natural gas and oil, the response is as follows.

Appendix F already provides lead agencies with direction on how to reduce GHG emissions associated with energy consumption. This includes, when discussing potential significant energy implications and energy sources supplying the project; determining the effects of the project on local and regional energy supplies; and mitigating energy impacts through conservation or utilizing renewable fuels. The Natural Resources Agency believes Appendix F as it exists and the proposed amendments adequately address this comment. No further revision to the text is required to respond to this comment.

Comment 103-34

Commenter suggests energy efficiency be expressed in terms of overall per capita energy consumption. Otherwise, renewable energy source may increase GHG emissions due to the small percent of use and output.

Response 103-34

Appendix F already provides a goal of “decreasing overall per capita energy consumption.” The Natural Resources Agency, however, declines to establish a specific numerical value. The Natural Resources Agency believes the amendments must maintain flexibility and preserve the discretion of the lead agency to determine what is appropriate for CEQA review given the characteristics, conditions, and circumstances surrounding a project. For the reasons above, the Natural Resources Agency rejects this comment.

Comment 103-35

Commenter states that increasing reliance on renewable energy sources should include increasing dependence on baseline energy with emphasis on energy efficiency and minimal environmental impacts.

Response 103-35

As explained in Response 103-33, Appendix F provides lead agencies with guidance on assessing a project's potentially significant energy implications. Indeed, energy supplied to a project derived from renewable resources is mitigation and considered a key factor in meeting the Appendix's overall goal of reducing reliance on fossil fuels. Additionally, increasing energy efficiency is also an expressly stated goal, directed by Public Resources Code Section 21100(b)(3) –“ reduce the wasteful, inefficient, and unnecessary consumption of energy.” No further response is necessary to address this comment.

Comment 103-36

Commenter suggests Appendix F identify water as an energy source.

Response 103-36

The Natural Resources Agency declines to further amend Appendix F to specify water as an energy source. In the discussion of potentially significant energy implications, a lead agency should identify and consider the energy source supplying the project. (State CEQA Guidelines, Appendix F, Section II (A)(4).) This reasonably directs lead agencies to identify energy sources which include hydroelectric energy in addition to other renewable sources in California's energy portfolio.

Comment 103-37

Commenter believes water needs to be addressed as a major issue in the discussion of greenhouse gas emissions.

Response 103-37

This comment is directed at amendments to Appendix F. As explained in Response 103-15, Appendix F addresses the energy implications of a project and is a mandatory element of a CEQA review. Amendments made to Appendix F recognize water as having a related role in a project's energy consumption. Consistent with the direction of section 21100(b)(3) of the Public Resources Code, should a project's water related energy consumption be excessive or inefficient, CEQA would require a lead agency addresses these issues. The Natural Resources Agency believes the revisions are adequate to address this comment. No further revision to the text is necessary.

Comment 103-38

Commenter believes plans need to have the same definition of “lifetime”. Otherwise, factual information will differ.

Response 103-38

The Natural Resources Agency believes maintaining flexibility in the Guidelines provides the lead agency more discretion to determine what is appropriate for a CEQA review given the condition, characteristics, and circumstances surrounding a project. The Natural Resources Agency rejects this comment.

Comment 103-39

Commenter believes the expanded checklist attempts to provide the public with access to the reports and decisions in preparing an environmental document or conclusion of no impact. With scientific and factual data, the lead agency should prove ability to reach conclusions based on analysis

Response 103-39

The comment makes a general statement regarding Appendix G and is not seeking to make additional revisions to the amendments. No further response to this comment is necessary.

Comment 103-40

Commenter believes lead agencies relying on scientific and factual data in a CEQA review lack peer review, thus, information can be mishandled.

Response 103-40

CEQA requires an interdisciplinary approach given the complexity of many environmental impacts. CEQA requires an agency to review the effects of its actions on numerous environmental resources, including air, water, fish, and wildlife. A proper review requires coordination across a variety of professional disciplines. The goal of CEQA is to ensure that trade-offs between various resources are publicly considered. Thus, by requiring a multi-disciplinary scientific inquiry, CEQA clearly requires a decision to be based on factual and scientific evidence.

The State CEQA Guidelines specifically require that a lead agency should make a good-faith effort, *based to the extent possible on scientific and factual data*. (Section 15064, 15064.4, Appendix G.) A lead agency is required to determine whether the project may have a significant effect based on substantial evidence in light of the whole record. (Section 21082.2 of the Public Resource Code.)

Comment 103-41

Commenter believes the amendments are a basis for a Cap-and-Trade.

Response 103-41

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

Comment 103-42

Commenter believes California and its citizens need economic development and income. Creating a “State Clearinghouse for the Depository of Scientific and Factual Data” may act as a springboard for industry, individuals, students, parents and children to buy into their futures.

Response 103-42

The Natural Resources Agency is only required to respond to comments concerning the proposed action (i.e., the text of the proposed amendments) or to the procedures followed in proposing or adopting the proposed action. (Government Code, § 11346.9(a)(3).) Comments on California’s general economic conditions are beyond the scope of this rulemaking or CEQA. No response is required to address this comment.