



1400 K Street, Suite 400 • Sacramento, California 95814  
Phone: 916.658.8200 Fax: 916.658.8240

[www.cacities.org](http://www.cacities.org)

November 24, 2008

Mr. James Goldstene  
Executive Officer, California Air Resources Board  
1001 I Street  
P.O. Box 2815  
Sacramento, California 95812

**Re: Setting Interim Significance Thresholds for Greenhouse Gases under the California Environmental Quality Act**

Dear Mr. Goldstene:

On October 24, 2008, the ARB released a Preliminary Draft Staff Proposal which “Recommended Approaches for Setting Interim Significance Thresholds for Greenhouse Gases under the California Environmental Quality Act.” The League of California Cities supports the development of recommended thresholds of significance for greenhouse gases under CEQA and appreciates the opportunity to submit these comments on the Draft Staff Proposal:

**1. Thresholds of Significance for Cities and Counties and other Local Governments are adopted locally.**

Section 15064.7 of the CEQA Guidelines encourages each public agency to develop and publish thresholds of significance that the agency uses in the determination of the significance of environmental effects. A threshold of significance is an “identifiable, quantitative, qualitative or performance level of a particular environmental effect, non-compliance with which means the effect will normally be determined to be significant.” Thresholds of significance must be adopted by ordinance, resolution, rule, or regulation and developed through a public review process and supported by substantial evidence.

Page 1 of the Draft Staff Proposal states that ARB staff is taking “the first step toward developing recommended statewide interim thresholds of significance for GHGs that may be adopted by local agencies for their own use.”

Comment #1: Since Section 15064.7 requires that thresholds of significance must be adopted and developed through a [local] public review process, it will not be possible for local agencies to simply adopt the statewide interim thresholds “for their own use.” The Draft Thresholds are too detailed to be useful locally. Broader guidelines – as is anticipated in Section 21083.05 - will provide local agencies with a structure in which to develop their own thresholds through a public review process.

Comment #2: For statewide interim thresholds to be useful to local agencies, they must be based upon substantial evidence. The Draft Staff Proposal does not support its recommendations with substantial

evidence. For example, no evidence is cited for the following important conclusions: (a) ARB staff used existing data for the industrial sector to derive a proposed hybrid threshold. The threshold consists of a quantitative threshold of 7,000 metric tons of CO<sub>2</sub> equivalent per year... (b) ...staff's preliminary analysis indicates that emissions from a project qualifying for the statutory infill project exemption... will emit approximately 1,600 metric tons (MT)CO<sub>2</sub>e/yr.

2. The purpose of thresholds of significance is to determine whether impacts are significant.

The Draft Staff Proposal recommends that thresholds of significance be developed “based on clear and stringent performance standards” (page 13). A “clear and stringent performance standard” might be an acceptable emissions level for the type of project under review.

Comment #1: Unfortunately the Draft Staff Proposal does not establish this emissions level, leaving it to its final threshold recommendation. It is very difficult to evaluate the thresholds of significance without this “clear and stringent performance standard.”

Comment #2: The Draft Staff Proposal states that the Staff's objective is “to develop thresholds for projects [in the residential and industrial sectors] that will result in a substantial portion of the GHG emissions from new projects being subject to CEQA's mitigation requirement...” (page 5). This objective cannot be evaluated until it is determined what constitutes a “significant adverse impact” on climate change through the regulation of greenhouse gas emissions. That determination is made through thresholds of significance. Thresholds of significance require substantial evidence supporting performance standards. The Draft Staff Proposal does not include performance standards. Therefore, we are unable to determine whether the “objective” is consistent with CEQA.

3. The recommendation to address GHGs at the “programmatic level” does not establish thresholds of significance. [Box 2]

Page 14 states that “if a project complies with the requirements of a previously adopted GHG emission reduction plan or mitigation program that satisfies...section 15064(h)(3), and includes the attributes specified in that provision and Box 2 [of Attachment B], the lead agency may determine that the project's GHG impacts are less than significant with no further analysis required.

Comment #1: A project's inconsistency with an adopted plan is not an environmental effect (*Orinda Association v. Board of Supervisors* (1986) 182 Cal.App.3d 1145). Therefore Box 2's inquiry into the consistency of a project with an adopted plan represents a departure from the existing law.

Comment #2: The reference to a “plan that complies with Section 15064(h)(3)” does not seem relevant to establishing recommended thresholds of significance. This section begins (page 14) with a reference to an OPR June 2008 Technical Advisory. The June 2008 Technical Advisory states that CEQA can be a more effective tool for greenhouse gas emissions analysis and mitigation if it is supported by policies. It goes on to suggest that adoption of general plan policies and certification of general plan EIRs that analyze “broad jurisdiction-wide” impacts of greenhouse gas emissions can be an effective strategy for addressing cumulative impacts of specific projects. The Staff Report then encourages local agencies to take advantage of a programmatic approach to address climate change. Both taking a programmatic

approach to addressing climate change and simplifying the cumulative impact analysis pursuant to 15064(h)(3) may be valid and helpful suggestions. They don't, however, provide guidance on the thresholds of significance for greenhouse gas emissions. A project that is consistent with a plan may be able to avoid the cumulative impact analysis. But such a project cannot avoid a project-specific evaluation of its environmental effects.

4. The minimum performance standards described in Box 3 are not thresholds of significance.

Box 3 on Attachment B lists certain "minimum performance standards, or equivalent mitigation measures" and then concludes that a project that meets those standards or incorporates those measures will be presumed to have a less than significant impact related to climate change.

Comment #1: It is difficult to respond to Box 3 because the performance standards have not yet been adopted. In addition, the "presumption" means that additional project-specific environmental review will be necessary. However, Box 3 lists mitigation measures to reduce the emission of greenhouse gases but does not establish thresholds of significance against which to measure the project's environmental impacts.

5. The preparation of an EIR should lead to meaningful and feasible mitigation measures.

The ARB staff continues to work on establishing performance standards for land use projects. Review of a project under an EIR should lead to a "preferred alternative" and to mitigation measures that reduce significant impacts to levels of insignificance. The project should be improved as a consequence of CEQA review. Therefore, thresholds of significance should not sweep into the EIR process projects for which additional impacts or alternatives do not exist. As stated in the comment letter submitted by CAPCOA, dated November 14, 2008, the threshold of significance should capture only those projects whose significant impacts can be better addressed through an EIR than through a list of adopted mitigation measures.

Thank you again for the opportunity to comment on the Draft Staff Proposal. We look forward to continuing to be involved in the process of adopting the Final Staff Proposal.

Sincerely,



Bill Higgins  
League of California Cities