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Via Electronic Mail

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**Re: Supplemental Comments on ARB Preliminary Draft Proposal,
Recommended Approaches for Setting Interim Significance Thresholds for
Greenhouse Gases Under CEQA**

Thank you for the opportunity to comment on ARB's recommended approaches for setting significance thresholds for greenhouse gas emissions under CEQA ("Proposed Thresholds"). These comments focus on issues raised at the December 9, 2008 meeting on the Proposed Thresholds. These comments focus on: 1) equivalency; 2) the quantitative "x" level above which a project's emissions are presumptively considered significant; and 3) the performance standard for transportation impacts.

1) Equivalency

With regard to the application of performance standards and measures, the Proposed Thresholds provide that a "project with mitigation may demonstrate an equivalent level of GHG emission reductions." It is critical that the demonstration of equivalency prioritize on-site mitigation. Were a project simply allowed to offset reductions that could feasibly be achieved on-site, the legitimate objectives embodied in the proposed thresholds of obtaining real on-site reductions and encouraging the development of projects that are consistent with a low carbon future would be undermined.

Requiring on-site mitigation where feasible in order to demonstrate equivalency is justified on numerous grounds. On-site reductions can be readily verified, are easier and more accurately monitored, and are in control of the lead agency and project proponent. Indeed, unlike offsets, avoiding emissions in the first instance guarantees that these emissions will not be generated. In addition, as all emission sources will need to be significantly reduced as part of a low carbon future, mitigation cannot simply be displaced to another location in order to achieve climate stabilization.

A preference toward on-site mitigation and then to mitigation proximate to the project site is also critical to addressing environmental justice concerns. Greenhouse gas emissions are often released in conjunction with criteria pollutants or may be associated with other types of impacts, such as traffic. As local communities bear the impacts associated with GHG intensive development, ensuring that the attainment of equivalency is first directed at the project site, and then to the local community can ensure that local communities receive the co-benefits that can accompany greenhouse gas reductions.¹

Accordingly, ARB should clarify that equivalency must be reached using the following hierarchy, with all feasible measures from the first category adopted before selecting measures from the second category, and so on:

- (A) First, measures that reduce or avoid global warming impacts from the project itself;
 - (B) Second, measures within the project boundaries or adjacent to the project that reduced or avoid global warming impacts;
 - (C) Third, measures that reduce or avoid global warming impacts from within the jurisdiction of the lead agency and/or local air basin;
 - (D) Fourth, measures that reduce or avoid global warming impacts from elsewhere in the State.
- 2) **The Numerical “X” Backstop for Residential and Commercial Projects Should Be Set at No More Than 900 Tons**

As set forth in the Center’s November 6th letter on the Proposed Thresholds, a numerical backstop above which a project’s cumulative impact on global warming is presumptively considered significant is critical to a legally defensible threshold of significance. Based on existing analyses and scientific data, a CO₂ eq. backstop of no

¹ In recognition of the co-benefits associated with GHG reductions, SCAQMD requires staff to implement GHG mitigation for industrial sources in the following hierarchy: 1) changes to project design; 2) onsite measures; 3) implementation of neighborhood projects; 4) in-district mitigation; 5) in-state mitigation; and 6) out of state mitigation, “which may include purchasing offsets if no other options are available.” SCAQMD, Interim GHG Significance Threshold Staff Proposal (revised version) (Oct. 2008) at 3-16 – 3-17.

more than 900 tons is appropriate. In its analysis of the effectiveness of various potential thresholds of significance, the California Air Pollution Control Officers Association (CAPCOA) determined that thresholds that are highly effective at reducing emissions and highly consistent with AB 32 and Executive Order S-3-05 are a threshold of zero or a quantitative threshold of 900 tons.² Under ARB's analysis, application of the performance standards that are part of the Proposed Thresholds would result in 20-50% emission reductions in the residential sector and 7-15% reductions in the commercial sector. Incorporation of these performance standards into the proposed thresholds might suggest that a numerical backstop could be above 900 tons and still be highly effective at reducing greenhouse gas emissions and highly compliant with California's emission reduction targets.³ However, California's emission reduction targets are based on a 2050 goal of stabilizing atmospheric concentrations of CO₂ at 450 ppm.⁴ Scientists have now concluded that "[i]f humanity wishes to preserve a planet similar to that on which civilization developed, paleoclimate evidence and ongoing climate change suggest that CO₂ will need to be reduced from its current 385 ppm to at most 350 ppm."⁵ Indeed, given that "the net addition of CO₂ to the atmosphere from human activities must be decreased to nearly zero" to achieve "atmospheric carbon dioxide levels that lead to climate stabilization," a backstop of above 900 tons does not appear to be sufficiently stringent from a scientific perspective.⁶ See Guidelines § 15064(b) ("[t]he determination of whether a project may have a significant effect on the environment calls for careful judgment ... based to the extent possible on scientific and factual data."). Accordingly, because climate stabilization will likely require even greater emission reductions than previously thought, even with the inclusion of performance standards, the numerical "x" threshold should not exceed 900 tons.

In the event a project's emissions are above 900 tons and compliant with performance standards or their equivalent, mitigation to reach this numerical backstop must be prioritized with the same hierarchy used for determining equivalency.

3) Residential Transportation Performance Criteria

The Center appreciates ARB's inclusion of feasible yet stringent performance standards that all residential and commercial projects must adopt to determine that a

² CAPCOA, *CEQA & Climate Change* at 56-57 (Jan. 2008).

³ While the emission reduction targets embodied in AB 32 and Executive Order S-3-05 can inform a determination of significance thresholds, this is because they reflect scientific data on needed emissions reductions. Under CEQA, regulatory standards can serve as proxies for significance only to the extent that they accurately reflect the level at which an impact can be said to be less than significant. See, e.g., *Protect the Historic Amador Waterways v. Amador Water Agency*, 116 Cal. App. 4th 1099, 1109 (2004).

⁴ An emissions pathway whereby developed countries would reduce emissions to 80% below 1990 levels as envisioned under Executive Order S-3-05 would cap atmospheric concentrations of CO₂ at approximately 450 ppm. See, e.g., UNDP, Human Development Report 2007/2008, Fighting climate change: Human solidarity in a divided world (2007) at 46-50 available at <http://hdr.undp.org/en/reports/global/hdr2007-2008/chapters/>

⁵ Hansen, J. et al., *Target Atmospheric CO₂: Where Should Humanity Aim?*, 2 OPEN ATMOSPHERIC SCIENCE J. at 217-231 (2008).

⁶ Matthews H.D. & Caldeira, K., *Stabilizing the Climate Requires Near-Zero Emissions*, 35 GEOPHYSICAL RESEARCH LETTERS L04705 (2008).

project has a less than significant impact on global warming. With regard to residential transportation, the Proposed Thresholds sets a performance standard of 14,000 VMT/hh-yr as a metric to represent compact development with close proximity to transit and a variety of services. The Center has two comments on this performance criteria that it would like to see addressed in the next iteration of the Proposed Thresholds.

First, please explain the extent to which the assumptions built into determining VMT/household can be manipulated such that projects that are not compact development proximate to transit and services are nonetheless determined to fall under the 14,000 VMT/household threshold. As the vast majority of the public are not sophisticated traffic modelers, it will be difficult to scrutinize how compliance with this performance standard is derived. If applicable, guidance on the parameters of assumptions that may be incorporated into this modeling may be helpful to prevent potential gamesmanship.

Second, for transparency purposes, it would be helpful to evaluate whether an alternative qualitative metric could be developed that describes the compact, transit-oriented development that characterize a 14,000 VMT/household development. Guidance on qualitative criteria may be found by combining the LEED ND prerequisites of Smart Location and Compact Development.⁷

Numerical VMT/household performance criteria still appear to have value as it may better facilitate equivalency determinations. For example, if a project did not meet qualitative criteria for one or more reasons, it may be difficult to determine what alternative mitigation would be appropriate in order for the project to mitigate to a less than significant level. However, if this same project generated 20,000 VMT/household development, than mitigation equivalent to the emissions generated by 6,000 VMT/household would be required in order to meet the transportation performance criteria (20,000 VTM/hh – 14,000 performance criteria = 6,000 VMT/hh difference). However, for transparency purposes, there may be a value in providing an alternative qualitative metric as part of the residential transportation performance standard.

Thank you for your consideration. Please do not hesitate to contact Matthew Vespa at (415) 436-9682 x.309 mvespa@biologicaldiversity.org if you have any questions or concerns.

Sincerely,



Matthew Vespa
Senior Attorney

⁷ U.S. Green Building Council, Pilot Version, LEED for Neighborhood Development System (“LEED ND”) (June 2007) at 6, 50, available at <http://www.usgbc.org/LEED/ND/>.