



NATURAL RESOURCES DEFENSE COUNCIL
111 Sutter Street, 20th Floor
San Francisco, CA 94104
Tel: 415-875-6100

November 26, 2008

Via: Electronic Submission at <http://www.arb.ca.gov/cc/localgov/ceqa/cegacomm.htm>

California Air Resources Board Staff
1001 "I" Street
Sacramento, CA 95812

**Re: CARB's General Approach in "Preliminary Draft Staff Proposal:
Recommended Approaches for Setting Interim Significance Thresholds under the
California Environmental Quality Act"**

Dear CARB Staff:

We appreciate the opportunity to comment on your *Preliminary Draft Staff Proposal on Recommended Approaches for Setting Interim Significance Thresholds under the California Environmental Quality Act*. Thank you for taking leadership on this important issue: local planners and facility owners across the state are seeking guidance on the significance of GHG emissions under CEQA, and recommendations from CARB will help answer some of their questions. We support the overall recommended approach of using performance standards in combination with a numerical threshold. We offer the following suggestions on how to improve the general approach, and are concurrently submitting more detailed comments on approach for industrial projects, and the approach for residential and commercial projects.

I. SCOPE OF CARB RECOMMENDATIONS

CARB should make recommendations for agriculture projects (ie: dairies) and transportation projects (ie: highways), in addition to industrial and residential & commercial. Both of these sectors are significant contributors to statewide greenhouse gas (GHG) emissions, with the total agricultural sector emitting about 5% and the total transportation sector emitting nearly 40% of statewide GHG emissions in 2004, respectively.

For agricultural projects, the existing definition of Large Confined Animal Facility (LCAF) should be the basis for the threshold of significance. The LCAF

definition was developed in the context of ozone pollution and utilizes different thresholds for attainment and nonattainment areas. Animal husbandry, which is responsible for significant amounts of ozone pollution, is also a large source of GHG pollutants (in particular methane). In addition, all of California should be considered nonattainment for GHG in light of the urgency of the reduction of GHG pollution. Therefore, CARB should utilize the ozone nonattainment LCAF threshold identified in California Code of Regulations § 86500 as the CEQA thresholds of significance for greenhouse gases.

For highway and other transportation infrastructure development projects, CARB should not go along with recent legislative proposals have suggested that certain transportation projects should be exempted from CEQA. This would be a step in the wrong direction. First, the premise of the proposal seems to be that compliance with CEQA is holding up the creation of new jobs. In our view, based on many years of experience working on CEQA matters, it is not compliance with CEQA, but rather attempts to get around CEQA and hide the environmental effects of a project from the public that slow things down the most.

Nothing in the Governor's proposed legislation would fix that. In fact, the proposal includes a rule that requires local agencies to approve or deny a covered project within 15 days. This will only increase the incentive for project proponents to hide the ball. We have recently seen 6,000 page environmental impact reports on port projects. Even the most eagle-eyed public servant will have a hard time conducting a thoughtful review of a document that big in 15 days. In addition, the 15 day up-or-down rule will effectively kill public participation in the environmental review of scores of highway projects affecting the lives of millions of Californians. The likely result from this is more litigation, rather than less, since the public will not have a meaningful way to have input into these projects outside of the courthouse.

Even more troubling is the potential effect of the proposed legislation on California's GHG reduction goals, embodied in AB 32, SB 375, and the Executive Order S-20-06. Nearly 40% of California's GHG emissions come from the transportation sector. The state has committed itself to reducing total emissions nearly 30% by 2020, and 80% below that by 2050. Building more freeways will increase, not decrease, GHG from vehicle travel, and so having these projects approved without environmental study and without coordination with existing law makes no sense.

II. ANALYSIS OF EXISTING CATEGORICAL EXEMPTIONS

NRDC requests that CARB staff make available for public review its analysis of GHGs with respect to existing statutory or categorical exemptions. Although many existing exemptions are due to a project's presumed minimal environmental impact, others are included to further non-environmental public policy goals (e.g. Title 14 § 15272 (Olympics facilities) or Title 14 § 15282 (misc. projects, including prisons and road restriping). Given California's commitment to reducing GHGs under AB32,

detailed consideration of each CEQA exemption is appropriate. NRDC has no reason at this time to contest CARB's determination of the appropriateness of applying existing exemptions in the GHG context; we ask only for the opportunity to review the assumptions and analysis underlying staff's recommendation and provide comment.

III. PROJECTS SHOULD HAVE TO MEET ALL PERFORMANCE STANDARDS

CARB's Draft Proposal indicates that industrial, residential, and commercial projects would have to meet all of the performance standards laid out in the eventual standard in order to be determined to be less than significant. For example, Box 3 on page 11 states that projects would have to meet "all of the below minimum performance standards" and Box 2 on page 7 states that projects must meet both of the two standards described. We support this formulation, and urge CARB not to weaken this language to allow projects to meet only one or a few of the standards.

IV. OFFSETS

CARB notes that some parties have suggested that a "zero threshold" would be appropriate. We note that the practical effect of a "zero threshold" would be that projects that can not mitigate their emissions to zero will purchase offsets in order to reach zero net emissions. We believe this would be an undesirable result for two reasons: 1) it would sanction the use of carbon offsets, which are difficult to verify; 2) it would set a precedent for allowing carbon offsets to be used for compliance with direct regulations, which could create expectations that such offsets could or should be used for compliance with other GHG direct regulatory programs.

A. Carbon offsets are difficult to verify and create the potential for confusion with other offset programs.

In order to truly reduce net GHG emissions, offsets must achieve real, additional, permanent, verifiable and enforceable GHG reductions. Experience with offsets under the Clean Development Mechanism has shown that it is very difficult to guarantee that offsets projects actually achieve real, additional, verifiable, permanent and enforceable GHG reductions.¹

B. CARB should not create a precedent for allowing carbon offsets for compliance with GHG direct regulations.

CARB is currently considering whether to allow offsets for compliance with a cap-and-trade program under AB 32. Allowing offsets to reduce the environmental impact of projects under CEQA could establish a precedent and expectation that offsets are a CARB-endorsed mechanism to reduce GHG emissions for purposes of compliance with direct regulations. CARB should not establish such a precedent because offsets could undermine the purpose of direct regulations.

¹ See *U.N. Effort To Curtail Emissions In Turmoil*, Wall Street Journal page A1, April 12, 2008, available at <http://online.wsj.com/article/SB120796372237309757.html>

For these reasons, we support CARB's conclusion that non-zero thresholds can be supported by substantial evidence. We believe that performance-standards can ensure that smaller projects achieve aggressive levels of on-site mitigation, thus rendering their emissions non-significant in the context of the state's overall efforts to reduce GHG emissions.

Sincerely,



Kristin Grenfell
Legal Director, Western Energy and Climate Projects

Avi Kar
Attorney, Public Health Program

Justin Horner
Policy Analyst, Energy Program

David Pettit
Senior Attorney, Air and Energy Program