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November 19, 2008

Ms. Mary Nichols, Chair
California Air Resources Board
1001 "I" Street
Sacramento, CA 95814

Subject: Interim Significance Thresholds for Greenhouse Gases under the California Environmental Quality Act

Dear Ms. Nichols,

Thank you for the opportunity to comment on the recommended approaches for setting Interim Significance Thresholds for Greenhouse Gases (GHG) under the California Environmental Quality Act (CEQA) and the associated Preliminary Draft Staff Proposal dated October 24, 2008.

The City of Los Angeles is the second largest city in the United States, with a population of over 4 million and a land area covering nearly 465 square miles. The City of Los Angeles Department of Water and Power (LADWP) is the nation's largest municipally owned utility, and its power system serves these 4 million residents with an installed generation capacity of 7,331 Megawatts (MW) of electricity. In May 2007, Los Angeles Mayor Antonio Villaraigosa, joined by several City Councilmembers, released the City's Climate Action Plan, "Green LA: An Action Plan to Lead the Nation in Fighting Global Warming." This Plan set out the City's goal to reduce greenhouse gas emissions to 35% below 1990 levels by 2030. A large part of meeting this goal rests with the LADWP and its actions to move quickly toward renewable sources of electricity. The LADWP is committed to increasing the amount of energy it generates from renewable power sources to 20% by 2010, and to 35% by 2020. Since 2005, LADWP has nearly tripled its portfolio of renewable energy, increasing its share of renewables from less than 3% to approximately 8% today.

Reducing emissions from municipal operations, electricity generation, and community activities in the City is critical to helping the state meet the AB 32 greenhouse gas (GHG) reduction goals; however it will also be critical to address GHG emissions from new and modified projects during the CEQA review process. Senate Bill 97, Public Resources Code § 21083.057, enacted in 2007, amends the CEQA statute to establish that GHG emissions are subject to CEQA. As such, lead agencies are obligated to determine whether a project's climate change-related effects may be significant, which requires preparation of an Environmental Impact Report (EIR) and the imposition of feasible mitigation measures to reduce these significant impacts.



The City's Planning Department acts as CEQA lead agency for most private development projects in the City. Other City departments may act as CEQA lead agency for public projects, and LADWP, as both a governmental agency and utility, has been the lead agency for most of its proposed projects. EnvironmentLA, the City's environmental policy department, provides CEQA policy advice, and is the lead for implementation of the City's Green LA Climate Action Plan. As such, EnvironmentLA, the City Planning Department, and LADWP would like to provide the following comments to ARB for consideration as the interim thresholds of significance for GHGs are further developed.

GENERAL COMMENTS

- Decision Tree Approach. The City strongly encourages the use of a tiered "decision tree" approach, similar to the methodology proposed by SCAQMD, that provides lead agencies with multiple opportunities to capture emission reductions from CEQA projects and achieve a level of less than significance.
- Programmatic Approach. The City strongly encourages the incorporation of a programmatic approach for planning and impact mitigation, given the global nature of climate change associated with GHG emissions. The Governor's Office of Planning and Research and several other organizations are proposing guidance or methodologies utilizing some type of regional planning methodology. Please note, for example, that opportunities to reduce emissions from transportation sources may be quite limited at the project site; area-wide or regional solutions such as transit lines and corridor-level mitigation, are often required.
- ARB with Primary Authority to Regulate GHG emissions. AB 32 clearly provides ARB with broad authority to regulate GHGs. Consequently, not only the implementation of AB 32, but also the task of establishing GHG significance thresholds for CEQA purposes is appropriately addressed by this agency. The absence of significance thresholds has been problematic for public agencies, which have been challenged on numerous occasions by the Attorney General's (AG) office for failure to properly quantify and mitigate climate change impacts in their environmental documents. The AG has made it clear that agencies that perform environmental analyses pursuant to CEQA are required to consider the GHG emission impacts of their decisions.

The City is interested in the development of interim statewide CEQA significance thresholds by ARB, given the global nature of GHG emissions, as well as the uncertainty of determining "significance" under CEQA for emissions related to a single project.

- Consistency of thresholds for different state agencies and programs. We note that various state agencies and programs are being developed that influence the determination of significance for GHG emissions. The California Energy Commission (CEC) opened a formal proceeding in October 2008 to determine how to satisfy their CEQA responsibilities during the power plant siting process. CEC intends to bring a recommendation that includes significance thresholds to the full Commission by February 2009. In addition, the AB32 Scoping Plan and one of its implementation mechanisms, SB375, speak directly to the need to reduce GHG emissions, and will set reduction goals for various sources and sectors in the coming months.

The ARB should review the interaction between these various efforts and do its best to assure consistency between them, working with the other agencies and programs. Thresholds of significance do not need to be the same for all sectors; in fact we appreciate discussions of a multi-sectoral approach to the determination of significance. However, local lead agencies must not be left to determine which state agency has the correct approach or level of significance when dealing with a particular emission source or land use sector.

- Controlling emissions at the Plan level. State CEQA Guidelines Section 15367 defines the “lead agency” as the public agency with the principal responsibility for carrying out or approving a project. Section 15064 (h)(3) of the Guidelines allows a lead agency to determine that “a 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 which provides specific requirements that will avoid or substantially lessen the cumulative problem.” Examples cited in statute include water quality or air quality control plans.

The Governor’s Office of Planning and Research (OPR) recently released preliminary guidance on incorporating GHG discussions into CEQA documents, which states that CEQA authorizes reliance on previously approved plans and mitigation programs (that have adequately analyzed and mitigated GHG emissions to a less than significant level) as a means to avoid or substantially reduce the cumulative impact of a project. No limitations on this provision are illustrated by OPR.

City staff encourages ARB to not limit this authority to rely on previously approved plans to residential and commercial projects as currently proposed. We propose that, where a public agency or special district has a defined plan for certain facilities, such as wastewater treatment facilities or electrical power generation and distribution, that contains the appropriate mitigation measures and other required components, this plan be considered equivalent to a land use plan in terms of mitigation for GHG emissions.

- Climate Change as a Cumulative Impact/Programmatic Solutions. Given the global nature of GHG emissions, it makes sense to evaluate a project’s contribution to climate change as a cumulative impact, although some large projects may be determined to be significant from a project-level perspective. Providing lead agencies an option to address GHG impacts on a programmatic and planning level, and not on a project-by-project basis, is consistent with the global nature of the problem. Both AB 32 and SB 375 look to reduce GHG emissions on a larger scale, rather than a project-by-project basis. Although CEQA requires the analysis of new and/or modified projects, mitigation of impacts that are global in nature are more appropriately addressed on a larger scale.

We find this to be especially relevant when reviewing transportation impacts of proposed development and redevelopment projects. While some mitigation can be done on site, such as incentives for public transit, appropriate building designs, reduced on site parking, options to truly reduce vehicles trips are limited if public transit is not available. We strongly encourage ARB to look closely at regional or area-wide evaluation of GHG impacts, where that makes sense.

We also strongly encourage ARB to work closely with local governments and other public

agencies as we try to address the mitigation of these impacts on a regional or planning area basis. We note that the goal is to reduce impacts, not to identify significant impacts that cannot be mitigated. There appears to be a void in the information available to determine the effectiveness of non-traditional transportation mitigation measures, in particular. Fighting climate change may encourage local governments to increase densities in certain communities, which will lead to increased traffic. This may be a positive impact to encourage greater use of transit, for example, but this appears through traditional traffic evaluations as a negative impact. The City would be happy to provide further information on this, as desired.

- Local efforts to develop GHG thresholds for CEQA analysis
 - a. **South Coast Air Quality Management District (SCAQMD)** - In the absence of GHG significance thresholds, the SCAQMD has taken a leadership role in developing interim thresholds for the agency to use in its capacity as a lead agency. Their efforts have resulted in extremely useful discussions and debates, and we urge ARB to examine some of the concepts that SCAQMD is proposing, including:
 - i. Multiple Tiers to reach a level of “Less than Significant”
 - ii. Significance screening threshold differentiated for industrial and residential/commercial.
 - iii. Opportunity for both industrial and residential/commercial projects to achieve less than significant impacts by adopting a local or regional plan that has certified emissions inventories, a certified environmental document and enforceable provisions
 - b. **City of LA** - The City of Los Angeles has adopted and utilizes its own set of CEQA Guidelines that incorporate all of the State CEQA Guidelines. The City of Los Angeles “City CEQA Guidelines” is utilized where appropriate by all City agencies in the implementation of CEQA.

Several City departments are now meeting regularly to identify opportunities for the City to meet its CEQA obligations in the climate change arena. Development of GHG significance thresholds has been the primary focus of the meetings. In development of our own guidelines, the City will continue to work with regional and state agencies to develop and adopt consistent GHG thresholds.

At the current time, City departments have not reached agreement on whether significance thresholds should be in a quantitative form or a more qualitative performance standard. We acknowledge the benefits of each in different situations. Numerical thresholds can be easier to enforce at the project level, and provide a clear guide for the determination of significance and necessity of mitigation. Performance thresholds may allow lead agencies to be more sensitive to the ability of certain sectors to reduce emissions from their activities, and allow us to rely and support our planning processes. We do agree, however, that whatever thresholds are proposed must rely on substantial evidence and be based on scientific and factual data. In order to adopt a statewide threshold at the local level, local lead agencies must have access to a well-understood method of calculating significance. We urge ARB to continue to work with local and state agencies as you move forward.

- Not all projects are subject to CEQA. City staff would also remind ARB staff that only a small percentage of development and redevelopment projects are subject to preparation of an EIR. Many more projects are required to prepare a negative declaration or mitigated declaration, pointing again to the need for well-defined and effective mitigation measures. Still more projects are allowed “by right” if they meet zoning and other local regulations for a particular site. Those projects that do undergo an EIR should not be expected to carry the burden for all new development and redevelopment projects. The City is happy to share more specific examples from our experience and work with ARB and others to try to reduce emissions from non-EIR development.

The City Planning Department has provided the additional comment below:

- Determination of Significance for Residential and Commercial Projects. For residential and commercial projects, it is important to set a threshold that would account for the combined transportation and building energy emissions. A threshold that accounts for a complete emissions profile would reflect more favorably on evaluation of infill projects, where VMT derived emissions are low in contrast to projects located in outlying areas where the VMT derived emissions will be higher. Separating these impacts could potentially result in a situation where development projects in the urbanized areas of the City are 'over mitigating' and discouraged because they are compared to the relatively 'high VMT' projects solely based on a quantitative threshold for building energy demand. Again, we underscore the need for effective VMT performance measures and traffic modeling.

In summary, we request that a threshold for residential and commercial projects be based on a complete emission profile (building energy, transportation, and water use) so that the use of mitigation measures be appropriately sized for contributing projects.

The LADWP has provided the additional comment below:

- Evaluation and Mitigation on a Utility by Utility Basis. As a governmental agency, LADWP has been the lead agency for a majority of its projects. In 2002, California shifted its electric utility emphasis to focus on decreasing its dependence on fossil fuels. The portfolio of renewable energy project is diverse by location and technology. LADWP gives preference to projects that are located within the Los Angeles region. However, a majority of the renewable projects are located outside of Los Angeles, and require transmission lines to bring the power back to Los Angeles.

Individually, most new projects may have an increase in emissions associated with them; but viewed as a portfolio approach, substantial emission reductions will be achieved by LADWP. A programmatic approach is more closely linked to the global nature of GHG emissions and will allow lead agencies with large territories such as LADWP to consider a portfolio approach for implementation of mitigation measures and reductions.

The CEC is currently evaluating on whether to address GHG emissions from power plants on a utility-by-utility basis. LADWP is reviewing this proposal and concurs that it may be more appropriate to mitigate power plant emissions with such a program.

Ms. Mary Nichols
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November 26, 2008
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Thank you, again, for the opportunity to provide you with these comments on the proposed interim significance threshold for greenhouse gas emissions. If you have any questions, or for further information, please feel free to contact me at (213) 978-0840 or Gretchen Hardison of my staff at (213) 978-0852.

Sincerely,

A handwritten signature in cursive script that reads "Detrich B. Allen".

Detrich B. Allen
General Manager

C: James Caldwell, LADWP
James Dugan, City Planning