



Planning and Development
Office of the Director

December 17, 2008

Mr. Douglas Ito (e-mail)
Air Resources Board
1001 I Street
Sacramento, California 95814

(AND)

<http://www.arb.ca.gov/cc/localgov/ceqa/ceqacomm.htm>

RE: Interim CEQA Greenhouse Gases Significance Thresholds

Dear Mr. Ito:

I have reviewed the October 24, 2008 Preliminary Staff Draft Proposal for Interim Significance Thresholds for Greenhouse Gases under CEQA, listened into the podcast of the staff presentation on December 9, 2008, and reviewed the presentation materials.

The City of Berkeley is an entirely infill community. Development in the community is promoted primarily along transit corridors, and the City has many policies and programs supportive of reduction in our GHG, including citizen-adopted GHG reduction goals greater than those established by the State. We have completed a second draft Climate Action Plan further promoting infill development as a means of meeting our city-adopted GHG reduction goals.

Despite the City's policies and programs supportive of appropriate land use, development projects in Berkeley can be contentious, and CEQA can be used by opponents of infill development as a tool to delay projects. I am very concerned that the ARB GHG guidelines, as currently proposed, would have the unintended consequence of providing an additional avenue of delay for projects that already face significant hurdles in any infill situation.

The "flow chart" (Attachment B) for Residential and Commercial Projects in the draft Proposal reflects a misunderstanding of how the process works. The flow chart seems to indicate that if a project is categorically exempt, it simply bypasses the remainder of the process. In regard to the infill exemption (the one most applicable to Berkeley), that is not the case. As stated in Guidelines Section 15332, the infill exemption applies if it can be demonstrated that "approval of the project would not result in any significant effects in relating to traffic, noise, air quality or water quality." It is often difficult to make that finding for infill projects, especially in regard to traffic impacts, but often in regard to air quality, noise and historic resources (see section 15300.2 (f)). With the draft Proposal, local emissions that may result from a given infill project could now become an issue, even for projects that will clearly have

beneficial impacts in regard to GHG emissions by occurring in transit-accessible locations rather than less transit-rich areas. Because we must review projects to ensure they would not have significant air quality impacts, the thresholds put forward by ARB will become the *de facto* basis for determining whether an EIR is required. In other words, if an infill project is not in conformance with the thresholds, it would be difficult to grant the exemption, thereby making it more difficult to do projects that are consistent with our GHG reduction goals. To avoid this problem, ARB may wish to consider defining the types of projects for which the threshold test would not need to be applied (e.g., infill residential or mixed use projects, served by transit, with a minimum density above 25 units per acre).

Second, the flow chart describes how adoption of a plan such as Berkeley's Climate Action Plan, consistent with various targets, can allow for a presumption of less than significant impacts. This allowance has the potential to help projects succeed that are consistent with GHG reduction goals and to promote appropriate development in cities that are demonstrating an overall commitment to GHG reduction goals. However, we have two concerns with the approach as described in the Preliminary Proposal. First, in order for local governments to make accurate quantitative commitments to reduce community GHG emissions, there needs to be accepted, approved standard methodologies and protocols for modeling potential GHG reductions. For example, currently Berkeley and other cities do not have the necessary tools or standard methodologies to accurately model or measure the impact on regional GHG emissions of our land use decisions. There is also not a current standard methodology for measuring the emissions that result from solid waste. The Preliminary Proposal implies a level of understanding of how various strategies will affect GHG emissions that go beyond what local governments can now determine. We look forward to working with ARB and other groups to improve and establish metrics, but the standards for climate plans set forth in the Preliminary Proposal would be difficult to meet without further assistance, tools and protocols. Second, the Preliminary Proposal requires that the Plan be consistent with SB 375. Conformance with the targets and Sustainable Communities Strategy (SCS) required by SB 375 will not be known for a minimum of four (4) years, until regional thresholds are set forth and the SCS adopted.

In regard to the specific thresholds, suggested in the presentation on December 9, I have additional concerns. The document states that all of the thresholds must be satisfied for a project to be presumed to not have a significant effect on the environment. Essentially, each of those thresholds would likely now become a minimum requirement for all projects where an EIR is not already required.

While achieving each of these thresholds is important for a variety of good reasons, it seems like establishing each of these CEQA thresholds as part of a GHG reduction strategy is not necessarily an appropriate way to impose new minimum standards on development projects. For example, the "voluntary" Tier II Energy efficiency standards would no longer be voluntary but required if a developer wished to avoid an EIR. Finally, the standard of 14,000 VMT is very helpful as a beginning point for consideration, but I'm not aware of any established protocol for determining the VMT likely to be generated by a specific development project. In addition to establishing a minimum threshold for significance, it would be helpful to have a threshold for insignificance (e.g., projects that generate 7000 VMT or less could be presumed to have less than significant impacts). Such a threshold would assist cities such as Berkeley to promote appropriate infill development.

Mr. Douglas Ito
Air Resources Board
December 17, 2008
Page 3

Overall, prior to adopting any thresholds, I recommend that ARB staff reach out more proactively to local government planners and CEQA practitioners who implement CEQA rules. It is very difficult for local government officials to get to Sacramento for hearings, and almost everyone I heard speak at your hearing on December 9 seemed to be representatives of industry group stakeholders and lobbyists paid to influence these kinds of regulations in the interests of very specific constituencies. While that is certainly a necessary part of the process, it does not seem to be an effective way of hearing from those of us in the trenches implementing CEQA on a daily basis at the local government level. We can assist in designing thresholds that we can then effectively implement.

Thank you for considering these concerns. I'd be happy to discuss these with you at your convenience and look forward to your response.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Dan Marks', with a stylized, flowing script.

Dan Marks
Director

c: Neal DeSnoo
Timothy Burroughs
Debra Sanderson