



Western Riverside Council of Governments

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January 5, 2009

Douglas Igo
California Air Resources Board
1001 "I" Street
P.O. Box 2815
Sacramento, CA 95812

Subject: Comments on the Preliminary Draft Staff Proposal for Recommended Approaches for Setting Interim Significance Thresholds for Greenhouse Gases

Dear Mr. Igo:

The Western Riverside Council of Governments (WRCOG) staff commends the California Air Resources Board (ARB) staff for its hard work on developing a draft proposal for thresholds of significance for greenhouse gases (ghg) under the California Environmental Quality Act (CEQA).

With the passage of AB 32, legal actions taken by the Attorney General, Office of Planning and Research guidance and other actions, it has become evident that projects must account for GHG emissions and mitigate where appropriate. With no State guidelines, local jurisdictions have been at a disadvantage of defining what is considered to be a "significant impact."

WRCOG staff urges ARB to ensure that as it works through the process of developing significance thresholds, that work by other agencies is considered. This includes the present work being undertaken by the South Coast Air Quality Management District (SCAQMD) to develop thresholds for the Basin. With multiple thresholds, lead agencies will continue to struggle on how to address GHGs in projects and clarification will be needed to determine which threshold is applicable to projects.

On October 24, 2008 and December 9, 2008 the ARB released its Preliminary Draft Staff Proposal for Recommended Approaches for Setting Interim Significance Thresholds for GHG under CEQA (Proposal) and conducted a workshop on the Preliminary Draft Staff Proposal and provided a presentation on the potential performance standards and measures, respectively. WRCOG staff wishes to provide the following comments on both the Proposal and the proposed performance standards and measures:

Please note that these comments have not been reviewed or endorsed by WRCOG's Executive Committee.

If you have any questions, please do not hesitate to contact me at (951) 955-8313 or by e-mail at spoonhour@wrcog.cog.ca.us.

Sincerely,

Barbara Spoonhour
Program Manager

Attachment: 1. League of California Cities Comment Letter Dated November 24, 2008

Preliminary Draft Staff Proposal:

On page 9, the Proposal states that "ARB staff believes that the develop a threshold of significance that will result in the vast majority (~90% statewide) of the greenhouse gas (GHG) emissions from new industrial projects being subject to CEQA's requirement to impose feasible mitigation can be accomplished with a threshold that allows small projects to be considered insignificant. 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 CO₂ equivalent per year (MTCO₂e/year) for operational emissions (excluding transportation), and performance standards for construction and transportation emissions."

Comment: It is not clear how projects that have the potential to significantly exceed the ~7,000 MTCO₂E/yr do not become phased in over time as separate projects. Using traffic as an example: a project would not have a significant impact on surrounding streets and would therefore only require minimal mitigation, if any, but the project would have a cumulative impact that would add to the congestion on local roads. WRCOG staff recommends that a tiered system be developed to cover all projects.

SCAQMD's significance threshold proposal calls for a 10,000 MMTCO₂E for industrial projects and 3,000 MMTCO₂E for residential and commercial projects. WRCOG staff recommends that ARB should work closely with SCAQMD staff to develop a consistent threshold. Having two different thresholds will lead to confusion by the lead agencies and project developers.

On page 13, the Proposal states that "ARB staff's objective is to develop a threshold for residential and commercial projects that will substantially reduce the greenhouse gas (GHG) emissions from new projects and streamline the permitting of carbon-efficient projects. To achieve this, staff's preliminary recommendation is to develop a threshold based on clear and stringent performance standards."

Comment: The same issue that is stated above can be applied to residential projects as well. Small projects can be categorically exempted from CEQA because they do not interfere with achieving the objective. WRCOG staff recommends that some aspect of mitigation should be considered for all projects. Example: lower polluting vehicles will have had a major impact on air quality but a single vehicle would have little effect to achieving clean air.

On page 15, the Proposal states that "ARB staff believes that existing progressive green building standards provide a starting point for performance standards for transportation, water use, waste, and construction related emissions. Existing green building rating systems like LEED, GreenPoint Rated, the California Green Building Code, and others, contain examples of measures that are likely to result in substantial GHG emission reductions from residential and commercial projects. The key to this approach will be identifying effective GHG reduction measures within these systems."

Comment: While ARB staff believes that substantial GHG emission reductions will occur with the implementation of certain green building measures or creating a proposed baseline for projects to meet, WRCOG staff recommends that ARB considering using incentives for those projects that go above and beyond the recommended performance standards or baseline.

In addition to the aforementioned comments on the Proposal, WRCOG staff concurs with comments provided by the League of California Cities on November 24, 2008. Their letter has been attached as reference.

Based on the discussions and presentation from the December 9, 2008, workshop that outlined the Potential Performance Standards and Measures, WRCOG staff submits the following comments:

Slide 10, Green building rating systems:

Comment: ARB should identify a single rating system so that a uniform approach could be used. Multiple approaches can add to the cost of development and have the potential for higher levels of development to occur in areas with lower green building standards of certification. The building industry has long preached the use of uniform standards to lower cost, reduce confusion and decrease the amount of time to process projects.

Slide 11, Incentive Programs:

Comment: SB 1 is a solar incentive program for housing and does not address the use of commercial and industrial space to incorporate solar construction into the buildings. WRCOG staff recommends that a model ordinance or amendment to the California Building Code be considered to require new industrial buildings over a specified square footage to incorporate structural requirements and design for the needed mechanical systems when adding solar panels to a building at a future date.

Slide 14, Construction:

Comment: The presentation states that alternative transportation mode options or incentives should be provided for workers to and from worksites on days that construction requires 200 or more workers. WRCOG staff believes that while this is well-intended, this would appear to be extremely difficult to coordinate, implement, and enforce. WRCOG staff would also like clarification if this includes all workers, such as, part time or temporary day labors at a project site or just full time employees of the developer.

Slide 15, Construction, cont.:

Comment: The presentation calls for the use of 20% recycled construction materials to be used the project. WRCOG staff recommends that ARB should consider identifying incentives for those projects that use and meet the 20% recycled material. These could include assistance (streamline) in permitting with local air quality districts.

Slides 16 and 17, Energy and Water:

Comment: WRCOG staff recommends that these categories should require the use of the California Building Code as the baseline for construction and then apply percentage or some type of matrix to determine the GHG reduction for the individual categories. This will provide a consistent set of standards through out the state and common thresholds for the certification rating system. The use of the updated California Building Code for 2009 with the inclusion of Part 11 should be used as the baseline. Development of a uniform and consistent set of processes and standards will reduce the cost to the development community and thereby justify the implementation of new standards to reduce GHG.

Slide 19, Residential Transportation:

Comment: WRCOG staff recommends that the recommendation for the demonstration that average vehicle miles traveled per household per year (VMT/hh-yr) should not exceed 14,000 VMT/hh-yr, if implemented at all, and be limited to urban areas with a population density capable of supporting transit and where alternative modes of transportation exist. By requiring this of all areas in the State, this could be overly restrictive to areas with limited or no transit options.

Slide 20, Commercial Transportation:

Comment: The presentation highlights the need for projects to meet proximity and design elements of ½ mile of at least 10 neighborhood services. WRCOG staff believes that clarification needs to be made as to what qualifies as a neighborhood service. For

example, are sidewalks considered public access between a project and services considered a neighborhood service? In addition, the use of non-motorized design considerations would be better suited to link projects to services, since there are more options available for jurisdictions and development to offset costs.



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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 CO₂ 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)CO₂e/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,

A handwritten signature in black ink, appearing to read "Bill Higgins". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Bill Higgins
League of California Cities