CAPCOA
CALIFORNIA AIR POLLUTION CONTROL OFFICER'S ASSOCIATION

980 Ninth Street, 16th Floor
Sacramento, CA 95814
(916) 449-9603 (916) 449-9604 FAX
www.capcoa.org

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Mr. James Goldstene
Executive Officer
California Air Resources Board
1001 I Street
P.O. Box 2815
Sacramento, CA 95812

Dear Mr. Goldstene:

The California Air Pollution Control Officers Association (CAPCOA) has spent substantial time and effort developing approaches to addressing greenhouse gas (GHG) emissions under the umbrella of the California Environmental Quality Act (CEQA). We believe that recommendations from the State on the determination of significance under CEQA would greatly enhance the implementation of CEQA reviews for GHG emissions, and we commend the Air Resources Board (ARB) for undertaking that effort. Based on the substantial experience local districts have in CEQA implementation, and on the work CAPCOA has done over the last 18 months on CEQA and GHGs, we have several recommendations to offer on ARB's draft proposed significance thresholds.

As you know, CAPCOA developed and published a resource paper titled, "CEQA and Climate Change: Evaluating and Addressing Greenhouse Gas Emissions from Projects Subject to the California Environmental Quality Act." During the preparation of the paper, and subsequent to its release, CAPCOA members have had many conversations with local governments and others about CEQA, the development of significance thresholds, and associated implementation concerns. In the last year, several districts have individually embarked on processes to establish GHG thresholds and an implementation structure. Through these efforts, we have gained a much greater and more nuanced understanding of the complexity of this issue. Our goal is to maximize the environmental benefit of review under CEQA and at the same time to minimize the administrative burden. Districts have shared their thoughts on this with ARB staff as they have developed the ARB draft proposal. The draft proposal reflects many of the considerations we identified, but there are some important issues we believe have not been addressed that need to be resolved before the proposal is finalized. These include issues with the thresholds themselves, the quantification methodology, the scientific basis for the thresholds, and some aspects of implementation that require further evaluation and discussion.

Draft Thresholds

ARB is proposing separate thresholds for stationary sources and land use projects. As stated in Chapter 3 of CAPCOA's "CEQA and Climate Change" document, we believe that CEQA does not require that the thresholds be the same. At the same time, there are many factors that must be considered before establishing different thresholds, and the basis for the decision needs to be clearly articulated and well documented. CAPCOA would like to offer suggestions on each of the draft threshold approaches under consideration, as well as on the decision to have separate thresholds.

Land Use - The draft land use threshold uses a performance standard approach and would require the preparation of an Environmental Impact Report (EIR) at some level of project emissions increase that is not yet specified (X). CAPCOA believes the performance standard approach has merit and could be very effective in addressing GHG emissions, provided the performance standards are carefully designed and appropriately specific to different categories of projects. It is very difficult to predict other outcomes of the approach, however, without knowing the value of X. In order to maximize the effectiveness of the EIR review process, it is critical that the threshold captures projects whose significant impacts can be better addressed through an EIR; at the same time, the threshold should not capture projects which will not benefit at all from an EIR. Properly performed, an EIR will identify impacts and alternatives that would not otherwise be explored, and can result in additional mitigation beyond the application of a performance standard. If the threshold captures too many projects for which additional impacts or alternatives do not exist, the review process will be overwhelmed by minor projects and there will be insufficient resources available for the projects that would truly benefit from the EIR review. One way to address this concern is to ensure that the performance standards are tiered to recognize the greater impacts and opportunities for reductions through alternatives when projects are larger, but still below the (X) threshold.

Stationary Sources - The ARB is considering a draft CEQA threshold for stationary sources of 7,000 metric tons of CO2 equivalent emissions (CO2e). CAPCOA suggests an alternative approach that more closely aligns with the approach for land use projects. We believe a performance standard should also be used for stationary sources, and we recommend the standard be a "best available control technology" for greenhouse gas emissions, or "G-BACT." CAPCOA has been developing a white paper to explore the application of G-BACT, which we will provide to the ARB. Similar to BACT for criteria pollutants, this is a performance standard that corresponds to the most effective emissions control for the pollutant in question, and takes into consideration the category and class of emissions source, as well as cost. We believe that requiring projects to install G-BACT will ensure that feasible mitigation of GHG occurs from a broader range of sources than a simple bright line at 7,000 metric tons of CO2e. We recommend that a backstop threshold be established, analogous to the "X" for land use projects, at which an EIR would be required. The backstop could be set to correspond to ARB's GHG mandatory reporting threshold (currently set at 25,000 metric tons CO2e), for example, which would lead to better alignment across the programs.

Aligning Thresholds - CAPCOA believes that, generally speaking, it will be simpler to implement new GHG requirements if they are consistent and aligned. To the extent that definitions, thresholds, and procedures are consistent across the GHG programs, there will be less confusion and that will improve compliance. Because GHGs are pollutants of global concern, rather than specific direct local impact, there is a good case for a more uniform and broad-based approach, and this holds geographically throughout the state as well as within and across programs. That said, simplicity should not come at the cost of real environmental protection. We encourage ARB to align definitions, thresholds, and procedures to the extent practicable, while preserving the environmental integrity of the underlying programs. In the case of CEQA thresholds, we believe this means a consistent statewide threshold, unless the allocation of reduction targets under SB 375 results in tailored thresholds to allow a region to meet its target, or a locality to contribute its share of the needed reductions. When considering whether to align thresholds for stationary sources and land use projects, we believe the thresholds should be aligned *as long as the alignment results in appropriate review of projects of each type.* The analysis should clearly evaluate the need for, and impact of, separate standards. We did not find sufficient explanation of the basis of the thresholds to allow a determination as to whether it was appropriate to separate them in the way the proposal does, and we urge ARB to provide that supporting information. It may be that the thresholds can be aligned if the performance standards are effective, the provisions of SB 375 are incorporated into the threshold, and standardized, streamlined review processes are put in place.

Basis and Quantification Methodology

In order for ARB's recommended thresholds to be useful to local agencies, they must be accompanied by sufficient justification, as well as clear guidance on quantification.

Basis - As noted in the CAPCOA "CEQA and Climate Change" document, CEQA does not require that an agency establish significance thresholds. In order for agencies to be able to rely on any thresholds recommended by ARB, the basis for selecting those thresholds as significant must be clearly documented, and those documents made available to any agency that undertakes to adopt and implement ARB's recommendation.

Quantification Methodology - It appears that ARB has calculated project emissions differently than has historically been done for CEQA review. For example, the boiler emissions calculated to illustrate the 7,000 metric ton/year CO2e threshold for stationary sources considers both direct emissions and "lifecycle" emissions. Historically, only the direct emissions from stationary sources have been considered for CEQA and for permitting. The net effect of this change is to capture for review much smaller projects than would otherwise reach the significance threshold. This is only one of a number of important assumptions that need to be explicitly articulated so that the threshold proposal can be correctly understood and applied.

To ensure emissions are consistently and appropriately calculated for comparison to the thresholds, ARB should establish standard quantification methodologies. This is being accomplished in part through the collaboration with the California Climate Action

Registry (CCAR). Unfortunately, CCAR's process for preparing and approving quantification protocols will not yield a large enough number of protocols, covering a wide enough range of project areas, in a time frame needed to support the near-term implementation of a uniform approach to addressing GHGs under CEQA. CAPCOA is working to support ARB in the development of project-specific quantification protocols, but we believe ARB should establish a process for these project-specific determinations to be reviewed and approved by ARB. A standardized process will allow more rapid development of guidance for implementing agencies and better consistency and certainty.

Emission factors are another critical part of calculating emissions from projects under CEQA. The Emissions Inventory and Research Divisions at ARB should quickly develop a workplan to review available GHG emission factors, and establish standard factors where none exist. CAPCOA is prepared to assist ARB in this effort. We are particularly interested in GHG emission factors and algorithms for models such as URBEMIS, the model most commonly used in California for projecting emissions from land use projects.

Emission factors and quantification methods are also needed for mitigation measures. CEQA requires that significant emissions be mitigated to insignificance where feasible. In order to show that this has been accomplished, the reductions associated with mitigation measures must be quantified. As with project-specific protocols, CAPCOA is committed to working with ARB to develop quantification protocols for mitigation measures. Districts have already begun work in this area, but a standardized, overarching process for review and approval of local determinations would facilitate this effort.

A related but subtly different aspect of the quantification is an assessment of the effectiveness of the measure. As ARB knows, requirements can be put in place, but the emission reductions are only achieved to the extent that the measures are fully and consistently implemented. For example, mitigation for a land use project involving a large office complex might include certain elements of a "green building" design or centralized HVAC control systems. A quantification protocol would identify the appropriate assumptions to calculate the emissions avoided by improved building energy use efficiency; this is only an effective mitigation strategy, however, if the measures are actually implemented, and are operated as designed. ARB will need to establish both the basic quantification protocols and the effectiveness of GHG mitigation measures, or work with CAPCOA to identify a process to accomplish this.

Implementation

There are several very important implementation questions that must be answered quickly in the wake of ARB's proposal. These include policy questions on mitigation; conflicting goals with criteria or toxic pollutant reductions; the role of process streamlining; the relationship of the thresholds to the Scoping Plan and how lead agencies should treat the ARB proposal before there is final action by ARB and OPR; and resources for implementation.

Mitigation Issues - The single most important thing ARB can do to support the identification and application of mitigation measures under CEQA is to establish guidance on the quality of acceptable reductions, including the definition of which emission reduction strategies are "additional" and can therefore be used to offset project emissions. In addition, ARB should establish a clear policy about the priority for application of mitigation measures. We recommend that ARB support a top-down approach to measure selection, as follows:

1. Measures that avoid the creation of GHGs from the project
2. Measures that control or reduce GHG emissions from the project
3. Onsite concurrent mitigation projects to offset GHG emissions from the project
4. Offsite concurrent mitigation projects to offset GHG emissions from the project
5. Payment of a mitigation fee to a specified agency that will be used to fund emission reduction projects to offset GHG emissions from the project, or purchase of emission reduction credits or offsets from an exchange

We also strongly urge ARB to give preference to emission reduction projects or offsets that are within California, to enhance our ability to verify the quality of the reductions and to ensure that Californian's are benefiting from the economic stimulation and criteria and toxic pollutant co-benefits that these projects will provide.

Trade-offs - The AB 32 legislation clearly states that public health protection is the first priority, and there can be no backsliding on programs to reduce criteria and toxic air pollutants. This is important and helpful direction. However, when mitigation options and project alternatives are being evaluated, there will be questions of trade-offs that are not so clear cut. For example, in an area that attains the federal and state ambient standards for ozone, is a trade-off between NOx reduction and GHG reduction evaluated the same way as it would be in an area that has substantial ozone problems? And even in a non-attainment area, how is the trade-off evaluated if there is a very small NOx increase associated with a very large GHG decrease? Are there any circumstances where an increase in toxic emissions would be acceptable – for example, if there are no residences or other receptors within a reasonable distance of the project? ARB will need to establish guidance on how to evaluate trade-offs between GHG and criteria/toxic pollutants.

Process Streamlining - When ARB makes its final recommendation on GHG thresholds, some consideration should be given to the role of process streamlining, and the ways in which ARB can support these efforts. Depending on how the thresholds are ultimately structured, they may result in a significant increase in the number of projects requiring review under CEQA. In order to ensure that local jurisdictions are not overwhelmed, ARB should work with CAPCOA and with other local government representatives to identify standardized approaches to project review in order to render the decision making ministerial. Done properly and with sufficient specificity, this can ensure that effective mitigation is reliably and consistently applied, and it can reduce the resources needed to review and approve the project. For example, the draft threshold ARB is considering for stationary sources would result in a finding that the emissions from a 10 MM Btu/hr boiler are significant under CEQA. In most cases, however, the mitigation opportunities will be limited to using lowest-emission technology, additional insulation, and possibly supplemental heat recovery. In addition, the feasibility of alternative equipment will be

evaluated against predictable criteria. The review of this class of source may be substantially streamlined if the lead agency (or the local district in this case) establishes a specific set of requirements for these projects. The review then becomes ministerial, and resources needed to complete are reduced and at the same time, the mitigation is more certain. ARB could work with CAPCOA to identify streamlining opportunities and to develop appropriate measures.

Interaction with Scoping Plan and Interim Threshold Periods - ARB has stated that the thresholds it is considering for recommendation are intended for the interim period until the Scoping Plan is fully implemented. This suggests that ARB envisions project significance and CEQA obligations changing when full implementation of the Scoping Plan has occurred. It is important that ARB provide additional clarification on this point. Does ARB intend that if a new project complies with the applicable standards under the Scoping Plan, it will have satisfied its obligation to mitigate its emissions under CEQA and it is no longer significant? Would this hold for all standards (command and control as well as market based)? What about sources that do not have specific applicable standards, and which are not directly part of the cap and trade program?

During the interim period identified by ARB, do CEQA obligations change as new Scoping Plan measures are implemented? Or is there a bright line demarcation between the two regimes? When does ARB envision the performance standards will be in place, and how should a project be evaluated if no applicable standard exists?

There is another interim period, between the initial proposal of draft recommended thresholds (a time point which has now passed) and the final adoption of recommendations by ARB and OPR. How are agencies to address the draft thresholds during this period? It is likely that ARB will be asked to comment on significance determinations that deviate from their draft recommendations; has ARB considered how it will respond to such requests? Guidance on this last issue is needed immediately, and cannot wait until the recommendations are final.

Resources - Depending on how the final recommended thresholds are structured, and how much streamlining assistance ARB provides to local districts and lead agencies, substantial resources may be needed – not only to review projects, but also to establish the framework to do so. Some of the costs may be recovered through fees on applications for project review, but not all. We encourage ARB to consider these costs in conjunction with other costs of implementing AB 32 and establish mechanisms to collect and provide the needed resources to implementing agencies.

In conclusion, CAPCOA supports ARB's effort to develop recommended significance thresholds for GHGs under CEQA and believes a consistent statewide approach is important. There are, however, significant practical considerations that must be addressed as ARB moves forward with the proposal, and we would greatly appreciate some form of written guidance on the questions we have raised. Local districts stand ready to offer assistance to ARB in developing the supporting infrastructure needed to effectively implement GHG thresholds in CEQA reviews.

If you have any questions about these issues, please feel free to contact me at (805) 961-8800.

Sincerely,

Terry Dressler
President