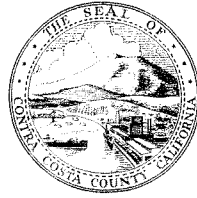


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November 26, 2008

Mary D. Nichols, Chair
Air Resources Board
(AB 32 Scoping Plan Comments)
1001 I Street
Sacramento, CA 95814

Honorable Chair Nichols,

Contra Costa County appreciates the opportunity to comment on the Assembly Bill (AB) 32 Proposed Scoping Plan (PSP). The comments below focus on comments previously submitted by the County on the Draft Scoping Plan in August 2008 (see enclosure). This letter provides a more comprehensive explanation of those comments in the hopes that they will invoke a change in the final document or other response.

Being cognizant of the need to fulfill the requirements under AB 32, but also recognizing the realities of implementation, a number of our comments refer to *existing* policy or authorization as an implementation mechanism. This should make the State's efforts more feasible and effective. Relying on existing mechanisms typically requires only administrative action or an increase in enforcement or oversight rather than regulatory or legislative action for entirely new programs (requiring yet again new enforcement/oversight protocols). This should speed and make less costly the fulfillment of the goals of AB 32.

In addition to the efficiency represented by using existing mechanisms, many of the factors highlighted here have a significant secondary benefit relative to the influence State operations have at the local level. Local agencies are more likely to perform as the PSP expects if the State demonstrates that the desired outcomes can be achieved in its own operations.

A broader comment, substantiated below, is that by simply changing the way the State *currently* does business (rather than making new regulations or statutes), significant progress towards fulfilling the goals of AB 32 without incurring the full costs of new efforts. In one case, State agencies are currently exempt from having to comply with local land use regulations. Many of these local regulations are state-of-the-practice yet State activities are exempt from these regulations which help fulfill the goals strived for in AB 32.

Page 24: II. RECOMMENDED ACTIONS: A. The Role of State Government: Setting an Example

The PSP cites¹ standards and directs that new State facilities be constructed to these standards in order to meet the greenhouse reduction targets. However, adherence to LEED standards will have little impact on transportation to and from a facility, which is one of the largest contributors of a buildings total greenhouse gas

¹ Draft Scoping Plan Appendix C: Page C-169 (LEED-NC Silver or Higher).

contribution². The LEED standards apply to a broad array of topics. In examining this broad array, the criteria that address the (much larger) impact of transportation to and from a facility are very simple.

The State should place a higher priority on compliance with regulations already in place that have the potential to significantly reduce the greenhouse gases generated by transportation to and from State facilities. Examples include Executive Order D-46-01 which requires the Department of General Services to maximize its support of smart growth patterns through the location and design of State facilities. In addition, Executive Order D-73-8 requires State agencies to implement a transportation management program designed to result in an annual reduction in the number of commute trips by State employees. The Final Scoping Plan should direct the State Government Operation Subgroup to establish performance standards for complying with these directives and require annual reports to monitor the progress of the State agencies following these directives. The State has existing regulations and statutes³ that better address the greenhouse gas impact of facilities, more so than what is found in the LEED standards. The Final Scoping Plan should require that the State site its facilities in a manner consistent with its own planning priorities.

This matter is particularly peculiar in that local jurisdictions will be encouraged to alter their General Plans to comply with the sustainable community strategies developed pursuant to SB 375. However, these improved plans can be easily compromised by the actions of State agencies which are not required to comply with local land use policy. This is not theoretical; it is currently happening and, absent relief from the State, will continue to happen during the implementation of AB 32. Mounting a massive effort to reduce greenhouse gases in one department, while undercutting the very same goals in another department, is not good practice. Specifically, State prisons, court facilities, colleges, universities, water storage/conveyance facilities, state office buildings, state-funded schools facilities, have a large *direct* effect on greenhouse gas production as well as a significant *indirect* impact. The indirect impact influences local land use policies, development pressures and travel behavior, all which, in turn, have an influence on greenhouse gas emissions.

Consistent with the comments submitted by the Land Use Subgroup of the Climate Action Team (LUSCAT), the Final Scoping Plan should include the following (and direct the State Government Operations Subgroup to address):

- an evaluation of facility siting standards for activities undertaken/regulated by the State (schools⁴, courts, colleges, etc.) to ensure siting of facilities in a GHG efficient manner (e.g. protect greenfields, minimize transportation requirements, and preserve habitat and natural resources).

² Approximately 55% according to the draft Contra Costa County *Municipal Climate Action Plan*,

³ Chapter 1016 - Statutes of 2002,

⁴ Revision to the Government Code Section 65302 to include sites for school facilities as a required component of the land use element of General Plans.

- Adoption of siting criteria by state agencies (e.g. State Allocation Board) that minimizes GHG emissions as a prerequisite for grant funding or adoption of the criteria as a state requirement for any facility funding distributed by the State.

The PSP has minimal discussion on the role the State's planning priorities can make in achieving the mandates of AB 32. As stated in our comment on the Draft Scoping Plan, the proposed Regional Targets should be supported by the State Environmental Goals and Policy Report (EGPR) and the 5-year infrastructure plan required by State law, Chapter 1016 - Statutes of 2002. Existing statutes requires every officer, agency, department, and instrumentality of State government to ensure that their functional plan is consistent with the State planning priorities, and annually demonstrate to the Governor and the Department of Finance when requesting infrastructure how the plans are consistent with those priorities. Furthermore, with each annual budget the Governor must include information relating proposed expenditures to the achievement of State planning priorities. The last EGPR prepared in 2003 recommended formation of an Interagency Working Group to implement the EGPR, however, the Governor never adopted the EGPR. The Final Scoping Plan should integrate it implementation efforts with the EGPR, including identifying how the newly established State Government Operations Subgroup will support the EGPR.

Page 47: 6. Regional Transportation-Related Greenhouse Gas Targets

California has existing⁵ parking cash-out legislation which, if enforced more effectively, could lead to significant reductions in greenhouse gas emissions. As the responsible regulatory authority, the Air Resources Board should revise its administrative efforts to encourage participation among employers and advise cities and counties on conditions they should impose on new development to expand the application of this statute on employers⁶. This proposed action for the Air Resources Board should be included in the Final Scoping Plan as a supporting measure for reaching regional transportation-related GHG targets, or the Final Scoping Plan should explain why this action should not be done.

Page 57: 13. Green Building Strategy

The PSP acknowledges that "*A Green Building strategy also includes siting considerations. Buildings that are sited close to public transportation or near mixed-use areas can work in tandem with transportation related strategies to decrease greenhouse gas emissions that result from that sector.*" However, such considerations are substantially under represented in the PSP. LEED criteria for features that influence a projects potential transportation impacts represent on 6 points of the 69 possible points that can be awarded to a project. It is entirely possible for a building to receive a platinum LEED certification (requires only 52 out of 69 possible points) but by virtue of its location have substantially higher greenhouse gas emissions than a less efficient building on a site less reliant on motor vehicles for access.

⁵ AB 2109, KATZ – 2002

⁶ For example, require project sponsors to prepare covenants, conditions & restrictions for the project to ensure parking and building leases are unbundled and that financial compensation to affected occupants is provided as required by applicable State law.

The Green Building Strategy needs to place more emphasis on the location for new buildings. Life-cycle costing procedures should include an evaluation of the GHG generated from building occupants entering or leaving the structure by motor vehicles. Construction of new State facilities or facilities to be constructed with State funding should be required to comply with the planning regulations of cities and counties that have general plans consistent with the applicable sustainable communities strategy.

Page 58: 13. Green Building Strategy

By replacing the stronger phrase "*all new schools would be required to meet the Collaborative for High Performance Schools (CHPS) 2009 criteria*" in the Draft Scoping Plan with the more permissive phrase "*should be required*" in the PSP, the State is losing the *direct* positive impact on greenhouse gas reduction which would be realized by holding school districts to this standard. In addition, the State will lose the substantial *indirect* positive impact relative to the larger effect that schools have on local land use polices, development pressure and travel behavior. Given the pervasiveness of schools, the trip making characteristics of schools and the aforementioned indirect effect these facilities have on local activities, the State should either return to the stronger language or demonstrate how this lost opportunity is justified.

Alternatively, without having to refer to the *Collaborative for High Performance Schools* (CHPS), significant gains can be made by requiring school and college districts (and other State agencies) to develop facilities consistent with local general plans once updated to comply with the sustainable communities strategies prepared pursuant to SB 375. Absent subjecting school districts to local land use polices or compliance with the applicable sustainable communities strategy; the State should reinstate the language which was in the Draft Scoping Plan requiring schools to meet standards in the CHPS.

Page 63: 16. Sustainable Forests

The State as an urban landowner and developer has the potential to contribute substantially in the development of urban forests. Appendix C refers to urban forestry strategies to help achieve the 5 Million Metric Tons of Carbon Dioxide Equivalents by 2020 from the Forests sector. This strategy discusses "*agency planting*". As an urban land owner, the State should look at its standards for landscaping on its property and the ability to support urban forestry through the planting of suitable species of trees in strategic locations. State departments responsible for establishing design standards for certain institutional facilities (e.g. schools and hospitals) could be required to foster the development of urban forests through standards developed by the State Architect.

Page 65: 17: Water

The County is encouraged that the Governor has issued an Executive Order on climate change. The State should be aware that Contra Costa County has, in its Delta Water Platform, actions that support the goals of AB 32 and the Executive Order, both directly and indirectly. These actions include:

Support addressing the impacts of climate change in any proposed studies and strategies, or in planning, engineering and constructing projects envisioned for the Delta.

A key component is a concept entitled Regional Self-Sufficiency, where all regions are required to implement a variety of local water supply options and institute conservation and reuse programs to reduce reliance on exports from the Delta.

The State may see improved response to the Governor's Executive Order on greenhouse gasses, and other water issues, if the State Resources Agency reduced its reliance on pumping water long distances as a water supply strategy.

Page 108: 4: Progress Toward the State Government Target

The PSP refers to the recently established a State Government Operations Subgroup⁷ to work with State agencies to create a statewide approach to meet the Scoping Plan's commitment to reduce greenhouse gas emissions by a minimum of 30 percent by 2020 below the State's estimated business-as-usual emissions. However, the description of the emission reduction strategies in Appendix C contains no reference to the State Government Operations Subgroup. The Final Scoping Plan should explicitly include State Operations in the measures proposed by this plan (Table 32), and describe how it will measure and track progress of the State Government Operations Subgroup. Since the expectation of the PSP is that the state will be able to develop and provide "best practices" for other branches of government to adopt, the activities of the State Government Operations Subgroup should be open to the review and comment by local agencies.

These comments are offered to ensure a complete and adequate Scoping Plan. Please contact John Cunningham of this office if you have any questions on these comments.

Sincerely



for Steven Goetz, Deputy Director
Transportation Planning Section

c: J. Cunningham,
D. Dingman DCD
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Enclosure

⁷ The PSP references to the State Government Subgroup and the State Operations Subgroup are interpreted to mean the same subgroup.

**DRAFT SCOPING PLAN
COMMENTS SUBMITTED BY
CONTRA COSTA COUNTY
August 1, 2008 (via ARB Website)**

General Comment

The web page for collecting comments on the Scoping Plan is difficult to use. The organization of the web page does not appear to be consistent with the organization of the document. It also makes it difficult to be a participant in this review if the State only encourages submittal of comments electronically. Public outreach for the Scoping Plan should be broader.

Transportation

The Sector Overview and Emission Reduction Strategies for Transportation include an evaluation of rail strategies. This evaluation is limited to High Speed Rail, which is contingent on voter approval of a state bond. The Scoping Plan should also evaluate the current state intercity rail program as a rail strategy. Implementation and expansion of intercity rail is not contingent on voter approval, but can be achieved through better coordination of existing state, regional and local transportation revenue available for this purpose. Such coordination is less likely to be achieved without some statewide evaluation of its potential effect on GHG emission reduction.

Land Use and Local Government

The proposed Regional Targets should be supported by the State Environmental Goals and Policy Report (EGPR) and the 5-year infrastructure plan required by State law, Chapter 1016 - Statutes of 2002. This coordination is mentioned in Appendix C, but apparently such coordination is not acknowledged at this point as appropriate for incorporation into the Scoping Plan. The recommendations of Appendix C regarding development and maintenance of the EGPR and a 5-year infrastructure plan for the State should be pulled into the Scoping Plan. Such coordination of planning efforts was also listed in the report of the Land Use Subgroup of the Climate Action Team (LUSCAT) as an essential principle to the long-term vision for land use planning in California.

The Scoping Plan on page 32 indicates that local governments have the ability to directly influence both the siting and design of new residential and commercial developments in a way that reduces greenhouse gases associated with energy, water, waste, and vehicle travel. The Scoping Plan should also acknowledge that single-purpose entities such as school and college districts operate independent of cities and counties under state law. These independent entities construct facilities that create major destinations for a community and can significantly affect green house gasses associated with energy, water, waste, and vehicle travel. The State can assist local government in meeting regional targets by ensuring that laws and regulations that support these special districts are coordinated with the actions of local government.

Substantial experience with development of school facilities under existing State law and related regulations/programs warrants consideration the following changes, in consultation with affected stakeholders:

- Revision to the Government Code Section 65302 to include sites for school facilities as a required component of the land use element of General Plans.
- Evaluation of state school facility siting standards and regulations to ensure siting of facilities in a GHG efficient manner (e.g. protect greenfields, minimize transportation requirements, and preserve habitat and natural resources).
- Adoption of siting criteria by the State Allocation Board as a prerequisite for grant funding or adoption of the criteria as a state requirement for any facility funding.

Please refer to the comments provided under the “State Government” sector for relevant State actions. These State actions will help provide the state leadership and funding to support the local government actions recommended by the Scoping Plan.

Green Buildings

The strategies for green building focus solely on the direct impact of structures on GHG emissions. There should be some acknowledgement of the indirect impact on GHG emissions by the provision of support facilities such as parking and their function in the community as a destination that generates vehicle trips. The Green Buildings sector of the Scoping Plan can refer to specific strategies in the “Land Use and Local Government” and “State Government” sectors of the Scoping Plan that address these indirect GHG impacts.

Forests

Appendix C refers to urban forestry strategies to help achieve the 5 Million Metric Tons of Carbon Dioxide Equivalents by 2020 from the Forests sector. This strategy discusses “agency planting”. As an urban land owner, the State should look at its standards for landscaping on its property and the ability to support urban forestry through the planting of suitable species of trees in strategic locations.

State Government Sector

A key element of the Scoping Plan is implementation of existing State laws and policies. This element needs to go beyond clean car standards, good movement measures, and the low Carbon Fuel Standard.

Appendix C refers to a strategy for locating State facilities based on the State’s planning priorities as embodied in Chapter 1016, Statutes of 2002. Construction of prisons, court facilities, colleges, universities, water storage and conveyance facilities, state office buildings, elementary and secondary schools as approved by the State Architect, all have significant influence on the land use policies, development pressures and travel behavior at the local level. This law requires each Governor’s Budget to include a 5-year infrastructure plan. The Governor is also required to prepare and maintain the State Environmental Goals and Policy Report (EGPR).

The public outreach and educational component of the Scoping Plan needs to make these documents more visible so the public can understand the sound environmental planning behind the capital facilities supported by each State budget. Has a greenhouse emission reduction goal been included in the EGPR? Is the State measuring and tracking compliance with this statute? Has preparation and maintenance of these documents been acknowledged in applicable State administrative manuals? Should development of the EGPR and the infrastructure plan be coordinated with the activities of the Governor's Strategic Growth Council? Can a copy of the most recent infrastructure plan and EGPR be made available for review by the public and local jurisdictions and other interested stakeholders?

Future GHG reduction efforts for State facilities should be expanded to include a review of the management of parking spaces owned or leased by the State. The Contra Costa County Climate Action Team is evaluating the feasibility of establishing a user fee for parking spaces owned or leased by the County and allocating any surplus revenue to incentives for use of commute alternatives. User fees would eliminate any subsidy that may exist for motorists who do not pay for the cost of the parking they use. Any revenue in excess of the cost to provide the parking could be used to provide improvements to transit service or made available to employees to help pay for their commuting costs. This strategy should be coordinated with potential future efforts listed under "employee practices" on page C-178, and other relevant state regulations such as Executive Order D-73-8 which requires State agencies to implement a transportation management program designed to result in an annual reduction in the number of commute trips by State employees.

The description of proposed measures to address "the State's Carbon Shadow", which begins on C-179 needs more detail in the following areas:

- The State's standards for the design of school and medical facilities currently emphasize requirements for buildings and support facilities. Equal emphasis is needed on requirements for site selection and the siting of these facilities in the community to ensure convenient access by transit, walking or bicycling. The criteria used by the State for awarding funding for facility construction should place greater weighting of facility siting in the community and transportation criteria. Some of these recommendations were in the LUSCAT report but do not appear in the Scoping Plan.
- The standards adopted by the State Fire Marshall need to be evaluated for their impact on GHG emissions and community design. The current requirements for fire access roads are based on operation of a standard multi-purpose fire/paramedic vehicle. These standards should encourage flexibility to allow the use of smaller vehicles that are compatible with more pedestrian-oriented street construction.
- The Air Resources Board (ARB) needs to improve its administration of the parking cashout program, Chapter 554, Statutes of 1992. This law requires certain employers who provide subsidized parking for their employees to offer a cash allowance in lieu of a parking space. Parking cashout offers the opportunity to reduce GHG emissions by reducing commute trips. The ARB is the agency authorized by the Legislature to

interpret and administer the parking cash-out law. Their administrative efforts have been limited to preparation of an informational guide to help employers determine whether they are subject to the requirements of the law. This “self-implementing” approach by the ARB has resulted in few employers offering a parking cash-out program to their employees. As the appropriate regulatory authority, the ARB should, in consultation with affected stakeholders, revise its administrative efforts to increase participation among employers and advise cities and counties on conditions they can impose on new development to expand the application of this statute on employers (e.g. require project sponsors to prepare CC&Rs for the project to ensure parking and building leases are unbundled and that financial compensation to affected occupants is provided as required by applicable state law)

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