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***Via Electronic Mail***

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**Re: Comments Following the June 2008 Meeting SCAQMD Greenhouse Gas Significance Threshold Working Group**

This letter provides additional comments from the Center for Biological Diversity (“the Center”) on issues raised during the first meeting of the SCAQMD Greenhouse Gas Significance Threshold Working Group (“Working Group”) on June 19, 2008 as summarized in the Minutes from that meeting.

**I. A Significance Threshold Should Be Based on 2050 Emission Reduction Targets**

Premising a threshold of significance on a 2020 emissions reduction target is flawed because 2020 emission reduction goals are only a first and interim step toward the reductions necessary to stabilize the climate. As projects built today will most certainly endure past 2020 to 2050, a threshold of significance must look to the 2050 emission reduction targets that scientists have determined are necessary to stabilize the climate. Simply assuming that technological innovation will somehow act to reduce a project’s carbon footprint at some uncertain future time is contrary to CEQA’s proscription against the uncertain deferral of measures necessary to protect the environment. Moreover, the global warming crisis is now too big and the time too short to rely on an incremental policy approach whereby a threshold of significance might become more stringent at some undefined later date. Bold and aggressive polices are called for.

Comments at the June Working Group meeting seemed to suggest a threshold aimed at achieving critical 2050 reduction targets is inappropriate because attaining this level of reduction is not currently technologically feasible. Technological feasibility is *not* the test for significance under CEQA. The significance of an impact is determined by the impacts of a proposed project on the environment. Thus, if scientific and factual data indicate that a project’s greenhouse gas emissions would have a cumulatively significant impact on the environment even after a project did all it purportedly could to reduce its emissions, then this impact is still considered significant. In any event, as a practical matter, offsite mitigation currently allows a project to attain emissions reductions that cannot be feasibly achieved on-site. Until such time as technological innovation largely eliminates a project’s carbon footprint, offsite mitigation provides an

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invaluable opportunity to complement on-site reductions and achieve emission reductions urgently needed from existing sources.

## **II. Specific Comments on the June 2008 Proposed Decision Tree**

### **A. Any Proposed “Decision Tree” Should First Be Informed by Scientific and Factual Data on the Cumulative Environmental Impact of a Project’s Global Warming Pollution**

The Center appreciates the challenges SCAQMD faces as the first entity to seriously engage in the development of a threshold of significance for greenhouse gases. However, the iterations of the decision trees proposed by SCAQMD, which seem primarily intended to address administerability concerns associated with a greenhouse gas threshold, seem to put the cart before the horse. In order to develop a tiered approach to evaluating the significance of a project’s greenhouse gas emissions, it would be helpful to first engage in an analysis of the quantitative and/or qualitative emissions levels that would potentially result in a cumulatively significant impact. Once a target objective is determined, “based to the extent possible on scientific and factual data” (Guidelines § 15064(b)), a potential tiered approach to meeting this target could be more thoughtfully examined.

CAPCOA has already engaged in an analysis of the effectiveness of various thresholds of significance. As set forth more fully in the Center’s April 17th letter to SCAQMD as part of the Working Group, analysis by CAPCOA and scientific data on the deep emissions cuts necessary to stabilize the climate point toward a threshold of zero in order to ensure that new projects do not have a cumulatively significant impact on the environment. Were SCAQMD to adopt a threshold that was not highly effective at reducing greenhouse gas emissions and highly compliant with the emission reduction targets necessary to stabilize the climate, it runs the risk that a project relying on this threshold would be challenged under the fair argument standard. *See, e.g., Protect the Historic Amador Waterways v. Amador Water Agency*, 116 Cal. App. 4th 1099, 1109 (2004) (“an agency must consider and resolve every fair argument that can be made about the possible significant environmental effects of a project, irrespective of whether an established threshold of significance has been met with respect to any given effect.”); *see also Communities for Better Env’t v. California Resources Agency*, 103 Cal. App. 4th 98, 120 (2002) (“the greater the existing environmental problems are, the lower the threshold for treating a project’s contribution to cumulative impacts as significant.”).

### **B. Analysis is Needed To Support a Finding of No Further Action for Categorically Exempt Projects**

Under the June 2008 proposed Decision Tree, projects need not determine the potential significance of their greenhouse gas emissions if they meet an “applicable exemption.” With regard to categorical exemptions, it would be helpful to provide data on the extent to which categorical exemptions are used in the District and the approximate range of greenhouse gas emissions associated with projects invoking particular exemptions. Given the classes of projects for which categorical exemptions can apply, emissions would presumably be quite low (perhaps in the range of 0-30 tons CO<sub>2</sub>eq). However, specific data would be helpful to support a

determination that a threshold of significance could still be highly compliant with emission reduction targets if projects falling within a categorical exemption were excused from a greenhouse gas emissions analysis.

**C. Compliance with a Planning Document That Achieves Emission Reduction Targets Necessary for Climate Stabilization Could be Its Own Tier, Rather Than A Compliance Option Under Tier 3**

As part of a possible decision tree, it seems more appropriate for a project that is relying on a planning document that is compliant with emission reduction targets to be in its own category, either above or below what is currently Tier 1. In order to be supported by substantial evidence that cumulative emissions are fully addressed, the planning document or greenhouse gas reduction plan must have undergone CEQA review, meet the emission reduction targets necessary to stabilize the climate, have a tracking and reporting mechanism, be enforceable, and commit to remedy excess emissions if commitments are not met. *See* Guideline 15064(h)(3) (“[i]f there is substantial evidence that the possible effects of a particular project are still cumulatively considerable notwithstanding that the project complies with the specified plan or mitigation program addressing the cumulative problem, an EIR must be prepared for the project.”).

**D. There Is a Potentially Large Disconnect Between a Less than Significant Determination Based on a Tier 2 De Minimis GHG Total and Among Mitigation Compliance Options Under Tier 3**

Understanding that numbers used in the proposed Decision Tree are placeholders, there nonetheless is a potentially large disparity between the emissions from a project that meets a de minimis level and one that might comply with one of the compliance options listed in Tier 3. Accordingly, projects with widely varying emissions levels (and correspondingly varying environmental impacts) would all be considered less than significant. Explanation, analysis and evidence are lacking to support a methodology whereby compliance with one of several approaches, all of which would potentially yield a different emissions total, could be equally viewed as resulting in a less than significant environmental impact. As with the treatment of other air quality pollutants under CEQA, it would seem more logically consistent and scientifically supportable and far less problematic to adopt a single numerical threshold for greenhouse gas emissions. Projects would then simply be required to meet this threshold in order to have a less than significant impact on global warming.

In addition, the 900 ton de minimis threshold set forth in Tier 2 is at the upper end of what CAPCOA analyzed as a highly effective threshold. As moving to Tier 3 would presumably result in a less than significant determination for projects with much higher emissions levels, implementation of this approach would collectively result in average emission levels that exceed the 900 ton threshold. Given the magnitude of the environmental and societal threats posed by global warming and the cumulative impact of even small sources of greenhouse gas emissions, a tiered system which collectively results in emissions outside the range CAPCOA has analyzed as highly compliant with emission reduction targets are prone to a fair argument challenge. *See Protect the Historic Amador Waterways*, 116 Cal. App. 4th at 1109. In addition, a 900 ton de

minimis threshold is insufficient as it is roughly equivalent to 50 residential units and would allow projects of this relatively large size to avoid any obligation to make emissions reductions. *See Center for Biological Diversity v. National Highway Traffic Safety Administration*, 508 F.3d 508, 550 (9th Cir. 2007) (“we cannot afford to ignore even modest contributions to global warming.”).

#### **E. Compliance With a Target Objective Should Not be Through Offsets Alone**

As presented, compliance with a target emissions objective could be met through offsets alone. (Compliance Option 3.) While offsite mitigation can help close the gap in project emissions that cannot be feasibly reduced on-site (such as transportation related emissions), it should be a mitigation option that is implemented only after all feasible on-site mitigation measures have been adopted. Compliance Option 1 and 3 should be combined in a manner that first prioritizes on-site reductions and then allows for offsite mitigation to meet the emission reduction target.

#### **F. Reduction from a Hypothetical BAU Standard is Inherently Flawed**

Reductions from business-as-usual greenhouse gas emissions is an infeasible metric for significance thresholds. Reductions from business-as-usual would allow project applicants to propose a hypothetical straw project that inflates project size, energy demands, and vehicle trips and create a reduced emissions alternative that appears to be a reduction from business-as-usual. There is no assurance that the reduced emissions alternative wasn't the preferred project from the outset, and the inflated project was envisioned to create the illusion of an actual greenhouse gas reduction. For example, a residential or commercial project could oversize the square footage per unit, types of heating or cooling, or estimated vehicle trips to create an inflated business-as-usual project. By then reducing that inflated project's size, energy demands, or vehicle trips and mixing uses the Project can then count itself as a reduction without making any meaningful additional changes to the project.

In addition, the 40% BAU reduction used in the proposed Decision Tree is insufficient to meet California's emission reduction targets. As determined by CAPCOA, a 90% reduction from business-as-usual, *effective immediately*, is necessary to meet the emission reduction targets set by Executive Order S-3-05. (CAPCOA, CEQA & Climate Change at 33 (emphasis added).) A 50 percent reduction from business-as-usual will prohibit California from reaching the goals of Executive Order S-3-05 even if existing emissions were 100 percent controlled. (*Id* at 33-34).

Thank you for your consideration. The Center looks forward to further discussing the critical role of CEQA in reducing greenhouse gas emissions in the Working Group. Please do not hesitate to contact Matthew Vespa at (415) 436-9682 x.309 [mvespa@biologicaldiversity.org](mailto:mvespa@biologicaldiversity.org) if you have any questions or concerns.

Sincerely,

A handwritten signature in black ink that reads "Matthew Vespa". The signature is written in a cursive style with a large, sweeping initial 'M'.

Matthew Vespa  
Senior Attorney

A handwritten signature in black ink that reads "Jonathan Evans". The signature is written in a cursive style with a large, sweeping initial 'J'.

Jonathan Evans  
Staff Attorney