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June 18, 2008

Elaine Chang
Deputy Executive Officer
Planning, Rule Development and Area Sources
South Coast Air Quality Management District
21865 Copley Drive
Diamond Bar, CA. 91765-4182

**Re: Recommendations on SCAQMD's Proposed
Interim CEQA Significance Guidance**

Dear Ms. Chang:

On behalf of the California Building Industry Association (CBIA, we thank you for the opportunity to offer these comments on your effort to provide guidance to local lead agencies in determining the significance of greenhouse gas emissions in CEQA documents.

The California Building Industry Association is a statewide trade association representing more than 6,700 companies including homebuilders, trade contractors, architects, engineers, designers, suppliers, and other industry professionals. The homebuilding industry contributes annually more than \$60 billion to the state's economy and generates 525,000 jobs.

While we understand that the thresholds under consideration are intended to be applicable to projects and environmental documents within the SCAQMD only on an interim basis, we view this as a critical effort that will help frame the issues for other districts, the California Air Resources Board, and ultimately the Governor's Office of Planning and Research as it issues statewide guidance pursuant to Senate Bill 97 of 2007.

**I. A Project's Contribution to Climate Change is Necessarily
Evaluated as a Cumulative Impact**

A project's contribution to climate change must be evaluated as a cumulative impact and not a project specific impact. Climate change by definition is the result of an accumulation of many projects and anthropogenic emissions over time in addition to many natural forces.

It is not at all unusual to hear that the impacts of global warming are being felt with alarming severity and speed and that any additional source of emission would frustrate the ambitious goals of the *Global Warming Solutions Act of 2006* (AB32). However, under CEQA and the case law, the critical question is not the severity of or the pace of global warming it is whether the project itself makes a considerable contribution. The

court in *Communities for a Better Environment v. California Resources Agency* (2002) 103 Cal. App. 4th 98, 119, stated that "the question is not whether there is a 'significant cumulative impact' but whether the effects of the 'individual project are considerable." (emphasis in original).

The CEQA Guidelines¹ specify that cumulative impacts are significant when they are "cumulatively considerable." An impact is cumulatively considerable if the incremental effect of the project is significant when viewed in connection with the effects of other projects.² Guideline 15130 specifically indicates that an incremental impact can be found to be less than significant.

The status of climate change as a cumulative impact is important because, while the discussion of cumulative impacts is to reflect the severity of the impacts and their likelihood of occurrence, the discussion of cumulative impacts in an EIR "need not provide as great detail as is provided for the effects attributable to the project."³

II. Any Significance Threshold Must Be Consistent With CEQA Precedent

The building industry has reviewed the various types of CEQA significance thresholds suggested by CAPCOA and participants in the SCAQMD working group in light of CEQA and case law.

A. A Zero-Emissions Threshold Is Inconsistent With CEQA

The building industry strongly believes that a zero-emissions threshold of environmental significance for green house gas emissions is fundamentally inconsistent with CEQA and the case law interpreting CEQA.

While we understand that some may argue for the adoption of such a threshold, we strongly believe that to do so would be fundamentally inconsistent with CEQA law and practice which historically has been premised upon a lead agency determining whether impacts are or are not significant -- not in assuming that *any* level of impact is significant. In *Communities* (above), the court specifically recognized this in rejecting the concept of zero thresholds for cumulative emissions impacts ("the 'one [additional] molecule rule' is not the law") 103 Cal. App. 4th at 120.

Applying a zero-emissions threshold is not only inconsistent with CEQA and case law but would potentially force a full EIR for all projects resulting in *any* GHG emissions, regardless of how small.

B. A Numeric Threshold Cannot Be Scientifically Supported

¹ CEQA Guideline 15130, California Code of Regulations, Title 14, Chapter 3.

² CEQA Guideline 15065, California Code of Regulations, Title 14, Chapter 3.

³ CEQA Guideline 15130 (b), California Code of Regulations, Title 14, Chapter 3.

The same reports that establish that climate change is a severe problem also establish that scientists do not yet understand the link between particular land use projects and climate change. Whether it is the Intergovernmental Panel on Climate Change (IPCC),⁴ the California Energy Commission (CEC),⁵ the California Air Pollution Control Officers Association (CAPCOA),⁶ or most recently the National Science and Technology Council,⁷ it is clear that scientists do not yet fully understand the impact of specific, individual land use projects on climate change. Because of this, the building industry strongly believes that there is no scientific basis for setting a specific numeric threshold such as an annual amount of emissions, and as such any attempt to impose such a threshold would be completely arbitrary.

Although numeric thresholds are arbitrary, the building industry recognizes that most EIRs currently underway are quantifying greenhouse gas emissions as part of their analysis. Lead agencies are selecting various methodologies to provide such quantification, pursuant to a lead agency's discretion to determine the appropriate methodology for evaluating impacts in an EIR. The fact that most EIRs are now quantifying greenhouse gas emissions as part of their disclosure of impacts does not mean, however, that it is appropriate to select a numeric threshold as the basis for determining significance. As the cited reports demonstrate, there simply is not any basis for selecting such a numeric threshold.

C. Set a Qualitative Threshold Based on Project Features and Mitigation to Improve Energy Efficiency, Reduce Carbon Intensity or Comply with AB 32.

The CEQA Guidelines and case law provide substantial flexibility in evaluating mitigation measures and project design features that can substantially reduce a project's contribution to a cumulative impact such as climate change. Generally, a project is required to implement its share of mitigation measures designed to alleviate the impact and agencies can impose project-specific conditions or more broadly applicable mitigation requirements.⁸ Lead agencies have substantial discretion to determine what combination of project features and mitigation measures can be incorporated into or imposed upon a proposed project to avoid a cumulative impact, and it is important that

⁴ "Difficulties remain in attributing temperature changes on smaller than continental scales and over time scales of less than 50 years. Attribution at these scales, with limited exceptions, has not been established." IPCC, *Understanding and Attributing Climate Change*, (Fourth Assessment Report, 2007)."

⁵ *Integrated Energy Policy Report*, 2007, describing the study of the relationship between land use and impacts on greenhouse gas emissions as in the "early stages of exploration."

⁶ CAPCOA, *CEQA & Climate Change*, 2008, "thus far little has been done to assess the significance of the affects new development projects may have on climate change."

⁷ "Attribution of temperature changes on scales smaller than continental and for time scales of 50 years, with limited exceptions, has not been established." National Science and Technology Council, *Scientific Assessment of the Effects of Global Change on the United States* (May 2008).

⁸ CEQA Guidelines § 15130(a)(3). See also CEQA Guidelines §15130(c)-(d).

any threshold preserve this discretion. Lead agencies considering projects are best able to evaluate particular mitigation measures in light of the totality of circumstances, including local conditions which vary so dramatically from jurisdiction to jurisdiction in California.

New residential development in California has the ability to produce substantial benefits in reducing per capita GHG emissions, and the project design features and mitigation measures that are being developed by both project proponents and lead agencies are expanding and enhancing the ability of new developments to further reduce GHG emissions and the carbon footprint of new development.

Because California has in place (and continues to tighten) stringent energy efficiency and green building standards, turnover of housing, other building stock and infrastructure can greatly reduce the state's carbon footprint.

Accordingly, the degree to which a project can reduce its contribution to climate change to a less than significant level should be determined by a qualitative measure that recognizes the discretion lead agencies possess to tailor mitigation to their local circumstances, and that also directs lead agencies to focus their mitigation efforts on improving energy efficiency and decreasing the carbon intensity of new development. For example, consistent with many of the impact questions currently evaluated in CEQA documents, a qualitative threshold could assess whether the proposed project reduces emissions compared to the baseline or to "business as usual", or could assess whether the project, with project design features and mitigation measures, helps the state to achieve the AB 32 goals.

This type of qualitative approach avoids two major drawbacks of the zero-emission or numeric standard approaches. First, applying a qualitative threshold of improving energy efficiency or decreasing carbon intensity will encourage development of cleaner new projects. Second, it helps to avoid the counterproductive claims that detailed analysis such as an EIR is required even for very small projects and in-fill housing projects. Applying detailed analysis requirements to such projects would delay many projects which can help reduce emissions, and would squander lead agency and air district staff and resources that would be better spent on other GHG reduction priorities.

III. The Baseline For Evaluating impacts Is Existing Physical Conditions

There appears to be general agreement among at least most stakeholders that the proper baseline for climate change analysis is current conditions. There are apparently some claims, however, based on AB 32, that the baseline should be 1990 conditions. CBIA agrees with the generally accepted position that the baseline is current conditions, and this position is supported by CEQA case law. In the California Supreme Court's most recent CEQA decision, on the Bay-Delta EIR, the court stated in the context of EIR alternatives analysis that an EIR should focus on reducing the impacts of a project and

that existing environmental conditions are considered as part of the baseline, not part of the impacts of a project.⁹ Positioning 1990 conditions as a baseline creates, in effect, a negative baseline below actual existing conditions. A negative baseline would be inconsistent with both the CEQA Guidelines and case law providing that current conditions are the baseline for the evaluation of impacts.

IV. Distinguishing Existing Emissions from New (Net) Emissions

In applying models or otherwise calculating emissions and related climate change impacts, lead agencies should attempt to distinguish between existing emissions that are part of the environmental baseline and new emissions that result from a project. (CEQA Guideline 15125). For example, if a technical model does not provide for a quantified distinction between existing and new emissions, the lead agency should at least describe this distinction in qualitative terms.

V. The Need For Caution In Using Existing Methodologies As Proxies To Evaluate Climate Change

Some lead agencies are using analytical tools that have developed in other contexts to evaluate climate change. It is important, however, to evaluate whether the proxy methodology provides an accurate estimate of climate change impacts and to include in the CEQA analysis some qualitative discussion of the limitations of such proxy methodologies. For example, some agencies have used or are considering using vehicle miles travelled (VMT) , derived from either the ITE manual or site-specific traffic studies, to calculate the greenhouse gas emissions of a project. These methods predict worst-case daily traffic and should not be extrapolated to approximate overall project emissions as are required for climate change analysis. The use of VMT as a proxy does not account for weekday/weekend differences. Also, VMT is designed to maximize the potential miles travelled on any route rather than to predict the average annual traffic -- which is a more appropriate approximation of project GHG emissions.

VI. Evaluation of GHG Emissions / Climate Change Impacts Must Be Based Upon Substantial Evidence

Consistent with CEQA's basic requirements, the evaluation of GHG emissions / global warming impacts must be based on substantial evidence — but several different approaches may be valid.

In the current period of both regulatory and scientific uncertainty, guidance documents should acknowledge that several different approaches to the evaluation of greenhouse gas emissions and global warming impacts are valid, so long as their conclusions are

⁹ *In re Bay-Delta Programmatic Environmental Impact Report Coordinated Proceedings*, California Supreme Court Case No. S138974 (June 5, 1008), slip opinion at 24-25.

based on substantial evidence. Substantial evidence may include consultation with air quality regulatory agencies, opinions from agency staff or consultants or recommendations or conclusions from technical and scientific reports on greenhouse gas emissions and climate change.

Thank you for the opportunity to offer these comments. Should you have any questions or comments, please contact either Nick Cammarota or Richard Lyon at (916) 443-7933.

Sincerely,



Nick Cammarota
General Counsel
California Building Industry Association



Richard Lyon
Senior Legislative Advocate
California Building Industry Association

cc: Barry Wallerstein, Executive Officer, SCAQMD
Mary Nichols, Chair, California Air Resources Board
Cynthia Bryant, Deputy Chief of Staff to Governor Schwarzenegger,
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