



**Building
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November 5, 2008

Barry Wallerstein, Executive Officer
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: Comments and Request for Additional Information on Draft CEQA
Greenhouse Gas Significance Threshold**

Dear Mr. Wallerstein and Ms. Chang:

On behalf of the members of the Building Industry Association of Southern California (BIA/SC), I am writing with regard to the District Staff's proposed interim greenhouse gas (GHG) significance threshold under the California Environmental Quality Act (CEQA), which is dated October 2008 and titled "Draft Guidance Document – Interim CEQA GHG Significance Threshold." I am writing to request much-needed additional information and to document our industry's serious concerns about the proposal. BIA/SC's Dr. Mark Grey and I have attended the recent GHG Working Group meetings where the District Staff shared their evolving concepts and proposals, which reflect the "tiered" approach to determining whether a project would have significant GHG emissions.

The draft tiered proposal reflects the Staff's typically innovative work designed to address a difficult subject matter. However, several of the proposal's features remain unclear and require clarification. As a result, our industry members are unable to comment fully on the proposal's practical consequences and legal defensibility.

We therefore respectfully request that before the Staff presents its proposal to the District Board, the Staff provide more details to the proposal's Working Group and give the group a reasonable timeline to assess and comment on those details. Adequate time to assess and comment on the proposal's details is particularly important given that our members – as well as public agencies and other stakeholders – must also invest time and resources in reviewing and commenting on state agencies' legislative and regulatory efforts to produce long-term, statewide GHG emission standards and CEQA significance thresholds.

Antelope Valley Chapter
Baldy View Chapter
Desert Chapter
Greater L.A./Ventura Chapter
Los Angeles County East Chapter
Orange County Chapter
Riverside County Chapter

I have outlined below several issues that we believe require more detail before the Working Group can adequately respond to the proposal:

1. For Tier 1 of the proposal, please identify and provide detail on the exemptions under CEQA that the Staff believes may be available for impacts due to GHG emissions. The Working Group should discuss whether existing exemptions under CEQA are appropriate in the context of impacts from GHG emissions.
2. Tier 2 states that if a project's GHG emissions fall within a GHG budget in an approved regional plan, then the project's GHG emissions are less than significant. Currently, there are no approved GHG emission budgets. Tier 2 therefore appears not to provide an existing option for CEQA compliance, even though the Staff's proposal is meant to serve as an interim framework for CEQA compliance pending promulgation of statewide GHG thresholds. Please clarify whether existing options for compliance exist under Tier 2.
3. Although there are currently no approved GHG emission budgets, Governor Schwarzenegger recently signed Senate Bill 375, which requires the California Air Resources Board (CARB) to establish regional emission budgets tied to land use and vehicle miles traveled. Please clarify how the Staff's proposal, as an interim framework; will ensure consistency with the statewide GHG emission budgets that CARB must establish under Senate Bill 375.
4. Tier 3 states that a project's incremental increase in GHG emissions must be below or mitigated to less than the Significance Screening Level. Tier 3 then sets 3,000 metric tons per year of CO₂-equivalents as the appropriate Significance Screening Level. We request details on how the Staff established the 3,000 metric tons figure as the appropriate level. In addition, as indicated on page 3-11 of the Staff's draft proposal, even if a project falls below this Significance Screening Level, it must also provide a certain percentage of energy efficiency beyond that required in California's building standards (Title 24) and must reduce water use by another percentage. We request detail on the percentages that the Staff plans to use and information on how the Staff will arrive – or has arrived – at those percentages.
5. California Health & Safety Code section 17958.8 reflects the State Legislature's intent that Title 24 is to be the statewide requirement for code related to energy efficiency, from which a local government should deviate only "because of local climatic, geological, or topographic conditions." Given that GHG emissions are a global concern, the District Staff's Tier 3 proposal – with its requirement of "x percent better than Title 24," undercuts this legislative intent

indirectly through the CEQA process. Additionally, requiring a project whose GHG emissions fall below the Significance Screening Level to employ additional energy efficiency and water conservation measures misuses CEQA to mitigate insignificant impacts, rather than to mitigate significant impacts only.

6. Option 1 under Tier 4 relies on the concept of "Business as Usual" (BAU). Page 3-6 of the Staff's draft proposal states that the definition of "BAU will evolve over time as the current regulatory framework changes to implement GHG reduction strategies . . ." On pages 3-6 through 3-7, the Staff acknowledges that ~~this evolving definition creates uncertainty and may be difficult to define.~~ The Staff then recommends that CARB develop and periodically update a statewide definition to minimize uncertainty. Any definition of BAU that evolves with time, however, remains uncertain and therefore contributes to confusion about compliance. An evolving definition of BAU could also lead to unfairness because a project's GHG reduction requirements would depend in part simply on the current regulatory framework, rather than on long-term regulatory programs. An evolving definition of BAU therefore discourages long-term compliance planning and its associated potential for efficiency and innovation. We therefore ask that the Staff reconsider its reliance on an evolving definition of BAU.

7. Option 1 under Tier 4 states that a project can meet a uniform percent emission reduction target relative to BAU by incorporating project design features or implementing emission reduction measures. Can a project meet a uniform percent emission reduction target under Tier 4 by committing to specific off-site mitigation as well? For example, can a project meet the target under Tier 4 by investing in off-site solar panels that will demonstrably increase the local alternative energy supply?

8. Tier 5 of the Staff's proposal potentially allows a project to provide offsets to achieve a fixed level of insignificance for GHG emissions which is established and applied pursuant to Tier 3. These requirements would be imposed without any consideration of the scale of the proposed project under consideration (e.g., the number of homes being built). Especially in light of the District Staff's recent unveiling of Proposed Rule 2702, which threatens to provide an immediate "in-lieu fee" regime, we need much more information and discussion concerning the economic and public policy implications of demanding fees as a way to mitigate all the way down to such a questionably established threshold, which – unlike Tier 4 – has no consideration of the scale of the project or proportionality.

9. Assembly Bill (AB) 32 authorizes the Governor to postpone implementation of emission reduction measures in the event of a "threat of significant economic harm." AB 32 also requires CARB to consider whether

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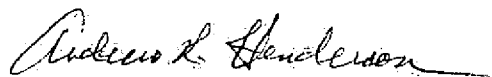
GHG mitigation measures are "cost-effective." Tier 5 of the Staff's proposal appears to require a project to purchase enough offsets to reduce the project's net GHG emissions to zero regardless of economic consequences or cost-effectiveness. We request clarification on whether the Staff's proposal accounts for the possibility of postponement of emission reduction measures during an economic crisis and whether the Staff has considered the cost-effectiveness of its offset requirement. We believe that these issues are particularly timely given the current economic situation.

11. Finally, we are concerned about whether the Staff's proposal for interim GHG significance thresholds will be consistent with CARB's recent proposal for long-term, statewide CEQA significance thresholds. We would also like to know whether the Staff has any plans for increased collaboration with CARB. We request that the Staff not present its proposal to the District Board without first ensuring and documenting that the interim proposal is consistent with CARB's long-term proposal. This consistency is critical given GHG emissions' global, rather than localized, climatic effects.

Thank you for considering our requests for greater specificity on these issues and for adequate time to review and comment on the proposal's details. I would appreciate a written response to our requests if possible, although I am also available to discuss our requests more informally. My phone number is 310-396-9993, and my email address is ahenderson@biasec.org.

Finally, the Building Industry Legal Defense Foundation and I want to thank Ms. Chang for participating in the foundation's conference on October 2 in Newport Beach. She did a great job discussing the District Staff's evolving, tiered approach to GHG significance thresholds under CEQA. Indeed, my thoughts in this letter about possible collaboration between the District and CARB reflect Ms. Chang's discussion at the conference.

Sincerely,



Andrew R. Henderson
Vice President and General Counsel
Building Industry Association of Southern California

cc: Dr. Steve Smith
Dr. Mark Grey
Richard J. Lambros