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January 16, 2009

TO: The Honorable Mary D. Nichols
Chair, California Air Resources Board

CC: All Members of the California Air Resources Board
Cynthia Bryant, Deputy Chief of Staff and Director of the Governor’s Office of Planning and Research

FR: California Business Properties Association
American Council of Engineering Companies
American Institute of Architects, California Council
Building Owners and Managers Association of California
California Association of Realtors
California Chamber of Commerce
California Manufacturers and Technology Association
California Retailers Association
International Council of Shopping Centers
National Association of Industrial and Office Properties
Western Electrical Contractors Association

RE: *Comments on Recommended Approaches for Setting Interim Significance Thresholds for Greenhouse Gases Under CEQA – Suggestions for Performance Standards*

The above listed organizations appreciate the opportunity to provide the California Air Resources Board (CARB) with comments on the Preliminary Draft Staff Proposal entitled “Recommended Approaches for Setting Interim Significance Thresholds for Greenhouse Gases under the California Environmental Quality Act [CEQA].” These comments are being submitted in addition to those submitted jointly with the California Building Industry Association (CBIA) on November 26, 2008. Additionally, these comments are in agreement with those being submitted by CBIA today on these same issues.

As set forth previously, the staff proposal’s recommendation to the Office of Planning and Research (OPR) will play a critical role in the CEQA process. Even before adoption, lead agencies are likely to look to the recommended threshold proposal and performance standards for guidance, applying them to a wide range of development projects in various jurisdictions throughout the state. Therefore, it is vital that the proposal and performance standards be capable of broad application to different development scenarios and be consistent with the existing CEQA process.

Below are comments and concerns regarding the adoption of a straight numeric threshold. Additionally, this letter discusses the development of performance standards that need to recognize the divergent businesses in this state and problems associated with a *pro forma* model approach.

A. Overview of Comments

Assembly Bill 32 (AB 32) enacts the Global Warming Act of 2006 (Act) and creates a statewide greenhouse gas (GHG) emission limit that requires reducing emissions to 1990 levels by 2020. In conjunction with this enactment, Senate Bill 97 (SB 97) amends the CEQA statute to establish that GHG emissions and the effects of GHG emissions

are appropriate subjects for CEQA analysis. SB 97 directs OPR to develop, and the Resources Agency to certify, draft CEQA Guidelines “for the mitigation of greenhouse gas emissions or the effects of greenhouse gas emissions.” Neither the CEQA statute nor the CEQA Guidelines prescribe thresholds of significance for GHG emissions. OPR has asked CARB technical staff to recommend a method for setting thresholds which will encourage consistency and uniformity in the CEQA analysis of GHG emissions throughout the state. The importance of these efforts and the effects on businesses through-out the state are essential to the success of AB 32 goals.

In this regard, OPR has expressed the belief that the unique nature of GHG emissions warrants investigation of statewide thresholds of significance for these emissions. While CEQA gives discretion to individual lead agencies to establish their own thresholds of significance, OPR has stated that if CARB recommends thresholds of significance supported by substantial evidence, lead agencies may take them into consideration as part of their independent processes, consistent with adopted CEQA regulations, to adopt thresholds of significance for greenhouse gas emissions. Accordingly, most lead agencies will apply this recommendation which will be critical in the future development of businesses throughout this state.

Importantly, the performance standards created under AB 32 and SB 97 must work together with interrelated GHG reductions performance standards, including those required by the California Energy Commission (CEC), the California Public Utilities Commission (CPUC), and the California Building Standards Commission (CBSC). Specifically, the California Building Standards Commission (CBSC) has codified energy efficient building standards in Title 24 of the California Code of Regulations. The development of these standards reflects the Governor’s policy directive to establish California as a leader in the efforts to reduce GHG emissions. To the extent applicable, CARB’s recommended performance standards should reflect these building codes and standards, where by law these building codes serve as the basis for the design and construction of buildings in California.

Given that both the Building Standards Commission’s Title 24 development process and CARB’s AB 32 implementation process (including the development of a CEQA GHG threshold) under statute are required to maximize cost-effective GHG emissions reductions, it is troubling that each arrived at, and here propose to adopt, different performance standards. Not only does this invite inconsistent application of California’s GHG reduction policy through-out the state, it will impede the achievement of statewide GHG reductions in the long run.

B. Numeric Limits Conflict with the Requirements of AB 32

AB 32 mandates a statewide goal of GHG emissions reductions and charges CARB to achieve the target in a technologically feasible and cost effective manner. As currently recommended, CARB’s proposed thresholds of significance include both a numeric limit on GHG emissions for different categories of development, as well as performance standards. It is strongly recommended that the thresholds of significance utilize performance standards alone, because the application of arbitrary numeric limits may be inconsistently applied, encourage lead agencies to adopt their own numeric limits defeating the purpose of a statewide standard, are not based on objective science and do not properly focus reductions on the most cost effective approaches.

First, the use of numeric limits is problematic because different agencies may use different methods to calculate those numeric limits. The numeric limits in thresholds of significance for GHG are based on emissions of carbon dioxide equivalent gases (CO₂E), rather than only on a single type of gas or criterion pollutant. Disagreement over the method used to quantify emissions calculation for equivalent gases will lead to inconsistent application of thresholds, thus potentially derailing the overall goal of uniform statewide reduction efforts.

Second, by recommending a numeric limit, CARB may encourage lead agencies to adopt their own numeric limits. By illustration, the South Coast Air Quality Management District (SCAQMD) has already proposed an interim threshold of significance for industrial projects with a numeric limit of 10,000 MTCO₂E, in contrast to the 7,000 MTCO₂E limit proposed by CARB for industrial projects. *See* Table 1 below.

What unfolds is a compliance problem for projects that face conflicting thresholds and uncertainty over which threshold will take precedence. This conflict is easily avoided by using thresholds of significance based on performance standards rather than on artificial numeric limits.

Table 1
 Comparison of CARB's and SCAQMD Interim GHG Significance Threshold Approaches

	Stationary/Industrial Sector Projects	
	CARB	SCAQMD
Policy Objective	Capture 90% of statewide stationary project emissions	Capture 90% of district wide GHG emissions (industrial)
Exemption	Apply applicable exemption	Apply applicable exemption
Regional GHG Reduction Plan	N.A.	Project Consistent with Applicable GHG Reduction Plan with GHG inventorying, monitoring, enforcement, etc.
Thresholds	<u>Project < 7,000 MTCO₂E/yr & meets construction & transportation performance standards</u>	<u>GHG emissions from industrial project is < 10,000 MTCO₂E/yr, including construction emissions amortized over 30 years & added to operational GHG emissions</u>
Performance Standards	See above	NA
Offsets	Offsite substitution allowed	Implement offsite mitigation for life of project, i.e., 30 years, with mitigation preference
Determination	GHG emissions significant, EIR is prepared if none of the above is met	GHG emissions significant, EIR is prepared if none of the above is met

See SCAQMD Staff Report dated December 5, 2008.

Third CARB has not established, with objective evidence, that any single project may cause a significant effect on global climate change. Indeed, CARB agrees that GHG emissions impacts are not project specific but cumulatively based. Because the GHG emissions impacts are analyzed cumulatively, there is no scientific basis for applying different performance standards based on the relative size of a project because size is not an accurate gauge of the potential green nature of the project. For instance, an agency could have 3 separate projects before it, each of which would be under the numeric threshold and would qualify for a less than significant finding, but at the same time be considering one large, mixed-use project in the urban core that exceeds the numeric threshold due to size alone, and thus find a significant impact. Not only does this minimize the smaller projects contribution to the cumulative impacts, this will effectively discourage co-locating uses and building model mixed-use developments, which is precisely the opposite of the result that should be desired here. Accordingly, numeric limits for individual projects are not supported by substantial evidence and should not be used as a basis for determining significance.

Fourth, arbitrary numeric limits unfairly burden new projects with potentially onerous standards and mitigation measures that would not apply to similar existing businesses. Many of the most cost effective measures to reduce emissions arise from improving the efficiency of these existing businesses or residences and encouraging building and equipment upgrades. The incoming administration's focus on increasing energy efficiency of existing structures by funding existing federal facilities and school upgrades supports this point. Cost barriers to new businesses will slow the transition to less carbon intense businesses because there will be little incentive to compete on an uneven playing field.

C. The Proposed Thresholds Are Not Adequately Defined

The problems with numeric limits described above are exacerbated by the failure to define central terms used in CARB's proposed thresholds of significance, rendering their application uncertain. For example, CARB proposes two separate interim threshold concepts for the three common types of projects: (1) industrial projects; and (2) residential and commercial projects. Preliminary Draft Staff Proposal, p. 5. Therefore, a particular project must be categorized as either industrial or residential/commercial to determine the applicable threshold of significance. However, CARB's recommended thresholds of significance do not define these categories of projects.

The Preliminary Draft Staff Proposal neither defines the terms "industrial" or "commercial," nor discusses any method of how to categorize a mixed-use project as one or the other of these types. While the Scoping Plan generally discusses the "industrial" term in the context of requiring audits for energy efficiency and co-benefits audits for applying to the "major industrial facilities emitting more than 0.5 MMTCO₂E per year" there is no discussion of what constitutes an industrial facility of less than that amount. Scoping Plan, p. 54. This is problematic because a number of different meanings can be applied to the term "industrial," depending on the type of operation, the project's land use characterization, or its similarity to commercial activities.

Similarly no guidance for what constitutes a "commercial" project is offered. The only reference is contained in the Preliminary Draft Staff Proposal where it states that "Performance standards will address the five major emission sub-sources for the sector: energy use, transportation, water use, waste, and construction," thereby allowing for the assumption that a commercial project would be one that normally includes these sub-sources of emissions. Preliminary Draft Staff Proposal, p. 13. This provides little clarification of a "commercial" project in contrast to a "residential" project, the definition of which is obvious. Accordingly, in the absence of clear and unambiguous definitions of "industrial" and "commercial" uncertainty will arise over which threshold of significance applies.

Moreover, while many projects may readily be identified as industrial, commercial or residential, many may fall into a "hybrid" category of projects which include elements of more than one of these definitions. By grouping commercial and residential projects under the same proposed threshold of significance, it can be implied that projects may include components of more than one category of project. However, there is no discussion on how to resolve this dilemma as to the applicability of either of CARB's thresholds of significance to a hybrid project. The lack of definitions of these terms creates uncertainty over how to categorize a hybrid project. Therefore, we recommend including a methodology for addressing "mixed-use" and/or hybrid projects to determine application of a significance threshold.

D. Workable Performance Standards Should Be the Focus of CARB's Thresholds of Significance Recommendation

In CBIA's separate letter dated January 16, it suggests a framework for developing workable and effective performance standards that are consistent not only with AB 32 and the plans CARB has developed to implement AB 32, but also with existing CEQA standards to analyze and mitigate cumulative impacts. The letter further highlights the need for flexibility in the performance standards, as well as the specifics needed to implement identifiable performance standards. Our organizations endorse this framework and suggest that the development of

workable and unambiguous performance standards should be CARB's focus in recommending thresholds of significance.

First, the use of performance standards alone, without artificial numeric limits, allows for flexibility in their application. The Preliminary Draft Staff Proposal acknowledges that lead agencies should be allowed to find that a project's mitigation is equivalent to identified performance standards. Preliminary Draft Staff Proposal, p. 15. This flexibility should also allow for cost-effective and innovative approaches for reducing GHG emissions while addressing specific regional concerns. This would allow a lead agency, in Tahoe for example, to use a different combination of performance standards than a lead agency in Los Angeles, which faces different challenges for the mandatory reduction of GHG emissions in that area.

Second, the use of performance standards alone better captures the overall goal of state-wide reduction by addressing the cumulative nature of GHG's impacts on climate change by capturing projects with low GHG emissions. Use of a numeric limit creates a situation where new projects face potentially onerous and economically unacceptable mitigation costs even if they reflect the most cutting-edge energy efficiency performance standards. In some situations, truly green projects will not go forward because of the high cost of CEQA compliance. At the same time, existing inefficient operations may not undergo the "behavior" changes a new project would if held to comply with performance (behavior) standards. In addition, many small industrial projects (while subject to construction and transportation performance standards) will not be required to undergo operational changes. The better approach is the adoption of performance standards for all projects falling under the Tier 3 analysis.

As set forth above, use of a numeric limit creates the situation where many small projects will fall under the numeric limit of the threshold of significance and be considered less than significant and ambiguity is created since it is unclear whether these projects may nevertheless have to comply with operational performance standards. Performance standards are the better way to go because despite their emissions, these projects would not undergo the "behavior" changes another project would if not held to performance (behavior) standards. Exclusive use of performance standards thus would better reduce emissions from a wider-ranging size of project, thus resulting in more GHG emissions reductions overall.

More importantly, using an arbitrary numeric threshold violates CEQA's basic analytical premise for demonstrating whether there is substantial evidence that a activity will have a reasonably foreseeable significant effect on the physical environment. Because to date, it is almost impossible to connect GHG emissions from any specific project to identifiable physical environmental effects at a particular location, a numeric threshold is not suitable for evaluating the effects of GHG emissions.

We appreciate the opportunity to comment upon the proposed interim threshold for GHG. For the reasons discussed above, we believe a recommendation of thresholds of significance based on workable and unambiguous performance standards, without artificial numeric limits, furthers the goals of AB 32. When combined with the recognition that a lead agency may conclude that a project's GHG emissions are not significant if they comply with AB 32, SB 375, or the requirements in another previously approved plan or mitigation program which provides specific requirements for reducing GHG emissions, GHG reductions will be achieved and allow for continued economic development across California.

We appreciate your attention to this matter. If you have questions or need more information regarding our comments please contact Matthew Hargrove at 916-443-4676 or mhargrove@cbpa.com.

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