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Via U.S. and Electronic Mail

Gregory Tholen
Principal Environmental Planner, Planning and Research
Bay Area Air Quality Management District
939 Ellis Street
San Francisco, California 94109
GTholen@baaqmd.gov

RE: **California Environmental Quality Act (CEQA) Air Quality Guidelines, Final Draft (dated November 2009); Proposed Thresholds of Significance (dated November 2, 2009)**

Dear Mr. Tholen:

The Attorney General's Office writes to support the Bay Area Air Quality Management District's leadership in addressing thresholds of significance for greenhouse gas (GHG) emissions. The Attorney General submits these comments pursuant to his independent duty to protect the natural resources of the State and not on behalf of any other entity or agency.

As you know, thresholds function as rebuttable presumptions that can greatly assist lead agencies in making the required project-by-project determination of significance where CEQA streamlining is not otherwise available.[1] Air District staff recommends GHG thresholds for three types of projects: (1) stationary sources permitted by the Air District; (2) land use projects permitted by local government; and (3) and general plan updates. (For ease of reference, a table containing staff's recommendations is attached to this letter.) The latter two recommendations, if approved by the Board, would serve as general guidance for cities and counties which, of course, retain their discretion to determine significance for projects under their jurisdictions.

Below, we highlight some of the most important aspects of staff's recommendations that give rise to our support:

[1] The need for GHG thresholds should reduce over the coming months and years, as cities and counties address GHG emissions at the programmatic level (see Proposed CEQA Guideline § 15183.5, subd. (b)), and as Metropolitan Planning Organizations complete Sustainable Community Strategies, giving rise to statutorily defined CEQA exceptions and exemptions for smart growth projects under Senate Bill 375.

- **The thresholds are designed to meet clear emissions reduction objectives.** Staff's recommended thresholds are devised to meet clearly identified, quantifiable objectives that relate back to the goal of reducing the risk of dangerous climate change. Such objectives are important not only for establishing the necessary substantial evidence to support the thresholds, but will be important yardsticks against which to measure the success of the thresholds once applied, allowing the Air District and lead agencies to determine whether to make modifications or changes.

- **The stringency of the thresholds matches the seriousness of the problem.** In enacting CEQA, the legislature observed that "[t]he capacity of the environment is limited" and charged lead agencies with the duty to avoid reaching "critical thresholds for the health and safety of the people of the state …." (Pub. Res. Code, § 21000, subd. (d).) This duty is especially important in the context of climate change, where we are at or near the atmosphere's ability absorb more GHG emissions without risking catastrophic and irreversible consequences. Based on the data provided, it appears that staff's recommended thresholds, while not triggered by every project, still provide substantial opportunities for mitigation. In light of the problem we face, a less stringent approach likely would be more vulnerable to legal challenge.

- **The thresholds minimize the potential for "gaming."** The recommended thresholds utilize clearly identified benchmarks (total annual emissions or GHG efficiency ratios) that will apply to every project; they are not devised project-by-project based on the attributes of the project and the project's location (e.g., 29% below "business as usual," however that might be defined). This substantially reduces the possibility that the thresholds could be "gamed" to circumvent a finding of significance that is otherwise warranted. It also substantially increases the likelihood that the thresholds will be applied in a generally consistent and predictable way, which should benefit not only lead agencies, but also project proponents.

- **The thresholds recognize that CEQA is more than just a mechanism to enforce other laws and regulations.** Staff's recommendations recognize the important role of local governments in achieving our statewide GHG emissions reductions targets. This is consistent with the Air Resources Board's view that local governments are "essential partners in achieving California's goals to reduce greenhouse gas emissions." (AB 32 Scoping Plan at p. 26.)

To improve the documents, the Air District may wish to consider the following:

- **Better explain how the thresholds will serve not only interim, but longer-term climate objectives.** The final set of documents would benefit from a short discussion explaining how the thresholds will serve the State's longer-term (beyond 2020) climate objectives. It would also be helpful if the documents would clarify that general plans and Climate Action Plans that extend beyond 2020 should have appropriate GHG targets (whether expressed in terms of total emissions or GHG efficiency ratios) that apply beyond that date.[2]

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[2] See Attorney General's Office, General Plan/CEQA/GHG Frequently Asked Questions at p. 4, available at http://ag.ca.gov/globalwarming/pdf/CEQA_GP_FAQs.pdf.

- **Work with Bay Area cities and counties to ensure that the efficiency-based threshold fulfills its purpose to encourage smart growth.** Staff's innovative recommendation for a threshold based on "very GHG-efficient projects" (see Proposed Thresholds of Significance at p. 20) establishes that, when properly employed, CEQA can in fact work to the advantage of lower-carbon development, including infill. We understand that some infill builders already have submitted letters expressing general support for staff's proposal (and, indeed, encouraging the Air District to go further). We encourage the Air District to continue to work with cities and counties to ensure that the efficiency-based threshold, not only in theory but in practice, will account for the substantial benefits of projects that are energy, water, and transit smart.

- **Make an express commitment to monitor the thresholds over time and to adjust if necessary.** The documents imply at various places that staff will evaluate how the thresholds perform and, if they are not achieving the stated objectives, make recommendations for changes or modifications. The Air District should make an affirmative commitment to this process – sometimes called "adaptive management" – given the importance of not simply identifying GHG emissions reductions goals, but of achieving them.

- **Correct the references to SB 375.** The supporting documents state that if a land use project complies with an SB 375 Sustainable Communities Strategy (SCS) or Alternative Planning Strategy (APS), the lead agency may find that the project's GHG-related impacts will be less than significant. An SCS/APS is not, however, a city or county land use document. Moreover, it addresses emissions only from cars and light trucks and not from all aspects of a project's operation. We suggest that the document simply refer to the CEQA streamlining and exemptions available under SB 375 by reference to the specific provisions of the statute.

- **Ensure that the text of the documents are consistent.** We noted that the important caveat about the limits of the use of the efficiency-based threshold that appears under Table 2.2 in the Proposed Thresholds of Significance document does not appear in similar tables in the Air Quality Guidelines. This caveat should appear in both places so it is not overlooked.

We appreciate the opportunity to participate in this very important process. Please contact us if you have any questions.

Sincerely,

/s/

JANILL L. RICHARDS
Deputy Attorney General

For EDMUND G. BROWN JR.
Attorney General

Excerpted from Proposed Thresholds of Significance (Nov. 2, 2009) at p. 6

Project Type	Proposed Thresholds
Land Use Projects	Compliance with Qualified Climate Action Plan OR 1,100 MT of CO_2e/yr OR 4.6 MT CO_2e/SP/yr* (residents + employees)
Stationary Sources	10,000 MT of CO_2e/yr
General Plans	Compliance with Qualified Climate Action Plan (or similar criteria included in a General Plan) OR 6.6 MT CO_2e/SP/yr (residents + employees)

* Staff notes that the efficiency-based thresholds should be applied to individual projects with caution. As explained herein, lead agencies may determine that the efficiency-based GHG thresholds for individual land use projects may not be appropriate for very large projects. If there is a fair argument that the project's emissions on a mass level will have a cumulatively considerable impact on the region's GHG emissions, the insignificance presumption afforded to a project that meets an efficiency-based GHG threshold would be overcome.