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Via Electronic Mail

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**Re: Comments on South Coast AQMD Draft Guidance Document – Interim
CEQA Greenhouse Gas (GHG) Significance Threshold**

Please accept these comments on the South Coast AQMD (“SCAQMD”) Interim CEQA Greenhouse Gas (GHG) Significance Threshold (“Interim Threshold”) on behalf of the Center for Biological Diversity (“CBD”) and Communities for a Better Environment (“CBE”). CBD and CBE appreciate SCAQMD’s initiative in being the first agency to tackle the difficult question of significance for GHGs. The Working Group process provided a useful forum to raise and vet some of the challenges and concerns in the development of a threshold. Unfortunately, the final result of the Working Group process is an ineffective and unworkable Interim Threshold to which we strenuously object.

As a member of the Working Group on the development of the Interim Threshold, CBD repeatedly raised concerns of the failure of SCAQMD: 1) to first frame the development of a threshold in the context of an environmental objective; and 2) set forth a threshold of significance that is supported by substantial evidence and is effective at reducing GHG emissions. In particular, CBD raised pointed concerns regarding the infeasibility of all the Interim Threshold’s Tier 4 Performance Standards as a workable metric from which to determine significance. None of these concerns have been adequately addressed. SCAQMD’s failure to support the Interim Threshold with substantial evidence leaves the proposed threshold open to legal challenge upon its adoption. *See* Guidelines § 15064.7(b) (“Thresholds of significance . . . [must] be supported by substantial evidence.”). Moreover, because the Interim Threshold is not effective as reducing greenhouse gas emissions and CBD’s concerns have not been

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resolved in the Interim Guidance document or elsewhere, a project relying on the Interim Threshold may 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.”).

In addition, the Draft Guidance Document is too vague on key issues to be adopted for use as an interim threshold at this juncture. Specifically, the Guidance Document does not: 1) provide examples of how a BAU threshold would function and address additionality concerns; 2) explain how a threshold of “early implementation of applicable AB 32 scoping plan measures” would be applied when scoping plan measures will not be finalized until 2011; and 3) provide any specificity on the use of undefined “sector-based” standards to determine significance. The Guidance Document’s utter lack of detail provides additional room for free interpretation by project proponents that would further frustrate the already limited effectiveness of the SCAQMD Interim Threshold proposal.

As SCAQMD is aware, ARB is now working to develop a threshold of significance for GHGs. While ARB’s proposal is still being finalized, commensurate with the environmental challenges posed by global warming, the ARB threshold appears far more stringent than that of SCAQMD because it provides a backstop whereby projects with a certain level of emissions are presumptively significant. In addition, the ARB proposal accurately defines the environmental objective of a threshold for GHGs as stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference (DAI) with the climate system. In contrast, SCAQMD has been explicit in the Working Group process that its primary objective is to create a threshold that would not require additional EIR preparation.

In conclusion, SCAQMD’s Interim Threshold is unsupportable and unworkable. CBE and CBD ask that SCAQMD not adopt the Interim Threshold as proposed.

Prior comments on SCAQMD’s Interim Threshold are incorporated by reference. This letter highlights the major concerns with SCAQMD’s current proposal.

Tier 4 Option #1: A 30% Below BAU Reduction

SCAQMD has not addressed additionality/gamesmanship concerns. The Draft Guidance Document only states that BAU is measured from existing regulatory requirements. There is no effort to address the concern that 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. Absent any examples of how

BAU would operate, there is no legitimate basis to assume that the targeted GHG reductions would actually be attained.

SCAQMD has not provided substantial evidence that a 30% below BAU threshold is effective at achieving the environmental objective of avoiding dangerous anthropogenic interference with the environment. To support its threshold, SCAMQD needs to explain how the cumulative total of the emissions it is not capturing will not have a significant environmental effect. By using a 30% BAU threshold, SCAQMD is saying that allowing 70% of emissions from new development to be released into the atmosphere would not have a significant environmental effect. This would seem to be an unsupportable conclusion given that emissions must be reduced by more than 80% below 1990 levels to avoid dangerous climate change. Indeed, 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). According to CAPCOA, a 28-33% business-as-usual (BAU) emission reduction has “low” emission reduction effectiveness. The Interim Guidance has not addressed any of these findings. Instead it justifies the threshold on the inchoate grounds that it would “contribute” to AB 32 and Executive Order S-3-05 targets.¹ This says nothing about the effectiveness of the threshold as a “contribution” does not necessary mean that the targeted environmental objective will actually be achieved.

Tier 4 Option #2: Early Compliance with the AB 32 Scoping Plan

The Interim Guidance provides no specificity as to what constitutes compliance with this option. Specific Scoping Plan measures will be developed over the next two years. With the exception of a small set of early action measures, regulations promulgated under the Scoping Plan will not be finalized until January 1, 2011, and take effect in early 2012. Thus, early compliance, even assuming it could be used as a significance threshold, could not begin until 2011. Under Guideline § 15064(h)(3), a lead agency can only rely on a plan that “is specified in law or adopted by the public agency” with “specific requirements that will avoid or substantially lessen the cumulative problem,” not unadopted proposals with limited specificity. To the extent SCAQMD is suggesting that Option #2 would allow a project proponent to rely on a plan that does not meet the requirements of Guideline § 15064(h)(3), and essentially allow the project proponent to interpret what early compliance with non-finalized Scoping Plan measures means, then this is contrary to CEQA because it is creating some lesser standard for the mitigation of cumulative impacts.

¹ The 30% BAU Threshold is also based on the unsupported assumption that existing and new development will carry an equal share of the emission reductions necessary to comply with AB 32.

Tier 4 Option #3: Achieve Sector-Based Standard

The Interim Guidelines provide absolutely no detail on what sector-based standards would be appropriate for determining significance. This provides yet another opportunity for a project proponent to fabricate its own interpretation of what level of emissions are significant.

Taken collectively, the three options set forth in Tier 4 allow project proponents multiple avenues to do little if anything additional in order to reach a less than significant determination. Indeed, a project could result in 1 million tons of greenhouse gas emissions and still be considered less than significant under the proposed framework.² Absent an analysis of the vast volume of emissions from new projects that would not be captured under the Interim Threshold, and an explanation of how this quantity of emissions does not interfere with the objective of avoiding dangerous climate change, the Interim Threshold is arbitrary and subject to legal challenge, as are all projects relying on it.

While it is important that lead agencies have guidance in evaluating global warming impacts under CEQA, it is also important that a threshold for GHGs be robust and reflect the severity of the climate crisis. As set forth above, the proposed Tier 4 performance standards are not a workable or effective means of evaluating significance under CEQA.

Thank you for your consideration. Please do not hesitate to contact Matthew Vespa at (415) 436-9682 x309 mvespa@biologicaldiversity.org or Adrienne Bloch (510) 510) 302-0430 x16 abloch@cbecal.org if you have any questions or concerns.

Sincerely,



Matthew Vespa
Senior Attorney



Adrienne Bloch
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cc: Steve Smith
Michael Krause

² Notably, this concern is addressed in the ARB proposal.