



BAY AREA
AIR QUALITY
MANAGEMENT
DISTRICT

**BOARD OF DIRECTORS
MEETING
April 20, 2022**

THIS MEETING WILL BE CONDUCTED UNDER PROCEDURES AUTHORIZED BY ASSEMBLY BILL 361 (RIVAS 2021) ALLOWING REMOTE MEETINGS. THIS MEETING WILL BE ACCESSIBLE VIA WEBCAST, TELECONFERENCE, AND ZOOM, AS WELL AS IN PERSON. A ZOOM PANELIST LINK WILL BE SENT SEPARATELY TO COMMITTEE OR BOARD MEMBERS

- **THE PUBLIC MAY OBSERVE THIS MEETING THROUGH THE WEBCAST BY CLICKING THE LINK AVAILABLE ON THE AIR DISTRICT’S AGENDA WEBPAGE AT**

www.baaqmd.gov/bodagendas

- **MEETING ATTENDEES MAY, IN LIEU OF REMOTE PARTICIPATION, ATTEND IN PERSON FOR PUBLIC COMMENT AND/OR OBSERVATION AT 375 BEALE STREET, BOARD ROOM (1ST FLOOR). IN-PERSON ATTENDEES MUST PASS REQUIRED HEALTH SCREENINGS AND ADHERE TO POSTED PUBLIC HEALTH PROTOCOLS WHILE IN THE BUILDING. THE PUBLIC MAY ALSO PARTICIPATE REMOTELY VIA ZOOM AT THE FOLLOWING LINK OR BY PHONE**

<https://bayareametro.zoom.us/j/88311978608>

(669) 900-6833 or (408) 638-0968

WEBINAR ID: 883 1197 8608

- **THOSE PARTICIPATING BY PHONE WHO WOULD LIKE TO MAKE A COMMENT CAN USE THE “RAISE HAND” FEATURE BY DIALING “*9”. IN ORDER TO RECEIVE THE FULL ZOOM EXPERIENCE, PLEASE MAKE SURE YOUR APPLICATION IS UP TO DATE**

BOARD OF DIRECTORS MEETING AGENDA

WEDNESDAY, APRIL 20, 2022

9:00 AM

Chairperson, Karen Mitchoff

1. **Call to Order - Roll Call**
2. **Pledge of Allegiance**
3. **Public Meeting Procedure**

The Board Chair shall call the meeting to order and the Clerk of the Boards shall take roll of the Board members.

This meeting will be webcast. To see the webcast, please visit www.baaqmd.gov/bodagendas at the time of the meeting. Closed captioning may contain errors and omissions and are not certified for their content or form.

***Public Comment on Agenda Items:** The public may comment on each item on the agenda as the item is taken up. Members of the public who wish to speak on matters on the agenda for the meeting, will have two minutes each to address the Board. No speaker who has already spoken on that item will be entitled to speak to that item again.*

CONSENT CALENDAR (Items 4 - 12)

4. Approval of the Minutes of April 6, 2022

The Board of Directors will consider approving the draft minutes of the Board of Directors Meeting of April 6, 2022.

5. Remote Teleconferencing per Assembly Bill (AB) 361 (Rivas)

The Board of Directors will consider approving a resolution reauthorizing Air District Board and Committee meetings remote teleconferencing through May 20, 2022.

6. Board Communications Received from April 6, 2022 through April 19, 2022

A copy of communications directed to the Board of Directors received by the Air District from April 6, 2022 through April 19, 2022, if any, will be distributed to the Board Members by way of email.

7. Air District Personnel on Out-of-State Business Travel for the Month Ending March 2022

In accordance with Section 5.4(b) of the Air District Administrative Code, Fiscal Policies and Procedures Section, the Board is hereby notified that the attached memorandum lists Air District personnel who have traveled on out-of-state business in the preceding months.

8. Authorization to Amend Contract with Dell Marketing, LP, to Support Development of CEQA Screening Tools

The Board of Directors will consider authorizing the Interim Acting Executive Officer/APCO to execute a contract amendment with Dell Marketing, LP, to increase the current three-year licensing agreement by \$80,000 for cloud-based computing, to a total amount not to exceed \$1,930,000.

9. Report of the Community Advisory Council Meeting of March 30, 2022

The Board of Directors will receive a report of the Community Advisory Council meeting of March 30, 2022.

10. Report of the Community Equity, Health and Justice Committee Meeting of April 7, 2022

The Board of Directors will receive a report of the Community Equity, Health and Justice Committee Meeting of April 7, 2022.

11. Report of the Legislative Committee Meeting of April 11, 2022

The Board of Directors will receive a report of the Legislative Committee meeting of April 11, 2022.

12. Report of the Advisory Council Meeting of April 11, 2022

The Board of Directors will receive a report of the Community Advisory Council meeting of April 11, 2022.

COMMENDATIONS/PROCLAMATIONS/AWARDS

13. The Board of Directors will recognize Jack P. Broadbent for his 18 years of service, dedication and leadership in creating a healthy breathing environment for every Bay Area resident while protecting and improving public health, air quality, and the global climate.

14. The Board of Directors will present the 2022 Spare the Air Leadership Award to Marin Clean Energy's LIFT Program.

PRESENTATION(S)

15. Adoption of California Environmental Quality Act (CEQA) Thresholds for Evaluating the Significance of Climate Impacts From Land Use Projects and Plans.

This is an action item to recommend the Board of Directors adopt the proposed CEQA Thresholds for Evaluating the Significance of Climate Impacts From Land Use Projects and Plans. Adoption of the thresholds is not subject to CEQA review pursuant to Public Resources Code Section 21065 (definition of a CEQA “project”) and CEQA Guidelines Sections 15064.7 (requirements for adopting thresholds of significance) and 15061(b)(3) (commonsense exemption). This item will be presented by Henry Hilken, Director of Planning and Climate Protection.

CLOSED SESSION

16. **CONFERENCE WITH LEGAL COUNSEL**

ANTICIPATED LITIGATION

Initiation of Litigation pursuant to Section 54956.9(c): one potential case

17. **PUBLIC EMPLOYEE APPOINTMENT AND EMPLOYMENT**

Pursuant to Government Code Section 54957(b)

Title: District Counsel

18. **CONFERENCE WITH LABOR NEGOTIATIONS**

Pursuant to Government Code Section 54957.6

Agency Designated Representatives: Board Chair Karen Mitchoff, Board Vice Chair John Bauters, John Chiladakis, DeeAnne Gillick, Sloan Sakai, Yeung & Wong

Unrepresented Employees: District Counsel

OPEN SESSION

OTHER BUSINESS

19. Public Comment on Non-Agenda Matters

Pursuant to Government Code Section 54954.3

Members of the public who wish to speak on matters not on the agenda for the meeting, will have two minutes each to address the Board.

20. Board Member Comments

Any member of the Board, or its staff, on his or her own initiative or in response to questions posed by the public, may: ask a question for clarification, make a brief announcement or report on his or her own activities, provide a reference to staff regarding factual information, request staff to report back at a subsequent meeting concerning any matter or take action to direct staff to place a matter of business on a future agenda. (Gov't Code § 54954.2)

21. Report of the Interim Executive Officer/APCO

22. Chairperson's Report

23. Time and Place of Next Meeting

Wednesday, May 4, 2022 at 9:00 a.m., in person or via webcast, teleconference, or Zoom, pursuant to procedures in accordance with Assembly Bill 361 (Rivas 2021).

24. Adjournment

The Board meeting shall be adjourned by the Board Chair.

CONTACT:

MANAGER, EXECUTIVE OPERATIONS
375 BEALE STREET, SAN FRANCISCO, CA 94105
vjohnson@baaqmd.gov

(415) 749-4941
FAX: (415) 928-8560
BAAQMD homepage:
www.baaqmd.gov

- Any writing relating to an open session item on this Agenda that is distributed to all, or a majority of all, members of the body to which this Agenda relates shall be made available at the Air District's offices at 375 Beale Street, Suite 600, San Francisco, CA 94105, at the time such writing is made available to all, or a majority of all, members of that body.

Accessibility and Non-Discrimination Policy

The Bay Area Air Quality Management District (Air District) does not discriminate on the basis of race, national origin, ethnic group identification, ancestry, religion, age, sex, sexual orientation, gender identity, gender expression, color, genetic information, medical condition, or mental or physical disability, or any other attribute or belief protected by law.

It is the Air District's policy to provide fair and equal access to the benefits of a program or activity administered by Air District. The Air District will not tolerate discrimination against any person(s) seeking to participate in, or receive the benefits of, any program or activity offered or conducted by the Air District. Members of the public who believe they or others were unlawfully denied full and equal access to an Air District program or activity may file a discrimination complaint under this policy. This non-discrimination policy also applies to other people or entities affiliated with Air District, including contractors or grantees that the Air District utilizes to provide benefits and services to members of the public.

Auxiliary aids and services including, for example, qualified interpreters and/or listening devices, to individuals who are deaf or hard of hearing, and to other individuals as necessary to ensure effective communication or an equal opportunity to participate fully in the benefits, activities, programs, and services will be provided by the Air District in a timely manner and in such a way as to protect the privacy and independence of the individual. Please contact the Non-Discrimination Coordinator identified below at least three days in advance of a meeting so that arrangements can be made accordingly.

If you believe discrimination has occurred with respect to an Air District program or activity, you may contact the Non-Discrimination Coordinator identified below or visit our website at www.baaqmd.gov/accessibility to learn how and where to file a complaint of discrimination.

Questions regarding this Policy should be directed to the Air District's Non-Discrimination Coordinator, Suma Peesapati, at (415) 749-4967 or by email at spesapati@baaqmd.gov.

BAY AREA AIR QUALITY MANAGEMENT DISTRICT

375 BEALE STREET, SAN FRANCISCO, CA 94105

FOR QUESTIONS PLEASE CALL (415) 749-4941

EXECUTIVE OFFICE: MONTHLY CALENDAR OF AIR DISTRICT MEETINGS

APRIL 2022

<u>TYPE OF MEETING</u>	<u>DAY</u>	<u>DATE</u>	<u>TIME</u>	<u>ROOM</u>
Board of Directors Stationary Source and Climate Impacts Committee	Monday	18	9:00 a.m.	Webcast only pursuant to Assembly Bill 361
Board of Directors Meeting	Wednesday	20	9:00 a.m.	1 st Floor, Board Room (In person option available) <u>and REMOTE</u> pursuant to Assembly Bill 361
Board of Directors Administration Committee	Wednesday	20	12:00 p.m.	1 st Floor, Board Room (In person option available) <u>and REMOTE</u> pursuant to Assembly Bill 361
Path to Clean Air Community Emissions Reduction Plan Steering Committee	Monday	25	5:30 p.m.	Webcast only pursuant to Assembly Bill 361
Board of Directors Budget and Finance Committee	Wednesday	27	9:30 a.m.	Webcast only pursuant to Assembly Bill 361
Board of Directors Mobile Source and Climate Impacts Committee	Thursday	28	9:30 a.m.	Webcast only pursuant to Assembly Bill 361

MAY 2022

<u>TYPE OF MEETING</u>	<u>DAY</u>	<u>DATE</u>	<u>TIME</u>	<u>ROOM</u>
Board of Directors Special Meeting Budget Hearing	Wednesday	4	8:30 a.m.	1 st Floor, Board Room (In person option available) <u>and REMOTE</u> pursuant to Assembly Bill 361
Board of Directors Meeting	Wednesday	4	9:00 a.m.	1 st Floor, Board Room (In person option available) <u>and REMOTE</u> pursuant to Assembly Bill 361
Board of Directors Community Equity, Health and Justice Committee	Thursday	5	9:30 a.m.	Webcast only pursuant to Assembly Bill 361
Board of Directors Legislative Committee	Monday	9	1:00 p.m.	Webcast only pursuant to Assembly Bill 361
Technology Implementation Office (TIO) Steering Committee	Friday	13	1:00 p.m.	Webcast only pursuant to Assembly Bill 361

MAY 2022

<u>TYPE OF MEETING</u>	<u>DAY</u>	<u>DATE</u>	<u>TIME</u>	<u>ROOM</u>
Board of Directors Stationary Source and Climate Impacts Committee	Monday	16	9:00 a.m.	Webcast only pursuant to Assembly Bill 361
Path to Clean Air Community Emissions Reduction Plan Steering Committee	Monday	16	5:30 p.m.	Webcast only pursuant to Assembly Bill 361
Board of Directors Meeting	Wednesday	18	9:00 a.m.	1 st Floor, Board Room (In person option available) <u>and REMOTE</u> pursuant to Assembly Bill 361
Board of Directors Administration Committee	Wednesday	18	11:00 a.m.	1 st Floor, Board Room (In person option available) <u>and REMOTE</u> pursuant to Assembly Bill 361
Board of Directors Budget and Finance Committee	Wednesday	25	9:30 a.m.	Webcast only pursuant to Assembly Bill 361
Board of Directors Mobile Source and Climate Impacts Committee	Thursday	26	9:30 a.m.	Webcast only pursuant to Assembly Bill 361

HL 4/15/2022 – 12:05 P.M.

G/Board/Executive Office/Moncal

BAY AREA AIR QUALITY MANAGEMENT DISTRICT
Memorandum

To: Chairperson Karen Mitchoff and Members
of the Board of Directors

From: Alexander Crockett
Interim Acting Executive Officer/APCO

Date: April 20, 2022

Re: Approval of the Minutes of April 6, 2022

RECOMMENDED ACTION

Approve the draft minutes of the Board of Directors Meeting of April 6, 2022.

BACKGROUND

None.

DISCUSSION

Attached for your review and approval of the draft minutes of the Board of Directors Meeting of April 6, 2022.

BUDGET CONSIDERATION/FINANCIAL IMPACT

None.

Respectfully submitted,

Alexander Crockett
Interim Acting Executive Officer/APCO

Prepared by: Marcy Hiratzka
Reviewed by: Vanessa Johnson

ATTACHMENTS:

1. Draft Minutes of the Board of Directors Meeting of April 6, 2022

Bay Area Air Quality Management District
375 Beale Street, Suite 600
San Francisco, CA 94105
(415) 749-5073

Board of Directors Regular Meeting
Wednesday, April 6, 2022

DRAFT MINUTES

Note: Audio recordings of the meeting are available on the website of the Bay Area Air Quality Management District at www.baaqmd.gov/bodagendas

**This meeting was conducted under procedures authorized by Assembly Bill 361 (Rivas 2021).
Members of the Board of Directors participated by teleconference.**

CALL TO ORDER

1. **Opening Comments:** Board of Directors (Board) Chairperson, Karen Mitchoff, called the meeting to order at 9:04 a.m.

Roll Call:

Present: Chairperson Karen Mitchoff; Vice Chairperson John Bauters; Secretary Davina Hurt; and Directors Margaret Abe-Koga, Teresa Barrett, David Canepa, Rich Constantine, Pauline Russo Cutter, John Gioia, David Haubert, Lynda Hopkins, David Hudson, Tyrone Jue, Myrna Melgar, Nate Miley, Rob Rennie, Brad Wagenknecht, Shamann Walton, and Steve Young.

Absent: Directors Cindy Chavez, Carole Groom, Erin Hannigan, Katie Rice, Mark Ross.

2. **PLEDGE OF ALLEGIANCE**

3. **PUBLIC MEETING PROCEDURE**

CONSENT CALENDAR (ITEMS 4 – 17)

4. Remote Teleconferencing per Assembly Bill (AB) 361 (Rivas)
5. Approval of the Minutes of March 11, 2022 and March 16, 2022
6. Board Communications Received from March 16, 2022 through April 5, 2022
7. Notices of Violations Issued and Settlements in Excess of \$10,000 in the Month of February 2022
8. Authorization to Amend Contract with Eide Bailly, LLC
9. Funding to Support the Bay Area Regional Collaborative
10. Report of the Legislative Committee Meeting of March 14, 2022
11. Report of the Administration Committee Meeting of March 16, 2022
12. Report of the Stationary Source & Climate Impacts Committee Meeting of March 21, 2022

13. Report of the Richmond Area Community Emissions Reduction Plan Steering Committee Meeting of March 21, 2022
14. Report of the Budget & Finance Committee Meeting of March 23, 2022
15. Report of the Mobile Source & Climate Impacts Committee Meeting of March 24, 2022
16. Authorization to Amend Signature Authority for San Mateo County Treasurer
17. Reschedule a Public Hearing to Consider the Adoption of Revised Proposed New Rule 13-5: Industrial Hydrogen Plants and Proposed Amendments to Rule 8-2: Miscellaneous Operation

Public Comments

No requests submitted.

Board Comments

None.

Board Action

Director Hudson made a motion, seconded by Director Wagenknecht, to **approve** Consent Calendar Items 4 through 17, inclusive, as amended; and the motion **carried** by the following vote of the Board:

AYES: Bauters, Barrett, Constantine, Cutter, Gioia, Haubert, Hopkins, Hudson, Hurt, Jue, Melgar, Miley, Mitchoff, Wagenknecht.
NOES: None.
ABSTAIN: None.
ABSENT: Abe-Koga, Canepa, Chavez, Groom, Hannigan, Rennie, Rice, Ross, Walton, Young.

PRESENTATIONS

18. MANAGEMENT AUDIT UPDATE AND FISCAL YEAR ENDING (FYE) 2022 STAFFING AUTHORIZATION REVIEW

John Chiladakis, Director of Information Services, introduced George Skiles and Lynda McCallum of Sjoberg Evashenk Consulting, the firm hired to conduct the Air District's Management Audit. Mr. Skiles and Ms. McCallum gave the presentation *Air District-Wide Risk Assessment Phase I Report*, including: project objectives and approach; Phase I observations; results (FYE 2022 staffing allocations, internal controls in hiring process); and Phase I conclusions and next steps.

NOTED PRESENT: Director Young was noted present at 9:15 a.m., Director Abe-Koga was noted present at 9:20 a.m., and Director Walton was noted present at 9:33 a.m.

Public Comments

Public comments were given by Jed Holtzman, San Francisco resident; Charles Davidson, Sunflower Alliance; and Dr. Raymond Tompkins, African-American Community Health Equity Council.

Board Comments

The Board and staff discussed the desire for the prioritization of an audit of the Air District’s hiring process, despite the urgency for additional technical and field staff; whether ten positions that were filled of twenty-six new positions on a hiring hold were promotions or new hires; the importance of Air District staff reestablishing trust with the Board so that the Board can be confident that Air District staff is properly following the Board's direction to the EO/APCO; whether a contract amendment is needed for the contracted auditing firm to conduct a separate analysis of the hiring process, and the direction to staff to carry that out immediately; and the direction to staff to hire the vacant FYE 22 positions using a process overseen by the auditor and the Interim Executive Officer/Air Pollution Control Officer (APCO).

Board Action

None; receive and file.

19. **CONSIDERATION OF NEW BILLS**

Alan Abbs, Legislative Officer, gave the staff presentation *Consideration of New Bills*, including: outcome; outline; requested action; Assembly Bill (AB) 2141 - E. Garcia: Greenhouse Gas Reduction Fund: community projects: funding; and AB 2836 - E. Garcia: Carl Moyer Memorial Air Quality Standards Attainment Program: vehicle registration fees: California tire fee.

NOTED PRESENT: Director Rennie was noted present at 9:55 a.m.

Public Comments

No requests received.

Board Comments

The Board and staff discussed The Board and staff discussed the allocation of the ten percent of the annual proceeds of the Greenhouse Gas Reduction Fund that California receives.

Board Action

Secretary Hurt made a motion, seconded by Director Wagenknecht, to Cutter, to **adopt** positions of **SUPPORT** for AB 2141 and AB 2836; and the motion **carried** by the following vote of the Board:

- AYES: Abe-Koga, Bauters, Barrett, Constantine, Cutter, Gioia, Haubert, Hopkins, Hudson, Hurt, Jue, Melgar, Miley, Mitchoff, Rennie, Wagenknecht, Walton, Young.
- NOES: None.
- ABSTAIN: None.
- ABSENT: Canepa, Chavez, Groom, Hannigan, Rice, Ross.

20. AUTHORIZATION TO USE COMMUNITY AIR PROTECTION PROGRAM (CAPP) IMPLEMENTATION FUNDS FOR THE CURRENT JAMES CARY SMITH COMMUNITY GRANT PROGRAM

Alexander Crockett, Interim Executive Officer/APCO, gave the staff presentation *Authorization to Use Community Air Protection Program Implementation Funds for Community Grant Program*, including: summary and requested action.

Public Comments

No requests received.

Board Comments

None.

Board Action

Director Wagenknecht made a motion, seconded by Director Cutter, to **authorize** the use of CAPP Implementation fund grants from *multiple* CAPP Implementation fund cycles (no longer solely from the 2019 CAPP, as was approved in December 2021) to execute grant agreements for recommended projects in the expanded James Cary Smith Community Grant awards program, in an amount not to exceed \$3,061,470; and the motion **carried** by the following vote of the Board:

AYES: Abe-Koga, Bauters, Barrett, Constantine, Cutter, Gioia, Haubert, Hopkins, Hudson, Hurt, Jue, Melgar, Miley, Mitchoff, Rennie, Wagenknecht, Walton, Young.
NOES: None.
ABSTAIN: None.
ABSENT: Canepa, Chavez, Groom, Hannigan, Rice, Ross.

21. PUBLIC COMMENT ON NON-AGENDA MATTERS (OUT OF ORDER, ITEM 23)

Public comments were given by LaDonna Williams, All Positives Possible; and Charles Davidson, Sunflower Alliance.

22. CHAIRPERSON'S REPORT (ITEM 26)

Chair Mitchoff introduced new Board member, Steve Young, Mayor of Benicia, and remarked that Cindy Chavez will be replaced by Santa Clara County Supervisor, Otto Lee, in May.

CLOSED SESSION (10:20 a.m.)

NOTED PRESENT: Director Canepa was noted present in Closed Session at 11:00 a.m.

23. PUBLIC EMPLOYEE APPOINTMENT (ITEM 21)

Pursuant to Government Code Section 54957 (b)

Title: District Counsel Appointment

REPORTABLE ACTION: Chair Mitchoff had nothing to report.

24. **PUBLIC EMPLOYEE EMPLOYMENT (ITEM 22)**

Pursuant to Government Code Section 54957 (b)

Title: Interim Chief Executive Officer/Air Pollution Control Officer

REPORTABLE ACTION: Chair Mitchoff had nothing to report.

OPEN SESSION (11:31 a.m.)

OTHER BUSINESS

25. **REPORT OF THE EXECUTIVE OFFICER/APCO**

Mr. Crockett introduced Dr. Ranyee Chiang, Director of Meteorology and Measurement, who reported on the status of Particulate Matter_{2.5} exceedances thus far in 2022 in the Bay Area.

26. **BOARD MEMBERS' COMMENTS (ITEM 24)**

Director Hudson discussed his opinion of the new amount of time that Chair Mitchoff has allowed for public comments at Board and committee meetings. He also discussed the world's first in-flight emissions study using 100% sustainable aviation fuel on a wide-body commercial passenger aircraft, being conducted by Airbus. The study is called "Emission and Climate Impact of Alternative Fuels' (ECLIF3) project."

Secretary Hurt reported that on March 24, 2022, the California Air Resources Board approved updates to its Commercial Harbor Craft Regulation aimed at reducing emissions from harbor craft like tugboats and ferries operated near California's coast to improve public health in nearby communities, many of which are disadvantaged. She also reported that she was invited to serve on a Carl Moyer program committee and consultation group to develop the AB 617 People's Blueprint for Community Air Protection.

Chair Mitchoff announced the departure of Board member Rich Constantine, Mayor of Morgan Hill. Board members thanked Mr. Constantine for his service on the Board.

27. **TIME AND PLACE OF NEXT MEETING**

Wednesday, April 20, 2022 at 9:00 a.m, in person or via webcast, teleconference, or Zoom, pursuant to procedures in accordance with Assembly Bill 361 (Rivas 2021).

28. **ADJOURNMENT**

The meeting adjourned at 11:45 a.m.

Marcy Hiratzka
Clerk of the Boards

BAY AREA AIR QUALITY MANAGEMENT DISTRICT

Memorandum

To: Chairperson Karen Mitchoff and Members
of the Board of Directors

From: Alexander Crockett
Interim Acting Executive Officer/APCO

Date: April 20, 2022

Re: Remote Teleconferencing per Assembly Bill (AB) 361 (Rivas)

RECOMMENDED ACTION

The Board of Directors will consider approving a resolution reauthorizing Air District Board and Committee meetings remote teleconferencing through May 20, 2022.

BACKGROUND

AB 361 (R. Rivas 2021) – Open meetings: state and local agencies: teleconferences. Allows until January 1, 2024, a local agency to use teleconferencing without complying with the teleconferencing requirements imposed by the Ralph M. Brown Act, when a legislative body of a local agency holds a meeting during a declared state of emergency, as that term is defined, when state or local health officials have imposed or recommended measures to promote social distancing, during a proclaimed state of emergency held for the purpose of determining, by majority vote, whether meeting in person would present imminent risks to the health or safety of attendees, and during a proclaimed state of emergency when the legislative body has determined that meeting in person would present imminent risks to the health or safety of attendees, as provided. The law requires a resolution every 30 days to provide this flexibility.

DISCUSSION

When the COVID-19 pandemic started, local agency boards struggled to conduct their meetings in compliance with the Brown Act’s public accessibility requirements while still abiding by stay-at-home orders. As a result, Governor Newsom signed several executive orders to grant local agencies the flexibility to meet remotely during the COVID-19 pandemic. The Governor’s executive orders allowed public agencies to meet remotely and did not require physical public access to those meeting locations. Those executive orders expired on September 30, 2021. The State of Emergency Declaration of March 4, 2020, continues to remain in effect.

AB 361 provides additional flexibility for local agencies looking to meet remotely during a proclaimed state of emergency, however, the legislative body is required to consider and vote on this flexibility on a monthly basis. Excerpts of the bill amending Section 54593 of the Government Code provide the following guidance:

(e) (1) A local agency may use teleconferencing without complying with the requirements of paragraph (3) of subdivision (b) if the legislative body complies with the requirements of paragraph (2) of this subdivision in any of the following circumstances:

(A) The legislative body holds a meeting during a proclaimed state of emergency, and state or local officials have imposed or recommended measures to promote social distancing.

(B) The legislative body holds a meeting during a proclaimed state of emergency for the purpose of determining, by majority vote, whether as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees.

(C) The legislative body holds a meeting during a proclaimed state of emergency and has determined, by majority vote, pursuant to subparagraph (B), that, as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees.

The following guidance on exercising this flexibility is also contained in the amended Section 54593(e) of the Government Code:

(3) If a state of emergency remains active, or state or local officials have imposed or recommended measures to promote social distancing, in order to continue to teleconference without compliance with paragraph (3) of subdivision (b), the legislative body shall, not later than 30 days after teleconferencing for the first time pursuant to subparagraph (A), (B), or (C) of paragraph (1), and every 30 days thereafter, make the following findings by majority vote:

(A) The legislative body has reconsidered the circumstances of the state of emergency.

(B) Any of the following circumstances exist:

(i) The state of emergency continues to directly impact the ability of the members to meet safely in person.

(ii) State or local officials continue to impose or recommend measures to promote social distancing.

(4) For the purposes of this subdivision, “state of emergency” means a state of emergency proclaimed pursuant to Section 8625 of the California Emergency Services Act (Article 1 (commencing with Section 8550) of Chapter 7 of Division 1 of Title 2).

(f) This section shall remain in effect only until January 1, 2024, and as of that date is repealed.

BUDGET CONSIDERATION/FINANCIAL IMPACT

None.

Respectfully submitted,

Alexander Crockett
Interim Acting Executive Officer/APCO

Prepared by: Alan Abbs
Reviewed by: Alexander Crockett

ATTACHMENTS:

1. Draft AB 361 Subsequent Resolution

BAY AREA AIR QUALITY MANAGEMENT DISTRICT

RESOLUTION NO. 2022-04

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE BAY AREA AIR QUALITY MANAGEMENT DISTRICT PROCLAIMING A LOCAL EMERGENCY, RATIFYING THE PROCLAMATION OF A STATE OF EMERGENCY BY GOVERNOR NEWSOM ON MARCH 20, 2020, AND AUTHORIZING REMOTE TELECONFERENCE MEETINGS OF THE LEGISLATIVE BODIES OF THE BAY AREA AIR QUALITY MANAGEMENT DISTRICT FOR THE PERIOD APRIL 6 TO MAY 6, 2022 PURSUANT TO BROWN ACT PROVISIONS.

WHEREAS, the Bay Area Air Quality Management District (District) is committed to preserving and nurturing public access and participation in meetings of the Board of Directors; and

WHEREAS, all meetings of Bay Area Air Quality Management District's legislative bodies are open and public, as required by the Ralph M. Brown Act (Cal. Gov. Code 54950 – 54963), so that any member of the public may attend, participate, and watch the District's legislative bodies conduct their business; and

WHEREAS, the Brown Act, Government Code section 54953(e), makes provisions for remote teleconferencing participation in meetings by members of a legislative body, without compliance with the requirements of Government Code section 54953(b)(3), subject to the existence of certain conditions; and

WHEREAS, a required condition is that a state of emergency is declared by the Governor pursuant to Government Code section 8625, proclaiming the existence of conditions of disaster or of extreme peril to the safety of persons and property within the state caused by conditions as described in Government Code section 8558; and

WHEREAS, a proclamation is made when there is an actual incident, threat of disaster, or extreme peril to the safety of persons and property within the jurisdictions that are within the District's boundaries, caused by natural, technological, or human-caused disasters; and

WHEREAS, it is further required that state or local officials have imposed or recommended measures to promote social distancing, or, the legislative body meeting in person would present imminent risks to the health and safety of attendees; and

WHEREAS, such conditions now exist in the District, specifically, Governor Newsom proclaimed a state of emergency in California starting on March 4, 2020 to prevent, mitigate, and respond to the spread of COVID-19; and

WHEREAS, social distancing has been ordered by state and local public health authorities due to the imminent health risks of in person contacts and meetings during the COVID-19 emergency; and

WHEREAS, the Board of Directors does hereby find that the COVID-19 public health emergency, and its imminent health risks to attendees of public meetings have caused, and will continue to cause, conditions of peril to the safety of persons within the District that are likely to be beyond the control of services, personnel, equipment, and facilities of the District, and desires to proclaim a local emergency and ratify the proclamation of state of emergency by the Governor of the State of California; and

WHEREAS, as a consequence of the local emergency, the Board of Directors does hereby find that the legislative bodies of the District shall conduct their meetings without compliance with paragraph (3) of subdivision (b) of Government Code section 54953, as authorized by subdivision (e) of section 54953, and that such legislative bodies shall comply with the requirements to provide the public with access to the meetings as prescribed in paragraph (2) of subdivision (e) of section 54953; and

WHEREAS, the District is publicizing in its meeting agendas zoom links for members of the public to participate remotely in meetings of the District's legislative bodies.

NOW, THEREFORE, THE BOARD OF DIRECTORS OF THE BAY AREA AIR QUALITY MANAGEMENT DISTRICT DOES HEREBY RESOLVE AS FOLLOWS:

Section 1. Recitals. The Recitals set forth above are true and correct and are incorporated into this Resolution by this reference.

Section 2. Proclamation of Local Emergency. The Board hereby proclaims that a local emergency now exists throughout the Bay Area Air Quality Management District due to COVID-19, and observes that social distancing has been ordered by the public health authorities due to the imminent health risks of in person contacts and meetings during the COVID-19 pandemic.

Section 3. Ratification of Governor's Proclamation of a State of Emergency. The Board hereby ratifies the Governor of the State of California's Proclamation of State of Emergency, effective as of its issuance date of March 4, 2020.

Section 4. Remote Teleconference Meetings. The staff and legislative bodies of the District are hereby authorized and directed to take all actions necessary to carry out the intent and purpose of this Resolution including, conducting open and public meetings in accordance with Government Code section 54953(e) and other applicable provisions of the Brown Act.

Section 5. Effective Date of Resolution. This Resolution shall take effect immediately upon its adoption and shall be effective until the earlier of (i) May 6, 2022 or such time the Board of Directors adopts a subsequent resolution in accordance with Government Code section 54953(e)(3) to extend the time during which the legislative bodies of the District may continue to teleconference without compliance with paragraph (3) of subdivision (b) of section 54953.

The foregoing resolution was duly regularly introduced, passed, and adopted at a regular meeting of the Board of Directors of the Bay Area Air Quality Management District on the motion of _____, seconded by _____, on the 6TH day of APRIL 2022, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

Karen Mitchoff
Chair of the Board of Directors

Davina Hurt
Secretary of the Board of Directors

DRAFT

BAY AREA AIR QUALITY MANAGEMENT DISTRICT
Memorandum

To: Chairperson Karen Mitchoff and Members
of the Board of Directors

From: Alexander Crockett
Interim Acting Executive Officer/APCO

Date: April 20, 2022

Re: Board Communications Received from April 6, 2022 through April 19, 2022

RECOMMENDED ACTION

None; receive and file.

BACKGROUND

None.

DISCUSSION

Copies of communications directed to the Board of Directors received by the Air District from April 6, 2022 through April 19, 2022, if any, will be distributed to the Board Members by way of email.

BUDGET CONSIDERATION/FINANCIAL IMPACT

None.

Respectfully submitted,

Alexander Crockett
Interim Acting Executive Officer/APCO

Prepared by: Michelle Beteta
Reviewed by: Vanessa Johnson

ATTACHMENTS:

None

BAY AREA AIR QUALITY MANAGEMENT DISTRICT
Memorandum

To: Chairperson Karen Mitchoff and Members
of the Board of Directors

From: Alexander Crockett
Interim Acting Executive Officer/APCO

Date: April 20, 2022

Re: Air District Personnel on Out-of-State Business Travel for the Month Ending March
2022

RECOMMENDED ACTION

None; receive and file.

BACKGROUND

In accordance with Section 5.4 (b) of the District's Administrative Code, Fiscal Policies and Procedures Section, the Board is hereby notified of District personnel who have traveled on out-of-state business. The report covers out-of-state business travel for the month of March 2022. The monthly out-of-state business travel report is presented in the month following travel completion.

DISCUSSION

The following out-of-state business travel activities occurred in the month of March 2022:

HR Transform 2022, March 14th-17th, 2022, Las Vegas, Nevada attendees:

- Terri Levels, People and Engagement Officer
- Lewis Letang, Senior Human Resources Analyst

BUDGET CONSIDERATION/FINANCIAL IMPACT

None.

Respectfully submitted,

Alexander Crockett
Interim Acting Executive Officer/APCO

Prepared by: Stephanie Osaze
Reviewed by: Jeff McKay

ATTACHMENTS:

None

BAY AREA AIR QUALITY MANAGEMENT DISTRICT

Memorandum

To: Chairperson Karen Mitchoff and Members
of the Board of Directors

From: Alexander Crockett
Interim Acting Executive Officer/APCO

Date: April 20, 2022

Re: Authorization to Amend Contract with Dell Marketing, LP, to Support Development
of CEQA Screening Tools

RECOMMENDED ACTION

Recommend the Board of Directors authorize the Interim Acting Executive Officer/APCO to execute a contract amendment with Dell Marketing, LP, to increase the current three-year licensing agreement by \$80,000 for additional cloud-based computing, to a total amount not to exceed \$1,930,000.

BACKGROUND

The Air District is currently updating its 2017 California Environmental Quality Act (CEQA) guidelines and re-evaluating thresholds of significance for toxic air contaminants and fine particulate matter in assessing local air quality impacts. As part of the update, the Air District plans to develop a web-based, on-road mobile source screening tool to assist local agencies in estimating air pollution contributed by every freeway and local roadway within the nine Bay Area counties.

To help prioritize rule development activities and to provide supplemental information to inform rule development efforts, the Air District is currently conducting year-long regional air quality modeling simulations. Part of this modeling effort will be directed towards identifying sources of air pollution that most contribute to fine particulate matter exposures in Bay Area communities.

DISCUSSION

The Bay Area roadway network consists of thousands of individual streets, arterials, and freeways. To develop screening tools to assist local agencies perform or evaluate environmental review of new development projects, the Air District staff plans to model the air pollution impacts of each roadway using an air dispersion model. Staff also plans to simulate regional meteorology and air quality using complex, three-dimensional air quality models, generating terabytes of data to help identify sources most impacting Bay Area communities.

Staff had planned to expand its existing, in-house cluster computers to accommodate the anticipated CEQA and regional modeling analyses, but the procurement of additional computer equipment has been delayed due to disruption in the global supply chain. With this licensing agreement amendment, staff is seeking additional access to a cloud-based computing platform to complete the necessary modeling to create timely CEQA roadway screening tools and regional modeling products.

The District currently has access to a cloud-based computing platform under its existing volume licensing agreement with Dell Marketing, LP. In September 2020, the Air District entered into a three-year Microsoft Enterprise Software Licensing Agreement, in amount not to exceed \$1.85M with Dell Marketing, LP. The contract is renewed every three years for Microsoft software licenses that include Windows operating systems and various tools including Azure, Microsoft’s public cloud-computing platform that houses a collection of servers that can be used for virtual computing and data storage. Additional access to the Azure platform would allow modeling to be run in parallel across hundreds of processors with speeds comparable to those installed in the current in-house computer cluster. This additional access, if approved, would increase the existing licensing agreement amount from \$1,850,000 to \$1,930,000, an increase of \$80,000.

BUDGET CONSIDERATION/FINANCIAL IMPACT

Funds for this licensing agreement amendment of \$80,000 are included in the Fiscal Year Ending (FYE) 2022 budget and will be drawn from budgets managed by the Assessment, Inventory, and Modeling (AIM) Division: Source Inventory (Program 601) and Air Quality Modeling Support (Program 603).

Respectfully submitted,

Alexander Crockett
Interim Acting Executive Officer/APCO

Prepared by: Song Bai and Saffet Tanrikulu
Reviewed by: Phil Martien and Greg Nudd

ATTACHMENTS:

1. Original Microsoft Licensing Agreement–Contract No. 2020.217
2. Confirmation of Board Authorization–Contract No. 2020.217



Program Signature Form

MBA/MBSA number

8084445

5-0000005936033

Agreement number

8084445

Note: Enter the applicable active numbers associated with the documents below. Microsoft requires the associated active number be indicated here, or listed below as new.

For the purposes of this form, "Customer" can mean the signing entity, Enrolled Affiliate, Government Partner, Institution, or other party entering into a volume licensing program agreement.

This signature form and all contract documents identified in the table below are entered into between the Customer and the Microsoft Affiliate signing, as of the effective date identified below.

Contract Document	Number or Code
<Choose Agreement>	Document Number or Code
<Choose Agreement>	Document Number or Code
<Choose Agreement>	Document Number or Code
<Choose Agreement>	Document Number or Code
<Choose Agreement>	Document Number or Code
Enterprise Enrollment	X20-10635
<Choose Enrollment/Registration>	Document Number or Code
<Choose Enrollment/Registration>	Document Number or Code
<Choose Enrollment/Registration>	Document Number or Code
<Choose Enrollment/Registration>	Document Number or Code
Amendment	M97 (New)
Product Selection Form	0997830.003 (New)
Document Description	Document Number or Code
Document Description	Document Number or Code
Document Description	Document Number or Code

By signing below, Customer and the Microsoft Affiliate agree that both parties (1) have received, read and understand the above contract documents, including any websites or documents incorporated by reference and any amendments and (2) agree to be bound by the terms of all such documents.

Customer

Name of Entity (Legal entity name)* Bay Area Air Quality Management District

Signature* _____

Printed First and Last Name* Jack P. Broadbent

Printed Title Executive Officer/APCO

Signature Date* 9/28/2020

Tax ID

* indicates required field

Microsoft Affiliate	
Microsoft Corporation	
Signature	_____
Printed First and Last Name	
Printed Title	
Signature Date <small>(date Microsoft Affiliate countersigns)</small>	
Agreement Effective Date <small>(may be different than Microsoft's signature date)</small>	

Optional 2nd Customer signature or Outsourcer signature (if applicable)

Customer	
Name of Entity (must be legal entity name)*	
Signature*	_____
Printed First and Last Name*	
Printed Title	
Signature Date*	

** indicates required field*

Outsourcer	
Name of Entity (must be legal entity name)*	
Signature*	_____
Printed First and Last Name*	
Printed Title	
Signature Date*	

** indicates required field*

If Customer requires additional contacts or is reporting multiple previous Enrollments, include the appropriate form(s) with this signature form.

After this signature form is signed by the Customer, send it and the Contract Documents to Customer's channel partner or Microsoft account manager, who must submit them to the following address. When the signature form is fully executed by Microsoft, Customer will receive a confirmation copy.

Microsoft Corporation
 Dept. 551, Volume Licensing
 6880 Sierra Center Parkway
 Reno, Nevada 89511
 USA



Enterprise Enrollment

State and Local

Enterprise Enrollment number <i>(Microsoft to complete)</i>	
Previous Enrollment number <i>(Reseller to complete)</i>	9013539

Framework ID <i>(if applicable)</i>	
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This Enrollment must be attached to a signature form to be valid.

This Microsoft Enterprise Enrollment is entered into between the entities as identified in the signature form as of the effective date. Enrolled Affiliate represents and warrants it is the same Customer, or an Affiliate of the Customer, that entered into the Enterprise Agreement identified on the program signature form.

This Enrollment consists of: (1) these terms and conditions, (2) the terms of the Enterprise Agreement identified on the signature form, (3) the Product Selection Form, (4) the Product Terms, (5) the Online Services Terms, (6) any Supplemental Contact Information Form, Previous Agreement/Enrollment form, and other forms that may be required, and (7) any order submitted under this Enrollment. This Enrollment may only be entered into under a 2011 or later Enterprise Agreement. By entering into this Enrollment, Enrolled Affiliate agrees to be bound by the terms and conditions of the Enterprise Agreement.

All terms used but not defined are located at <http://www.microsoft.com/licensing/contracts>. In the event of any conflict the terms of this Agreement control.

Effective date. If Enrolled Affiliate is renewing Software Assurance or Subscription Licenses from one or more previous Enrollments or agreements, then the effective date will be the day after the first prior Enrollment or agreement expires or terminates. If this Enrollment is renewed, the effective date of the renewal term will be the day after the Expiration Date of the initial term. Otherwise, the effective date will be the date this Enrollment is accepted by Microsoft. Any reference to “anniversary date” refers to the anniversary of the effective date of the applicable initial or renewal term for each year this Enrollment is in effect.

Term. The initial term of this Enrollment will expire on the last day of the month, 36 full calendar months from the effective date of the initial term. The renewal term will expire 36 full calendar months after the effective date of the renewal term.

Terms and Conditions

1. Definitions.

Terms used but not defined in this Enrollment will have the definition in the Enterprise Agreement. The following definitions are used in this Enrollment:

“Additional Product” means any Product identified as such in the Product Terms and chosen by Enrolled Affiliate under this Enrollment.

“Community” means the community consisting of one or more of the following: (1) a Government, (2) an Enrolled Affiliate using eligible Government Community Cloud Services to provide solutions to a Government or a qualified member of the Community, or (3) a Customer with Customer Data that is subject to Government regulations for which Customer determines and Microsoft agrees that the use of Government Community Cloud Services is appropriate to meet Customer’s regulatory requirements.

Membership in the Community is ultimately at Microsoft's discretion, which may vary by Government Community Cloud Service.

"Enterprise Online Service" means any Online Service designated as an Enterprise Online Service in the Product Terms and chosen by Enrolled Affiliate under this Enrollment. Enterprise Online Services are treated as Online Services, except as noted.

"Enterprise Product" means any Desktop Platform Product that Microsoft designates as an Enterprise Product in the Product Terms and chosen by Enrolled Affiliate under this Enrollment. Enterprise Products must be licensed for all Qualified Devices and Qualified Users on an Enterprise-wide basis under this program.

"Expiration Date" means the date upon which the Enrollment expires.

"Federal Agency" means a bureau, office, agency, department or other entity of the United States Government.

"Government" means a Federal Agency, State/Local Entity, or Tribal Entity acting in its governmental capacity.

"Government Community Cloud Services" means Microsoft Online Services that are provisioned in Microsoft's multi-tenant data centers for exclusive use by or for the Community and offered in accordance with the National Institute of Standards and Technology (NIST) Special Publication 800-145. Microsoft Online Services that are Government Community Cloud Services are designated as such in the Use Rights and Product Terms.

"Industry Device" (also known as line of business device) means any device that: (1) is not useable in its deployed configuration as a general purpose personal computing device (such as a personal computer), a multi-function server, or a commercially viable substitute for one of these systems; and (2) only employs an industry or task-specific software program (e.g. a computer-aided design program used by an architect or a point of sale program) ("Industry Program"). The device may include features and functions derived from Microsoft software or third-party software. If the device performs desktop functions (such as email, word processing, spreadsheets, database, network or Internet browsing, or scheduling, or personal finance), then the desktop functions: (1) may only be used for the purpose of supporting the Industry Program functionality; and (2) must be technically integrated with the Industry Program or employ technically enforced policies or architecture to operate only when used with the Industry Program functionality.

"Managed Device" means any device on which any Affiliate in the Enterprise directly or indirectly controls one or more operating system environments. Examples of Managed Devices can be found in the Product Terms.

"Qualified Device" means any device that is used by or for the benefit of Enrolled Affiliate's Enterprise and is: (1) a personal desktop computer, portable computer, workstation, or similar device capable of running Windows Pro locally (in a physical or virtual operating system environment), or (2) a device used to access a virtual desktop infrastructure ("VDI"). Qualified Devices do not include any device that is: (1) designated as a server and not used as a personal computer, (2) an Industry Device, or (3) not a Managed Device. At its option, the Enrolled Affiliate may designate any device excluded above (e.g., Industry Device) that is used by or for the benefit of the Enrolled Affiliate's Enterprise as a Qualified Device for all or a subset of Enterprise Products or Online Services the Enrolled Affiliate has selected.

"Qualified User" means a person (e.g., employee, consultant, contingent staff) who: (1) is a user of a Qualified Device, or (2) accesses any server software requiring an Enterprise Product Client Access License or any Enterprise Online Service. It does not include a person who accesses server software or an Online Service solely under a License identified in the Qualified User exemptions in the Product Terms.

"Reseller" means an entity authorized by Microsoft to resell Licenses under this program and engaged by an Enrolled Affiliate to provide pre- and post-transaction assistance related to this agreement;

"Reserved License" means for an Online Service identified as eligible for true-ups in the Product Terms, the License reserved by Enrolled Affiliate prior to use and for which Microsoft will make the Online Service available for activation.

"State/Local Entity" means (1) any agency of a state or local government in the United States, or (2) any United States county, borough, commonwealth, city, municipality, town, township, special purpose district, or other similar type of governmental instrumentality established by the laws of Customer's state and located within Customer's state's jurisdiction and geographic boundaries.

"Tribal Entity" means a federally-recognized tribal entity performing tribal governmental functions and eligible for funding and services from the U.S. Department of Interior by virtue of its status as an Indian tribe.

"Use Rights" means, with respect to any licensing program, the use rights or terms of service for each Product and version published for that licensing program at the Volume Licensing Site and updated from time to time. The Use Rights include the Product-Specific License Terms, the License Model terms, the Universal License Terms, the Data Protection Terms, and the Other Legal Terms. The Use Rights supersede the terms of any end user license agreement (on-screen or otherwise) that accompanies a Product.

"Volume Licensing Site" means <http://www.microsoft.com/licensing/contracts> or a successor site.

2. **Order requirements.**

- a. **Minimum order requirements.** Enrolled Affiliate's Enterprise must have a minimum of 250 Qualified Users or Qualified Devices. The initial order must include at least 250 Licenses for Enterprise Products or Enterprise Online Services.
 - (i) **Enterprise commitment.** Enrolled Affiliate must order enough Licenses to cover all Qualified Users or Qualified Devices, depending on the License Type, with one or more Enterprise Products or a mix of Enterprise Products and the corresponding Enterprise Online Services (as long as all Qualified Devices not covered by a License are only used by users covered with a user License).
 - (ii) **Enterprise Online Services only.** If no Enterprise Product is ordered, then Enrolled Affiliate need only maintain at least 250 Subscription Licenses for Enterprise Online Services.
- b. **Additional Products.** Upon satisfying the minimum order requirements above, Enrolled Affiliate may order Additional Products.
- c. **Use Rights for Enterprise Products.** For Enterprise Products, if a new Product version has more restrictive use rights than the version that is current at the start of the applicable initial or renewal term of the Enrollment, those more restrictive use rights will not apply to Enrolled Affiliate's use of that Product during that term.
- d. **Country of usage.** Enrolled Affiliate must specify the countries where Licenses will be used on its initial order and on any additional orders.
- e. **Resellers.** Enrolled Affiliate must choose and maintain a Reseller authorized in the United States. Enrolled Affiliate will acquire its Licenses through its chosen Reseller. Orders must be submitted to the Reseller who will transmit the order to Microsoft. The Reseller and Enrolled Affiliate determine pricing and payment terms as between them, and Microsoft will invoice the Reseller based on those terms. Throughout this Agreement the term "price" refers to reference price. Resellers and other third parties do not have authority to bind or impose any obligation or liability on Microsoft.
- f. **Adding Products.**
 - (i) **Adding new Products not previously ordered.** New Enterprise Products or Enterprise Online Services may be added at any time by contacting a Microsoft Account Manager or Reseller. New Additional Products, other than Online Services, may be used if an order is placed in the month the Product is first used. For Additional Products that are Online Services, an initial order for the Online Service is required prior to use.

(ii) Adding Licenses for previously ordered Products. Additional Licenses for previously ordered Products other than Online Services may be added at any time but must be included in the next true-up order. Additional Licenses for Online Services must be ordered prior to use, unless the Online Services are (1) identified as eligible for true-up in the Product Terms or (2) included as part of other Licenses.

g. True-up requirements. Enrolled Affiliate must submit an annual true-up order that accounts for any changes since the initial order or last order. If there are no changes, then an update statement must be submitted instead of a true-up order.

(i) Enterprise Products. For Enterprise Products, Enrolled Affiliate must determine the number of Qualified Devices and Qualified Users (if ordering user-based Licenses) at the time the true-up order is placed and must order additional Licenses for all Qualified Devices and Qualified Users that are not already covered by existing Licenses, including any Enterprise Online Services.

(ii) Additional Products. For Additional Products that have been previously ordered under this Enrollment, Enrolled Affiliate must determine the maximum number of Additional Products used since the latter of the initial order, the last true-up order, or the prior anniversary date and submit a true-up order that accounts for any increase.

(iii) Online Services. For Online Services identified as eligible for true-up in the Product Terms, Enrolled Affiliate may place a reservation order for the additional Licenses prior to use and payment may be deferred until the next true-up order. Microsoft will provide a report of Reserved Licenses ordered but not yet invoiced to Enrolled Affiliate and its Reseller. Reserved Licenses will be invoiced retrospectively to the month in which they were ordered.

(iv) Subscription License reductions. Enrolled Affiliate may reduce the quantity of Subscription Licenses at the Enrollment anniversary date on a prospective basis if permitted in the Product Terms, as follows:

- 1) For Subscription Licenses that are part of an Enterprise-wide purchase, Licenses may be reduced if the total quantity of Licenses and Software Assurance for an applicable group meets or exceeds the quantity of Qualified Devices and Qualified Users (if ordering user-based Licenses) identified on the Product Selection Form, and includes any additional Qualified Devices and Qualified Users added in any prior true-up orders. Step-up Licenses do not count towards this total count.
- 2) For Enterprise Online Services that are not a part of an Enterprise-wide purchase, Licenses can be reduced as long as the initial order minimum requirements are maintained.
- 3) For Additional Products available as Subscription Licenses, Enrolled Affiliate may reduce the Licenses. If the License count is reduced to zero, then Enrolled Affiliate's use of the applicable Subscription License will be cancelled.

Invoices will be adjusted to reflect any reductions in Subscription Licenses at the true-up order Enrollment anniversary date and effective as of such date.

(v) Update statement. An update statement must be submitted instead of a true-up order if, since the initial order or last true-up order, Enrolled Affiliate's Enterprise: (1) has not changed the number of Qualified Devices and Qualified Users licensed with Enterprise Products or Enterprise Online Services; and (2) has not increased its usage of Additional Products. This update statement must be signed by Enrolled Affiliate's authorized representative.

(vi) True-up order period. The true-up order or update statement must be received by Microsoft between 60 and 30 days prior to each Enrollment anniversary date. The third-year true-up order or update statement is due within 30 days prior to the Expiration Date, and any license reservations within this 30 day period will not be accepted. Enrolled Affiliate

may submit true-up orders more often to account for increases in Product usage, but an annual true-up order or update statement must still be submitted during the annual order period.

- (vii) **Late true-up order.** If the true-up order or update statement is not received when due, Microsoft will invoice Reseller for all Reserved Licenses not previously invoiced and Subscription License reductions cannot be reported until the following Enrollment anniversary date (or at Enrollment renewal, as applicable).
- h. **Step-up Licenses.** For Licenses eligible for a step-up under this Enrollment, Enrolled Affiliate may step-up to a higher edition or suite as follows:
 - (i) For step-up Licenses included on an initial order, Enrolled Affiliate may order according to the true-up process.
 - (ii) If step-up Licenses are not included on an initial order, Enrolled Affiliate may step-up initially by following the process described in the Section titled "Adding new Products not previously ordered," then for additional step-up Licenses, by following the true-up order process.
- i. **Clerical errors.** Microsoft may correct clerical errors in this Enrollment, and any documents submitted with or under this Enrollment, by providing notice by email and a reasonable opportunity for Enrolled Affiliate to object to the correction. Clerical errors include minor mistakes, unintentional additions and omissions. This provision does not apply to material terms, such as the identity, quantity or price of a Product ordered.
- j. **Verifying compliance.** Microsoft may, in its discretion and at its expense, verify compliance with this Enrollment as set forth in the Enterprise Agreement.

3. **Pricing.**

- a. **Price Levels.** For both the initial and any renewal term Enrolled Affiliate's Price Level for all Products ordered under this Enrollment will be Level "D" throughout the term of the Enrollment.
- b. **Setting Prices.** Enrolled Affiliate's prices for each Product or Service will be established by its Reseller. Except for Online Services designated in the Product Terms as being exempt from fixed pricing, As long as Enrolled Affiliate continues to qualify for the same price level, Microsoft's prices for Resellers for each Product or Service ordered will be fixed throughout the applicable initial or renewal Enrollment term. Microsoft's prices to Resellers are reestablished at the beginning of the renewal term.

4. **Payment terms.**

For the initial or renewal order, Microsoft will invoice Enrolled Affiliate's Reseller in three equal annual installments. . The first installment will be invoiced upon Microsoft's acceptance of this Enrollment and remaining installments will be invoiced on each subsequent Enrollment anniversary date. Subsequent orders are invoiced upon acceptance of the order and Enrolled Affiliate may elect to pay annually or upfront for Online Services and upfront for all other Licenses.

5. **End of Enrollment term and termination.**

- a. **General.** At the Expiration Date, Enrolled Affiliate must immediately order and pay for Licenses for Products it has used but has not previously submitted an order, except as otherwise provided in this Enrollment.
- b. **Renewal option.** At the Expiration Date of the initial term, Enrolled Affiliate can renew Products by renewing this Enrollment for one additional 36-month term or by signing a new Enrollment. Microsoft must receive a Renewal Form, Product Selection Form, and renewal order prior to or at the Expiration Date. Microsoft will not unreasonably reject any renewal.

Microsoft may make changes to this program that will make it necessary for Customer and its Enrolled Affiliates to enter into new agreements and Enrollments at renewal.

c. If Enrolled Affiliate elects not to renew.

(i) Software Assurance. If Enrolled Affiliate elects not to renew Software Assurance for any Product under its Enrollment, then Enrolled Affiliate will not be permitted to order Software Assurance later without first acquiring a new License with Software Assurance.

(ii) Online Services eligible for an Extended Term. For Online Services identified as eligible for an Extended Term in the Product Terms, the following options are available at the end of the Enrollment initial or renewal term.

1) Extended Term. Licenses for Online Services will automatically expire in accordance with the terms of the Enrollment. An extended term feature that allows Online Services to continue month-to-month (“Extended Term”) is available. During the Extended Term, Online Services will be invoiced monthly at the then-current published price as of the Expiration Date plus a 3% administrative fee for up to one year. If Enrolled Affiliate wants an Extended Term, Enrolled Affiliate must submit a request to Microsoft at least 30 days prior to the Expiration Date.

2) Cancellation during Extended Term. At any time during the first year of the Extended Term, Enrolled Affiliate may terminate the Extended Term by submitting a notice of cancellation to Microsoft for each Online Service. Thereafter, either party may terminate the Extended Term by providing the other with a notice of cancellation for each Online Service. Cancellation will be effective at the end of the month following 30 days after Microsoft has received or issued the notice.

(iii) Subscription Licenses and Online Services not eligible for an Extended Term. If Enrolled Affiliate elects not to renew, the Licenses will be cancelled and will terminate as of the Expiration Date. Any associated media must be uninstalled and destroyed and Enrolled Affiliate’s Enterprise must discontinue use. Microsoft may request written certification to verify compliance.

d. Termination for cause. Any termination for cause of this Enrollment will be subject to the “Termination for cause” section of the Agreement. In addition, it shall be a breach of this Enrollment if Enrolled Affiliate or any Affiliate in the Enterprise that uses Government Community Cloud Services fails to meet and maintain the conditions of membership in the definition of Community.

e. Early termination. Any early termination of this Enrollment will be subject to the “Early Termination” Section of the Enterprise Agreement.

For Subscription Licenses, in the event of a breach by Microsoft, or if Microsoft terminates an Online Service for regulatory reasons, Microsoft will issue Reseller a credit for any amount paid in advance for the period after termination.

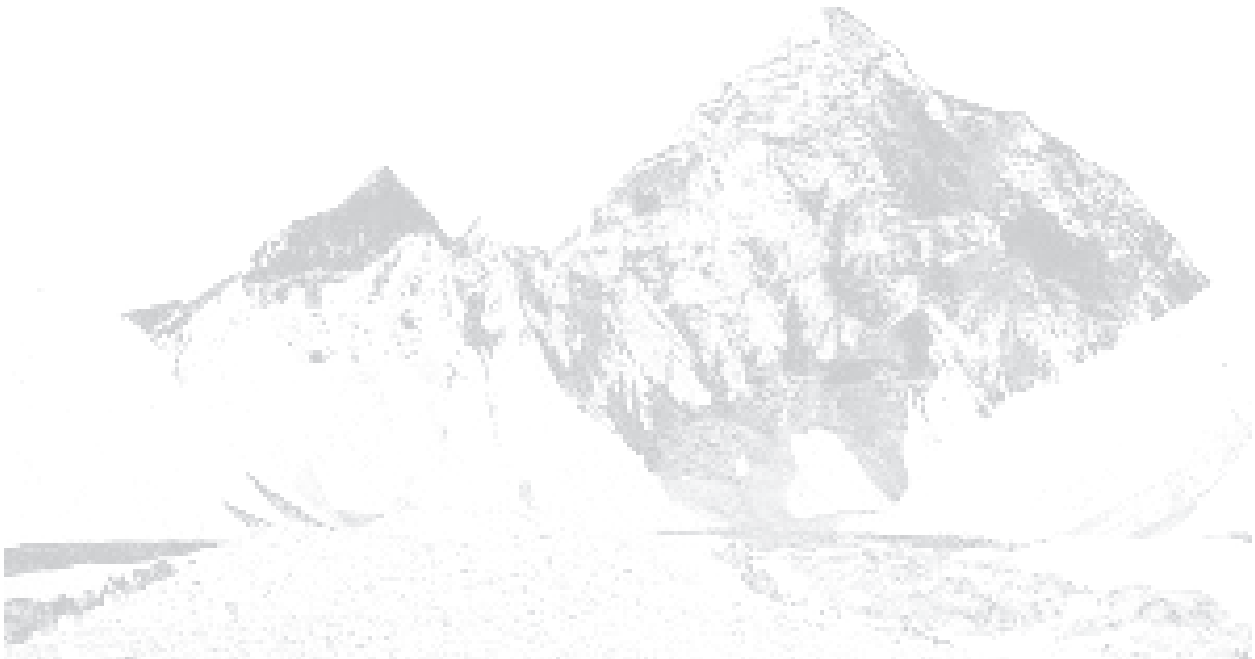
6. Government Community Cloud.

a. Community requirements. If Enrolled Affiliate purchases Government Community Cloud Services, Enrolled Affiliate certifies that it is a member of the Community and agrees to use Government Community Cloud Services solely in its capacity as a member of the Community and, for eligible Government Community Cloud Services, for the benefit of end users that are members of the Community. Use of Government Community Cloud Services by an entity that is not a member of the Community or to provide services to non-Community members is strictly prohibited and could result in termination of Enrolled Affiliate’s license(s) for Government Community Cloud Services without notice. Enrolled Affiliate acknowledges that only Community members may use Government Community Cloud Services.

b. All terms and conditions applicable to non-Government Community Cloud Services also apply

to their corresponding Government Community Cloud Services, except as otherwise noted in the Use Rights, Product Terms, and this Enrollment.

- c. Enrolled Affiliate may not deploy or use Government Community Cloud Services and corresponding non-Government Community Cloud Services in the same domain.
- d. **Use Rights for Government Community Cloud Services.** For Government Community Cloud Services, notwithstanding anything to the contrary in the Use Rights:
 - (i) Government Community Cloud Services will be offered only within the United States.
 - (ii) Additional European Terms, as set forth in the Use Rights, will not apply.
 - (iii) References to geographic areas in the Use Rights with respect to the location of Customer Data at rest, as set forth in the Use Rights, refer only to the United States.



Enrollment Details

1. Enrolled Affiliate's Enterprise.

- a. Identify which Agency Affiliates are included in the Enterprise. (Required) Enrolled Affiliate's Enterprise must consist of entire offices, bureaus, agencies, departments or other entities of Enrolled Affiliate, not partial offices, bureaus, agencies, or departments, or other partial entities. Check only one box in this section. If no boxes are checked, Microsoft will deem the Enterprise to include the Enrolled Affiliate only. If more than one box is checked, Microsoft will deem the Enterprise to include the largest number of Affiliates:

Enrolled Affiliate only

Enrolled Affiliate and all Affiliates

Enrolled Affiliate and the following Affiliate(s) (Only identify specific affiliates to be included if fewer than all Affiliates are to be included in the Enterprise):

Enrolled Affiliate and all Affiliates, with following Affiliate(s) excluded:

- b. Please indicate whether the Enrolled Affiliate's Enterprise will include all new Affiliates acquired after the start of this Enrollment: Exclude future Affiliates

2. Contact information.

Each party will notify the other in writing if any of the information in the following contact information page(s) changes. The asterisks (*) indicate required fields. By providing contact information, Enrolled Affiliate consents to its use for purposes of administering this Enrollment by Microsoft, its Affiliates, and other parties that help administer this Enrollment. The personal information provided in connection with this Enrollment will be used and protected in accordance with the privacy statement available at <https://www.microsoft.com/licensing/servicecenter>.

- a. **Primary contact.** This contact is the primary contact for the Enrollment from within Enrolled Affiliate's Enterprise. This contact is also an Online Administrator for the Volume Licensing Service Center and may grant online access to others. The primary contact will be the default contact for all purposes unless separate contacts are identified for specific purposes

Name of entity (must be legal entity name)* Bay Area Air Quality Management District

Contact name* First John **Last** Chiladakis

Contact email address* jchiladakis@baaqmd.gov

Street address* 375 Beale Street, Suite 600

City* San Francisco

State* CA
Postal code* 94105-2066
(Please provide the zip + 4, e.g. xxxxx-xxxx)
Country* United States
Phone* 415-749-4750
Tax ID

** indicates required fields*

- b. Notices contact and Online Administrator.** This contact (1) receives the contractual notices, (2) is the Online Administrator for the Volume Licensing Service Center and may grant online access to others, and (3) is authorized to order Reserved Licenses for eligible Online Services, including adding or reassigning Licenses and stepping-up prior to a true-up order.

Same as primary contact (default if no information is provided below, even if the box is not checked).

Contact name* First Last
Contact email address*
Street address*
City*
State*
Postal code* -
(Please provide the zip + 4, e.g. xxxxx-xxxx)
Country*
Phone*

Language preference. Choose the language for notices. English
 This contact is a third party (not the Enrolled Affiliate). Warning: This contact receives personally identifiable information of the Customer and its Affiliates.

** indicates required fields*

- c. Online Services Manager.** This contact is authorized to manage the Online Services ordered under the Enrollment and (for applicable Online Services) to add or reassign Licenses and step-up prior to a true-up order.

Same as notices contact and Online Administrator (default if no information is provided below, even if box is not checked)

Contact name*: First Last
Contact email address*
Phone*

This contact is from a third party organization (not the entity). Warning: This contact receives personally identifiable information of the entity.

** indicates required fields*

- d. Reseller information.** Reseller contact for this Enrollment is:

Reseller company name* Dell Inc.
Street address (PO boxes will not be accepted)* One Dell Way
City* Round Rock
State* TX
Postal code* 78682
Country* United States
Contact name* Government Contract Admin
Phone* 847-465-3700
Contact email address* US_MS_VL_Admin@Dell.com

** indicates required fields*

By signing below, the Reseller identified above confirms that all information provided in this Enrollment is correct.

Signature* _____ Printed name* Printed title* Date*
--

** indicates required fields*

Changing a Reseller. If Microsoft or the Reseller chooses to discontinue doing business with each other, Enrolled Affiliate must choose a replacement Reseller. If Enrolled Affiliate or the Reseller intends to terminate their relationship, the initiating party must notify Microsoft and the other party using a form provided by Microsoft at least 90 days prior to the date on which the change is to take effect.

- e. If Enrolled Affiliate requires a separate contact for any of the following, attach the Supplemental Contact Information form. *Otherwise, the notices contact and Online Administrator remains the default.*
 - (i) Additional notices contact
 - (ii) Software Assurance manager
 - (iii) Subscriptions manager
 - (iv) Customer Support Manager (CSM) contact

3. Financing elections.

Is a purchase under this Enrollment being financed through MS Financing? Yes, No.

If a purchase under this Enrollment is financed through MS Financing, and Enrolled Affiliate chooses not to finance any associated taxes, it must pay these taxes directly to Microsoft.



Amendment to Contract Documents

Enrollment Number

5-0000005936033

This amendment ("Amendment") is entered into between the parties identified on the attached program signature form. It amends the Enrollment or Agreement identified above. All terms used but not defined in this Amendment will have the same meanings provided in that Enrollment or Agreement.

Enterprise Enrollment (Indirect) Invoice for Quoted Price Amendment ID M97

The price quoted to Enrolled Affiliate's Reseller is a fixed price based on an estimated order submission date. Microsoft will invoice Enrolled Affiliate's Reseller based on this fixed price quote. If this order is submitted later than the estimated order submission date, Enrolled Affiliate's Reseller will be charged for net new Monthly Subscriptions (including Online Services) for the period during which these services were not provided. Pricing to Enrolled Affiliate is agreed between Enrolled Affiliate and Enrolled Affiliate's Reseller.

SKU Number	SKU Description	Existing Quantity	Incremental quantities
AAD-33168	M365 E5 Unified ShrdSvr ALNG SubsVL MVL PerUsr		440
N9U-00002	VisioPlan2 ShrdSvr ALNG SubsVL MVL PerUsr	2	
9K3-00002	VisioPlan2FrmSA ShrdSvr ALNG SubsVL MVL PerUsr	16	
6QK-00001	Azure prepayment	104	22
PRX-00002	CommonDataSrcvDBCpcty ShrdSvr ALNG SubsVL MVL AddOn		20
TK2-00001	Dmstc Calling Plan ShrdSvr ALNG SubsVL MVL PerUsr	100	
DDW-00003	Dyn365ECstmrSrcv ShrdSvr ALNG SubsVL MVL PerUsr	2	13
7MK-00002	Project Plan3 FrmSA Shared All Lng Subs VL MVL Per User	1	

SKU Number	SKU Description	Existing Quantity	Incremental quantities
7LS-00002	Project Plan3 Shared All Lng Subs VL MVL Per User	15	

Except for changes made by this Amendment, the Enrollment or Agreement identified above remains unchanged and in full force and effect. If there is any conflict between any provision in this Amendment and any provision in the Enrollment or Agreement identified above, this Amendment shall control.

This Amendment must be attached to a signature form to be valid.

Microsoft Internal Use Only:

(M97)EnrAmend(Ind)(InvoiceforQuotedPrice)(WW)(ENG)(Dec2019)(IU) .docx		M97	B
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Enterprise Enrollment Product Selection Form



Proposal ID

0997830.003

Enrollment Number

Language: English (United States)

Enrolled Affiliate's Enterprise Products and Enterprise Online Services summary for the initial order:

Profile	Qualified Devices	Qualified Users	Device / User Ratio	Enterprise Product Platform	CAL Licensing Model
Enterprise	440	440	1.0	Yes	User Licenses

Products	Enterprise Quantity
Microsoft 365 Enterprise	
Microsoft 365 E5 USL	440

Enrolled Affiliate's Product Quantities:

Price Group	1	2	3	4
Enterprise Products	Office Professional Plus + Office 365 ProPlus + Office 365 (Plans E3 and E5) + Microsoft 365 Enterprise	Client Access License + Office 365 (Plans E1, E3 and E5) + Microsoft 365 Enterprise	Client Access License + Windows Intune + EMS USL + Microsoft 365 Enterprise	Win E3 + Win E5 + Win VDA + Microsoft 365 Enterprise
Quantity	440	440	440	440

Enrolled Affiliate's Price Level:

Product Offering / Pool	Price Level
Enterprise Products and Enterprise Online Services USLs: Unless otherwise indicated in associated contract documents, Price level set using the highest quantity from Groups 1 through 4.	D
Additional Product Application Pool: Unless otherwise indicated in associated contract documents, Price level set using quantity from Group 1.	D
Additional Product Server Pool: Unless otherwise indicated in associated contract documents, Price level set using the highest quantity from Group 2 or 3.	D
Additional Product Systems Pool: Unless otherwise indicated in associated contract documents, Price level set using quantity from Group 4.	D

NOTES

Unless otherwise indicated in the associated contract documents, the price level for each Product offering / pool is set as described above, based upon the quantity to price level mapping below:

Quantity of Licenses and Software Assurance	Price Level
2,399 and below	A

Enterprise Enrollment Product Selection Form



2,400 to 5,999	B
6,000 to 14,999	C
15,000 and above	D
Note 1: Enterprise Online Services may not be available in all locations. Please see the Product List for a list of locations where these may be purchased.	
Note 2: If Enrolled Affiliate does not order an Enterprise Product or Enterprise Online Service associated with an applicable Product pool, the price level for Additional Products in the same pool will be price level "A" throughout the term of the Enrollment. Refer to the Qualifying Government Entity Addendum pricing provision for more details on price leveling.	

CONFIRMATION OF BOARD AUTHORIZATION

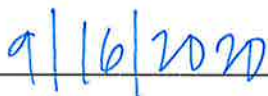
CONTRACT NO. 2020.217

This document serves as confirmation that at the Board of Directors Meeting on **September 16, 2020**, the Board authorized the Executive Officer/APCO to enter into and execute all necessary contracts with:

Dell Marketing LP, not to exceed **\$1.85M**, for a three-year Microsoft Enterprise Software Licensing Agreement.



Marcy Hiratzka
Clerk of the Boards



Date

BAY AREA AIR QUALITY MANAGEMENT DISTRICT
Memorandum

To: Chairperson Karen Mitchoff and Members
of the Board of Directors

From: Alexander Crockett
Interim Acting Executive Officer/APCO

Date: April 20, 2022

Re: Report of the Community Advisory Council Meeting of March 30, 2022

RECOMMENDED ACTION

None; receive and file.

BACKGROUND

None.

DISCUSSION

The Air District's Community Advisory Council met on Wednesday, March 30, 2022, and approved the Minutes of January 13, 2022. This meeting was conducted under procedures authorized by Assembly Bill 361. Members of the Council participated by teleconference.

Interim Executive Officer/Air Pollution Control Officer, Alexander Crockett, gave introductory remarks and then prior to any of the three agendized presentations being given, the Council discussed the number of its members who had expressed interest in serving in a leadership role. As a result of that discussion, three members volunteered for leadership roles on the Council.

The Council then received the staff presentation *Vote on Structure, Governance, and Workplan*. During this item, the Council adopted a three-co-chairperson structure; tabled the discussion of whether to have a charter or bylaws until after the three co-chairpersons were appointed; and adopted an ad-hoc committee (comprised of six Councilmembers) who are to develop the Council's workplan and governance document.

The Council then received the staff presentation *Election of Community Advisory Council Leadership*. Ms. Margaret Gordon, Kevin Jefferson, and Latasha Washington each gave candidate statements describing why they wished to serve in a leadership role on the Council. During this item, the Council appointed Ms. Gordon, Mr. Jefferson, and Ms. Washington to serve as the three Council Co-Chairpersons.

The Council then received the presentation *Introduction to Biomonitoring and Example Projects*, given by Stephanie Jarmul, Senior Environmental Scientist, of the California Environmental Protection Agency's Office of Environmental Health Hazard Assessment.

Finally, the Council received an oral report from Air District staff to address an odor complaint from a resident of Milpitas that was given as public comment at the January 13, 2022 Council meeting.

The next meeting of the Community Advisory Council is to be determined. This concludes the Summary Report of the Community Advisory Council.

BUDGET CONSIDERATION/FINANCIAL IMPACT

None.

Respectfully submitted,

Alexander Crockett
Interim Acting Executive Officer/APCO

Prepared by: Marcy Hiratzka
Reviewed by: Vanessa Johnson

ATTACHMENTS:

1. Community Advisory Council March 30, 2022 Meeting Memorandums

BAY AREA AIR QUALITY MANAGEMENT DISTRICT

Memorandum

To: Members of the Community Advisory Council

From: Alexander Crockett
Interim Acting Executive Officer/APCO

Date: March 30, 2022

Re: Presentation on Biomonitoring from the Office of Environmental Health Hazard Assessment

RECOMMENDED ACTION

None; receive and file.

BACKGROUND

The Office of Environmental Health Hazard Assessment (OEHHA) conducts biomonitoring in California to measure chemicals in a person's body. Biomonitoring provides information about chemical exposures from many different sources, including air, water, dust, food, and consumer products.

DISCUSSION

Staff from the Office of Environmental Health Hazard Assessment (OEHHA) will provide an overview of biomonitoring, sample biomonitoring projects, and how to assist OEHHA in identifying locations for biomonitoring projects.

BUDGET CONSIDERATION/FINANCIAL IMPACT

None.

Respectfully submitted,

Alexander Crockett
Interim Acting Executive Officer/APCO

Prepared by: Brian Butler
Reviewed by: Veronica Eady

ATTACHMENTS:

1. None

COMMUNITY ADVISORY COUNCIL
MEETING OF MARCH 30, 2022

BAY AREA AIR QUALITY MANAGEMENT DISTRICT

Memorandum

To: Members of the Community Advisory Council

From: Alexander Crockett
Interim Acting Executive Officer/APCO

Date: March 30, 2022

Re: Vote on Structure, Governance, and Workplan

RECOMMENDED ACTION

The Council will vote on the Community Advisory Council structure, type of governance document, and the creation of an ad hoc committee to develop a workplan and governance document.

BACKGROUND

The Community Advisory Council (CAC), established in November 2021, is a newly formed advisory body to the Board of Directors.

DISCUSSION

Councilmembers to vote on the following items:

- Leadership structure (for example, two Co-Chairs, a Chair and Vice-Chair, or some other structure).
- Type of governance document (e.g. charter, bylaws, etc.)
- Creation of an ad-hoc committee to develop work plan and governance document

To support CAC members in the discussion, staff will present information on leadership structures, types of governance documents, and work plans. Council members will have the opportunity to vote on their leadership structure and type of governance document. Additionally, the CAC will have the opportunity to vote to establish an *ad hoc* committee to develop a workplan and governance document.

BUDGET CONSIDERATION/FINANCIAL IMPACT

None.

Respectfully submitted,

Alexander Crockett
Interim Acting Executive Officer/APCO

Prepared by: Brian Butler
Reviewed by: Veronica Eady

ATTACHMENTS:

1. Sample Work Plan from Air District Stationary Source and Climate Impacts Committee
2. Sample Charter from the Richmond-North Richmond-San Pablo Steering Committee
3. Sample By-Laws from the San Joaquin Valley Unified Air Pollution Control District Environmental Justice Advisory Group

COMMUNITY ADVISORY COUNCIL
MEETING OF MARCH 30, 2012

Proposed 2022 Stationary Source and Climate Impacts Committee Meeting Workplan

Meeting Schedule	Topics
February	<ul style="list-style-type: none"> • Introduction to the SSCI Committee and 2022 Workplan • Rule 11-18 Update • Rule 13-5 Update
March	<ul style="list-style-type: none"> • <i>NOx Appliance Rules (9-4 and 9-6) update (if no EIR)</i> • Fenceline Community Air Monitoring Program (Schedule X) • Update on Bay Area Refinery Conversion Projects <ul style="list-style-type: none"> ○ Rule 9-14: Petroleum Coke Calcining Operations
April	<ul style="list-style-type: none"> • <i>NOx Appliance Rules (9-4 and 9-6) update (if EIR)</i> • South Bay Odor Study • Rule 8-8: Refinery Wastewater • Wildfire Response Program Update
May	<ul style="list-style-type: none"> • Rule 9-13: Portland Cement Manufacturing • Air Filtration Health Benefits (Possible Guest Speaker)
June	<ul style="list-style-type: none"> • Rule 11-18 Update • AB 32 Scoping Plan Update
July	<ul style="list-style-type: none"> • Rule 8-5: Tanks • Rule 8-18: Equipment Leaks • Bay View Hunters Point Cement and Material Handling Facilities
August – No Meeting	
September	<ul style="list-style-type: none"> • Health Impacts of Wood Smoke
October	<ul style="list-style-type: none"> • Source Prioritization • Particulate Matter Methodology
November	<ul style="list-style-type: none"> • Green and Healthy Homes Update
December	<ul style="list-style-type: none"> • Source Apportionment in Overburdened Communities Update

The Path to Clean Air in the Richmond-North Richmond-San Pablo Area Community Steering Committee Charter and Participation Agreement

Statement of Purpose

The purpose/goal of The Path to Clean Air Community Steering Committee in the Richmond-San Pablo-North Richmond Area is to remedy persistent air pollution exposures and reduce health risks and inequities associated with poor air quality for people who live, work, and play in and around the Richmond-San Pablo-North Richmond study area. This purpose/goal will be accomplished by identifying community priorities, specific improvements, and by working with BAAQMD staff to determine effective implementation strategies to reduce air pollution exposures in this study area.

Assembly Bill 617 (Garcia, C., Chapter 136, Statutes of 2017) is a State-mandated program that uses a community-based approach to reduce local air pollution in communities around the State that continue to experience disproportionate impacts from air pollution. The Richmond-North Richmond-San Pablo area's Path to Clean Air is the region's first effort under the AB 617 program to develop a Community Air Monitoring Plan (CAMP) to look for, identify, and understand areas of elevated air pollution exposure in Richmond, North Richmond, and San Pablo communities. The CAMP Community Steering Committee adopted the branding and name, "Path to Clean Air." With the completion of the Community Air Monitoring Plan the Path to Clean Air is beginning the next phase of the AB 617 Program, developing a Community Emissions and Exposure Reduction Plan (CERP). On March 3, 2021, the Air District Board of Directors voted to appoint a 31- community member Steering Committee to help guide the development of a Community Emissions Reduction Plan for the Richmond-North Richmond-San Pablo area.

1. Steering Committee Activities

Path to Clean Air Richmond-North Richmond-San Pablo Community Steering Committee members will participate in the development of the CERP and will act as liaisons between the community, stakeholders, and BAAQMD staff and Board, by disseminating information, making decisions, and providing input as appropriate. Steering Committee members will also receive regular updates on the implementation of the Community Air Monitoring Plan. The Richmond-North Richmond-San Pablo area CERP will need to be completed in 2022 with plan implementation beginning in 2022. The CSC will be subject to the California Brown Act (California Government Code sections 54950, et seq.) and in conducting its meetings and deliberations, the CSC shall follow Robert's Rules of Order as nearly as possible.

2. Steering Committee Objectives

The Path to Clean Air Richmond-North Richmond-San Pablo Community Steering Committee will serve as outlined in the Statement of Purpose. The Steering Committee will develop a Community Emissions and Exposure Reduction Plan that identifies and

develops strategies to address areas of elevated air pollution exposure in the Richmond-North Richmond-San Pablo area. The Steering Committee will disseminate information and consider input from the broader community. The goal is for the implementation of the CERP to begin in 2022. After the CERP has been developed, the Steering Committee Co-chairs may elect to change the meeting schedule as needed to best support and provide guidance on implementation and develop progress reports, with the consent of a majority of the CERP Steering Committee.

3. Membership

Community Steering Committee (CSC) members will represent people who live in the Richmond-North Richmond-San Pablo area and other interested stakeholders affiliated with various sectors. These sectors can include community-based organizations, youth organizations, non-profits, faith leaders, education, government, health, and business representatives from the Richmond-North Richmond-San Pablo area. The CSC shall be comprised of an odd number of members between 27 and 31, with a minimum of 70% of members residing within the initial study area, and with two non-voting members representing local businesses and industrial companies (not business associations).

4. Roles and Responsibilities

Co-chairs: The voting members of the Community Steering Committee shall select two Co-chairs from among the CSC members, and the voting members of the CSC shall select a Board Liaison from among the CSC members who shall provide informational reports to the Board of Directors. The Co-chair team will be responsible for developing meeting agendas, and for leading Steering Committee meetings.

Community Steering Committee Members: Steering Committee members will be responsible for assisting Air District and Co-chairs in developing the Richmond-North Richmond-San Pablo CERP, in accordance with the California Air Resources Board's Community Air Protection Blueprint¹. They will identify the scope of issues to be considered; inform technical analyses to understand these issues; co-develop with the Bay Area Air Quality Management District strategies to solve the issues identified; and ensure continued accountability for CERP implementation.

5. Standard Steering Committee Meeting Procedures

Deliberation and Consensus: Decision-making will not proceed without a quorum (quorum = $\frac{1}{2}$) of voting members. Steering Committee members may choose to recuse themselves from decisions at any time. Members **must** recuse themselves from decisions where there is a conflict of interest. The Political Reform Act requires that, "No public official at any level of state or local government shall make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest" (Government Code Section 87100 et seq).

Open Meetings: The Community Steering Committee meetings must be open to the public, with materials publicly available in advance. Stakeholder input is welcome and encouraged.

Meeting Schedule and Agendas: Co-chairs and BAAQMD staff will develop meeting agenda. Individual Steering Committee members have the right to submit items for placement on the agenda.

Should the co-chairs or BAAQMD staff deny the member's request, the denial and the reasons for the denial must be submitted in writing to the requesting member and the entire Steering Committee no later than 6 business days in advance of the meeting for which the item has been requested. Failure to do so will cause the request to be automatically on the agenda of the meeting requested.

Steering Committee agendas and meeting materials (including Spanish translated) will be posted on the District's website at least 72 calendar hours prior to the meeting. Meeting minutes will also be posted on the District's website.

Ad-hoc Committees Members who wish to be further involved may choose to participate in ad-hoc committees.

6. Amendments

Amendments to this charter of the Steering Committee of the Path to Clean Air in the Richmond-San Pablo Area Partnership Agreement require approval by a majority of voting members present.

7. Accessibility

The Steering Committee meetings and other outreach events associated with the committee must be held at transit accessible facilities that can accommodate members covered by the Americans with Disabilities Act.

8. Accommodation

Language interpretation services will be provided as needed with a minimum of (six) 6 business days in advance of the request.

9. Dissemination of Materials

All documents, materials, and correspondences, produced by or submitted to CERP, Steering Committee, Air District staff, or facilitators, will be considered public information records and subject to the California Public Records Act regulations and procedures for disclosure and transparency.

10. Website

BAAQMD website will be updated twice a month, in preparation for the next Steering Committee meeting (uploaded material for discussion) and after each Steering Committee meeting, to include meeting summaries, notes, and optimally meeting recordings.

11. Participation Principles

The following are principles, goals, and expectations of conduct for Steering Committee members. Steering Committee members will work collectively and cooperatively with all stakeholders within the community—people who live in the study area, businesses and organizations, youth groups, schools, local, regional, and State governments, health agencies and faith-based organizations—to ensure all represented parties are heard and can agree on an outcome that protects public health. This will include:

- a. **Providing strategic guidance, vision, and oversight**, such as:
 - Informing the development of the Richmond-North Richmond-San Pablo Area Community Emissions Reduction Plan.
 - Tracking progress of the work using agreed-upon indicators at Steering Committee and subcommittee levels.
 - Improving data collection and reporting for community education to inform development of emission and exposure reduction strategies.
 - Identifying effective goals to bring about reduced health risk in the Richmond-North Richmond-San Pablo Area study area.

- b. **Providing leadership and accountability** by:
 - Identifying obstacles to achieving the goal and developing solutions to overcome them.
 - Considering how my own organization or those in my network can align to the common goals and principles of the Steering Committee.
 - Serving as a vocal champion of the program's collective impact and effort in the communities.
 - Working towards consensus while recognizing that not everyone will agree on every issue and to resolve conflicts in a positive, swift, and constructive manner.
 - Approaching a committee member that misses more than 4 meetings. The committee co-chairs will meet with the specific member to assess their continuation as a member of the steering committee on a case-by-case basis.

- c. **Play an active role** by:
 - Attending a minimum of 70% of available Steering Committee meetings (in their entirety) within 12-months of a member's appointment.
 - Attending community summits and town hall meetings as they are scheduled through the development of the plan and implementation.
 - Participating according to the Charter. Provision will be made for members to participate electronically.
 - Reviewing materials prior to meetings and coming prepared for engaged discussion, active listening, and respectful dialogue.

**San Joaquin Valley Unified
Air Pollution Control District
Environmental Justice Advisory Group
AMENDED BYLAWS**

I. AUTHORITY: The Environmental Justice Advisory Group (EJAG) was formed, in accordance with the District's Environmental Justice Strategy approved August 2007, to assist the District with the implementation of the Environmental Justice Strategy. The EJAG shall serve as a forum to gather public input and enhance public participation. The EJAG shall not have any regulatory or administrative role in the District's permitting, enforcement, planning or rule making activities. Nothing in these bylaws shall be interpreted as giving EJAG any authority other than those granted by the District Governing Board in the District's Environmental Justice Strategy.

II. MEMBERSHIP, APPOINTMENT PROCEDURES, AND TERMS OF APPOINTMENT: EJAG membership, appointment procedures, and terms of appointment shall be as established in the District's Environmental Justice Strategy.

III. TERMINATION OF EJAG MEMBERSHIP: EJAG members shall serve at the pleasure of the District's Governing Board. EJAG membership may be terminated by action of the member or formal action of the District Governing Board. Any member of the EJAG may resign from the group at any time by notifying the Chair. The EJAG Chair may recommend removal of a member who fails to attend three consecutive meetings of the group, without excuse.

IV. MISSION AND SCOPE: The EJAG's mission is to advise the District on how to integrate environmental justice principles into all programs, policies, and activities. EJAG members shall serve in an advisory role and provide advice, direction, and critique to the District concerning its continuing efforts to advance environmental justice. While EJAG members may assist the District in crafting effective public education and outreach strategies, they shall not be held responsible for direct engagement on public outreach activities on behalf of the District. The EJAG may provide recommendations on how the District can best accomplish the goals outlined in the District's Environmental Justice Strategy and may assist in updating them as needed.

V. REPORTING RELATIONSHIPS: All communications, including reports and recommendations will be presented directly to members of the District Governing Board. For administrative matters, the EJAG may provide reports or advice directly to the Air Pollution Control Officer (APCO) upon request by the APCO. The CAC shall be copied on any communication between the District Governing Board, the EJAG and the APCO.

VI. GOALS AND OBJECTIVES: For each calendar year, EJAG shall establish goals and objectives, and an action plan to achieve those goals and objectives. EJAG may revise its goals and objectives and the action plan throughout the year as necessary. EJAG goals and objectives shall strictly adhere to the District's Environmental Justice Strategy. The Air Pollution Control Officer shall have the final authority on approving or revising the EJAG's goals and objectives and the action plan.

VII. EJAG MEETINGS AND AGENDA: EJAG meetings, activities, notices, and agendas are subject to the requirements of the Ralph M. Brown Act. All EJAG meetings and EJAG sub-committee meeting shall be conducted in accordance with Robert's Rules of Order. All EJAG meetings, including all meetings of the standing sub-committees of the EJAG shall be open to the public. The District shall provide public notice of the availability of the EJAG meeting agenda and all associated reports and documents at least 72 hours prior to the public meetings. The District shall provide a copy of the agenda and all supporting documents to the EJAG members at least seven calendar days prior to the public meetings. The EJAG Chair shall have the primary responsibility to prepare a proposed agenda for each EJAG meeting with input from the EJAG members, CAC members, the District staff, and the members of the public. The Air Pollution Control Officer may revise the agenda in accordance with the District's Environmental Justice Strategy, EJAG bylaws, the Brown Act, and other applicable requirements. Any disagreements with the Air Pollution Control Officer concerning the EJAG agenda may be brought to the attention of the Governing Board by the Chair of the EJAG for resolution. EJAG agendas shall be posted in Spanish on the District website and made available in Spanish when needed.

VIII. EJAG ORGANIZATION: The EJAG Chair shall be selected by recorded majority vote of the EJAG and serve a term of two (2) years. The EJAG Vice-Chair shall be selected by recorded majority vote of the EJAG and serve a term of one (1) year. Should the EJAG be unable to elect a succeeding Chair or Vice-Chair prior to expiration of their term, the succeeding Chair or Vice-Chair shall be appointed by the Air Pollution Control Officer. The Chair, in consultation with the Air Pollution Control Officer, shall determine the date, time, and place of EJAG meetings, and ensure that EJAG members are properly notified. The Chair will also be responsible for appointing EJAG members to serve on sub-committees and workgroups. Additionally, the Chair shall conduct EJAG meetings under Robert's Rules of Order.

IX. QUORUM AND VOTING: The presence of a simple majority of current membership shall constitute a quorum for transaction of business and no vote shall be taken without a quorum present. Actions by EJAG shall require a majority vote of the members present. These quorum and voting rules shall also apply to actions by EJAG's standing sub-committees.

X. AMENDMENTS OF BYLAWS: These bylaws can be amended only by formal action by the District's Governing Board.

BAY AREA AIR QUALITY MANAGEMENT DISTRICT

Memorandum

To: Members of the Community Advisory Council

From: Alexander Crockett
Acting Interim Executive Officer/APCO

Date: March 30, 2022

Re: Election of Community Advisory Council Leadership

RECOMMENDED ACTION

The Committee may vote on the election of Community Advisory Council leadership (CAC).

BACKGROUND

The CAC leadership could, among other things, open and adjourn the meetings, manage the meetings, and support the CAC in establishing priorities.

DISCUSSION

In the previous agenda item, the Community Advisory Council (CAC) will have voted on their leadership structure (e.g. two Co-Chairs, a chair and vice chair, or some other leadership structure developed by the CAC). Assuming the CAC has voted on a leadership structure during Agenda Item #6, the Community Advisory Council may now take further action to elect the Community Advisory Council leaders to fill those positions.

BUDGET CONSIDERATION/FINANCIAL IMPACT

None.

Respectfully submitted,

Alexander Crockett
Acting Interim Executive Officer/APCO

Prepared by: Brian Butler
Reviewed by: Veronica Eady

ATTACHMENTS:

1. None

COMMUNITY ADVISORY COUNCIL
MEETING OF MARCH 30, 2022

BAY AREA AIR QUALITY MANAGEMENT DISTRICT

Memorandum

To: Chairperson Karen Mitchoff and Members
of the Board of Directors

From: Alexander Crockett
Interim Acting Executive Officer/APCO

Date: April 20, 2022

Re: Report of the Community Equity, Health and Justice Committee Meeting of April 7,
2022

RECOMMENDED ACTION

None; receive and file.

BACKGROUND

None.

DISCUSSION

The Community Equity, Health & Justice Committee met on Thursday, April 7, 2022. This meeting was conducted under procedures in accordance with Assembly Bill 361. Members of the Committee participated by teleconference.

The minutes of March 3, 2022, meeting were continued until the next meeting of the Committee due to a loss of Quorum.

The Committee then received a presentation from Cecilia Mejia of Brightline Defense, as part of the “Community Perspective” series, which is a standing item on this Committee’s agenda. Ms. Mejia’s presentation included how she became involved in environmental justice work, and the projects of Brightline Defense, an organization whose goal is to empower communities and create sustainable environments.

The Committee then received the staff presentation Participatory Budgeting Overview. The Air District is considering participatory budgeting (a democratic process that allows community members to directly participate in budget-related decision making) in its programs. Air District staff is considering how to implement participatory budgeting, beginning with training in participatory budgeting.

Finally, the Committee then received and discussed the staff presentation Bayview Hunters Point Enforcement Update, including a discussion of the Air District's enforcement process, an overview of the regulated facilities and naturally occurring asbestos sites in the area, a discussion of general air quality concerns in Bayview Hunter's Point and two primary areas of focus – Amador Street and Gilman Avenue, and a brief overview of other Air District activities in Bayview Hunter's Point.

The next meeting of the Community Equity, Health & Justice Committee will be held on Thursday, May 5, 2022, at 9:30 a.m., via webcast, teleconference, or Zoom, pursuant to procedures in accordance with Assembly Bill 361 (Rivas 2021). This concludes the Chair Report of the Community Equity, Health & Justice Committee.

BUDGET CONSIDERATION/FINANCIAL IMPACT

None.

Respectfully submitted,

Alexander Crockett
Interim Acting Executive Officer/APCO

Prepared by: Marcy Hiratzka
Reviewed by: Vanessa Johnson

ATTACHMENTS:

1. Community Equity, Health and Justice Committee April 7, 2022, Meeting Memorandums

BAY AREA AIR QUALITY MANAGEMENT DISTRICT

Memorandum

To: Chairperson Davina Hurt and Members
of the Community Equity, Health and Justice Committee

From: Alexander Crockett
Interim Acting Executive Officer/APCO

Date: April 7, 2022

Re: Community Perspectives

RECOMMENDED ACTION

None; receive and file.

BACKGROUND

The Community Equity, Health and Justice Committee provides local and regional community environmental justice advocates and local leaders a platform to present and share their expertise and/or lived experiences. Specific subjects/topics will vary based upon each community perspective member's unique experience.

Brightline Defense is an environmental justice non-profit organization that works to empower communities and create sustainable environments. Its work includes public policy advocacy, environmental justice advocacy, ensuring job creation and retention, and advocating for the development of fair, affordable, and sustainable housing. The Brightline Defense team is composed of legal experts, policy advocates, communication specialists, community organizers, volunteers, and a board of directors committed to the empowerment of traditionally under-served communities in local neighborhoods, the San Francisco Bay Area, and beyond.

DISCUSSION

Cecilia Mejia is an Air District Community Advisory Council member and Program Coordinator for [Brightline Defense](#), where she manages Brightline's [Construction on Ramp Program](#) and [Air Quality Monitoring Program](#). Ms. Mejia will discuss the program work performed in the areas she supports. As an Air District James Cary Smith Grant recipient, Ms. Mejia will also discuss Brightline's work that aligns with the grant.

Cecilia is a recent graduate of the University of California, Berkeley where she majored in Conservation and Resource Studies and worked at the Student Environmental Resource Center. She is interested in the intersection of environmental justice and gender as well as equitable environmental restoration. She hopes to develop her community building skills further to

empower communities that are affected by environmental injustices. She has also served on the San Francisco Environmental Justice Working Group.

BUDGET CONSIDERATION/FINANCIAL IMPACT

None.

Respectfully submitted,

Alexander Crockett
Interim Acting Executive Officer/APCO

Prepared by: Tim Williams
Reviewed by: Veronica Eady

ATTACHMENTS:

1. None

COMMUNITY EQUITY, HEALTH, AND
JUSTICE COMMITTEE MEETING OF
APRIL 7, 2022

BAY AREA AIR QUALITY MANAGEMENT DISTRICT

Memorandum

To: Chairperson Davina Hurt and Members
of the Community Equity, Health and Justice Committee

From: Alexander Crockett
Interim Acting Executive Officer/APCO

Date: April 7, 2022

Re: Participatory Budgeting Overview

RECOMMENDED ACTION

None; receive and file.

BACKGROUND

The Air District is considering participatory budgeting (PB) in Air District programs. Participatory budgeting is a democratic process that allows community members to directly participate in budget-related decision making, i.e., community members decide how to spend a defined portion of a government agency's budget. Staff is considering how to implement PB at the Air District, beginning with training in participatory budgeting.

DISCUSSION

The standard PB process follows a community decision-making model. The process begins with the government entity making preliminary programmatic decisions regarding eligible programs, budget purpose, and limitations. Subsequently, the process empowers the community to make all program-design related decisions. Such decisions include project eligibility, project selection criteria and priorities, voting mechanism for the boarder public/community, and final project selection. The outcome is a set of projects or programs selected by the community through the participatory budgeting process.

Staff is exploring options to utilize participatory budgeting at the Air District. The Community Benefits Fund is one opportunity to undertake participatory budgeting. The fund was approved by the Air District Board in early 2021. A total of \$3 million was approved for Fiscal Year Ending 2022. The funds are intended to be community-directed and provide community benefits. The funding source for the Community Benefits Fund is generally unrestricted; however, funds should be used to advance the agency's mission and benefit overburdened communities. It is presumed that all funded projects should improve air quality and/or reduce exposure to air pollution, especially in impacted communities. Specifics regarding eligible projects, project criteria and selection, and funding distribution decisions would need to be defined as the

program is developed with community via a community decision-making process. The Community Advisory Council could decide to act as the community decision-making body for a PB effort with the Community Benefits Fund. Staff will work with the Community Advisory Council to explore this option for participatory budgeting.

Another opportunity to undertake participatory budgeting is through the Community Health Protection Program, i.e., implementation of Assembly Bill AB617 (Garcia, C., Chapter 136, Statutes of 2017). AB 617 is an acknowledgement that many communities around the state continue to experience disproportionate impacts from air pollution. AB617 directs the Air District to work with communities to develop and implement monitoring and/or community emission reduction plans. The Air District receives funding from CARB to implement this program. A fourth year of funding, \$9 million, has recently been distributed by CARB. The Air District submitted, and CARB has approved, a spending plan for those funds, however, the spending plan can be modified to accommodate any PB efforts. If this path is selected as the best avenue for participatory budgeting, Air District staff would work with a decision-making body to develop a community-oriented process to identify projects that meet CARB's criteria for funding.

Participatory Budgeting Training

Staff has partnered with the Participatory Budgeting Project to ensure successful implementation of participatory budgeting at the Air District. The PB Project is a nonprofit organization that empowers people to decide together how to spend public money. Thus far, the PB Project, led by Kristiania DeLeon, Co-Executive Director at the PB Project, provided staff training to introduce PB concepts to all staff who may work on implementing PB. Ms. DeLeon oversees the PB Project's network building, advocacy, and technical assistance to increase the demand, visibility, and impact of PB efforts across North America.

Ms. DeLeon will provide a brief presentation on participatory budgeting for the members of the Community Equity, Health and Justice Committee. We also anticipate further PB training for the members of the Community Advisory Committee, if they elect to take up this effort, and Air District staff.

BUDGET CONSIDERATION/FINANCIAL IMPACT

None.

Respectfully submitted,

Alexander Crockett
Interim Acting Executive Officer/APCO

Prepared by: Christy Riviere and Miriam Torres

Reviewed by: Veronica Eady

ATTACHMENTS:

1. None

COMMUNITY EQUITY, HEALTH, AND
JUSTICE COMMITTEE MEETING OF
APRIL 7, 2022

BAY AREA AIR QUALITY MANAGEMENT DISTRICT

Memorandum

To: Chairperson Davina Hurt and Members
of the Community Equity, Health and Justice Committee

From: Alexander Crockett
Interim Acting Executive Officer/APCO

Date: April 7, 2022

Re: Bayview Hunters Point Enforcement Update

RECOMMENDED ACTION

None; receive and file.

BACKGROUND

Residents of the Bayview – Hunters Point neighborhoods in San Francisco have expressed concerns about health and quality of living impacts from air pollution emitted by facilities and construction activities in their neighborhoods. Cement and material handling facilities to the residents' east and ongoing construction activities within and around the surrounding areas contribute to particulate matter (PM) pollution including dust and PM2.5 as well as toxic air contaminants such as naturally occurring asbestos (NOA). The Air District's Compliance and Enforcement staff regularly patrol and monitor these areas to ensure facilities and operations are in compliance with air quality regulations.

DISCUSSION

Staff will present an overview of the actions taken by Air District enforcement staff to address air quality concerns in the Bayview – Hunters Point (BVHP) area. The presentation will include a discussion of the Air District's enforcement process, an overview of the regulated facilities and NOA sites in the area, a discussion of general air quality concerns in BVHP and our two primary areas of focus – Amador Street and Gilman Avenue, and a brief overview of other Air District activities in BVHP.

BUDGET CONSIDERATION/FINANCIAL IMPACT

None.

Respectfully submitted,

Alexander Crockett
Interim Acting Executive Officer/APCO

Prepared by: Patrick Wenzinger
Reviewed by: John Marvin

ATTACHMENTS:

1. None

COMMUNITY EQUITY, HEALTH, AND
JUSTICE COMMITTEE MEETING OF
APRIL 7, 2022

BAY AREA AIR QUALITY MANAGEMENT DISTRICT

Memorandum

To: Chairperson Karen Mitchoff and Members
of the Board of Directors

From: Alexander Crockett
Interim Acting Executive Officer/APCO

Date: April 20, 2022

Re: Report of the Legislative Committee Meeting of April 11, 2022

RECOMMENDED ACTION

The Committee recommends the Board adopt the following positions for the following bills:

- **Support** Assembly Bill 2852 (Bloom) - Air pollution control districts and air quality management districts: independent special districts: funding.
- **Support** Assembly Bill 2910 (Santiago) - Nonvehicular air pollution: civil penalties.
- **Support** Senate Bill 1382 (Gonzalez) - Air pollution: Clean Cars 4 All Program: Sales and Use Tax Law: zero emissions vehicle exemption.
- **Oppose** Senate Bill 1235 (Borgeas) - Air pollution: portable equipment: emergency events.
- **Oppose Unless Amended** Assembly Bill 2816 (Ting) - State Air Resources Board: zero-emission incentive programs: requirements.

BACKGROUND

None.

DISCUSSION

The Legislative Committee met on Monday, April 11, 2022, and approved the minutes of March 14, 2022. This meeting was conducted under procedures in accordance with Assembly Bill 361. Members of the Committee participated by teleconference.

The Committee then received and discussed an oral presentation from Alan Abbs, Legislative Officer, summarizing bills that are being sponsored by the Air District. These bills included:

- Assembly Bill 1897 (Wicks) -Nonvehicular air pollution control: refineries: penalties;
- Assembly Bill 2214 (C. Garcia) - California Environmental Quality Act: schoolsites: acquisition of property; and

- Assembly Bill 2721 (Lee) - Bay Area Air Quality Management District: district board: compensation and expenses.

The Committee then received and discussed the staff presentation *Consideration of New Bills*. The Committee recommends the Board adopt the following positions for the following bills:

- **Support** Assembly Bill 2852 (Bloom) - Air pollution control districts and air quality management districts: independent special districts: funding.
- **Support** Assembly Bill 2910 (Santiago) - Nonvehicular air pollution: civil penalties.
- **Support** Senate Bill 1382 (Gonzalez) - Air pollution: Clean Cars 4 All Program: Sales and Use Tax Law: zero emissions vehicle exemption.
- **Oppose** Senate Bill 1235 (Borgeas) - Air pollution: portable equipment: emergency events.
- **Oppose Unless Amended** Assembly Bill 2816 (Ting) - State Air Resources Board: zero-emission incentive programs: requirements.

Mr. Abbs listed other bills that the Air District is monitoring, many of which have yet to be heard.

The next meeting of this Committee will be held on Monday, May 9, 2022 at 1:00 p.m, via webcast, teleconference, or Zoom, pursuant to procedures in accordance with Assembly Bill 361 (Rivas 2021). This concludes the Chair's Report of the Legislative Committee.

BUDGET CONSIDERATION/FINANCIAL IMPACT

None.

Respectfully submitted,

Alexander Crockett
Interim Acting Executive Officer/APCO

Prepared by: Marcy Hiratzka
Reviewed by: Vanessa Johnson

ATTACHMENTS:

1. Legislative Committee April 11, 2022 Meeting Memorandums

BAY AREA AIR QUALITY MANAGEMENT DISTRICT

Memorandum

To: Chairperson Pauline Russo Cutter and Members
of the Legislative Committee

From: Alexander Crockett
Interim Acting Executive Officer/APCO

Date: April 11, 2022

Re: Air District-Sponsored Bills

RECOMMENDED ACTION

None; receive and file.

BACKGROUND

This year, the Air District is sponsoring the following three bills:

- Assembly Bill (AB) 1897 (Wicks) - Nonvehicular air pollution control: refineries: penalties.
- AB 2214 (C. Garcia) - California Environmental Quality Act: schoolsites: acquisition of property.
- AB 2721 (Lee) - Bay Area Air Quality Management District: district board: compensation and expenses.

DISCUSSION

Staff will provide the Legislative Committee with a summary and status of the three Air District-sponsored bills.

AB 1897 (Wicks) - Nonvehicular air pollution control: refineries: penalties.

CapitolTrack Bill Summary: Current law prohibits a person from discharging from nonvehicular sources air contaminants or other materials that cause injury, detriment, nuisance, or annoyance to the public, or that endanger the comfort, repose, health, or safety of the public, or that cause, or have a natural tendency to cause, injury or damage to business or property, as specified. Under existing law, a person who violates this provision is guilty of a misdemeanor, as specified, or is strictly liable for a civil penalty of not more than \$10,000, unless that person alleges by affirmative defense and establishes that the act was not the result of intentional or negligent conduct, in which case the person is strictly liable for a civil penalty of not more than \$5,000. A person who violates this provision and who acts negligently, knowingly, willfully and intentionally, or with reckless disregard, is liable for a civil penalty in a greater amount, as

specified. This bill would make a person who violates this provision liable for a civil penalty of not more than \$30,000 if the violation results from a discharge from a stationary source required by federal law to be included in an operating permit program established pursuant to Title V of the federal Clean Air Act, and the stationary source is a refinery, the discharge results in a severe disruption to the community, the discharge contains or includes one or more toxic air contaminants, as specified, and 25 or more people are exposed to the discharge.

Current Status: AB 1897 was introduced by Assemblymember Wicks on February 9, 2022, and has been referred to the Assembly Natural Resources and the Assembly Judiciary Committees. It is scheduled to be heard on April 18, 2022.

AB 2214 (C. Garcia) - California Environmental Quality Act: schoolsites: acquisition of property.

CapitolTrack Bill Summary: Would require the governing board or body of a charter school or private school, before acquiring title to property for a new schoolsite or for an addition to a present schoolsite, to give notice in writing of the proposed acquisition to the planning commission. The bill would also require the planning commission to investigate the proposed site and submit a written report to the governing board or body of the charter school or private school, as provided. The bill would make the provisions relating to school districts also applicable to charter schools and private schools.

Current Status: AB 2214 was introduced by Assemblymember Cristina Garcia on February 15, 2022, and has been referred to the Assembly Natural Resources and Assembly Education Committees. As of this writing, it has not been scheduled for a hearing.

AB 2721 (Lee) - Bay Area Air Quality Management District: district board: compensation and expenses.

CapitolTrack Bill Summary: Current law establishes a district board to govern the Bay Area Air Quality Management District and prescribes the membership of the district board. Current law authorizes the district board to provide, by ordinance, compensation not to exceed \$100 per day for board members for attending meetings of the board or committees of the board or while on official business of the district and not to exceed \$6,000 per year. Existing law also requires board members to receive actual and necessary expenses incurred in the performance of their duties. This bill would revise the amount of compensation that a member of the board may receive for attending a meeting of the board or attending a meeting while on official business of the district to an amount not to exceed \$100 per meeting and \$200 per day. The bill would also authorize a member of the board to receive compensation for active transportation travel to one of these meetings and would subject this compensation to the \$6,000 total annual compensation limit.

Current Status: AB 2721 was introduced by Assemblymember Lee on February 18, 2022, and was referred to the Assembly Natural Resources Committee. It is scheduled to be heard on April 4, 2022.

BUDGET CONSIDERATION/FINANCIAL IMPACT

None.

Respectfully submitted,

Alexander Crockett
Interim Acting Executive Officer/APCO

Prepared by: Alan Abbs
Reviewed by: Alexander Crockett

ATTACHMENTS:

1. AB 1897 (Wicks) - Bill Text - As Introduced on 2/9/2022
2. AB 2214 (C. Garcia) - Bill Text - As Introduced on 2/15/2022
3. AB 2721 (Lee) - Bill Text - As Amended on 3/10/2022

LEGISLATIVE COMMITTEE
MEETING OF APRIL 11, 2022

ASSEMBLY BILL**No. 1897****Introduced by Assembly Member Wicks**

February 9, 2022

An act to amend Sections 42400.7, 42402, 42402.1, 42402.2, 42402.3, and 42403 of, and to add Section 42402.6 to, the Health and Safety Code, relating to nonvehicular air pollution.

LEGISLATIVE COUNSEL'S DIGEST

AB 1897, as introduced, Wicks. Nonvehicular air pollution control: refineries: penalties.

Existing law prohibits a person from discharging from nonvehicular sources air contaminants or other materials that cause injury, detriment, nuisance, or annoyance to the public, or that endanger the comfort, repose, health, or safety of the public, or that cause, or have a natural tendency to cause, injury or damage to business or property, as specified. Under existing law, a person who violates this provision is guilty of a misdemeanor, as specified, or is strictly liable for a civil penalty of not more than \$10,000, unless that person alleges by affirmative defense and establishes that the act was not the result of intentional or negligent conduct, in which case the person is strictly liable for a civil penalty of not more than \$5,000. A person who violates this provision and who acts negligently, knowingly, willfully and intentionally, or with reckless disregard, is liable for a civil penalty in a greater amount, as specified. Existing law precludes prosecution under specified statutes if civil penalties are recovered pursuant to the above provisions for the same offense.

This bill would make a person who violates this provision liable for a civil penalty of not more than \$30,000 if the violation results from a

discharge from a stationary source required by federal law to be included in an operating permit program established pursuant to Title V of the federal Clean Air Act, and the stationary source is a refinery, the discharge results in a severe disruption to the community, the discharge contains or includes one or more toxic air contaminants, as specified, and 25 or more people are exposed to the discharge. The bill would additionally make a person who violates this provision liable for a civil penalty of not more than \$100,000 for a subsequent violation within a 12-month period. The bill would prohibit this provision from applying if the violation is caused by unforeseen and unforeseeable criminal acts, acts of war, acts of terrorism, or civil unrest. The bill would additionally preclude prosecution under specified statutes if civil penalties are recovered pursuant to this provision.

Vote: majority. Appropriation: no. Fiscal committee: no.
 State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 42400.7 of the Health and Safety Code
 2 is amended to read:

3 42400.7. (a) The recovery of civil penalties pursuant to
 4 Section 39674, 42401, 42402, 42402.1, 42402.2, 42402.3, ~~or~~
 5 ~~42402.4 42402.4, or 42402.6~~ precludes prosecution under Section
 6 42400, 42400.1, 42400.2, 42400.3, 42400.3.5, or 42400.4 for the
 7 same offense. When a district refers a violation to a prosecuting
 8 agency, the filing of a criminal complaint is grounds requiring the
 9 dismissal of ~~any~~ a civil action brought pursuant to this article for
 10 the same offense.

11 (b) If the pending civil action described in subdivision (a)
 12 includes a request for injunctive relief, that portion of the civil
 13 action shall not be dismissed upon the filing of a criminal complaint
 14 for the same offense.

15 SEC. 2. Section 42402 of the Health and Safety Code is
 16 amended to read:

17 42402. (a) Except as provided in Sections 42402.1, 42402.2,
 18 42402.3, ~~and 42402.4, any 42402.4, and 42402.6,~~ a person who
 19 violates this part, ~~any~~ an order issued pursuant to Section 42316,
 20 ~~or any~~ a rule, regulation, permit, or order of a district, including a
 21 district hearing board, or of the state board issued pursuant to Part
 22 1 (commencing with Section 39000) to Part 4 (commencing with

1 Section 41500), inclusive, is strictly liable for a civil penalty of
2 not more than five thousand dollars (\$5,000).

3 (b) (1) A person who violates ~~any~~ a provision of this part, ~~any~~
4 an order issued pursuant to Section 42316, or ~~any~~ a rule, regulation,
5 permit or order of a district, including a district hearing board, or
6 of the state board issued pursuant to Part 1 (commencing with
7 Section 39000) to Part 4 (commencing with Section 41500),
8 inclusive, is strictly liable for a civil penalty of not more than ten
9 thousand dollars (\$10,000).

10 (2) (A) If a civil penalty in excess of five thousand dollars
11 (\$5,000) for each day in which a violation occurs is sought, there
12 is no liability under this subdivision if the person accused of the
13 violation alleges by affirmative defense and establishes that the
14 violation was caused by an act that was not the result of intentional
15 conduct or negligent conduct.

16 (B) Subparagraph (A) does not apply to a violation of a federally
17 enforceable ~~requirements~~ requirement that ~~occur~~ occurs at a Title
18 V source in a district in which a Title V permit program has been
19 fully approved.

20 (C) Subparagraph (A) does not apply to a person who is
21 determined to have violated an annual facility emissions cap
22 established pursuant to a market-based incentive program adopted
23 by a district pursuant to subdivision (b) of Section 39616.

24 (c) A person who owns or operates ~~any~~ a source of air
25 contaminants in violation of Section 41700 that causes actual
26 injury, as defined in subdivision (d) of Section 42400, to the health
27 and safety of a considerable number of persons or the public, is
28 liable for a civil penalty of not more than fifteen thousand dollars
29 (\$15,000).

30 (d) Each day during ~~any~~ a portion of which a violation occurs
31 is a separate offense.

32 SEC. 3. Section 42402.1 of the Health and Safety Code is
33 amended to read:

34 42402.1. (a) ~~Any~~ Except as provided in Section 42402.6, a
35 person who negligently emits an air contaminant in violation of
36 this part or ~~any~~ a rule, regulation, permit, or order of the state board
37 or of a district, including a district hearing board, pertaining to
38 emission regulations or limitations is liable for a civil penalty of
39 not more than twenty-five thousand dollars (\$25,000).

1 (b) ~~Any~~ A person who negligently emits an air contaminant in
2 violation of Section 41700 that causes great bodily injury, as
3 defined ~~by~~ *in subdivision (f) of Section 12022.7 of the Penal Code,*
4 ~~to any~~ a person or that causes the death of ~~any~~ a person, is liable
5 for a civil penalty of not more than one hundred thousand dollars
6 (\$100,000).

7 (c) Each day during ~~any~~ a portion of which a violation occurs
8 is a separate offense.

9 SEC. 4. Section 42402.2 of the Health and Safety Code is
10 amended to read:

11 42402.2. (a) ~~Any~~ *Except as provided in Section 42402.6, a*
12 *person who emits an air contaminant in violation of any a provision*
13 *of this part, or any order, rule, regulation, or permit a rule,*
14 *regulation, permit, or order of the state board or of a district,*
15 *including a district hearing board, pertaining to emission*
16 *regulations or limitations, and who knew of the emission and failed*
17 *to take corrective action, as defined in subdivision (b) of Section*
18 *42400.2, within a reasonable period of time under the*
19 *circumstances, is liable for a civil penalty of not more than forty*
20 *thousand dollars (\$40,000).*

21 (b) ~~Any~~ A person who owns or operates ~~any~~ a source of air
22 contaminants in violation of Section 41700 that causes great bodily
23 injury, as defined ~~by~~ *in subdivision (f) of Section 12022.7 of the*
24 *Penal Code, to any a person or that causes the death of any a*
25 *person, and who knew of the emission and failed to take corrective*
26 *action, as defined in subdivision (b) of Section 42400.2, within a*
27 *reasonable period of time under the circumstances, is liable for a*
28 *civil penalty not to exceed two hundred fifty thousand dollars*
29 *(\$250,000).*

30 (c) Each day during ~~any~~ a portion of which a violation occurs
31 is a separate offense.

32 SEC. 5. Section 42402.3 of the Health and Safety Code is
33 amended to read:

34 42402.3. (a) ~~Any~~ *Except as provided in Section 42402.6, a*
35 *person who willfully and intentionally emits an air contaminant*
36 *in violation of this part or any a rule, regulation, permit, or order*
37 *of the state board, or of a district, including a district hearing board,*
38 *pertaining to emission regulations or limitations, is liable for a*
39 *civil penalty of not more than seventy-five thousand dollars*
40 *(\$75,000).*

1 (b) ~~Any~~ A person who willfully and intentionally, or with
2 reckless disregard for the risk of great bodily injury, as defined by
3 *in subdivision (f) of Section 12022.7 of the Penal Code*, to, or death
4 of, ~~any~~ a person, emits an air contaminant in violation of Section
5 41700 that results in an unreasonable risk of great bodily injury
6 to, or death of, ~~any~~ a person, is liable for a civil penalty of not
7 more than one hundred twenty-five thousand dollars (\$125,000).
8 If the violator is a corporation, the maximum penalty may be up
9 to five hundred thousand dollars (\$500,000).

10 (c) ~~Any~~ A person who willfully and intentionally, or with
11 reckless disregard for the risk of great bodily injury, as defined by
12 *in subdivision (f) of Section 12022.7 of the Penal Code*, to, or death
13 of, ~~any~~ a person, emits an air contaminant in violation of Section
14 41700 that causes great bodily injury, as defined by *in subdivision*
15 *(f) of Section 12022.7 of the Penal Code*, to ~~any~~ a person or that
16 causes the death of ~~any~~ a person, is liable for a civil penalty of not
17 more than two hundred fifty thousand dollars (\$250,000). If the
18 violator is a corporation, the maximum penalty may be up to one
19 million dollars (\$1,000,000).

20 (d) Each day during ~~any~~ a portion of which a violation occurs
21 is a separate offense.

22 SEC. 6. Section 42402.6 is added to the Health and Safety
23 Code, to read:

24 42402.6. (a) (1) A person is liable for a civil penalty of not
25 more than thirty thousand dollars (\$30,000) if the person violates
26 Section 41700 and all of the following occur:

27 (A) (i) The discharge is from a Title V source that is a refinery.

28 (ii) For purposes of this subparagraph, "refinery" means an
29 establishment that is located on one or more contiguous or adjacent
30 properties that processes a petroleum or alternative feedstock to
31 produce a more usable product such as gasoline, diesel fuel,
32 aviation fuel, lubricating oil, asphalt, petrochemical feedstock, or
33 other similar product.

34 (B) The discharge results in a severe disruption to the
35 community, including, but not limited to, residential displacement,
36 shelter in place, evacuation, or destruction of property.

37 (C) The discharge contains or includes one or more toxic air
38 contaminants, as identified by the state board pursuant to Section
39 39657.

40 (D) Twenty-five or more persons are exposed to the discharge.

1 (2) A person shall be liable for a civil penalty of not more than
2 one hundred thousand dollars (\$100,000) for a discharge subject
3 to paragraph (1) if that discharge occurs within 12 months of a
4 prior discharge subject to paragraph (1).

5 (b) Except as provided in subdivision (b) of Section 42402.2 or
6 subdivision (b) or (c) of Section 42402.3, a civil penalty described
7 in subdivision (a) shall apply on the initial date of a violation.

8 (c) If a violation of subdivision (a) continues to occur subsequent
9 to the initial date of the violation, the civil penalty described in
10 Section 42402, 42402.1, 42402.2, or 42402.3 shall apply to those
11 subsequent days.

12 (d) The civil penalty described in paragraphs (1) and (2) of
13 subdivision (a) shall not apply if the violation is caused by
14 unforeseen and unforeseeable criminal acts, acts of war, acts of
15 terrorism, or civil unrest.

16 (e) Moneys collected pursuant to this section shall be expended
17 in support of air quality programs, including, but not limited to,
18 programs to research or mitigate the effects of air pollution.

19 SEC. 7. Section 42403 of the Health and Safety Code is
20 amended to read:

21 42403. (a) The civil penalties prescribed in Sections 39674,
22 42401, 42402, 42402.1, 42402.2, ~~and 42402.3~~ 42402.3, *and*
23 *42402.6* shall be assessed and recovered in a civil action brought
24 in the name of the people of the State of California by the Attorney
25 General, by ~~any~~ a district attorney, or by the attorney for ~~any~~ *the*
26 district in which the violation occurs in ~~any~~ a court of competent
27 jurisdiction.

28 (b) In determining the amount of *the civil penalty* assessed, the
29 court, or in reaching ~~any~~ a settlement, the district, shall take into
30 consideration all relevant circumstances, including, but not limited
31 to, the following:

- 32 (1) The extent of harm caused by the violation.
- 33 (2) The nature and persistence of the violation.
- 34 (3) The length of time over which the violation occurs.
- 35 (4) The frequency of past violations.
- 36 (5) The record of maintenance.
- 37 (6) The unproven or innovative nature of the control equipment.
- 38 (7) ~~Any action~~ *Action, if any*, taken by the defendant, including
39 the nature, extent, and time of response of the cleanup and
40 construction undertaken, to mitigate the violation.

- 1 (8) The financial burden to the defendant.

LEGISLATIVE COMMITTEE
MEETING OF APRIL 11, 2022

o

ASSEMBLY BILL

No. 2214

Introduced by Assembly Member Cristina Garcia

February 15, 2022

An act to amend Section 21151.2 of the Public Resources Code, relating to environmental quality.

LEGISLATIVE COUNSEL'S DIGEST

AB 2214, as introduced, Cristina Garcia. California Environmental Quality Act: schoolsites: acquisition of property.

(1) The California Environmental Quality Act requires a lead agency, as defined, to prepare, or cause to be prepared, and certify the completion of an environmental impact report on a project that it proposes to carry out or approve that may have a significant effect on the environment, or to adopt a negative declaration if it finds that the project will not have that effect.

Existing law requires the governing board of a school district, before acquiring title to property for a new schoolsite or for an addition to a present schoolsite, to give notice in writing of the proposed acquisition to the planning commission. Existing law requires the planning commission to investigate the proposed site and submit a written report to the governing board of the school district, as provided. Existing law prohibits the governing board from acquiring title to the property until the report of the planning commission has been received.

This bill would also require the governing board or body of a charter school or private school, before acquiring title to property for a new schoolsite or for an addition to a present schoolsite, to give notice in writing of the proposed acquisition to the planning commission. The bill would also require the planning commission to investigate the

proposed site and submit a written report to the governing board or body of the charter school or private school, as provided. The bill would make the provisions relating to school districts also applicable to charter schools and private schools.

(2) To the extent that this bill would impose new duties on local agencies, this bill would constitute a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 21151.2 of the Public Resources Code
2 is amended to read:

3 21151.2. (a) To promote the *health and safety* of pupils and
4 comprehensive community ~~planning~~ *planning*, the governing board
5 *or body* of each school ~~district~~ *district, charter school, or private*
6 *school shall*, before acquiring title to property for a new ~~school~~
7 *site schoolsite* or for an addition to a present ~~school site~~, shall
8 *schoolsite*, give the planning commission having jurisdiction notice
9 in writing of the proposed acquisition. ~~The~~

10 (b) *The* planning commission shall investigate the proposed site
11 and within 30 days after receipt of the notice shall submit to the
12 governing board *or body of the school district, charter school, or*
13 *private school* a written report of the investigation and its
14 recommendations concerning acquisition of the site.

15 ~~The~~
16 (c) *The* governing board *or body of the school district, charter*
17 *school, or private school* shall not acquire title to the property until
18 the report of the planning commission has been received. ~~If~~

19 (d) *If* the report does not favor the acquisition of the property
20 for a ~~school site, schoolsite~~, or for an addition to a present ~~school~~
21 *site, schoolsite*, the governing board *or body* of the school ~~district~~

1 *district, charter school, or private school* shall not acquire title to
2 the property until 30 days after the commission's report is received.
3 SEC. 2. If the Commission on State Mandates determines that
4 this act contains costs mandated by the state, reimbursement to
5 local agencies and school districts for those costs shall be made
6 pursuant to Part 7 (commencing with Section 17500) of Division
7 4 of Title 2 of the Government Code.

LEGISLATIVE COMMITTEE
MEETING OF APRIL 11, 2022

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AMENDED IN ASSEMBLY MARCH 10, 2022

CALIFORNIA LEGISLATURE—2021–22 REGULAR SESSION

ASSEMBLY BILL

No. 2721

Introduced by Assembly Member Lee

February 18, 2022

An act to amend Section 40227 of the Health and Safety Code, relating to the Bay Area Air Quality Management District.

LEGISLATIVE COUNSEL'S DIGEST

AB 2721, as amended, Lee. Bay Area Air Quality Management District: district board: ~~compensation and expenses.~~ *compensation.*

Existing law establishes the Bay Area Air Quality Management District, which is vested with the authority to regulate air emissions located in the boundaries of the Counties of Alameda, Contra Costa, Marin, Napa, San Francisco, San Mateo, and Santa Clara and portions of the Counties of Solano and Sonoma. Existing law establishes a district board to govern the district and prescribes the membership of the district board. Existing law authorizes the district board to provide, by ordinance, compensation *not to exceed \$100 per day* for board members for attending meetings *of the board or committees of the board* or while on official business of the ~~district and~~ *district and not to exceed \$6,000 per year.* Existing law also requires board members to receive actual and necessary expenses incurred in the performance of their ~~duties,~~ as ~~specified.~~ *duties.*

This bill would state the intent of the Legislature to enact subsequent legislation that would make changes to the compensation and expenses that members of the district board receive in the performance of their ~~board duties.~~ *revise the amount of compensation that a member of the board may receive for attending a meeting of the board or attending a*

meeting while on official business of the district to an amount not to exceed \$100 per meeting and \$200 per day. The bill would also authorize a member of the board to receive compensation for active transportation travel to one of these meetings and would subject this compensation to the \$6,000 total annual compensation limit.

Vote: majority. Appropriation: no. Fiscal committee: no.
 State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 40227 of the Health and Safety Code is
 2 amended to read:

3 40227. (a) Each member of the bay district board shall receive
 4 actual and necessary expenses incurred in the performance of board
 5 duties, and board duties.

6 (b) Each member of the bay district board may receive
 7 compensation, to be determined by the bay district board, not to
 8 exceed one hundred dollars (\$100) for each day attending the
 9 meetings board subject to subdivision (c), for any of the following:

10 (1) Attending a meeting of the bay district board and or a
 11 committee meetings thereof, or, of the bay district board.

12 (2) Attending a meeting, upon authorization of the bay district
 13 board, while on official business of the bay district, but the district.

14 (3) Active transportation travel to a meeting described in
 15 paragraph (1) or (2).

16 (c) The compensation provided for attending a meeting pursuant
 17 to paragraph (1) or (2) of subdivision (b) shall not exceed one
 18 hundred dollars (\$100) for each meeting and shall not exceed two
 19 hundred dollars (\$200) per day. The compensation provided
 20 pursuant to subdivision (b) shall not exceed six thousand dollars
 21 (\$6,000) in any one year. Compensation

22 (d) Compensation pursuant to this section shall be fixed by
 23 ordinance.

24 SECTION 1. In order to promote active transportation, reduce
 25 air pollution, and protect public health in the bay area region, it is
 26 the intent of the Legislature to enact subsequent legislation that
 27 would make changes to the compensation and expenses that

- 1 ~~members of the board of the Bay Area Air Quality Management~~
- 2 ~~District receive in the performance of their board duties.~~

LEGISLATIVE COMMITTEE
MEETING OF APRIL 11, 2022

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BAY AREA AIR QUALITY MANAGEMENT DISTRICT

Memorandum

To: Chairperson Pauline Russo Cutter and Members
of the Legislative Committee

From: Alexander Crockett
Interim Acting Executive Officer/APCO

Date: April 11, 2022

Re: Consideration of New Bills

RECOMMENDED ACTION

Approve staff's recommendation of support for the following bills:

- Assembly Bill (AB) 2852 (Bloom) - Air pollution control districts and air quality management districts: independent special districts: funding.
- AB 2910 (Santiago) - Nonvehicular air pollution: civil penalties.
- Senate Bill (SB) 1382 (Gonzalez) - Air pollution: Clean Cars 4 All Program: Sales and Use Tax Law: zero emissions vehicle exemption.

Approve staff's recommendation of opposition for the following bill:

- SB 1235 (Borgeas) - Air pollution: portable equipment: emergency events.

Approve staff's recommendation to oppose unless amended for the following bill:

- AB 2816 (Ting) - State Air Resources Board: zero-emission incentive programs: requirements.

BACKGROUND

AB 2852 (Bloom) - Air pollution control districts and air quality management districts: independent special districts: funding.

CapitolTrack Summary: Current law provides for the establishment of air pollution control districts and air quality management districts. Current law declares a district a body corporate and politic and a public agency of the state, and prescribes the general powers and duties of a district. Current law authorizes a district to receive funding from specified sources, including, but not limited to, grants, permit fees, and penalties. This bill would designate, retroactive to January 1, 2020, a district as an independent special district for purposes of receiving state funds or funds disbursed by the state, including federal funds.

AB 2910 (Santiago) - Nonvehicular air pollution: civil penalties.

CapitolTrack Summary: Current law generally designates air pollution control and air quality management districts with the primary responsibility for the control of air pollution from all sources other than vehicular sources. Current law establishes maximum civil penalties for any person for violations of air pollution laws from nonvehicular sources. A person who violates these laws and who acts negligently, knowingly, willfully and intentionally, or with reckless disregard, is liable for a civil penalty in a greater amount, as specified. Current law annually adjusts the maximum penalties for violations of these laws based on the California Consumer Price Index. This bill would increase the maximum amount of those civil penalties, as specified.

SB 1382 (Gonzalez) - Air pollution: Clean Cars 4 All Program: Sales and Use Tax Law: zero emissions vehicle exemption.

CapitolTrack Summary: Current law establishes the Clean Cars 4 All Program, which is administered by the State Air Resources Board, to focus on achieving reductions in the emissions of greenhouse gases, improvements in air quality, and benefits to low-income state residents through the replacement of high-polluter motor vehicles with cleaner and more efficient motor vehicles or a mobility option. Current law requires the implementing regulations to ensure, among other things, that there is improved coordination, integration, and partnerships with other programs that target disadvantaged communities. This bill would require the implementing regulations for the Clean Cars 4 All Program to additionally ensure that the State Air Resources Board coordinates with air resource management districts and local nonprofit and community organizations to identify barriers to accessing the Clean Cars 4 All program and to develop outreach protocols and metrics to assess the success of outreach across the districts.

SB 1235 (Borgeas) - Air pollution: portable equipment: emergency events.

CapitolTrack Summary: Would codify the State Air Resources Board's regulation authorizing portable equipment to be operated during an emergency event, as defined above, and would also authorize portable equipment to be operated during a public safety power shut-off event. The bill would define "public safety power shut-off event," in part, as a planned power outage undertaken by an electrical corporation to reduce the risk of wildfires caused by utility equipment.

AB 2816 (Ting) - State Air Resources Board: zero-emission incentive programs: requirements.

CapitolTrack Summary: Current law establishes various incentive programs that are administered or funded by the State Air Resources Board to provide financial assistance for the purchase of zero-emission vehicles by individuals, including, among others, the Clean Cars 4 All Program. This bill would require the state board, with respect to zero-emission vehicle (ZEV) incentive programs administered or funded by the state board, to ensure that beginning January 1, 2024, incentives awarded under those programs are awarded based on the average annual gallons of gasoline or diesel that the applicant's vehicle consumed. The bill would require the state board to develop a tool to determine the annual average gallons of gasoline or diesel consumed by a particular vehicle and would require the state board to make the tool publicly available on its internet website for use by potential applicants of a ZEV incentive program.

DISCUSSION

Staff will provide the Committee with a brief summary and status of bills listed on the attached list and will recommend bills to support and oppose during the session. Staff will review other bills that may be of interest to the Committee.

Specifically, staff will plan to discuss the following bills:

AB 2852 (Bloom) - Air pollution control districts and air quality management districts: independent special districts: funding.

If passed, AB 2852 would allow air districts to be eligible for emergency funding, similar to stimulus funding provided from federal COVID relief funds. Previous COVID relief funding was limited to “independent special districts,” however, the California Department of Finance did not consider air quality management districts and air pollution control districts to be independent special districts for purposes of receiving funding.

The bill requires a majority vote in both the Assembly and Senate, and will be heard in Assembly Natural Resources on April 18, 2022.

Staff recommends the Committee recommend that the Board of Directors take a support position on the bill.

AB 2910 (Santiago) - Nonvehicular air pollution: civil penalties.

If passed, AB 2910 would raise civil penalty amounts for a list of penalties not covered by our sponsored bill, AB 1897 (Wicks). AB 2910 is being amended to ensure that it is complementary to AB 1897.

The bill requires a majority vote in both the Assembly and Senate and will be heard in tandem with AB 1897 in Assembly Natural Resources on April 18, 2022.

Staff recommends the Committee recommend that the Board of Directors take a support position on the bill.

SB 1382 (Gonzalez) - Air pollution: Clean Cars 4 All Program: Sales and Use Tax Law: zero emissions vehicle exemption.

If passed, SB 1382 would, among other things, exempt Clean Cars for All new and used car purchases from state sales tax.

The bill requires a majority vote in both the Assembly and Senate, and will be heard in Senate Environmental Quality on April 20, 2022.

Staff recommends the Committee recommend that the Board of Directors take a support position on the bill.

SB 1235 (Borgeas) - Air pollution: portable equipment: emergency events.

If passed, SB 1235 would exempt certain diesel backup engines from having to obtain air district permits if used for emergencies. Staff has identified several engines currently installed and under permit that would be removed from having permit requirements, and inspections, with the Air District

The bill requires a majority vote in both the Assembly and Senate, and will be heard in Senate Environmental Quality on April 25, 2022.

Staff recommends the Committee recommend that the Board of Directors take an oppose position on the bill.

AB 2816 (Ting) - State Air Resources Board: zero-emission incentive programs: requirements.

If passed, AB 2816 would add a layer to the Clean Cars for All Program that creates a variable incentive amount entirely based on gasoline saved by the eventual new or used car purchase. While an interesting concept, the requirement creates a new hurdle that will curtail interest in the program within low-income communities and may in fact offer significantly lower incentive amounts. The bill also purports to create a similar requirement for the Clean Vehicle Replacement Program (CVRP), however, CVRP is not a “scrap and replace” program like Clean Cars for All. Because CVRP is not a scrap and replace, there’s no certainty that the goals of the bill will be achieved with respect to CVRP.

The bill requires a majority vote in both the Assembly and Senate. It will likely be heard in Assembly Transportation on April 18, 2022.

Staff recommends the Committee recommend that the Board of Directors take an oppose unless amended position on the bill. The acceptable amendment would be to remove the Clean Cars for All part of the language, and instead have it only focus on CVRP.

BUDGET CONSIDERATION/FINANCIAL IMPACT

None.

Respectfully submitted,

Alexander Crockett
Interim Acting Executive Officer/APCO

Prepared by: Alan Abbs
Reviewed by: Alexander Crockett

ATTACHMENTS:

1. Bills of Interest Matrix - As of 3/30/2022
2. AB 2582 (Bloom) - Bill Text - As Amended on 3/24/2022
3. AB 2910 (Santiago) - Bill Text - As Amended on 3/24/2022
4. SB 1382 (Gonzalez) - Bill Text - As Amended on 3/16/2022
5. SB 1235 (Borgeas) - Bill Text - As Introduced on 2/17/2022
6. AB 2816 (Ting) - Bill Text - As Amended on 3/17/2022

LEGISLATIVE COMMITTEE
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Bill #	Author	Subject	Last Amended	Last Status - As of 3/30/2022	Location	Notes	Position	Priority (Low/Medium/High)	Category
AB 1749	Garcia, Cristina	Community Air Protection Blueprint: community emissions reduction programs; toxic air contaminants and criteria air pollutants.	3/14/2022	3/22/2022-From committee: Do pass and refer to Com. on APPR. (Ayes 8; Noyes 3.) (March 21). Re-referred to Com. on APPR.	3/21/2022-A. APPR.			Medium	AB 617
AB 284	Rivas, Robert	California Global Warming Solutions Act of 2006; climate goal; natural and working lands.	7/14/2021	9/10/2021-Failed Deadline pursuant to Rule 61(a)(15). (Last location was INACTIVE FILE on 9/2/2021) (May be acted upon Jan 2022)	9/10/2021-S; 2 YEAR			Low	Climate Change
AB 1369	Bennett	Buy Clean California Act: eligible materials; product-specific global warming potential emissions.	1/12/2022	2/1/2022-In Senate. Read first time. To Com. on RLS for assignment.	2/1/2022-S. RLS.			Low	Climate Change
AB 1395	Mumtazchi	The California Climate Crisis Act.	9/3/2021	9/10/2021-Failed Deadline pursuant to Rule 61(a)(15). (Last location was INACTIVE FILE on 9/10/2021) (May be acted upon Jan 2022)	9/10/2021-S; 2 YEAR			Low	Climate Change
AB 1676	Burke	Greenhouse gases: carbon capture, utilization, and sequestration.		1/21/2022-From printer: May be heard in committee February 20.	1/20/2022-A. PRINT			Low	Climate Change
AB 2442	Rivas, Robert	Climate change.	3/24/2022	3/28/2022-Re-referred to Com. on L. GOV.	3/24/2022-A. L. GOV.			Low	Climate Change
AB 2446	Holden	Embodied carbon: emissions; construction materials.		3/3/2022-Referred to Com. on MAT. RES.	3/3/2022-A. MAT. RES.			Low	Climate Change
AB 2532	Bennett	Scoping plan: compliance and implementation reports.		3/10/2022-Referred to Com. on MAT. RES.	3/10/2022-A. MAT. RES.			Low	Climate Change
AB 2578	Cunningham	State Energy Resources Conservation and Development Commission: integrated energy policy report; carbon capture, utilization, and sequestration.	3/17/2022	3/21/2022-Re-referred to Com. on U. & E.	3/17/2022-A. U. & E.			Low	Climate Change
AB 2674	Villa poota	California Global Warming Solutions Act of 2006; Low Carbon Fuel Standard regulations.		3/10/2022-Referred to Com. on MAT. RES. pursuant to Assembly Rule 96.	3/10/2022-A. MAT. RES.			Low	Climate Change
AB 2700	McCarthy	Transportation electrification: electrical distribution grid upgrades.	3/21/2022	3/28/2022-Re-referred to Com. on U. & E. and TRANS.	3/28/2022-A. U. & E.			Low	Climate Change
AB 2722	Grayson	Greenhouse gases: work-from-home option.		3/10/2022-Referred to Com. on MAT. RES.	3/10/2022-A. MAT. RES.			Low	Climate Change
AB 2809	Carrillo	Greenhouse gases: refrigerants.		2/19/2022-From printer: May be heard in committee March 21.	2/18/2022-A. PRINT			Low	Climate Change
AB 2944	Patricie Morris	Greenhouse gases: carbon capture, utilization, and sequestration.	3/24/2022	3/28/2022-Re-referred to Com. on MAT. RES.	3/24/2022-A. MAT. RES.			Low	Climate Change
SB 260	Wiener	Climate Corporate Accountability Act.	1/3/2022	1/26/2022-Read third time. Passed. (Ayes 23; Noyes 7.) Ordered to the Assembly in Assembly. Read first time. Held at Do. &.	1/26/2022-A. DESK			Medium	Climate Change
SB 852	Dodd	Climate resilience districts: formation; funding mechanisms.	3/9/2022	3/22/2022-Set for hearing March 31. March 31 set for first hearing canceled at the request of author.				Low	Climate Change
SB 905	Skinner	Decarbonized Cement and Geologic Carbon Sequestration Demonstration Act.	2/18/2022	3/28/2022-From committee: Do pass and refer to Com. on BD. (Ayes 5; Noyes 2.) (March 28). Re-referred to Com. on BD.	3/28/2022-S. ED.			Low	Climate Change
SB 989	Hertzberg	Climate Change Preparedness, Resiliency, and Jobs for Communities Program: climate-beneficial projects; grant funding.	3/9/2022	3/17/2022-Re-referred to Com. on BD.	3/17/2022-S. E.Q.			Low	Climate Change
SB 1020	Alkins	California Global Warming Solutions Act of 2006; scoping plan.		3/25/2022-Set for hearing April 20.	3/25/2022-S. E.Q.			Low	Climate Change
SB 1068	Laird	Governor's Office of Business and Economic Development: Climate change.	3/15/2022	3/25/2022-Set for hearing April 4.	3/23/2022-S. E.Q.			Low	Climate Change
SB 1075	Skinner	Hydrogen: green hydrogen; emissions of greenhouse gases.		3/21/2022-From committee: Do pass and refer to Com. on E, U. & C. (Ayes 12; Noyes 6.) (March 21). Re-referred to Com. on E, U. & C.	3/21/2022-E. U. & C.			Low	Climate Change
SB 1101	Caballero	Carbon sequestration: pore space ownership and Carbon Capture, Utilization, and Storage Program.	3/16/2022	3/25/2022-Set for hearing April 20.	3/24/2022-S. E.Q.			Low	Climate Change
SB 1136	Portantino	California Environmental Quality Act: exp. edited environmental review; climate change regulations.	3/16/2022	3/25/2022-Set for hearing April 20.	3/24/2022-S. E.Q.			Low	Climate Change
SB 1145	Laird	California Global Warming Solutions Act of 2006; greenhouse gas emissions; biofuel.	3/1/2022	3/28/2022-From committee: Do pass and re-refer to Com. on APPR with recommendation: To constant calendar. (Ayes 7; Noyes 0.) (March 28). Re-referred to Com. on APPR.	3/28/2022-S. APPR.			Low	Climate Change
SB 1206	Skinner	Hydrofluorocarbon gases: sale or distribution.	3/29/2022	3/29/2022-Read second time and amended. Re-referred to Com. on APPR.	3/28/2022-S. APPR.			Low	Climate Change
SB 1220	Limón	Zero-emission and near-zero emission vehicle incentive programs: requirements.	3/15/2022	3/25/2022-Set for hearing April 20.	3/23/2022-S. E.Q.			Low	Climate Change
SB 1297	Cortese	Low embodied carbon building materials: carbon sequestration.	3/29/2022	3/29/2022-Read second time and amended. Re-referred to Com. on N.R. & W.	3/28/2022-S. N.R. & W.			Low	Climate Change
SB 1301	Becker	Corporation Tax Law: climate resiliency surcharge.	3/16/2022	3/23/2022-Re-referred to Com. on GOV. & F.	3/23/2022-S. GOV. & F.			Low	Climate Change
SB 1347	Huezo	California Global Warming Solutions Act of 2006; scoping plan: renewable hydrogen production study.	3/15/2022	3/23/2022-Re-referred to Com. on E.Q.	3/23/2022-S. E.Q.			Low	Climate Change
SB 1392	Wickowski	Carbon capture and storage pilot program: industrial facilities.		3/9/2022-Referred to Com. on E, U. & C.	3/9/2022-S. E. U. & C.			Low	Climate Change
AB 1814	Grayson	Transportation electrification: community choice aggregators.	3/28/2022	3/29/2022-Re-referred to Com. on U. & E.	2/18/2022-A. U. & E.			Low	Energy
AB 2025	Thig	Energy: electric vehicle charging standards.		3/23/2022-From committee: Do pass and refer to Com. on U. & E. (Ayes 6; Noyes 0.) (March 21). Re-referred to Com. on U. & E.	3/21/2022-A. U. & E.			Low	Energy
AB 2204	Boerner Horvath	Clean energy: Office of Clean Energy Workforce.		3/3/2022-Referred to Com. on L. & E. and U. & E.	3/3/2022-A. L. & E.			Low	Energy

Bill #	Author	Subject	Last Amended	Last State - As of 3/30/2022	Location	Notes	Position	Priority (Low/Medium/High)	Category
AB 2345	Ward	Community Renewable Energy Program.	3/28/2022	3/29/2022- Re-referred to Com. on U. & E.	3/3/2022-A, U. & E.			Low	Energy
AB 2567	Garcia, Eduardo	Energy: from renewable energy resources and firm zero carbon resources procurement.	3/18/2022	3/29/2022- Re-referred to Com. on U. & E.	3/10/2022-A, U. & E.			Low	Energy
AB 2822	Bigelow	Biodiesel fuels; renewable diesel fuel.		3/17/2022- Referred to Com. on REV. & TAX.	3/17/2022-A, REV. & TAX.			Low	Energy
SB 1037	Wickowski	Clean energy and pollution reduction objectives.		2/23/2022- Referred to Com. on R.L.S.	2/15/2022-S, R.L.S.			Low	Energy
SB 1043	Skinner	Energy, appliance standards and cost-effective measures.	3/10/2022	3/23/2022- Re-referred to Com. on H. & C.	3/23/2022-S, H. & C.			Low	Energy
SB 1142	Becker	Energy suppliers; notice and reimbursement of decarbonization charge.		2/23/2022- Referred to Com. on E., U. & C.	2/23/2022-S, E, U. & C.			Low	Energy
SB 1158	Grove	Motor Vehicle Fuel Tax; Diesel Fuel Tax; infrastructure investment.		3/17/2022- Referred to Com. on GOV. & F.	3/17/2022-S, GOV. & F.			Low	Energy
SB 1164	Stern	Energy; building energy efficiency; component repository and registry.		3/28/2022- NOTE: Do pass as amended, but first amend, and refer to the Committee on Environmental Quality (PASS)	3/28/2022-S, E-Q.			Low	Energy
SB 1201	Archuleta	Hydrogen-fueling stations; administrative approval.	3/14/2022	3/28/2022- Referral to Com. on R.Q. rescinded because of the limitations placed on committee hearings due to ongoing health and safety risks of the COVID-19 virus. 3/28/2022- From committee to committee - continuation. Read second time and amended. Re-referred to Com. on 3/16/2022.	3/24/2022-S, E-Q.			Low	Energy
SB 1332	Becker	Building performance standards.		3/28/2022- NOTE: Do pass as amended, but first amend, and refer to the Committee on Governance and Finance (PASS)	2/18/2022-S, R.L.S.		Propose Oppose	Medium	Energy
SB 1393	Archuleta	Energy appliances; local requirements.		3/23/2022- From committee chair, with author's amendments; amend, and refer to committee. Read second time and amended and re-referred to Com. on R.L.S.	3/23/2022-S, R.L.S.			Medium	Environmental Justice
AE 1001	Garcia, Cristina	Environment; mitigation measures for air quality impacts; environmental justice.	3/22/2022	2/11/2022- From printed bill to be heard in committee March 13.	2/10/2022-A, PRINT			Low	Environmental Justice
AE 1369	Murasachi	Fossil fuel-dependent workers; California Equitable Just Transition Fund.		3/29/2022- Re-referred to Com. on NAT. RES.	3/3/2022-A, NAT. RES.			Low	Environmental Justice
AE 2419	Begon	Environmental justice; federal infrastructure investment and jobs Act; Justice4All Oversight Committee.		3/17/2022- In committee. Hearing postponed by committee.	2/18/2022-A, NAT. RES.		Air District Sponsored	High	General Air District
AE 1827	Wicks	Non-vehicular air pollution control; retrofits; penalties.	3/21/2022	3/22/2022- Re-referred to Com. on NAT. RES.	3/17/2022-A, NAT. RES.		Propose Support	Medium	General Air District
AE 2141	Garcia, Eduardo	Greenhouse Gas Reduction Fund; community projects; funding.		3/22/2022- Re-referred to Com. on NAT. RES.	3/17/2022-A, NAT. RES.		Propose Oppose	Medium	General Air District
AL 2533	Quirk	Air pollution; permits; mobile idling or demand-based vehicles.		3/10/2022- Referred to Com. on TRAMS and NAT. RES.	3/10/2022-A, TRAMS.			Medium	General Air District
AE 2494	Garcia, Cristina	Natural Carbon Sequestration and Resilience Act of 2022.	3/21/2022	3/22/2022- Re-referred to Com. on NAT. RES.	3/17/2022-A, NAT. RES.			Medium	General Air District
AE 2721	Lee	Bay Area Air Quality Management District; district board; compensation.	3/10/2022	3/10/2022- Re-referred to Com. on NAT. RES.	3/10/2022-A, NAT. RES.		Air District Sponsored	High	General Air District
AE 2836	Garcia, Eduardo	Carl Meyer Memorial Air Quality Standards Attainment Program; vehicle registration fees; California Air Rec.	3/24/2022	3/28/2022- Re-referred to Com. on TRAMS.	3/24/2022-A, TRAMS.		Propose Support	Medium	General Air District
AL 2810	Reyes	Qualifying logistics use projects.	3/24/2022	3/28/2022- Re-referred to Com. on L. GOV.	3/24/2022-A, L. GOV.			Low	General Air District
AE 2852	Bloom	Air pollution control districts and air quality management districts; independent special districts; funding.	3/24/2022	3/28/2022- Re-referred to Com. on L. GOV.	3/24/2022-A, L. GOV.		Propose Support	Medium	General Air District
AE 2910	Smitko	Non-vehicular air pollution; civil penalties.	3/24/2022	3/28/2022- Re-referred to Com. on NAT. RES.	3/24/2022-A, NAT. RES.		Propose Support	Medium	General Air District
SB 1045	Burton	Air quality; miles and regulations; socioeconomic impacts assessment.	3/29/2022	3/29/2022- Read second time and amended. Re-referred to Com. on APPR.	3/28/2022-S, APPR.		Propose Oppose	Medium	General Air District
SB 1225	Borjas	Air pollution; portable equipment; emergency events.		3/17/2022- March 28 hearing postponed by committee.	3/2/2022-S, E-Q.		Propose Oppose	Medium	General Air District
AE 3623	Medina	Carl Meyer Memorial Air Quality Standards Attainment Program.	7/6/2021	7/14/2021- Failed Deadline pursuant to Rule 61(a)(11). (Last location was TRAMS on 6/28/2021) May be acted upon Jan 2022.	7/14/2021-S, 2 YEAR			Medium	GGPP; Incentive Programs; Mobile Source, Cap and Trade
AE 3625	Lozano	Building standards; electric vehicle charging infrastructure.	6/29/2021	9/10/2021- Failed Deadline pursuant to Rule 61(a)(15). (Last location was NATIVE FILE on 9/10/2021) May be acted upon Jan 2022.	9/10/2021-S, 2 YEAR			Low	GGPP; Incentive Programs; Mobile Source, Cap and Trade
AE 1387	Reyes	Alternative and Renewable Fuel and Vehicle Technology Program.	9/3/2021	9/10/2021- Failed Deadline pursuant to Rule 61(a)(15). (Last location was NATIVE FILE on 9/7/2021) May be acted upon Jan 2022.	9/10/2021-S, 2 YEAR			Low	GGPP; Incentive Programs; Mobile Source, Cap and Trade
AE 1044	Burke	Greenhouse Gas Reduction Fund; California Jobs Plan Act of 2021		1/20/2022- Referred to Com. on L. & E. and NAT. RES.	1/20/2022-A, L. & E.			Low	GGPP; Incentive Programs; Mobile Source, Cap and Trade
AE 1738	Bourner Horvath	Building standards; installation of electric vehicle charging stations; existing buildings.		2/10/2022- Referred to Com. on H. & C. and ED.	2/10/2022-A, H. & C. & ED.			Low	GGPP; Incentive Programs; Mobile Source, Cap and Trade
AE 1778	Garcia, Cristina	State transportation funding; freeway projects; poverty and pollution; Department of Transportation.	3/24/2022	3/28/2022- Re-referred to Com. on TRAMS.	3/10/2022-A, TRAMS.			Low	GGPP; Incentive Programs; Mobile Source, Cap and Trade
AE 1873	Bourner Horvath	Personal Income Tax Law; Corporation Tax Law; credits; electric vehicle charging stations.		3/22/2022- In committee; hearing for testimony only.	2/18/2022-A, REV. & TAX.			Low	GGPP; Incentive Programs; Mobile Source, Cap and Trade
AL 2061	Wig	Transportation electrification; electric vehicle charging infrastructure.	3/21/2022	3/29/2022- From committee: Do pass and re-refer to Com. on U. & E. (Ayes: 14, Nays: 0) [March 28]. Re-referred to Com. on U. & E.	3/29/2022-A, U. & E.			Low	GGPP; Incentive Programs; Mobile Source, Cap and Trade

Bill #	Author	Subject	Last Amended	Last State - As of 3/30/2022	Location	Notes	Position	Priority (Low/Medium/High)	Category
AB 202A	Gipson	Air Quality Improvement Program: micro-mobility devices		3/23/2022: Committee received from committee Do pass and re-refer to Com. on APPR. (Ayes 11, Noes 0) (March 21). Re-referred to Com. on APPR.	3/23/2022-A, APPR.			Low	GGPR: Incentive Programs, Mobile Source, Cap and Trade
AB 210L	Flora	Whole orchard recycling projects: carbon offsets		3/24/2022: Referred to Com. on NAT. RES.	3/24/2022-A, NAT. RES.			Low	GGPR: Incentive Programs, Mobile Source, Cap and Trade
AB 211L	Bighow	Motor vehicles: air pollution		2/15/2022: From printer: May be heard in committee March 17.	3/14/2022-A, PRINT			Low	GGPR: Incentive Programs, Mobile Source, Cap and Trade
AB 219Z	Mullh	California decarbonization project: funding		2/24/2022: Referred to Com. on TRANS.	3/24/2022-A, TRANS.			Low	GGPR: Incentive Programs, Mobile Source, Cap and Trade
AB 235B	Grayson	Vehicular air pollution: Zero-Emission Aftermarket Conversion Project.	3/21/2022	3/29/2022: From committee: Do pass and re-refer to Com. on NAT. RES. (Ayes 14, Noes 3) (March 28). Re-referred to Com. on NAT. RES.	3/29/2022-A, NAT. RES.			Low	GGPR: Incentive Programs, Mobile Source, Cap and Trade
AB 235H	O'Donnell	Alternative vehicle and vessel technologies: funding programs: commercial harbor craft.		3/3/2022: Referred to Com. on TRANS.	3/3/2022-A, TRANS.			Medium	GGPR: Incentive Programs, Mobile Source, Cap and Trade
AB 254Z	O'Donnell	Air pollution: assistance program: drayage vehicles.		3/10/2022: Referred to Com. on TRANS.	3/10/2022-A, TRANS.			Low	GGPR: Incentive Programs, Mobile Source, Cap and Trade
AB 256Z	Bennett	Clean Transportation Program: hydrogen fueling stations.	3/24/2022	3/29/2022: From committee: Do pass and re-refer to Com. on APPR. (Ayes 9, Noes 0) (March 28). Re-referred to Com. on APPR.	3/29/2022-A, APPR.			Low	GGPR: Incentive Programs, Mobile Source, Cap and Trade
AB 262Z	Mullh	Sales and use taxes: exemptions: California Hybrid and Zero-Emission Truck and Bus Voucher Incentive Project: transit buses.		3/17/2022: In committee: Hearing postponed by committee.	3/10/2022-A, REV. & TAX			Low	GGPR: Incentive Programs, Mobile Source, Cap and Trade
AB 269B	Borner-Horvath	Small passenger vessels: emissions reductions: state fueling.	3/24/2022	3/29/2022: Re-referred to Com. on TRANS.	3/24/2022-A, TRANS.			Low	GGPR: Incentive Programs, Mobile Source, Cap and Trade
AB 270Z	Munatsuchi	Zero-emission fueling station reliability standards: transportation: low income and disadvantaged community financial assistance.		3/10/2022: Referred to Com. on TRANS.	3/10/2022-A, TRANS.			Low	GGPR: Incentive Programs, Mobile Source, Cap and Trade
AB 273Z	Carroll	Air pollution: purchase of new drayage and short-haul trucks: incentive programs: eligibility, labor standards.	3/24/2022	3/29/2022: Re-referred to Com. on L. & E.	3/24/2022-A, L. & E.			Low	GGPR: Incentive Programs, Mobile Source, Cap and Trade
AB 273Z	Munatsuchi	Greenhouse gases: market-based compliance mechanism.	3/14/2022	3/28/2022: Re-referred to Com. on NAT. RES.	3/24/2022-A, NAT. RES.			Low	GGPR: Incentive Programs, Mobile Source, Cap and Trade
AB 279B	Fong	Freight: development projects.		2/19/2022: From printer: May be heard in committee March 21.	2/18/2022-A, PRINT			Low	GGPR: Incentive Programs, Mobile Source, Cap and Trade
AB 280Z	Munatsuchi	Air pollution: carbon tax and dividend.		2/19/2022: From printer: May be heard in committee March 21.	2/18/2022-A, PRINT			Low	GGPR: Incentive Programs, Mobile Source, Cap and Trade
AB 287Z	Bonta, Phil	Transportation funding programs: eligibility: public transportation ferries.		2/17/2022: From printer: May be heard in committee March 21.	2/16/2022-A, PRINT			Low	GGPR: Incentive Programs, Mobile Source, Cap and Trade
AB 286Z	Munatsuchi	California Global Warming Solutions Act of 2006: offset credits.		3/17/2022: Referred to Com. on TRANS.	3/17/2022-A, TRANS.			Low	GGPR: Incentive Programs, Mobile Source, Cap and Trade
AB 292B	Cooper	Personal income taxes: Clean Cars 4 All Program: retirement and replacement.	3/17/2022	3/21/2022: Re-referred to Com. on TRANS.	3/17/2022-A, TRANS.			Medium	GGPR: Incentive Programs, Mobile Source, Cap and Trade
AB 295Z	Chinongbom	Vehicular air pollution: State Air Resources Board regulations.		2/19/2022: From printer: May be heard in committee March 21.	2/18/2022-A, TRANS.			Low	GGPR: Incentive Programs, Mobile Source, Cap and Trade
SB 315	Pertaniano	Short-lived climate pollutants: on-air waste reduction goals: local installation assistance.	1/31/2022	1/24/2022: Read third time. Passed (Ayes 23, Noes 0) (ordered to the Assembly in Assembly, Read first time 10/14/2021 at 4:45. 1/19/2022: Read third time. Passed (Ayes 33, Noes 0) (ordered to the Assembly in Assembly, Read first time 10/14/2021 at 4:45.	2/19/2022-A, PRINT			Medium	GGPR: Incentive Programs, Mobile Source, Cap and Trade
SB 344	Limón	Sales and use taxes: exemption: medium- or heavy-duty zero-emission trucks.	5/25/2021	1/19/2022: Read third time. Passed (Ayes 33, Noes 0) (ordered to the Assembly in Assembly, Read first time 10/14/2021 at 4:45.	1/19/2022-A, DIGSK			Low	GGPR: Incentive Programs, Mobile Source, Cap and Trade
SE 726	Gonzalez	Alternative fuel and vehicle technologies: sustainable transportation.	8/30/2021	9/10/2021: Failed deadline pursuant to rule 6.116(15) (Last location was NACTIVE FILE on 9/7/2021) (May be acted upon Jan 2022)	9/10/2021-A, 2 YEAR			Medium	GGPR: Incentive Programs, Mobile Source, Cap and Trade
SB 771	Becker	Sales and use tax: Law: zero emissions vehicle exemption.	5/11/2021	9/10/2021: Failed deadline pursuant to rule 6.116(15) (Last location was 688 on 5/26/2021) (May be acted upon Jan 2022)	9/10/2021-A, 2 YEAR			Medium	GGPR: Incentive Programs, Mobile Source, Cap and Trade
SB 894	Jones	Off-highway vehicles.	3/23/2022	3/29/2022: Read second time and amended. Re-referred to Com. on N.R. & W.	3/22/2022-E, N.R. & W.			Low	GGPR: Incentive Programs, Mobile Source, Cap and Trade
SE 844	Wiener	California Environmental Quality Act: exemptions: transportation-related projects.	3/16/2022	3/28/2022: VOTE: Do pass/amended, but first amend, and re-refer to the Committee on Appropriations (PASS) Com. on TRANS.	3/28/2022-\$, APPR.			Medium	GGPR: Incentive Programs, Mobile Source, Cap and Trade
SE 932	Pertaniano	General Plans: circulation element: bicycle and pedestrian plans and traffic calming plans.	3/23/2022	3/23/2022: Read second time and amended. Re-referred to Com. on TRANS.	3/17/2022-S, TRANS.			Low	GGPR: Incentive Programs, Mobile Source, Cap and Trade
SB 942	Newman	Low Carbon Transit Operations Program: free or reduced fare transit program.		3/29/2022: From committee: Do pass and re-refer to Com. on APPR. (Ayes 11, Noes 3) (March 29). Re-referred to Com. on APPR.	3/28/2022-S, APPR.			Low	GGPR: Incentive Programs, Mobile Source, Cap and Trade
SB 104L	Skinner	Air pollution: state vehicle fleet: zero-emission vehicles.	3/17/2022	3/29/2022: From committee: Do pass and re-refer to Com. on B.C. (Ayes 11, Noes 3) (March 29). Re-referred to Com. on B.C.	3/29/2022-S, B.C.			Low	GGPR: Incentive Programs, Mobile Source, Cap and Trade
SB 108B	Melendez	Greenhouse Gas Reduction Fund: Salton Sea restoration.	3/14/2022	3/25/2022: Set for hearing April 20.	3/23/2022-S, E.O.			Low	GGPR: Incentive Programs, Mobile Source, Cap and Trade
SB 112A	Gonzalez	Governor's Office of Business and Economic Development: Office of Freight.		3/29/2022: Set for hearing April 19.	3/21/2022-S, TRANS.			Low	GGPR: Incentive Programs, Mobile Source, Cap and Trade
SB 120Z	Becker	Zero net emissions: greenhouse gases: state agency operations.	2/24/2022	3/29/2022: Set for hearing April 5.	3/17/2022-S, C.O.			Low	GGPR: Incentive Programs, Mobile Source, Cap and Trade
SB 121Z	Allen	State Regional Collaborative for Climate, Equity, and Resilience.		3/28/2022: From committee: Do pass and re-refer to Com. on TRANS. (Ayes 5, Noes 1) (March 28). Re-referred to Com. on TRANS.	3/28/2022-S, TRANS.			Low	GGPR: Incentive Programs, Mobile Source, Cap and Trade

Bill #	Author	Subject	Last Amended	Last State - As of 3/30/2022	Location	Notes	Position	Priority (Low/Medium/High)	Category
SB 1251	Gonzalez	Office of the Zero-Emission Vehicle Equity Advocate.	3/29/2022	3/29/2022-Set for hearing April 5. From committee with author's amendments. Read second time and amended. Referred to Com. on ED.	3/29/2022-S.G.O.			Low	GGPP, Incentive Programs, Mobile Source, Cap and Trade
SB 1248	Allen	Clean Transportation Program; electric vehicle charging; fleet-operated autonomous vehicles.	3/24/2022	3/24/2022-From committee with author's amendments. Read second time and amended. Referred to Com. on E, U, & C.	3/24/2022-S.E.U. & C.			Low	GGPP, Incentive Programs, Mobile Source, Cap and Trade
SB 1305	Laird	State vehicle fleet alternative fuel vehicles.	3/19/2022	3/19/2022-From committee. Do pass and re-refer to Com. on APPR. (Ayes: 12, Nays: 6) [March 20] Re-referred to Com. on APPR.	3/29/2022-S.APPR.		Propose Support	Low	GGPP, Incentive Programs, Mobile Source, Cap and Trade
SB 1322	Meyman	Publicly available hydrogen-fueling stations.	3/16/2022	3/16/2022-From committee. Do pass and re-refer to Com. on APPR. (Ayes: 12, Nays: 6) [March 20] Re-referred to Com. on APPR.	3/24/2022-S.E.U. & C.			Low	GGPP, Incentive Programs, Mobile Source, Cap and Trade
SB 1332	Gonzalez	Air pollution; Clean Cars 4 All Program; Sales and Use Tax; Low-emission vehicles exemption.	3/16/2022	3/16/2022-From committee with amendments. Referred to Com. on E, U, & C. The limitations placed on committee hearings due to ongoing health and safety risks at the COVID-19 crisis.	3/24/2022-S.E.U. & C.			Low	GGPP, Incentive Programs, Mobile Source, Cap and Trade
SB 1391	Koninger	Greenhouse gases; market-based compliance mechanisms; linkages to the state.	3/16/2022	3/16/2022-From committee with amendments. Referred to Com. on APPR. (Ayes: 12, Nays: 6) [March 20] Re-referred to Com. on APPR.	3/24/2022-S.E.U. & C.			Low	GGPP, Incentive Programs, Mobile Source, Cap and Trade
SB 1402	Allen	Building standards; electric vehicle charging infrastructure.	3/16/2022	3/16/2022-From committee with amendments. Referred to Com. on APPR. (Ayes: 12, Nays: 6) [March 20] Re-referred to Com. on APPR.	3/24/2022-S.E.U. & C.			Low	GGPP, Incentive Programs, Mobile Source, Cap and Trade
AB 2093	Garcia, Eduardo	Public contracts; construction projects; community workforce agreements; battery manufacturing and lithium battery technology.	6/15/2021	7/14/2021-Filed Deadline pursuant to Rule 61(a)(11). (Last location was GOV. & P. on 6/22/2021) (May be acted upon Jan. 2022)	3/14/2021-S.2 YBARE			Low	Other
AB 1849	Thig	Indoor air pollution.	1/24/2022	2/1/2022-In Senate. Read first time. To Com. on RLS for assignment.	2/1/2022-S.RLS.			Medium	Other
AB 1624	Thig	Budget Act of 2022.		1/26/2022-Referred to Com. on BUDGET.	1/16/2022-A.BUDGET			High	Other
AB 1717	Aguiar-Curry	Public works; definition.		3/17/2022-From committee. Do pass and re-refer to Com. on APPR. (Ayes: 6, Nays: 4) [March 16] Re-referred to Com. on APPR.	3/16/2022-A.APPR.			Low	Other
AB 1933	Grayson	California Environmental Quality Act; redevelopment; Concord Naval Weapons Station.	3/10/2022	3/24/2022-Referred to Com. on NAT. RES. and IDJ. pursuant to Assembly Rules.	3/24/2022-A.NAT. RES.		Support	Medium	Other
AB 1944	Lee	Local government; open and public meetings.		2/18/2022-Referred to Com. on L.GOV.	2/18/2022-A.L.GOV.			Low	Other
AB 1932	Medina	San Joaquin Valley Unified Air Pollution Control District; fees; assessments.	3/24/2022	3/24/2022-Referred to Com. on NAT. RES.	3/24/2022-A.NAT. RES.			Low	Other
AB 2016	Grayson	Ear-plug; pilotage rates; pilot boat surcharge.	3/11/2022	3/22/2022-From committee. Do pass and re-refer to Com. on APPR. (Ayes: 12, Nays: 4) [March 21] Re-referred to Com. on APPR.	3/22/2022-A.APPR.			Low	Other
AB 2057	Garrillo	Transportation Agency; goods movement data.	3/28/2022	3/29/2022-Referred to Com. on TRANS.	2/24/2022-A.TRANS.			Low	Other
AB 2076	Reyes, Luz	Extreme Heat and Community Resilience Program; Extreme Heat Hospitalization and Death Reporting System.	3/23/2022	3/24/2022-Referred to Com. on HEALTH.	3/24/2022-A.HEALTH			Low	Other
AB 2089	Kiley	Air pollution; small off-road engines.	3/24/2022	3/29/2022-Referred to Com. on NAT. RES.	3/24/2022-A.NAT. RES.			Low	Other
AB 2406	Lee	Employee parking.		2/24/2022-Referred to Com. on TRANS.	2/24/2022-A.TRANS.		Propose Support	Medium	Other
AB 2418	Garcia, Cristina	California Environmental Quality Act; school sites; acquisition of property.		2/24/2022-Referred to Com. on NAT. RES. and ED.	2/24/2022-A.NAT. RES.		AP District Sponsored	High	Other
AB 2419	Smith	State Air Resources Board; members.		2/24/2022-Referred to Com. on NAT. RES.	2/24/2022-A.NAT. RES.			Low	Other
AB 2437	Friedman	Transportation planning; regional transportation improvement plan; sustainable communities; strategies; climate goals.	3/22/2022	3/29/2022-From committee. Do pass and re-refer to Com. on NAT. RES. (Ayes: 8, Nays: 4) [March 23] Re-referred to Com. on NAT. RES.	3/29/2022-A.NAT. RES.			Low	Other
AB 2449	Borbo, Blanca	Open meetings; local agencies; teleconferences.		3/3/2022-Referred to Com. on L.GOV.	3/3/2022-A.L.GOV.			Low	Other
AB 2620	Vallabres	Income taxes; credits; telecommuting; transfer of funds.		3/17/2022-In committee hearing postponed by committee.	3/10/2022-A.REV. & TAX			Low	Other
AB 2617	Levine	Local government; open meetings.		3/10/2022-Referred to Com. on L.GOV. and IDJ.	3/10/2022-A.L.GOV.			Low	Other
AB 2816	Thig	State Air Resources Board; zero-emission incentive programs requirements.	3/17/2022	3/21/2022-Referred to Com. on TRANS.	3/17/2022-A.TRANS.		Propose Oppose Units: Amended	Medium	Other
SB 500	Bobbio	Climate Pollution Reduction in Homes Initiative grants.	5/20/2021	1/24/2022-Read third time. Passed. (Ayes: 33, Nays: 1) Referred to the Assembly in Assembly. Read first time. Held at D.S.	1/24/2022-A.DESK			Medium	Other
SB 721	Becker	Bay Area California Act; Environmental Product Declarations; concrete.	6/21/2021	7/19/2021-Filed Deadline pursuant to Rule 61(a)(11). (Last location was S.A.R. on 6/24/2021) (May be acted upon Jan. 2022)	7/14/2021-A.2 YEAR			Low	Other
SB 693	Dodd	Community Energy Resilience Act of 2022.	3/21/2022	3/25/2022-Set for hearing April 4.	3/14/2022-S.APPR.			Low	Other
SB 680	Skinner	Budget Act of 2022.		1/11/2022-From printer.	1/10/2022-S.BUDGET			High	Other
SB 1100	Cortese	Open meetings; orderly conduct.	3/21/2022	3/25/2022-Set for hearing April 5.	3/17/2022-S.IDJ.			Low	Other

Bill #	Author	Subject	Last Amended	Last Status - As of 3/30/2022	Location	Notes	Position	Priority (Low/Medium/High)	Category
SB 1118	Borges	California Environmental Quality Act; judicial relief.	3/16/2022	3/25/2022-Set for hearing April 20.	3/23/2022-S.E.Q.			Low	Other
SB 1132	Wickowski	Air quality health planning.		2/23/2022-Referred to Com. on RLS.	2/16/2022-S.RLS.			Low	Other
SB 1314	Limón	Oil and gas: Class II injection wells enhanced oil recovery.	3/16/2022	3/23/2022-Referred to Com. on N.R. & W.	3/23/2022-S.N.R. & W.			Low	Other
SB 1319	Grove	Oil import restrictions: human rights and environmental standards; air pollution reports of tanker ship emissions.	3/16/2022	3/25/2022-Set for hearing April 5.	3/23/2022-S.N.R. & W.			Low	Other
AB 2232	McCarthy	School facilities: heating, ventilation, and air conditioning systems.		3/3/2022-Referred to Com. on ED and Higher ED.	3/3/2022-A. ED.			Medium	Wildfire/P.S.P.S.
AB 2243	Garcia, Eduardo	Occupational safety and health standards: heat illness; wildfire smoke.	3/21/2022	3/22/2022-Referred to Com. on L. & E.	3/3/2022-A. L. & E.			Low	Wildfire/P.S.P.S.
AB 2258	Wood	Property Assessed Clean Energy program; wildfire safety improvements.		3/3/2022-Referred to Com. on L.GOV. and B. & F.	3/3/2022-A. L. GOV.			Low	Wildfire/P.S.P.S.
AB 2387	Garcia, Eduardo	Safe Drinking Water; Wildfire Prevention; Drought Preparation; Flood Protection; Extreme Heat Mitigation; and Workforce Development Bond Act of 2022.	3/31/2022	3/22/2022-Referred to Com. on W.P. & W.	3/3/2022-A. W.P. & W.			Low	Wildfire/P.S.P.S.
AB 2538	Rivers, Robert	State Warning Center; wildfire smoke notification.	3/28/2022	3/29/2022-Referred to Com. on E.M.	3/10/2022-A. EMERGENCY MANAGEMENT			Low	Wildfire/P.S.P.S.
AB 2550	Arambula	State Air Resources Board; ambient air quality standards; nonattainment districts.	3/24/2022	3/28/2022-Referred to Com. on NAT. RES.	3/24/2022-A. NAT. RES.			Medium	Wildfire/P.S.P.S.
AB 2645	Rodriguez	Local emergency plans: integration of access and functional needs community resilience centers.	3/10/2022	3/10/2022-Referred to Com. on E.M.	3/10/2022-A. EMERGENCY MANAGEMENT			Low	Wildfire/P.S.P.S.
SB 1264	Dable	Property Assessed Clean Energy program; wildfire safety improvements.		3/21/2022-Referred to Com. on GOV. & F.	3/21/2022-S. GOV. & F.			Low	Wildfire/P.S.P.S.
SB 1266	Borges	Income taxes: credits; designated wildfire zones.	3/17/2022	3/17/2022-Referred to Com. on GOV. & F.	3/17/2022-S. GOV. & F.			Low	Wildfire/P.S.P.S.
Total Active Bills	142							110 27 5	Low Medium High

LEGISLATIVE COMMITTEE OF APRIL 11, 2022

AMENDED IN ASSEMBLY MARCH 24, 2022

CALIFORNIA LEGISLATURE—2021–22 REGULAR SESSION

ASSEMBLY BILL

No. 2852

Introduced by Assembly Member Bloom

February 18, 2022

An act to amend Section ~~40700~~ 40701.5 of the Health and Safety Code, relating to air pollution.

LEGISLATIVE COUNSEL'S DIGEST

AB 2852, as amended, Bloom. Air pollution control districts and air quality management ~~districts~~: *districts: independent special districts: funding.*

Existing law provides for the establishment of air pollution control districts and air quality management districts. Existing law declares a district a body corporate and politic and a public agency of the ~~state~~: *state, and prescribes the general powers and duties of a district. Existing law authorizes a district to receive funding from specified sources, including, but not limited to, grants, permit fees, and penalties.*

~~This bill would make a nonsubstantive change to that latter provision: designate, retroactive to January 1, 2020, a district as an independent special district for purposes of receiving state funds or funds disbursed by the state, including federal funds.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 40701.5 of the Health and Safety Code
- 2 is amended to read:

1 40701.5. (a) Funding for a district may be provided by, but is
2 not limited to, any one or any combination of the following sources:

- 3 (1) Grants.
- 4 (2) Subventions.
- 5 (3) Permit fees.
- 6 (4) Penalties.
- 7 (5) A surcharge or fee pursuant to Section 41081 or 44223 on
8 motor vehicles registered in the district.

9 (b) Expenses of a district that are not met by the funding sources
10 identified in subdivision (a) shall be provided by an annual per
11 capita assessment on those cities that have agreed to have a member
12 on the district board for purposes of Section 40100.5, 40100.6,
13 40152, 40322.5, 40704.5, or 40980 and on the county or counties
14 included within the district. Any annual per capita assessment
15 imposed by the district on those cities and counties included within
16 the district shall be imposed on an equitable per capita basis.

17 (c) Subdivision (b) does not apply to the San Joaquin Valley
18 Unified Air Pollution Control District or, if that unified district
19 ceases to exist, the San Joaquin Valley Air Quality Management
20 District, if that district is created.

21 (d) (1) Notwithstanding subdivision (b), expenses of the San
22 Diego County Air Pollution Control District that are not met by
23 the funding sources identified in subdivision (a) shall be provided
24 by an annual per capita assessment imposed on an equitable per
25 capita basis on each city and county included in the San Diego
26 County Air Pollution Control District by the governing board of
27 the San Diego County Air Pollution Control District created
28 pursuant to Section 40100.6.

29 (2) At least 30 days before the assessment is imposed, the
30 governing board shall hold a public hearing which shall include
31 data supporting the annual per capita assessment and any schedule
32 that may apply.

33 (e) ~~This section shall become operative on March 1, 2021.~~
34 ~~Notwithstanding any other law, retroactive to January 1, 2020, a~~
35 ~~district shall be deemed an independent special district for~~
36 ~~purposes of receiving state funds or funds disbursed by the state,~~
37 ~~including federal funds. For purposes of this subdivision, "funds"~~
38 ~~includes, but is not limited to, moneys, loans, grants, financial~~
39 ~~incentives, and other economic benefits.~~

1 SECTION 1. ~~Section 40700 of the Health and Safety Code is~~
2 ~~amended to read:~~
3 ~~40700. A district is a body corporate and politic and a district~~
4 ~~is a public agency of the state.~~

LEGISLATIVE COMMITTEE
MEETING OF APRIL 11, 2022

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AMENDED IN ASSEMBLY MARCH 24, 2022

CALIFORNIA LEGISLATURE—2021–22 REGULAR SESSION

ASSEMBLY BILL

No. 2910

**Introduced by Assembly Member ~~Cunningham~~ *Santiago*
(Coauthors: Assembly Members ~~Low and Wicks~~) *Carrillo,
Cristina Garcia, and Muratsuchi***

February 18, 2022

An act to amend ~~Section 57016~~ *Sections 42402, 42402.1, 42402.2,
42402.3, and 42402.4* of the ~~Food and Agricultural~~ *Health and Safety*
Code, relating to ~~agriculture~~. *air pollution*.

LEGISLATIVE COUNSEL'S DIGEST

AB 2910, as amended, ~~Cunningham~~ *Santiago*. ~~Agriculture: produce
markets.~~ *Nonvehicular air pollution: civil penalties.*

Existing law generally designates air pollution control and air quality management districts with the primary responsibility for the control of air pollution from all sources other than vehicular sources. Existing law establishes maximum civil penalties for any person for violations of air pollution laws from nonvehicular sources. A person who violates these laws and who acts negligently, knowingly, willfully and intentionally, or with reckless disregard, is liable for a civil penalty in a greater amount, as specified. Existing law annually adjusts the maximum penalties for violations of these laws based on the California Consumer Price Index.

This bill would increase the maximum amount of those civil penalties, as specified.

~~Existing law authorizes the Director of Industrial Relations to make regulations as he may deem necessary to carry out certain provisions~~

relating to produce markets in certain counties and to produce dealers and registered unloaders.

This bill would make nonsubstantive changes to that provision.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes.

State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 42402 of the Health and Safety Code is
2 amended to read:

3 42402. (a) Except as provided in Sections 42402.1, 42402.2,
4 42402.3, and 42402.4, ~~any~~ a person who violates this part, ~~any~~ an
5 order issued pursuant to Section 42316, or ~~any~~ a rule, regulation,
6 permit, or order of a district, including a district hearing board, or
7 of the state board issued pursuant to Part 1 (commencing with
8 Section 39000) to Part 4 (commencing with Section 41500),
9 inclusive, is strictly liable for a civil penalty of not more than five
10 fifteen thousand dollars (~~\$5,000~~). (\$15,000).

11 (b) (1) A person who violates ~~any~~ a provision of this part, ~~any~~
12 an order issued pursuant to Section 42316, or ~~any~~ a rule, regulation,
13 permit or order of a district, including a district hearing board, or
14 of the state board issued pursuant to Part 1 (commencing with
15 Section 39000) to Part 4 (commencing with Section 41500),
16 inclusive, is strictly liable for a civil penalty of not more than ten
17 thirty thousand dollars (~~\$10,000~~). (\$30,000).

18 (2) (A) If a civil penalty in excess of five fifteen thousand
19 dollars (~~\$5,000~~) (\$15,000) for each day in which a violation occurs
20 is sought, there is no liability under this subdivision if the person
21 accused of the violation alleges by affirmative defense and
22 establishes that the violation was caused by an act that was not the
23 result of intentional conduct or negligent conduct.

24 (B) Subparagraph (A) does not apply to a violation of a federally
25 enforceable requirements requirement that occur occurs at a Title
26 V source in a district in which a Title V permit program has been
27 fully approved.

28 (C) Subparagraph (A) does not apply to a person who is
29 determined to have violated an annual facility emissions cap
30 established pursuant to a market-based incentive program adopted
31 by a district pursuant to subdivision (b) of Section 39616.

1 (c) A person who owns or operates ~~any~~ a source of air
 2 contaminants in violation of Section 41700 that causes actual
 3 injury, as defined in subdivision (d) of Section 42400, to the health
 4 and safety of a considerable number of persons or the public, is
 5 liable for a civil penalty of not more than ~~fifteen~~ *forty-five* thousand
 6 dollars ~~(\$15,000)~~. (*\$45,000*).

7 (d) Each day during ~~any~~ a portion of which a violation occurs
 8 is a separate offense.

9 *SEC. 2. Section 42402.1 of the Health and Safety Code is*
 10 *amended to read:*

11 42402.1. (a) ~~Any~~ A person who negligently emits an air
 12 contaminant in violation of this part or ~~any~~ a rule, regulation,
 13 permit, or order of the state board or of a district, including a
 14 district hearing board, pertaining to emission regulations or
 15 limitations is liable for a civil penalty of not more than ~~twenty-five~~
 16 *forty* thousand dollars ~~(\$25,000)~~. (*\$40,000*).

17 (b) ~~Any~~ A person who negligently emits an air contaminant in
 18 violation of Section 41700 that causes great bodily injury, as
 19 defined ~~by~~ *in subdivision (f) of* Section 12022.7 of the Penal Code,
 20 to ~~any~~ a person or that causes the death of ~~any~~ a person, is liable
 21 for a civil penalty of not more than one hundred *twenty* thousand
 22 dollars ~~(\$100,000)~~. (*\$120,000*).

23 (c) Each day during ~~any~~ a portion of which a violation occurs
 24 is a separate offense.

25 *SEC. 3. Section 42402.2 of the Health and Safety Code is*
 26 *amended to read:*

27 42402.2. (a) ~~Any~~ A person who emits an air contaminant in
 28 violation of ~~any~~ a provision of this part, or ~~any~~ order, rule,
 29 ~~regulation, or permit~~ *a rule, regulation, permit, or order* of the
 30 state board or of a district, including a district hearing board,
 31 pertaining to emission regulations or limitations, and who knew
 32 of the emission and failed to take corrective action, as defined in
 33 subdivision (b) of Section 42400.2, within a reasonable period of
 34 time under the circumstances, is liable for a civil penalty of not
 35 more than ~~forty six~~ *sixty* thousand dollars ~~(\$40,000)~~. (*\$60,000*).

36 (b) ~~Any~~ A person who owns or operates ~~any~~ a source of air
 37 contaminants in violation of Section 41700 that causes great bodily
 38 injury, as defined ~~by~~ *in subdivision (f) of* Section 12022.7 of the
 39 Penal Code, to ~~any~~ a person or that causes the death of ~~any~~ a
 40 person, and who knew of the emission and failed to take corrective

1 action, as defined in subdivision (b) of Section 42400.2, within a
2 reasonable period of time under the circumstances, is liable for a
3 civil penalty not to exceed two hundred ~~thirty~~ *seventy-five* thousand
4 dollars ~~(\$250,000)~~. *(\$275,000)*.

5 (c) Each day during ~~any~~ a portion of which a violation occurs
6 is a separate offense.

7 *SEC. 4. Section 42402.3 of the Health and Safety Code is*
8 *amended to read:*

9 42402.3. (a) ~~Any~~ A person who willfully and intentionally
10 emits an air contaminant in violation of this part or ~~any~~ a rule,
11 regulation, permit, or order of the state board, or of a district,
12 including a district hearing board, pertaining to emission
13 regulations or limitations, is liable for a civil penalty of not more
14 than ~~seventy-five~~ *ninety-five* thousand dollars ~~(\$75,000)~~. *(\$95,000)*.

15 (b) ~~Any~~ A person who willfully and intentionally, or with
16 reckless disregard for the risk of great bodily injury, as defined by
17 *in subdivision (f) of Section 12022.7 of the Penal Code*, to, or death
18 of, ~~any~~ a person, emits an air contaminant in violation of Section
19 41700 that results in an unreasonable risk of great bodily injury
20 to, or death of, ~~any~~ a person, is liable for a civil penalty of not
21 more than one hundred ~~twenty-five~~ *forty* thousand dollars
22 ~~(\$125,000)~~. *(\$140,000)*. If the violator is a corporation, the
23 maximum penalty may be up to five hundred *fifty* thousand dollars
24 ~~(\$500,000)~~. *(\$550,000)*.

25 (c) ~~Any~~ A person who willfully and intentionally, or with
26 reckless disregard for the risk of great bodily injury, as defined by
27 *in subdivision (f) of Section 12022.7 of the Penal Code*, to, or death
28 of, ~~any~~ a person, emits an air contaminant in violation of Section
29 41700 that causes great bodily injury, as defined by *in subdivision*
30 *(f) of Section 12022.7 of the Penal Code*, to ~~any~~ a person or that
31 causes the death of ~~any~~ a person, is liable for a civil penalty of not
32 more than two hundred ~~thirty~~ *seventy-five* thousand dollars
33 ~~(\$250,000)~~. *(\$275,000)*. If the violator is a corporation, the
34 maximum penalty may be up to one million *one hundred thousand*
35 dollars ~~(\$1,000,000)~~. *(\$1,100,000)*.

36 (d) Each day during ~~any~~ a portion of which a violation occurs
37 is a separate offense.

38 *SEC. 5. Section 42402.4 of the Health and Safety Code is*
39 *amended to read:*

1 42402.4. ~~Any~~ A person who knowingly and with intent to
2 deceive, falsifies ~~any~~ a document required to be kept pursuant to
3 ~~any~~ a provision of this part, or ~~any~~ a rule, regulation, permit, or
4 order of the state board or of a district, including a district hearing
5 board, is liable for a civil penalty of not more than ~~thirty-five~~ fifty
6 thousand dollars ~~(\$35,000)~~. (\$50,000).

7 SECTION 1. Section 57016 of the Food and Agricultural Code
8 is amended to read:

9 57016. The director may make regulations as the director may
10 deem necessary to carry out this chapter and to effectuate its
11 purposes.

LEGISLATIVE COMMITTEE
MEETING OF APRIL 11, 2022

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AMENDED IN SENATE MARCH 16, 2022

SENATE BILL

No. 1382

Introduced by Senator Senators Gonzalez and Becker

February 18, 2022

An act to amend ~~Section 6384 of the Revenue and Taxation Code, relating to taxation; Sections 44124.5 and 44125.5 of the Health and Safety Code, and to add Section 6368.2 to the Revenue and Taxation Code, relating to air pollution.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 1382, as amended, Gonzalez. ~~Taxation: sales tax: exemptions. Air pollution: Clean Cars 4 All Program: Sales and Use Tax Law: zero emissions vehicle exemption.~~

(1) Existing law establishes the Clean Cars 4 All Program, which is administered by the State Air Resources Board, to focus on achieving reductions in the emissions of greenhouse gases, improvements in air quality, and benefits to low-income state residents through the replacement of high-polluter motor vehicles with cleaner and more efficient motor vehicles or a mobility option. Existing law requires the implementing regulations to ensure, among other things, that there is improved coordination, integration, and partnerships with other programs that target disadvantaged communities.

Existing law creates the enhanced fleet modernization program to provide compensation for the retirement and replacement of passenger vehicles and light-duty and medium-duty trucks that are high polluters. Existing law requires the state board to annually post on its internet website a performance analysis of the replacement and mobility options component of the programs that includes information regarding how

incentive levels can be modified to maximize participation and emissions reductions.

This bill would require the implementing regulations for the Clean Cars 4 All Program to additionally ensure that the State Air Resources Board coordinates with air resource management districts and local nonprofit and community organizations to identify barriers to accessing the Clean Cars 4 All program and to develop outreach protocols and metrics to assess the success of outreach across the districts. The bill would additionally require, for purposes of the enhanced fleet modernization program, that the performance analysis include an assessment identifying target groups that are underserved by Clean Cars 4 All and assessing barriers to Clean Cars 4 All, and an evaluation of outreach efforts to target groups that are currently underserved by Clean Cars 4 All.

(2) Existing state sales and use tax laws impose a tax on retailers measured by the gross receipts from the sale of tangible personal property sold at retail in this state or on the storage, use, or other consumption in this state of tangible personal property purchased from a retailer for storage, use, or other consumption in this state. The Sales and Use Tax Law provides various exemptions from those taxes.

This bill, on or after January 1, 2023, would provide an exemption from those taxes with respect to the sale in this state of, and the storage, use, or other consumption in this state of, a qualified motor vehicle, as defined, sold to a qualified buyer, as defined. The bill would provide that this exemption does not apply to specified state sales and use taxes from which the proceeds are deposited into the Local Revenue Fund, the Local Revenue Fund 2011, or the Local Public Safety Fund.

The Bradley-Burns Uniform Local Sales and Use Tax Law authorizes counties and cities to impose local sales and use taxes in conformity with the Sales and Use Tax Law, and existing laws authorize districts, as specified, to impose transactions and use taxes in accordance with the Transactions and Use Tax Law, which generally conforms to the Sales and Use Tax Law. Amendments to the Sales and Use Tax Law are automatically incorporated into the local tax laws.

This bill would specify that this exemption does not apply to local sales and use taxes or transactions and use taxes.

Existing law provides that sales and use taxes shall apply to the gross receipts from the sale of any tangible personal property to contractors purchasing that property as the agents of the United States or for their own account and subsequent resale to the United States for use in the

~~performance of contracts with the United States for the construction of improvements on or to real property in California.~~

~~This bill would make nonsubstantive changes to those provisions.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 44124.5 of the Health and Safety Code
2 is amended to read:

3 44124.5. (a) The Clean Cars 4 All Program is hereby
4 established and is to be administered by the state board to focus
5 on achieving reductions in the emissions of greenhouse gases,
6 improvements in air quality, and benefits to low-income state
7 residents through the replacement of high-polluter motor vehicles
8 with cleaner and more efficient motor vehicles or a mobility option.

9 (b) Beginning in the 2018–19 fiscal year, and every fiscal year
10 thereafter, the state board shall set specific, measurable goals for
11 the replacement of passenger vehicles and light- and medium-duty
12 trucks that are high polluters.

13 (c) The state board shall take steps to meet the goals set forth
14 pursuant to subdivision (b). The steps shall include, but need not
15 be limited to, updating the guidelines for Clean Cars 4 All no later
16 than January 1, 2019.

17 (d) The regulation implementing this section shall ensure all of
18 the following:

19 (1) Where applicable, there is improved coordination,
20 integration, and partnerships with other programs that target
21 disadvantaged communities and receive moneys from the
22 Greenhouse Gas Reduction Fund, created pursuant to Section
23 16428.8 of the Government Code.

24 (2) *The state board shall coordinate with air quality*
25 *management districts and local nonprofit and community*
26 *organizations to identify barriers to accessing the Clean Cars 4*
27 *All program and to develop outreach protocols and metrics to*
28 *assess the success of outreach across the air quality management*
29 *districts.*

30 (2)

31 (3) The replacement or a mobility option is consistent with
32 paragraph (6) of subdivision (d) of Section 44125.

1 (3)

2 (4) Provisions enhance the prescreening of applicants to Clean
3 Cars 4 All, if determined by the state board to be appropriate.

4 *SEC. 2. Section 44125.5 of the Health and Safety Code is*
5 *amended to read:*

6 44125.5. Beginning no later than July 1, 2019, and every year
7 thereafter, the state board, for both the program and Clean Cars 4
8 All, shall collect and post on its ~~Internet Web site~~ *internet website*
9 all of the following:

10 (a) The performance of both programs relative to the goals set
11 pursuant to subdivision (b) of Section 44124.5 and subdivision (b)
12 of Section 44125.

13 (b) An accounting that includes, but need not be limited to,
14 moneys allocated to the program and Clean Cars 4 All and the
15 expenditures of the program and Clean Cars 4 All by region.

16 (c) A performance analysis broken down by district of the
17 replacement and mobility options component of the program and
18 Clean Cars 4 All to identify areas to be emphasized when setting
19 future goals or updating the guidelines for the program and Clean
20 Cars 4 All. The analysis shall include all of the following:

21 (1) Whether a district implementing the replacement and
22 mobility options component of the program or Clean Cars 4 All
23 has a backlog or a waiting list for applicants and recommendations
24 from the district or state board on how to eliminate the backlog or
25 waiting list.

26 (2) An evaluation of the funding for targeted outreach in
27 low-income or disadvantaged communities, including whether the
28 funding should be enhanced or modified to reach the goals set
29 pursuant to subdivision (b) of Section 44124.5 and subdivision (b)
30 of Section 44125.

31 (3) How incentive levels can be modified to maximize
32 participation and emissions reductions.

33 (4) *An assessment identifying target groups that are underserved*
34 *by Clean Cars 4 All, and assessing barriers to Clean Cars 4 All,*
35 *including language access barriers, geographic barriers, or*
36 *information barriers.*

37 (5) *An evaluation of outreach efforts to target groups that are*
38 *currently underserved by Clean Cars 4 All.*

39 *SEC. 3. Section 6368.2 is added to the Revenue and Taxation*
40 *Code, to read:*

1 6368.2. (a) On or after January 1, 2023, there are exempted
2 from the taxes imposed by this part, the gross receipts from the
3 sale in this state of, and the storage, use, or other consumption in
4 this state of, a qualified motor vehicle sold to a qualified buyer.

5 (b) For purposes of this section, all of the following definitions
6 apply:

7 (1) "Qualified motor vehicle" means a plug-in hybrid or
8 zero-emission vehicle designated as an eligible vehicle under the
9 Clean Cars 4 All Program established by Section 44124.5 of the
10 Health and Safety Code.

11 (2) "Qualified buyer" means an individual with an award letter
12 or other approval documentation issued by any entity implementing
13 the Clean Cars 4 All Program to the individual indicating that
14 their application was approved for a grant under the Clean Cars
15 4 All Program.

16 (c) (1) Notwithstanding any provision of the Bradley-Burns
17 Uniform Local Sales and Use Tax Law (Part 1.5 (commencing
18 with Section 7200)) or the Transactions and Use Tax Law (Part
19 1.6 (commencing with Section 7251)), the exemption established
20 by this section does not apply with respect to any tax levied by a
21 county, city, or district pursuant to, or in accordance with, either
22 of those laws.

23 (2) Notwithstanding subdivision (a), the exemption established
24 by this section shall not apply with respect to any tax levied
25 pursuant to Section 6051.2 or 6201.2, pursuant to Section 35 of
26 Article XIII of the California Constitution, or any tax levied
27 pursuant to Section 6051 or 6201 that is deposited in the State
28 Treasury to the credit of the Local Revenue Fund 2011 pursuant
29 to Section 6051.15 or 6201.15.

30 SEC. 4. It is the intent of the Legislature to comply with Section
31 41 of the Revenue and Taxation Code for purposes of the exemption
32 under Section 6368.2 of the Revenue and Taxation Code, as added
33 by this act.

34 SECTION 1. Section 6384 of the Revenue and Taxation Code
35 is amended to read:

36 6384. Notwithstanding any other law, the tax imposed under
37 this part shall apply to the gross receipts from the sale of any
38 tangible personal property to contractors purchasing that property
39 either as the agents of the United States or for their own account
40 and subsequent resale to the United States for use in the

- 1 performance of contracts with the United States for the construction
- 2 of improvements on or to real property in this state.

LEGISLATIVE COMMITTEE
MEETING OF APRIL 11, 2022

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Introduced by Senator Borgeas

February 17, 2022

An act to add Section 41756 to the Health and Safety Code, relating to air pollution.

LEGISLATIVE COUNSEL'S DIGEST

SB 1235, as introduced, Borgeas. Air pollution: portable equipment: emergency events.

Existing law authorizes local air pollution control and air quality management districts (air districts) to establish a permit system requiring that any person who builds, erects, alters, replaces, operates, or uses any article, machine, equipment, or other contrivance that may cause the issuance of air contaminants obtain a permit to ensure compliance with applicable air quality standards. Existing law requires the State Air Resources Board to establish, by regulation, an optional registration program for portable equipment that is, or may be, used in more than a single air district. Pursuant to this directive, the state board established the Portable Equipment Registration Program, which allows portable engines and equipment units to operate throughout the state without authorization or permits from air districts. The state board's regulations allow for the temporary operation of otherwise unregistered or unpermitted portable engines during an emergency event if certain conditions are met. The state board's regulations define "emergency event" as any situation arising from a sudden and reasonably unforeseen natural disaster such as earthquake, flood, fire, or other unforeseen events beyond the control of the portable engine or equipment unit operator, its officers, employees, and contractors that threatens public health and safety and that requires the immediate temporary operation

of portable engines or equipment units to help alleviate the threat to public health and safety.

This bill would codify the state board’s regulation authorizing portable equipment to be operated during an emergency event, as defined above, and would also authorize portable equipment to be operated during a public safety power shut-off event. The bill would define “public safety power shut-off event,” in part, as a planned power outage undertaken by an electrical corporation to reduce the risk of wildfires caused by utility equipment.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 41756 is added to the Health and Safety
2 Code, to read:

3 41756. (a) Notwithstanding any other law, portable equipment
4 may be operated during an emergency event if the portable
5 equipment, and the owner or operator of the portable equipment,
6 complies with the requirements of subdivision (c) of Section 2455
7 of Title 13 of the California Code of Regulations.

8 (b) For purposes of this section, “emergency event” includes
9 both of the following:

10 (1) An “emergency event,” as defined in subdivision (j) of
11 Section 2452 of Title 13 of the California Code of Regulations.

12 (2) A public safety power shut-off event. For the purpose of
13 this subdivision, “public safety power shut-off event” has the same
14 meaning as “deenergization event” set forth in Section 351 of the
15 Water Code.

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AMENDED IN ASSEMBLY MARCH 17, 2022

CALIFORNIA LEGISLATURE—2021–22 REGULAR SESSION

ASSEMBLY BILL

No. 2816

Introduced by Assembly Member Ting

February 18, 2022

An act to amend Section 3183 of the Public Resources Code, relating to oil and gas: 44124.5 of, and to add Chapter 4.5 (commencing with Section 43880) to Part 5 of Division 26 of, the Health and Safety Code, relating to air pollution.

LEGISLATIVE COUNSEL'S DIGEST

AB 2816, as amended, Ting. ~~Gas storage wells: reportable leaks: regulations.—State Air Resources Board: zero-emission incentive programs: requirements.~~

Existing law generally designates the State Air Resources Board as the state agency with the primary responsibility for the control of vehicular air pollution. Existing law establishes various incentive programs that are administered or funded by the State Air Resources Board to provide financial assistance for the purchase of zero-emission vehicles by individuals, including, among others, the Clean Cars 4 All Program.

This bill would require the state board, with respect to zero-emission vehicle (ZEV) incentive programs administered or funded by the state board, to ensure that beginning January 1, 2024, incentives awarded under those programs are awarded based on the average annual gallons of gasoline or diesel that the applicant's vehicle consumed. The bill would require the state board to develop a tool to determine the annual average gallons of gasoline or diesel consumed by a particular vehicle and would require the state board to make the tool publicly available

on its internet website for use by potential applicants of a ZEV incentive program. To maximize equity benefits, the bill would require the state board to ensure that additional per gallon incentive payments are provided to an applicant of a ZEV incentive program if the applicant meets specified income or place of residence criteria. The bill would require the state board to submit a report to the Legislature on or before January 1, 2024, and every 2 years thereafter, regarding the ZEV incentive programs.

Existing law establishes the Geologic Energy Management Division in the Department of Conservation, under the direction of the State Oil and Gas Supervisor, who is required to supervise the drilling, operation, maintenance, and abandonment of oil and gas wells, as provided. Existing law requires the division, in consultation with the State Air Resources Board, to determine and adopt by regulation what constitutes a reportable leak from a gas storage well, as defined, and the timeframe for reporting that leak. Existing law requires the division, in consultation with the State Air Resources Board, to review and, if necessary, revise the regulations developed pursuant to that requirement no less than once every 10 years.

This bill would instead require the division to review and revise those regulations no less than once every 5 years.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature finds and declares the following:
2 (a) The transportation sector is the biggest source of carbon
3 emissions in California, with 39 percent of total emissions coming
4 from transportation and 28 percent of total emissions coming from
5 light-duty vehicles.
6 (b) The harms of vehicle emissions impact communities of color
7 and low-income communities disproportionately.
8 (c) Zero-emission vehicles (ZEV) have the potential to replace
9 vehicles powered by gasoline or diesel and thereby reduce vehicle
10 emissions at speed and scale.
11 (d) ZEVs only curb vehicle emissions to the extent they displace
12 gasoline or diesel that would have been burned in a vehicle
13 powered by one of those fuels.

1 (e) Calculations of vehicle emissions reductions resulting from
 2 ZEV incentives are based on assumptions and modeling that fail
 3 to take into account the fact that the actual gasoline or diesel
 4 displacement impact of ZEVs varies widely based on how much
 5 gasoline or diesel was being consumed by the vehicle being
 6 switched for a ZEV.

7 (f) ZEV incentives to date have been used disproportionately
 8 by high-income drivers who use gasoline or diesel at rates below
 9 the mean.

10 (g) Low- and middle-income households and families in
 11 under-resourced communities in the top tier of gasoline or diesel
 12 consumption in California are likely to have the longest commutes
 13 in the least efficient internal combustion engine vehicles, which
 14 forces them to spend a large percentage of their household income
 15 on fuel.

16 (h) The demand for ZEVs and ZEV incentives exceeds supply,
 17 and therefore it is critical to ensure that every ZEV maximizes
 18 gasoline and diesel displacement.

19 (i) Allocating ZEV incentives to maximize gasoline and diesel
 20 displacement would benefit drivers in under-resourced communities
 21 and rural communities.

22 (j) Tying the amount of ZEV incentives to the amount of past
 23 gasoline or diesel consumption, meaning the average annual
 24 gallons of gasoline or diesel used, and residence in
 25 under-resourced communities is a relatively simple way to
 26 maximize the gasoline or diesel reduction and equity impacts of
 27 ZEV incentives.

28 SEC. 2. Chapter 4.5 (commencing with Section 43880) is added
 29 to Part 5 of Division 26 of the Health and Safety Code, to read:

30

31 *CHAPTER 4.5. ZERO-EMISSION VEHICLE INCENTIVE PROGRAM*
 32 *REQUIREMENTS*

33

34 43880. For purposes of this chapter, the following definitions
 35 apply:

36 (a) "Under-resourced community" has the same meaning as
 37 defined in Section 71130 of the Public Resources Code.

38 (b) "Zero-emission vehicle incentive program" or "ZEV
 39 incentive program" means a program to provide incentives to an
 40 individual for the purchase of a light-duty zero-emission vehicle.

1 43881. *This chapter applies to zero-emission vehicle incentive*
2 *programs that receive funding from, or are administered by, the*
3 *state board, as applicable, including, but not limited to, all of the*
4 *following:*

5 (a) *The Clean Cars 4 All Program established pursuant Section*
6 *44124.5.*

7 (b) *The Clean Vehicle Rebate Project established as a part of*
8 *the Air Quality Improvement Program (Article 3 (commencing*
9 *with Section 44274) of Chapter 8.9).*

10 (c) *The Clean Vehicle Assistance Program established as a part*
11 *of the Air Quality Improvement Program (Article 3 (commencing*
12 *with Section 44274) of Chapter 8.9).*

13 43882. (a) *On or before January 1, 2024, the state board shall*
14 *develop a tool to calculate the average annual gallons of gasoline*
15 *or diesel that a particular vehicle has used. The tool shall calculate*
16 *the average annual gallons of gasoline or diesel that a particular*
17 *vehicle has used by using both of the following:*

18 (1) *Publicly available data on the miles per gallon that a*
19 *particular make and model of a vehicle uses.*

20 (2) *The odometer reading at the time the applicant purchased*
21 *the vehicle or the time the vehicle was transferred to the applicant*
22 *and the current odometer reading.*

23 (b) *The state board shall make the tool developed pursuant to*
24 *subdivision (a) publicly available on its internet website to enable*
25 *potential applicants of a ZEV incentive program to determine the*
26 *incentive amount they will receive under the particular program.*

27 43883. (a) (1) *The state board shall ensure that beginning*
28 *January 1, 2024, incentives awarded under a ZEV incentive*
29 *program subject to this chapter are awarded based on the average*
30 *annual gallons of gasoline or diesel that the applicant's vehicle*
31 *consumed, as determined using the tool developed pursuant to*
32 *Section 43882. The state board shall set the amount of the incentive*
33 *at a level that maximizes the displacement of gasoline or diesel*
34 *and the reduction of emissions criteria pollutants per dollar spent.*

35 (2) *To maximize the equity benefits of an incentive provided*
36 *under a ZEV incentive program subject to this chapter, the state*
37 *board shall ensure that additional per gallon incentive payments*
38 *are provided to an applicant of a ZEV incentive program if the*
39 *applicant meets either of the following criteria:*

40 (A) *The applicant is low or moderate income.*

- 1 (B) *The applicant resides in an under-resourced community.*
2 (b) *The state board may require that the applicant sell or*
3 *otherwise surrender the internal combustion engine vehicle on*
4 *which the incentive payment is based.*
5 (c) (1) *Notwithstanding any other law, the maximum amount*
6 *of an incentive provided under a ZEV incentive program subject*
7 *to this chapter shall be established by the state board pursuant to*
8 *this chapter.*
9 (2) *An incentive provided under a ZEV incentive program shall*
10 *not exceed _____ dollars per gallon of gasoline or diesel consumed.*
11 (d) *On or before January 1, 2024, the state board shall develop*
12 *and implement a strategy for doing both of the following:*
13 (1) *Identifying the drivers who use the most gasoline or diesel*
14 *who reside in under-resourced communities and who are lower*
15 *to middle income.*
16 (2) *Expediting the replacement of gasoline- or diesel-powered*
17 *vehicles of drivers identified pursuant to paragraph (1) with ZEVs.*
18 (e) *The state board shall report to the Legislature no later than*
19 *January 1, 2024, and biennially thereafter, all of the following*
20 *information:*
21 (1) *The actual gasoline or diesel and criteria emissions reduced*
22 *per dollar spent on ZEV incentives under programs subject to this*
23 *chapter.*
24 (2) *The impacts of ZEV incentive spending in terms of*
25 *quantifiable emissions reductions and transportation savings within*
26 *under-resourced communities and among low- to middle-income*
27 *individuals.*
28 (3) *The changes in annual gasoline and diesel use at local levels*
29 *by census tract or ZIP Code.*
30 (f) *A report to be submitted to the Legislature pursuant to*
31 *subdivision (e) shall be submitted in compliance with Section 9795*
32 *of the Government Code.*
33 SEC. 3. *Section 44124.5 of the Health and Safety Code is*
34 *amended to read:*
35 44124.5. (a) *The Clean Cars 4 All Program is hereby*
36 *established and is to be administered by the state board to focus*
37 *on achieving reductions in the emissions of greenhouse gases,*
38 *improvements in air quality, and benefits to low-income state*
39 *residents through the replacement of high-polluter motor vehicles*
40 *with cleaner and more efficient motor vehicles or a mobility option.*

1 (b) Beginning in the 2018–19 fiscal year, and every fiscal year
2 thereafter, the state board shall set specific, measurable goals for
3 the replacement of passenger vehicles and light- and medium-duty
4 trucks that are high polluters.

5 (c) The state board shall take steps to meet the goals set forth
6 pursuant to subdivision (b). The steps shall include, but need not
7 be limited to, updating the guidelines for Clean Cars 4 All no later
8 than January 1, 2019.

9 (d) The regulation implementing this section shall ensure all of
10 the following:

11 (1) Where applicable, there is improved coordination,
12 integration, and partnerships with other programs that target
13 disadvantaged communities and receive moneys from the
14 Greenhouse Gas Reduction Fund, created pursuant to Section
15 16428.8 of the Government Code.

16 (2) The replacement or a mobility option is consistent with
17 paragraph (6) of subdivision (d) of Section 44125.

18 (3) Provisions enhance the prescreening of applicants to Clean
19 Cars 4 All, if determined by the state board to be appropriate.

20 (e) *The state board shall ensure that incentives awarded under*
21 *the Clean Cars 4 All Program are awarded consistent with Chapter*
22 *4.5 (commencing with Section 43880).*

23 ~~SECTION 1. Section 3183 of the Public Resources Code is~~
24 ~~amended to read:~~

25 ~~3183. (a) The division, in consultation with the State Air~~
26 ~~Resources Board, shall determine and adopt by regulation what~~
27 ~~constitutes a reportable leak from a gas storage well and the~~
28 ~~timeframe for reporting that leak. The regulations shall require an~~
29 ~~operator to immediately report to the division a leak that poses a~~
30 ~~significant present or potential hazard to public health and safety,~~
31 ~~property, or to the environment.~~

32 ~~(b) Until the regulations pursuant to subdivision (a) are in effect,~~
33 ~~a leak of any size from a gas storage well shall be deemed a~~
34 ~~reportable leak, and the operator shall notify the division~~
35 ~~immediately.~~

36 ~~(c) If a leak from a gas storage well that is reported to the~~
37 ~~division pursuant to subdivision (a) or (b), as applicable, cannot~~
38 ~~be controlled within 48 hours, the division shall post information~~
39 ~~about the leak on its internet website and provide regular updates~~
40 ~~to the public until the leak is stopped.~~

- 1 ~~(d) The division, in consultation with the State Air Resources~~
- 2 ~~Board, shall review and, if necessary, revise the regulations~~
- 3 ~~developed pursuant to subdivision (a) no less than once every five~~
- 4 ~~years.~~

LEGISLATIVE COMMITTEE
MEETING OF APRIL 11, 2022

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BAY AREA AIR QUALITY MANAGEMENT DISTRICT

Memorandum

To: Chairperson Karen Mitchoff and Members
of the Board of Directors

From: Alexander Crockett
Interim Acting Executive Officer/APCO

Date: April 20, 2022

Re: Report of the Advisory Council Meeting of April 11, 2022

RECOMMENDED ACTION

None; receive and file.

BACKGROUND

None.

DISCUSSION

The Advisory Council met on Monday, April 11, 2022, and approved the minutes of February 14, 2022. This meeting was conducted under procedures authorized by Assembly Bill 361. Members of the Council participated by teleconference.

The Council then received and discussed the staff presentation *Building Appliance Rules: Exposure and Equity Assessment*, focusing on a model-based evaluation of the impacts of natural gas combustion from residential and commercial space and water heating appliances. This presentation supplements the development of Rules 9-4 (Nitrogen Oxides from Fan Type Residential Central Furnaces) and 9-6 (Nitrogen Oxides Emissions from Natural Gas-Fired Boilers and Water Heaters).

The Council then received and discussed the staff presentation *Fine Particulate Matter Local Risk Methodology: Key Questions*, focusing on trade-offs between simplicity versus complexity.

The Council then received and discussed the staff presentation *Combustion Analysis Proposal*. The Air District proposes to conduct an analysis of all combustion sources, which would explore health, equity, and possibly climate impacts of combustion, and track particulate matter concentrations back to individual source categories of Particulate Matter.

Finally, the Council received and discussed the staff presentation *Particulate Matter Strategy Progress Report*.

The next meeting of the Council will be held at the Call of the Co-Chairs. This concludes the Chair Report of the Advisory Council meeting.

BUDGET CONSIDERATION/FINANCIAL IMPACT

None.

Respectfully submitted,

Alexander Crockett
Interim Acting Executive Officer/APCO

Prepared by: Marcy Hiratzka
Reviewed by: Vanessa Johnson

ATTACHMENTS:

1. Advisory Council April 11, 2022 Meeting Memorandums

BAY AREA AIR QUALITY MANAGEMENT DISTRICT

Memorandum

To: Chairpersons Linda Rudolph and Gina Solomon, and Members
of the Advisory Council

From: Alexander Crockett
Interim Acting Executive Officer/APCO

Date: April 11, 2022

Re: Building Appliance Rules: Exposure and Equity Assessment

RECOMMENDED ACTION

None; receive and file.

BACKGROUND

Air District staff recently crafted draft amendments to Regulation 9, Rule 4: Nitrogen Oxides from Fan Type Residential Central Furnaces (“Rule 9-4”) and Regulation 9, Rule 6: Nitrogen Oxides Emissions from Natural Gas-Fired Boilers and Water Heaters (“Rule 9-6”). As supplemental information to support the development of Rules 9-4 and 9-6, Air District staff have conducted a model-based evaluation of the impacts of natural gas combustion from residential and commercial space and water heating appliances.

This part of the overall assessment quantifies the magnitude and the relative distribution of exposure reductions that could be realized from the elimination of nitrogen oxide (NO_x) and fine particulate matter (PM_{2.5}) emissions from those sources. Focusing on PM_{2.5} impacts attributable to those emissions, this agenda item evaluates the distribution of impacts across four major racial/ethnic groups: white, Asian/Pacific Islander, African-American/Black, and Hispanic/Latino.

DISCUSSION

Air District staff applied its regional air quality modeling system to estimate air pollution levels in a baseline emissions scenario and a control emissions scenario, with reductions in the control scenario matching emission estimates from natural gas-fired building appliances covered under Rules 9-4 and 9-6. Annual average exposures were computed using weighted averages of 1-km gridded PM_{2.5} concentrations, with a modeled 2020 residential population serving as the weights. Under baseline conditions, the annual average PM_{2.5} exposure per capita was found to be 8.7 micrograms per cubic meter (μg/m³). Approximately 0.14 μg/m³, or 2% of that 8.7 μg/m³

baseline, was found to be attributable to PM_{2.5} and NO_x emissions from the combustion of natural gas by residential and commercial space and water heating appliances.

Under the modeled control scenario, the largest reductions would accrue to the Bay Area's communities of color, and specifically to the Asian/Pacific Islander population. This is true in both absolute and relative terms, and for all modeled pollutants (NO_x, primary PM_{2.5}, secondary PM_{2.5}, and total PM_{2.5}). For total PM_{2.5}, the reduction for Asian/Pacific Islander residents would be 9% more than average; for Hispanic/Latino residents, 2% more; for African-American/Black residents, 3% less; and for white residents, 7% less. This reflects the distribution of current impacts from modeled appliances at the regional level. At the county level, a different pattern was observed. African-American/Black and Hispanic/Latino residents were consistently identified as the most impacted within every county but one.

For this item, staff will explain the above findings and address Advisory Council questions. Staff will seek Advisory Council guidance on ideas for refining equity assessments, for enhancing presentation materials, and for identifying productive next steps. Upcoming Air District studies of exposures and equity are likely to borrow from, or extend, the methods applied in this analysis. As such, the Council's guidance and feedback may find broader application in that future work.

BUDGET CONSIDERATION/FINANCIAL IMPACT

None.

Respectfully submitted,

Alexander Crockett
Interim Acting Executive Officer/APCO

Prepared by: David Holsitus and Phil Martien
Reviewed by: Greg Nudd

ATTACHMENTS:

1. None

BAY AREA AIR QUALITY MANAGEMENT DISTRICT

Memorandum

To: Chairpersons Linda Rudolph and Gina Solomon, and Members of the Advisory Council

From: Alexander Crockett
Interim Acting Executive Officer/APCO

Date: April 11, 2022

Re: Fine Particulate Matter Local Risk Methodology: Key Questions

RECOMMENDED ACTION

None; receive and file.

BACKGROUND

One challenge of implementing the Advisory Council's 2020 *Particulate Matter Reduction Strategy Report* is that current law regulates fine particulate matter (PM_{2.5}) as a regional pollutant. While a regional regulatory framework has been successful in reducing PM_{2.5} exposures for the Bay Area population overall, an expanded toolset is warranted to accelerate exposure reductions for the most impacted communities and populations.

A specific and relevant recommendation in the *PM Reduction Strategy Report* calls for the treatment of PM_{2.5} as a toxic air contaminant. In response, Air District staff have assembled a draft methodology for use in managing health risks posed by specific sources of PM_{2.5} at a local level. In the development of this methodology, staff are working with the Office of Environmental Health Hazard Assessment, the California Air Resources Board, and the US Environmental Protection Agency.

At the Advisory Council Meeting on February 14, 2022, Agenda Item 5 ("Regulatory Toolbox and PM Health Impacts Methodology") discussed the draft methodology and considerations related to its implementation. A draft document detailing a framework for estimating the impacts from long-term exposure to undifferentiated local PM_{2.5} on adult mortality was included as part of that meeting's agenda packet. This agenda item continues that earlier discussion, provides a review and update on Air District staff's work related to this effort, and poses additional questions to the Advisory Council.

DISCUSSION

To guide the development of the methodology, it is important to understand the regulatory context and the envisioned applications. This agenda item will situate the proposed methodology within the broader regulatory framework, illustrating the gap it is intended to fill. This agenda item will also discuss relevant contexts, as well as examples of source types likely to be covered. Likely applications of this approach are permitting for new and/or modified sources, new or amended rules for existing sources, and project environmental review under the California Environmental Quality Act (CEQA). Source types for which the methodology may apply include aggregate processing facilities; concrete batch plants; short-term projects, such as construction sites; and combustion sources, such as power co-generation facilities.

Key questions about the development of a PM_{2.5} local risk methodology for the Advisory Council's consideration center on trade-offs between simplicity versus complexity. Simplicity promotes quicker and broader adoption, ease of implementation, and greater transparency. However, some benefits may also be realized from a more complex methodology. Air District staff will provide a detailed presentation and request the Advisory Council's input and feedback.

BUDGET CONSIDERATION/FINANCIAL IMPACT

None.

Respectfully submitted,

Alexander Crockett
Interim Acting Executive Officer/APCO

Prepared by: Phil Martien and David Holstius

Reviewed by: Greg Nudd

ATTACHMENTS:

1. None

BAY AREA AIR QUALITY MANAGEMENT DISTRICT

Memorandum

To: Chairpersons Linda Rudolph and Gina Solomon, and Members
of the Advisory Council

From: Alexander Crockett
Interim Acting Executive Officer/APCO

Date: April 11, 2022

Re: Combustion Analysis Report Proposal

RECOMMENDED ACTION

None; receive and file.

BACKGROUND

The Air District first initiated the idea of a combustion strategy in the 2017 Clean Air Plan. A “basin-wide” combustion strategy was proposed to reduce energy use in industry, develop measures to promote energy efficiency in new and existing buildings, and to develop measures to reduce transportation emissions by decreasing motor vehicle travel and improving the fuel efficiency of the vehicle fleet. This strategy recognized that particulate matter is a major driver of health risks from Bay Area air pollution. The Air District and its Advisory Council further explored issues of PM and combustion when it convened the Particulate Matter Symposium Series in 2019. The goal of the series was to understand how to best improve air quality conditions for communities that are most at risk from PM emissions and exposure.

A key outcome from the symposium series was the Advisory Council’s Particulate Matter Reduction Strategy Report, completed in December 2020. The report contains 28 recommended actions, many of which deal directly with combustion sources of PM.

Air District propose to further explore the role of combustion sources in PM emissions and exposures. We propose a detailed analysis of all combustion sources to ascertain which contribute most to health and other impacts from PM.

DISCUSSION

The Air District proposes to conduct an analysis of all combustion sources. The report would explore health, equity, and possibly climate impacts of combustion. The analysis would also track particulate matter concentrations back to individual source categories of PM.

The methodology Air District staff proposes involves the use of two different, yet compatible, models. First, the Intervention Model for Air Pollution (InMAP) would be applied as a screening step. InMAP is a reduced-complexity air quality model, well suited for both regional- and community-scale PM_{2.5} source apportionment, with the capacity to investigate equity issues and with faster turnaround, compared to traditional chemistry transport models. The InMAP model is new, therefore Air District staff is partnering with academic experts to implement it. The advantage of InMAP over our traditional modeling platforms is the relative ease with which sources can be apportioned. This means we can better determine the percentage contribution to PM exposure for many source categories (e.g., various types of permitted stationary sources, classes of on-road vehicles, and categories of off-road equipment).

Second, staff would apply the Air District's traditional, regulatory-grade, full chemistry model and US EPA's Benefits Mapping and Analysis Program (BenMAP) to evaluate concentrations and health impacts from selected source categories. For example, work is underway now to assess the impacts of wood smoke and residential natural gas combustion. Woodsmoke is known to be the largest contributor to wintertime particulate matter. Natural gas combustion comprises over 25 percent of the stationary source nitrogen oxide emissions and for which there are zero-emissions alternatives. Other source categories of emissions would be evaluated based on the prioritizations suggested by the InMAP results, the Air District's rule-making schedule, and community concerns.

Next Steps

If there is support for moving forward with the proposal to complete a combustion analysis and report, in the coming year, the Air District will begin working on the analysis and draft the report. The analysis and associated report will inform our PM reduction efforts. Specifically, the analysis will inform source evaluation and prioritization.

- **Source Evaluation** - Evaluate PM sources identified in inventory and as key community by community advocates to determine which sources within our regulatory authority are most important to control to protect public health and reduce inequity.
- **Source Prioritization** - Identify sources for policy intervention based on community-informed source evaluation results and impact analysis. Determine if further statutory authority is needed.

BUDGET CONSIDERATION/FINANCIAL IMPACT

None.

Respectfully submitted,

Alexander Crockett
Interim Acting Executive Officer/APCO

Prepared by: Christy Riviere
Reviewed by: Phil Martien and Greg Nudd

ATTACHMENTS:

1. None

ADVISORY COUNCIL
MEETING OF APRIL 11, 2022

BAY AREA AIR QUALITY MANAGEMENT DISTRICT

Memorandum

To: Chairpersons Linda Rudolph and Gina Solomon, and Members of the Advisory Council

From: Alexander Crockett
Interim Acting Executive Officer/APCO

Date: April 11, 2022

Re: Implementation of Advisory Council Particulate Matter Recommendations

RECOMMENDED ACTION

None; receive and file.

BACKGROUND

In 2019, recognizing that particulate matter is a major driver of health risks from Bay Area air pollution, the Bay Area Air Quality Management District and its Advisory Council convened the Particulate Matter Symposium Series. The goal of the series was to understand how to best improve air quality conditions for communities that are most at risk from PM emissions and exposure.

A key outcome from the symposium series was the Advisory Council's *Particulate Matter Reduction Strategy Report*, completed in December 2020. The report contains 28 recommended actions. Recommendations are based on input from scientific experts from around the country, including state and Air District air quality experts, community and environmental activists, and industry representatives. The council's recommendations are grouped into four broad categories: health protective targets, impacted communities, wildfires and regional PM.

Air District staff has prepared a *Particulate Matter Strategy Progress Report* to showcase progress on implementing the Advisory Council's recommendations. The progress report presents the Air District's approach to responding to the Advisory Council recommendations, highlights recently completed work and current efforts related to PM. We also describe specific Air District efforts that respond to the Advisory Council recommendations and next steps.

DISCUSSION

Given limited resources, the Air District is approaching its response to the Advisory Council's recommended actions largely through the lens of its regulatory framework. Though incentives, planning and advocacy are certainly part of our approach, the emphasis is on stationary sources: enforcement, permitting, and rules.

Regulatory efforts are prioritized against the following criteria:

- **Community Priorities** – Sources identified in community actions plans, such as in West Oakland’s *Owning Our Air* community emission reduction plan, and through direct community input.
- **Health impacts** – Sources that have the greatest health impacts, i.e., evaluate health impacts from major PM source categories, such as refineries, woodsmoke and residential natural gas use.
- **Drivers of PM** – Sources that are the major drivers of PM emissions and exposure.

Highlights

Below are recent accomplishments to advance the Advisory Council’s recommendations:

- **PM from Refineries** - Reduced PM emissions from largest PM sources at refineries by the maximum extent feasible. Given estimated operating costs of \$80 million per year, the costs to refineries will be extensive. Advisory Council’s report was essential to making the case for moving forward with this controversial rule.
- **Source Priority Criteria** - Developed prioritization framework for policy interventions to reduce emissions and exposure from stationary sources. PM emissions and sources in overburdened communities are key criteria, largely due to the Advisory Council’s *Particulate Matter Reduction Strategy Report*.
- **PM Modeling** - Updated regulatory-grade, regional, PM modeling platform. Improved ammonia emissions data will allow for better secondary PM calculations, as well as improved wood smoke and restaurant emissions data.
- **Community Action Plans** - Implementing the West Oakland community action plan, *Owning Our Air*. Developing the Richmond-North Richmond-San Pablo action plan, which will include PM strategies. East Oakland recently designated by the California Air Resources Board to develop a community action plan. All plans include community health assessments and source apportionments to inform strategies.

The Air District is currently undertaking a wide range of actions to further advance the Advisory Council’s recommendations, some of which are highlighted below:

- **Residential Sources** - Quantifying health and equity impacts of major residential sources, such as furnaces, water heaters and woodsmoke. Working on a rule to reduce emissions from residential furnaces and water heaters. Natural gas combustion from these sources contribute up to 26 percent of nitrogen oxide emissions from all stationary sources. Nitrogen oxide is a precursor to PM_{2.5}.
- **PM Health Impacts** – Working on a methodology to quantify PM health impacts from new and/or modified facilities.
- **PM Monitoring** - Developing insights from PM measurement data, including data from low-cost sensors and regulatory monitoring.
- **Community Data** - Developing detailed source apportionment for PM and toxics in Richmond-North Richmond-San Pablo to better understand which facilities in the

community contribute most to PM and health impacts.

- **Mobile Source Incentives** - Distributing mobile source incentives to reduce emissions from cars, trucks, and off-road sources. In 2021, distributed over \$76 million for a reduction of over 68 tons per year of PM₁₀ and nearly 217 tons per year of nitrogen oxide, a particulate matter precursor.

Next Steps

In the coming year, the Air District will continue working on the many efforts identified in this progress report. To ensure resources are appropriately prioritized and that there is a clear structure for tracking and reporting progress, we will organize our work into objectives and key results. In other words, we will be selecting a limited number of high-level goals and key milestones and deliverables to achieve these goals. We will report out our progress on these goals to the Air District Board on a regular basis.

- **Source Evaluation** - Evaluate PM sources identified in inventory and as key community by community advocates to determine which sources within our regulatory authority are most important to control to protect public health and reduce inequity.
- **Changes to Permitting Rules** - Consider further changes to permitting rules to address local PM impacts.
- **Source Prioritization** - Identify sources for policy intervention based on community-informed source evaluation results and health impact analysis.

BUDGET CONSIDERATION/FINANCIAL IMPACT

None.

Respectfully submitted,

Alexander Crockett
Interim Acting Executive Officer/APCO

Prepared by: Christy Riviere
Reviewed by: Greg Nudd

ATTACHMENTS:

1. 2022 Particulate Matter Strategy Progress Report

2022

PARTICULATE MATTER STRATEGY PROGRESS REPORT



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INTRODUCTION

In 2019, recognizing that particulate matter is a major driver of health risks from Bay Area air pollution, the Bay Area Air Quality Management District and its Advisory Council convened the Particulate Matter Symposium Series. The goal of the series was to understand how to best improve air quality conditions for communities that are most at risk from PM emissions and exposure.

A key outcome from the symposium series was the Advisory Council's *Particulate Matter Reduction Strategy Report*, completed in December 2020. The report contains 28 recommended actions. Recommendations are based on input from scientific experts from around the country, including state and Air District air quality experts, community and environmental activists, and industry representatives.

This **2022 Particulate Matter Strategy Progress Report** presents progress on implementing the Advisory Council's recommendations. We present the Air District's approach to responding to the Advisory Council recommendations, highlight recently completed work and current efforts related to PM. We also describe specific Air District efforts that respond to the Advisory Council recommendations and next steps.



APPROACH

Given limited resources, the Air District is approaching its response to the Advisory Council's recommended actions largely through the lens of its regulatory framework. Though incentives, planning and advocacy are certainly part of our approach, the emphasis is on stationary sources: enforcement, permitting, and rules. Regulatory efforts are prioritized against the following criteria:



Community Priorities – Sources identified in community actions plans, such as in West Oakland's *Owning Our Air* community emission reduction plan, and through direct community input.



Health impacts – Sources that have the greatest health impacts, i.e., evaluate health impacts from major PM source categories, such as refineries, woodsmoke and residential natural gas use.



Drivers of PM – Sources that are the major drivers of PM emissions and exposure.

Challenges

- Limited staffing and other resources.
- Existing law treats PM as regional pollutant.
- Fugitive dust emissions and exposures are not well quantified.
- Short duration and localized exposure not completely addressed in research and air quality standards.

SUCCESS HIGHLIGHTS

PM from Refineries - Reduced PM emissions from largest PM sources at refineries by the maximum extent feasible. Given estimated annual costs of \$80 million, the costs to refineries will be extensive. The Advisory Council's *Particulate Matter Reduction Strategy* report was essential to making the case for moving forward with this controversial rule.

Source Priority Criteria - Developed prioritization framework for policy interventions to reduce emissions and exposure from stationary sources. PM emissions and sources in overburdened communities are key criteria, largely due to the Advisory Council's *Particulate Matter Reduction Strategy Report*.

PM Modeling - Updated regulatory-grade, regional, PM modeling platform. Improved ammonia emissions data will allow for better secondary PM calculations, as well as improved wood smoke and restaurant emissions data.

Community Action Plans - Adopted and now implementing the West Oakland community action plan, *Owning Our Air*. Developing the Richmond-North Richmond-San Pablo action plan, which will include PM strategies. East Oakland recently designated by the California Air Resources Board to develop a community action plan. All plans include or will include community health assessments and source apportionments to inform strategies.

Reducing PM from Refineries

The Air District's Rule 6-5 minimizes particulate matter emissions from Fluidized Catalytic Cracking Units, or FCCUs. FCCUs are the largest single source of particulate matter emissions at refineries and some of the largest individual sources of particulate matter in the Bay Area. Rule 6-5 imposes the strictest feasible FCCU control requirements to reduce health-threatening air pollution.

Recent amendments to Rule 6-5 are anticipated to reduce PM by 493 tons per year.

CURRENT WORK HIGHLIGHTS

Residential Sources - Quantifying health and equity impacts of major residential sources, such as furnaces, water heaters and woodsmoke. Working on a rule to reduce emissions from residential furnaces and water heaters. Natural gas combustion from these sources contribute up to 26 percent of nitrogen oxide emissions from all stationary sources. Nitrogen oxide is a precursor to PM_{2.5}.

PM Health Impacts - Working on a methodology to quantify PM health impacts from new and/or modified facilities.

PM Monitoring - Developing insights from PM measurement data, including data from low-cost sensors and regulatory monitoring.

Community Data - Developing detailed source apportionment for PM and toxics in Richmond-North Richmond-San Pablo to better understand which facilities in the community contribute most to PM and health impacts.

Incentives - Distributing mobile source incentives to reduce emissions from cars, trucks, and off-road sources. In 2021, distributed over \$76 million, 86 percent went to high pollution, disadvantaged or low-income communities. Reduced over 68 tons per year of PM₁₀ and nearly 217 tons per year of nitrogen oxide, a particulate matter precursor.

Better Understanding PM in Communities

Through a joint effort with the University of Washington and the University of California Berkeley, we are using Intervention Model for Air Pollution (InMap) to evaluate inequalities in PM_{2.5} exposure and estimate the impacts of policy interventions.

InMap is a relatively simplified model that tracks sources to concentrations. The model is also linked to demographic information.

InMap can be used to do community and regional source apportionment and equity analysis. The community scale is relatively refined, with 1-kilometer grids.

PRIORITY ACTIONS

This section presents the specific 28 recommended actions in the Advisory Council's *Particulate Matter Reduction Strategy Report* and the Air District's efforts to implement each. The Advisory Council's recommendations were developed in the context of particulate matter statements and a policy framework. The statements are a series of findings based on scientific evidence gathered by the Advisory Council. The framework encourages the Air District to evaluate and prioritize strategies that reduce particulate matter in communities most heavily impacted. The council's recommendations are grouped into four broad categories: health protective targets, impacted communities, wildfires and regional PM.



Group 1 – Health Protective Targets

Three recommendations to establish more stringent, health protective PM targets. Recommendations address establishing PM_{2.5} concentration targets and standards based on scientific evidence.



Group 2 – Impacted Communities

Fourteen recommendations regarding community actions plans, assessments of health impacts and community-level exposure to PM. Better enforcement, new and improved rules and electrification of sources in impacted communities and improved permitting of facilities.



Group 3 – Wildfires

One recommendation to further develop and implement strategies and health protective measures to protect people's health during wildfire episodes, especially those living in impacted communities.



Group 4 – Regional PM

Thirteen recommendations to improve PM air quality data and access to PM emissions data. Reduce PM from vehicles, road dust, buildings, commercial cooking and residential wood burning.

MEASURING PROGRESS

The Air District pursues and has completed a multitude of efforts that directly address the Advisory Council's recommendations. To assess progress on recommended actions, the Air District evaluated nearly 100 separate, and sometimes related, efforts to reduce particulate matter. Each of these efforts were placed into a spreadsheet, detailing the effort, next steps and progress status, e.g., completed, started, ongoing or not started.

Air District work efforts were then aligned with the Advisory Council recommendations. The status indication of the Air District efforts offered some insight into progress on the Advisory Council recommended actions. That progress is indicated in this report.

Even though the Air District has completed much, the broad nature of the recommendations means continuous effort is required. Many actions also overlap, and/or encompass multiple Air District efforts. In addition, not all Air District efforts fit neatly into a single recommendation, as some efforts could fall under more than one Advisory Council recommendation.

Given these constraints, we did our best to match up and assess or work with the Advisory Council recommendations and use that data to present our progress.

The Air District pursues and has completed a multitude of work efforts that directly address the Advisory Council recommendations

Targets

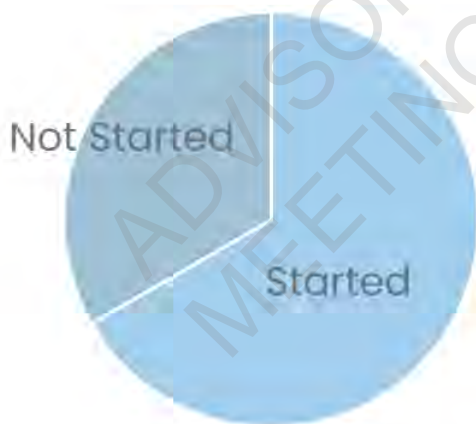


Three Advisory Council recommended actions relate to establishing more **health protective PM targets**. Specific efforts the Air District is undertaking, or are planning to take, are described below.

Targets: The Air District will request that the recently seated Community Advisory Council take up the issue of equity-focused particulate matter targets. We do not believe that regional targets would be helpful at this time.

PM Standards: The Air District has requested US EPA set more stringent air quality standards for particulate matter. US EPA is expected to propose more stringent standards, via a rule, for which the Air District will provide comments. The federal standards are likely to be more stringent than current California standards.

Fine PM as TAC: Air District staff is working with the Office of Environmental Health Hazard Assessment, CARB and US EPA to develop a method to assess the risk from exposure to local sources of particulate matter.



75% of Target Actions Started

Advisory Council Recommendations

- Establish PM_{2.5} targets consistent with findings based on scientific evidence.
- Advocate to establish more stringent PM standards.
- Designate fine PM as a toxic air contaminant.

Impacted Communities



Of the fourteen Advisory Council recommended actions to reduce PM emissions and exposures in impacted communities, three relate to **community action plans**. Below is summary of Air District actions to reduce PM emissions and exposure via community action plans.

Plans: Via the implementation of AB 617, one community action plan is adopted, and two are underway. Working with West Oakland Environmental Indicators Project, the Air District Board of Directors adopted *Owning Our Air* in 2018, a community emission reduction plan for the West Oakland community. The plan includes over 80 strategies to reduce emissions and exposure, including from particulate matter. The Air District is now working with the Richmond-North Richmond-San Pablo community to develop its action plan. East Oakland was just designated by the state to develop an action plan. Additionally, the West Oakland plan contains PM targets; future plans are expected to contain similar targets.

Best Available Methods: Air District staff is reviewing sources of PM emissions in the West Oakland action plan, i.e., dust and backup generators, to determine best methods for reducing PM from these sources. Similar efforts will take place in Richmond-North Richmond-San Pablo and East Oakland, once plans are adopted for those communities.

Community Exposure/Health Assessments: Air District staff has completed source apportionment and exposure assessments from sources in West Oakland. Similar work is underway in Richmond-North Richmond-San Pablo and will begin soon in East Oakland. The InMAP project will provide source apportionment, exposure, and equity assessments for all overburdened communities at a 1-kilometer grid scale.

Advisory Council Recommendations

- Develop action plans for impacted communities that include actions to reach lower PM targets.
- Ensure plans include best available methods for reducing PM emissions and exposures.
- Conduct community-level exposure and health impact assessments.

Impacted Communities



Four of the Advisory Council recommendations regarding impacted communities are about **permitting and the implementation and enforcement** of programs and rules.

Implementation/Enforcement: Enforcement and notice of violation fact sheets and targeted inspections are set to begin in designated AB 617 communities, e.g., West Oakland and Richmond-North Richmond-San Pablo. The Air District is working with communities to determine specific information and inspection needs.

Permitting: In 2021, the Air District modified its permitting regulations to require greater public notice and to impose stricter limits on health impacts in overburdened communities. Health risk assessments include all related projects, dating back 5 years, and include total toxic emissions, rather than incremental. Additionally, with the completion of the PM local health impacts methodology, the Air District will develop additional amendments to permitting regulations to improve protectiveness.

Advisory Council Recommendations

- Evaluate and strengthen implementation and enforcement of programs and rules.
- Develop strategies to consider cumulative community PM impacts in permitting processes.
- Modify Air District permitting regulations to address hot-spots and cumulative PM health risks.
- Evaluate current efforts to prevent “piecemealing” in the permitting process and take actions as needed.

Impacted Communities



Of the Advisory Council recommended actions to reduce PM emissions and exposures in impacted communities, four relate to **specific sources**: refineries, magnet sources, road dust, and buildings.

Refineries: The Air District's Rule 6-5 minimizes particulate matter emissions from Fluidized Catalytic Cracking Units, or FCCUs, which are the largest single source of particulate matter emissions at refineries, and some of the largest individual sources of particulate matter in the Bay Area.

Magnet Sources: The Air District has sponsored bills in two legislative sessions to clarify our authority to regulate magnet sources. The South Coast Air Quality Management District has adopted an Indirect Source Rule and we are looking to that rule as a model.



80% of Impacted Communities Actions Started

Advisory Council Recommendations

- Identify and further reduce significant sources of PM from refineries.
- Seek Air District authority for magnet sources of PM emissions.
- Strengthen rules limiting emissions and trackout of road dust to reduce PM in overburdened communities.
- Seek federal funding for electrification infrastructure, especially in disadvantaged communities.

Road Dust: Air District Rules 6-1 and 6-6 pertain to dust, including from construction and track out. Staff has drafted a white paper to determine path forward. Amendments to rules are pending community input on prioritization.

Buildings: The Air District advocated for funding in the federal budget bill, to no avail. However, there is \$800 million in proposed funding in current state budget bill for building electrification.

Wildfires



The Advisory Council recommended one action to reduce PM emissions and exposures from **wildfires**. The one action contains seven subparts. Air District efforts to respond to the Advisory Council's wildfire recommendations are summarized below.

Public Education: Completed a multitude of public outreach efforts: wildfire safety video series, over 300 media interviews, social media coverage, press conferences, webpages, public booths at community events, posters, and partnerships with others on messaging and public health information. Public education efforts are ongoing.

Monitoring and Forecasting: Limited staff resources have prevented progress on efforts to improve real-time monitoring and forecasting of wildfires.

Research: There are ongoing nation- and statewide research efforts to study health impacts from wildfire smoke. The Air District tracks this research and periodically reports on current findings.

Forest Management: The Air District does not generally work in the area of forest management. However, the Air District's Wildfire Prevention Chipping Program provides funding for individual homeowners to remove forest debris from property.

Clean Air Shelters: The Air District received \$3 million for grants to counties to improve air filtration in public buildings that can act as clean air shelters.

HEPA Filters: The Clean Air Filtration Program improves access to high efficiency air filtration for those most vulnerable to wildfire smoke and air pollution.

Advisory Council Recommendations

- Wildfire strategies and guidance: public education; real-time monitoring and forecasting; research to assess health impacts; forest management; clean air shelters; mobile clean air shelters; HEPA filters for high-risk individuals.

70% of Wildfire Actions Started or Ongoing



BAAQMD
PM Strategy Progress Report 2022

Regional PM



The Advisory Council recommended thirteen actions related to regional PM. Three relate directly to **particulate matter measurement data**. Air District efforts to implement data-related recommendations are summarized below.

Accessible & Timely PM Data: Analyze air monitoring data to assess patterns and trends of PM. Ongoing work to develop resources to effectively communicate PM data summaries and insights, how to access and use available PM data. Plans to develop community-specific air quality fact sheets sharing insights from available PM monitoring data.

PM Monitoring: Begin evaluating Air District measurements that improve understanding of PM in communities and throughout the Bay Area, including speciation and ultrafine PM.

PM Speciation and Ultrafine PM: Plans to verify and compile speciation data and upload to the Air Quality System (US EPA's ambient air pollution database). Ongoing work with other agencies to improve national PM monitoring requirements that track the levels and characteristics of PM, including speciation and ultrafine PM.

Advisory Council Recommendations

- Make air quality data for PM accessible and timely.
- Make current PM speciation data more available. Advocate for U.S. EPA national monitoring guidance and requirements to increase PM speciation.
- Advocate for increased, broader, national monitoring, exposure, and health impact studies of ultrafine PM.

Regional PM



Of the thirteen Advisory Council recommended actions related regional PM, six relate to PM from **mobile sources**. Air District efforts to implement mobile source actions are summarized below.

UFP Filtration: Work has yet to begun on this effort.

Tire, Brake and Road Dust: The Air District is participating in inter-agency collaborative project with Caltrans to research and review road dust emissions methodology and data improvement.

Reduce Driving: The Air District undertakes a wide variety of effort to reduce vehicle miles traveled. The Cut the Commute Program is an ongoing effort to reduce driving, through employer pledges to reduce driving and amendments to the Commuter Benefits Program. Spare the Air is a well-known public information campaign to reduce driving.

Electrification: The Air District is advocating for increased state funding to support electrification. Ongoing mobile source incentives to reduce particulate matter from cars, trucks and off-road sources. Incentives efforts are highlighted on following page.

Off-Road Rules: The Air District is advocating for increased state funding for stricter regulations, e.g., letter writing, lobbying, etc.

Advisory Council Recommendations

- Advocate for improved UFP filtration requirements for on-road vehicles.
- Advocate for improved emission estimation and control methods for emerging source categories (e.g., tires & brakes, road dust).
- Develop, fund, implement, and encourage strategies to reduce vehicle miles traveled.
- Support state efforts to electrify trucks and other vehicles.
- Assist local programs to control road dust.
- Seek stricter off-road mobile source rules from the state.

Regional PM



Of the over \$76 million in incentives, 86% have gone to high pollution, disadvantaged, and/or low-income communities.

Highlighting Mobile Source Incentives

In 2021, the Air District awarded over \$76 million in incentives to reduce emissions from cars, trucks, and off-road sources. Of these, 86 percent went to high pollution, disadvantaged or low-income communities. Over 359 tons per year of criteria pollutants were reduced, and over 11,800 tons per year of CO₂. Criteria pollutant reductions include 68 tons per year of PM₁₀ and nearly 217 tons per year of nitrogen oxide, a particulate matter precursor. The 68 tons per year of PM₁₀ is equivalent to 43% of the anticipated PM reductions from Rule 6-5 amendments on FCCUs, i.e., PM emissions from the Chevron refinery in Richmond.

Criteria pollutant reductions included 68 tons per year of PM₁₀ and nearly 217 tons per year of nitrogen oxide, a particulate matter precursor.

Regional PM



Of the thirteen Advisory Council recommended actions related regional PM, two relate to PM from **buildings** and encourage electrification. Air District efforts to implement building electrification to reduce PM are summarized below.

Appliance Rules: Considering amendments to Air District's Rule 9-4 and 9-6. Rule 9-4 limits emissions of nitrogen oxides from natural-gas fired residential furnaces. Rule 9-4 limits emissions of nitrogen oxides from natural gas fired residential furnaces. Rule 9-6 limits emissions from natural gas water heaters and boilers. The amendments would require zero-emission units beginning in 2027. The rule amendments would impact point-of-sale for new and existing construction; benefits would accrue over time as appliances are replaced.

Advisory Council Recommendations

- Adopt a rule requiring, and create a program incentivizing, all electric utilities in new construction.
- Adopt rules to improve the emissions performance of water heaters and space heaters and require newly-installed heaters and other appliances to be electric.

Regional PM



Of the thirteen Advisory Council recommended actions related regional PM, two relate to PM from **commercial cooking and wood burning**. Air District efforts to reduce PM in these areas are summarized below.

Cooking: Amendments are being considered to existing rules to limit emissions from charbroilers and wood-fired ovens. Work has yet to begin on these efforts.

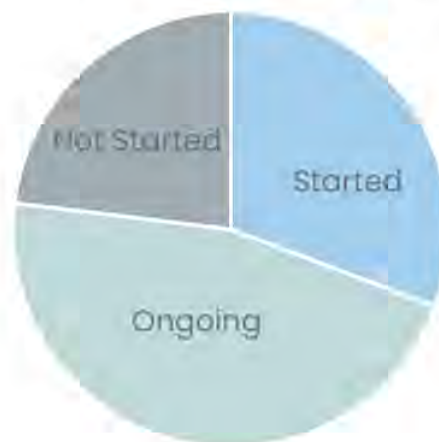
Wood Burning: The Air District recently amended Rule 6-3, which makes it illegal to use any wood-burning devices (such as fireplaces, woodstoves, or pellet stoves) when fine particulate pollution is forecasted to exceed federal health standards and a Spare the Air Alert is in effect. Beginning in 2020, the wood burning ban was extended to include any days year-round when a Spare the Air Alert is in effect. Amendments also limit excessive smoke when burning is allowed, ban burning of garbage, plastics, and other toxic materials, and require labeling on firewood and other solid fuels sold in the Bay Area.

In 2022, the Air District will be analyzing health and equity impacts of wood burning in the Bay Area. The analysis will provide insight into options and benefits of additional rulemaking.

Advisory Council Recommendations

- Expand efforts to reduce emissions from commercial cooking equipment such as charbroilers and wood-fired ovens.
- Consider further restrictions on residential wood burning emissions.

80% of Regional PM Actions Started or Ongoing



NEXT STEPS

In the coming year, the Air District will continue working on the many efforts identified in this progress report. To ensure resources are appropriately prioritized and that there is a clear structure for tracking and reporting progress, we will organize our work into objectives and key results. In other words, we will be selecting a limited number of high-level goals and key milestones and deliverables to achieve these goals. We will report out our progress on these goals to the Air District Board on a regular basis.



No. 01 – Objectives and Key Results

Develop objectives and key results to guide the Air District's work to reduce PM emissions and exposure.



No. 02 – Evaluate Source Impacts

Evaluate PM sources in the emissions inventory and as identified by community advocates to determine which sources within our regulatory authority are most important to control to protect public health and reduce inequity.



No. 03 – Changes to Permitting Rules

Consider further changes to permitting rules to address local PM impacts.



No. 04 – Source Prioritization

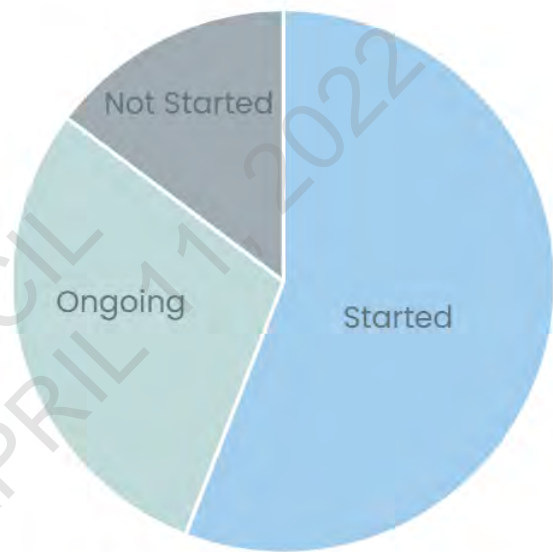
Identify sources for policy intervention based on community-informed source evaluation results and health impact analysis.

CONCLUSION

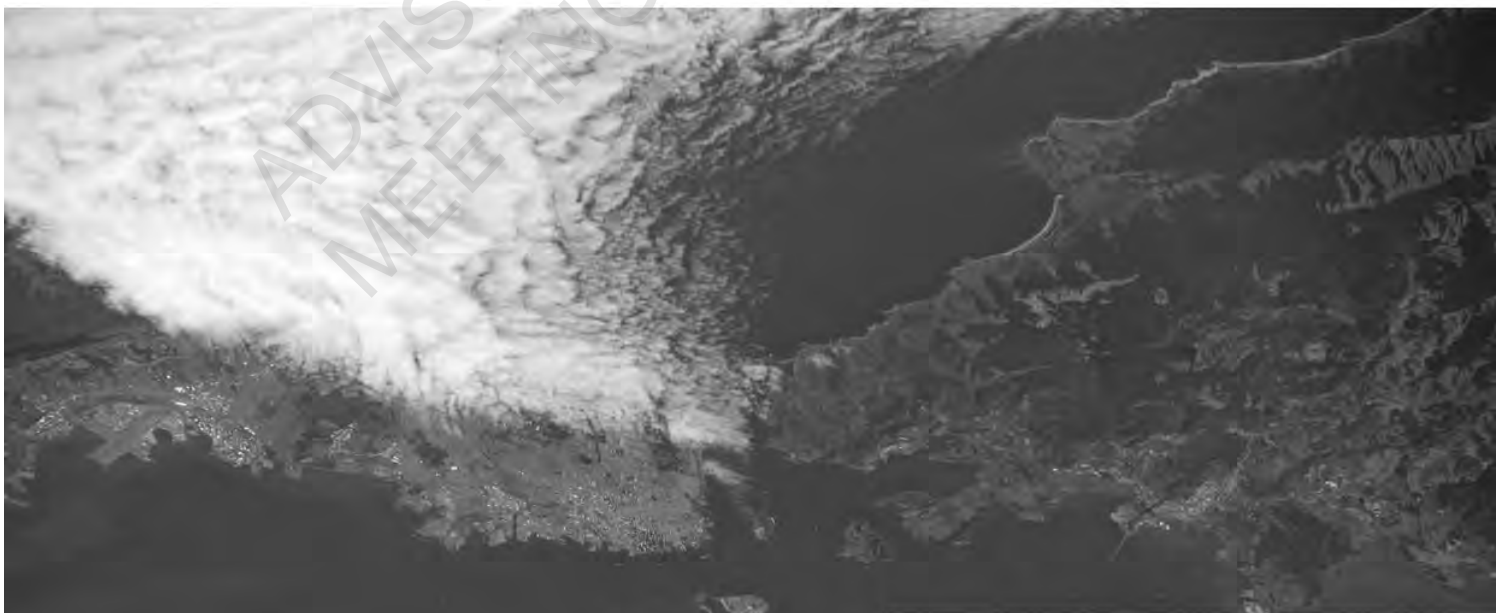
Reducing particulate matter emissions and exposure is an ongoing Air District priority and commitment, especially in overburdened communities experiencing disproportionate exposure.

A multitude of Air District efforts address the Advisory Council's recommendations. Over 55 percent of the Advisory Council actions are underway. Nearly 30 percent are ongoing efforts, and 15 percent have yet to begin.

We have accomplished much, but there is still more to do. We look forward to continuing the important work of reducing harmful particulate matter from our air and improving community health.



Progress on All Actions



BAY AREA AIR QUALITY MANAGEMENT DISTRICT

Memorandum

To: Chairperson Karen Mitchoff and Members
of the Board of Directors

From: Alexander Crockett
Interim Acting Executive Officer/APCO

Date: April 20, 2022

Re: Adoption of California Environmental Quality Act (CEQA) Thresholds for
Evaluating the Significance of Climate Impacts From Land Use Projects and Plans.

RECOMMENDED ACTION

Staff requests the Board of Directors adopt the proposed CEQA Thresholds for Evaluating the Significance of Climate Impacts From Land Use Projects and Plans. Adoption of the thresholds is not subject to CEQA review pursuant to Public Resources Code Section 21065 (definition of a CEQA “project”) and CEQA Guidelines Sections 15064.7 (requirements for adopting thresholds of significance) and 15061(b)(3) (commonsense exemption), and the District intends to file a notice of exemption accordingly.

BACKGROUND

The California Environmental Quality Act (CEQA) was signed into law in 1970. CEQA requires that California public agencies study and disclose the environmental impacts of proposed development projects and plans, and limit those impacts to the extent feasible. These environmental impacts include climate change (through greenhouse gas emissions), and air quality, as well as impacts not directly related to the Air District’s purview, such as water quality, transportation, and biological resources, among others.

Greenhouse gas emissions from land use development can occur directly, e.g., emissions from combustion devices such as boilers and generators, and indirectly, e.g., from transportation activity associated with a project. Although Air District permits protect public health by assuring that stationary sources of air pollution comply with all applicable Air District regulations, the Air District does not have authority to issue permits for GHG emissions from local land use development. City or county land use permits determine whether and where a GHG-emitting project may be located, and local land use permits sometimes do not adequately consider GHG emissions. Although Air District air quality permits may impose conditions on stationary source operations that could also result in GHG co-benefits, Air District permits do not address GHG emissions from transportation, fossil fuel combustion, or other activities. As such, the Air District’s ability to influence GHG emissions from land use projects is limited. And while many land use developments result in public concern, with calls for the Air District to take action,

limited authority with respect to local land use decisions limits our options.

The Air District's CEQA Thresholds of Significance for Climate Impacts and the associated Justification Report are tools the Air District employs to further its and the State's goals of meeting GHG emissions reduction targets. The Air District's CEQA Thresholds of Significance for Climate Impacts and Justification Report are intended to assist cities, counties, and other lead agencies in analyzing and reducing climate impacts of local projects and plans. The thresholds provide lead agencies with recommended benchmarks for determining whether a project's or plan's GHG emissions rise to a level of significance. The Proposed "*Justification Report: CEQA Thresholds for Evaluating the Significance of Climate Impacts from Land Use Projects and Plans*" (Justification Report) provides the rationale and substantial evidence supporting the Thresholds of Significance for Climate Impacts due to GHG emissions. Staff is also developing updated CEQA Guidelines that will provide additional support to local project developers and lead agencies in implementing the thresholds; the updated CEQA Guidelines will be released in Spring 2022.

Substantive changes have occurred with respect to the data and assumptions underlying the analytical methodologies, thresholds, and guidance since the Air District's last update of its GHG thresholds in June 2010. In addition, the State has taken strong legislative and programmatic action to achieve GHG reductions beyond 2020. Further, noteworthy court decisions related to CEQA litigation have occurred since 2010, creating new parameters that influence how climate impacts due to GHG emissions can be determined and mitigated under CEQA. Accordingly, Air District staff proposes to update the CEQA GHG thresholds to reflect current State legislation, policy guidance and GHG reduction targets, new and revised requirements in the State CEQA Guidelines, case law, improved analytical methodologies, and updated GHG reduction strategies and technologies.

DISCUSSION

Staff has investigated proposed updates to the CEQA Thresholds of Significance for Climate Impacts due to GHG emissions. Key motivations of this effort include the need to update the recommended thresholds to align with the latest State GHG reduction targets for 2030 and 2045, and to support local planning efforts. The current thresholds are outdated, based on the State's 2008 Scoping Plan and 2020 GHG reduction target, and require updating to reflect current statewide policy, targets and time horizons. Staff proposes updated Thresholds of Significance for Climate Impacts for: 1) Land-use Projects, and 2) Land-use Development Plans.

1) Land-use Projects

For a land-use project's GHG emissions to be determined to be less than significant, it is proposed that the project must: a) include certain project design elements, or; b) be consistent with a local GHG Reduction Strategy. Project design elements include aspects of the project that are within the control of the project developer and that have the potential to "lock in" GHG emissions for the duration of the project-life. The design elements included in the proposed thresholds address GHG emissions from building operations and transportation. Alternatively, the evaluation of a land-use development project's GHG impacts could focus on a demonstration that the project is consistent with a local GHG Reduction Strategy, such as a climate action plan,

which in turn conforms to State and Air District guidance. Criteria for a GHG Reduction Strategy that supports this type of streamlining is specified in the State of California CEQA Guidelines (section 15183.5(b)). In addition, the Air District is developing further supportive guidance for local GHG Reduction Strategies on how to reflect consistency with the State Guidelines. This supportive guidance will be included in the Air District’s CEQA Guidance to be released later this Spring. The proposed thresholds for land use development projects are summarized in the following table and in Attachment 1.

Thresholds for Land Use Projects (Must Include A or B)	
A.	Projects must include, at a minimum, the following project design elements: <ol style="list-style-type: none"> 1. Buildings <ol style="list-style-type: none"> a. The project will not include natural gas appliances or natural gas plumbing (in both residential and nonresidential development). b. The project will not result in any wasteful, inefficient, or unnecessary energy usage as determined by the analysis required under CEQA Section 21100(b)(3) and Section 15126.2(b) of the State CEQA Guidelines. 2. Transportation <ol style="list-style-type: none"> a. Achieve a reduction in project-generated vehicle miles traveled (VMT) below the regional average consistent with the current version of the California Climate Change Scoping Plan (currently 15 percent) or meet a locally adopted Senate Bill 743 VMT target, reflecting the recommendations provided in the Governor’s Office of Planning and Research’s Technical Advisory on Evaluating Transportation Impacts in CEQA: <ol style="list-style-type: none"> i. Residential projects: 15 percent below the existing VMT per capita ii. Office projects: 15 percent below the existing VMT per employee iii. Retail projects: no net increase in existing VMT b. Achieve compliance with off-street electric vehicle requirements in the most recently adopted version of <u>CALGreen Tier 2</u>.
B.	Projects must be consistent with a local GHG reduction strategy that meets the criteria under State CEQA Guidelines Section 15183.5(b).

2) Land-use Development Plans

For long-term communitywide planning documents (e.g., general plans, long-range development plans, climate action plans) to be determined to have a less-than-significant climate impact, they must demonstrate that GHG emissions from the jurisdiction will decline consistent with California’s GHG reduction targets of 40 percent below 1990 levels by 2030 and carbon neutrality by 2045. A local jurisdiction that plans to develop in a manner that will reflect those targets will support the State’s ability to achieve its climate goals and thus would be considered to have a less-than-significant impact on GHG emissions. If a jurisdiction has adopted a climate action plan that meets the criteria for a GHG Reduction Strategy under the State CEQA Guidelines and the Air District’s guidance, it can use that climate action plan to provide the basis for demonstrating that the jurisdiction’s GHG emissions will meet the 2030 and 2045 targets when it adopts a general plan update and similar long-range planning document. The proposed threshold for plans is summarized in the table below and in Attachment 1.

Thresholds for Land-use Development Plans (Must Include A or B)

- A. Meet the State’s goals to reduce emissions to 40 percent below 1990 levels by 2030 and carbon neutrality by 2045; or
- B. Be consistent with a local GHG reduction strategy that meets the criteria under State CEQA Guidelines Section 15183.5(b).

Staff prepared a report to explain and support the recommended thresholds. This report, “*Justification Report: CEQA Thresholds for Evaluating the Significance of Climate Impacts from Land Use Projects and Plans*,” is included as Attachment 2. This Justification Report provides the substantial evidence to support adoption of these thresholds by the Board of Directors, as well as the substantial evidence needed by Lead Agencies that choose to use these thresholds to make significance determinations.

Staff is evaluating the recommended thresholds of significance for climate impacts for stationary sources, and will report back to the Board on those thresholds later in 2022. As part of this process, staff will bring early concepts to the Board and will conduct a robust outreach and engagement process.

Staff convened numerous focus groups with local government planning staff, builders, affordable housing developers, environmental advocates and community organizations to discuss this approach for updating the CEQA Climate Impacts Thresholds and to receive feedback and suggestions. Staff also convened a public workshop on December 9, 2021, opened a 30-day public comment period starting on February 16, 2022, and convened a second public workshop on March 10, 2022. In response to public comments, staff has made minor adjustments to the Justification Report. Public comments submitted to the Air District during this period and staff responses to public comments have been compiled into Attachment 3, *Public Comments and Staff Response Regarding Proposed Thresholds of Significance for Climate Impacts and Justification Report*.

Staff presented on the proposed update to the CEQA Climate Impact Thresholds at the September 23, 2021 and March 24, 2022 Mobile Source and Climate Impacts Committee meetings. At the March 24, 2022 meeting, the Committee recommended that the Board of Directors adopt the proposed Thresholds of Significance for Climate Impacts. The March 24, 2022 Mobile Source and Climate Impacts Committee Report is included as Attachment 4. A resolution supporting adoption of this action is included as Attachment 5, *Resolution*.

The Climate Impact Thresholds are not subject to CEQA review, based on the following:

1. The District complied with CEQA Guidelines Section 15064.7 in establishing the Climate Impact Thresholds. Section 15064.7 establishes the required procedure for enacting generally applicable thresholds of significance such as the Climate Impact Thresholds and does not require CEQA review of such thresholds.
2. The Climate Impact Thresholds are advisory only, administrative in nature, do not affect air emissions from any sources, and will not cause a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment.

Any potential impact would be speculative. Accordingly, they are not a project within the meaning of CEQA. (Pub. Resources Code, § 21065.)

3. The Climate Impact Thresholds have no possibility of causing significant environmental effects within the meaning of CEQA. (CEQA Guidelines, § 15061(b)(3).)

BUDGET CONSIDERATION/FINANCIAL IMPACT

None. Resources to update and implement the CEQA Thresholds and Guidelines are included in the FYE 2022 and proposed FYE 2023 budgets.

Respectfully submitted,

Alexander Crockett
Interim Acting Executive Officer/APCO

Prepared by: Abby Young
Reviewed by: Henry Hilken

ATTACHMENTS:

1. Proposed CEQA Thresholds for Evaluating the Significance of Climate Impacts From Land Use Projects and Plans
2. Justification Report: CEQA Thresholds for Evaluating the Significance of Climate Impacts from Land Use Projects and Plans
3. Public Comments and Staff Responses Regarding Proposed Thresholds of Significance for Climate Impacts and Justification Report
4. March 24, 2022 MSCIC Meeting Agenda 8 Memorandum and Attachment
5. Draft Resolution Adopting CEQA Thresholds for Evaluating the Significance of Climate Impacts from Land Use Projects and Plans
6. CEQA Support Letter from Metropolitan Transportation Commission



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ATTACHMENT 1

PROPOSED CEQA THRESHOLDS FOR EVALUATING THE SIGNIFICANCE OF CLIMATE IMPACTS FROM LAND USE PROJECTS AND PLANS

Thresholds for Land Use Projects (Must Include A or B)

- A. Projects must include, at a minimum, the following project design elements:
 - 1. Buildings
 - a. The project will not include natural gas appliances or natural gas plumbing (in both residential and nonresidential development).
 - b. The project will not result in any wasteful, inefficient, or unnecessary energy usage as determined by the analysis required under CEQA Section 21100(b)(3) and Section 15126.2(b) of the State CEQA Guidelines.
 - 2. Transportation
 - a. Achieve a reduction in project-generated vehicle miles traveled (VMT) below the regional average consistent with the current version of the California Climate Change Scoping Plan (currently 15 percent) or meet a locally adopted Senate Bill 743 VMT target, reflecting the recommendations provided in the Governor’s Office of Planning and Research’s Technical Advisory on Evaluating Transportation Impacts in CEQA:
 - i. Residential projects: 15 percent below the existing VMT per capita
 - ii. Office projects: 15 percent below the existing VMT per employee
 - iii. Retail projects: no net increase in existing VMT
 - b. Achieve compliance with off-street electric vehicle requirements in the most recently adopted version of CALGreen Tier 2.
- B. Projects must be consistent with a local GHG reduction strategy that meets the criteria under State CEQA Guidelines Section 15183.5(b).

Thresholds for Plans (Must Include A or B)

- A. Meet the State’s goals to reduce emissions to 40 percent below 1990 levels by 2030 and carbon neutrality by 2045; or
- B. Be consistent with a local GHG reduction strategy that meets the criteria under State CEQA Guidelines Section 15183.5(b).



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ATTACHMENT 2

**JUSTIFICATION REPORT:
CEQA THRESHOLDS FOR EVALUATING
THE SIGNIFICANCE OF CLIMATE IMPACTS
FROM LAND USE PROJECTS AND PLANS**



**BAY AREA AIR QUALITY
MANAGEMENT DISTRICT**

Justification Report:
**CEQA Thresholds for Evaluating
the Significance of Climate Impacts
From Land Use Projects
and Plans**

April 2022





Justification Report

CEQA Thresholds for Evaluating the Significance of Climate Impacts

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April 2022

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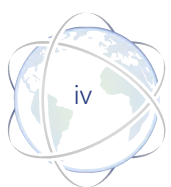
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LIST OF ABBREVIATIONS

°C	degrees Celsius
AB	Assembly Bill
Air District	Bay Area Air Quality Management District
CALGreen	California Green Building Standards Code
CARB	California Air Resources Board
CEC	California Energy Commission
CEQA	California Environmental Quality Act
DC	direct current
EIR	environmental impact report
EV	electric vehicle
GHG	greenhouse gas
HCD	California Department of Housing and Community Development
OPR	Governor's Office of Planning and Research
RPS	Renewables Portfolio Standard
SB	Senate Bill
VAC	voltage of alternating current
VMT	vehicle miles traveled
ZEV	zero-emission vehicle

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1 INTRODUCTION AND EXECUTIVE SUMMARY

This report presents the Bay Area Air Quality Management District's (Air District's) recommended thresholds of significance for use in determining whether a proposed project will have a significant impact on climate change. The Air District recommends that these thresholds of significance be used by public agencies to comply with the California Environmental Quality Act (CEQA).

Evaluating climate impacts under CEQA can be challenging because global climate change is inherently a cumulative problem. Climate change is not caused by any individual emissions source but by a large number of sources around the world emitting greenhouse gases (GHGs) that collectively create a significant cumulative impact. CEQA requires agencies in California to analyze such impacts by evaluating whether a proposed project would make a "cumulatively considerable" contribution to the significant cumulative impact on climate change. (See CEQA Guidelines Sections 15064[h] and 15064.4[b].)¹ But CEQA does not provide any further definition of what constitutes a cumulatively considerable contribution in this context. These thresholds of significance are intended to assist public agencies in determining whether proposed projects they are considering would make a cumulatively considerable contribution to global climate change, as required by CEQA.

The Air District's recommended thresholds of significance are summarized below, with a detailed discussion of the basis for the thresholds presented in the remainder of this report. The information provided in this report is intended to provide the substantial evidence that lead agencies will need to support their determinations about significance using these thresholds. This information also provides the substantial evidence to support adoption of these thresholds by the Air District's Board of Directors. (See CEQA Guidelines Section 15064.7 [thresholds must be adopted by the Board of Directors through a public review process and be supported by substantial evidence].)

1.1 THRESHOLDS FOR LAND USE PROJECTS

For land use development projects, the Air District recommends using the approach endorsed by the California Supreme Court in *Center for Biological Diversity v. Department of Fish & Wildlife* (2015) (62 Cal.4th 204), which evaluates a project based on its effect on California's efforts to meet the State's long-term climate goals. As the Supreme Court held in that case, a project that would be consistent with meeting those goals can be found to have a less-than-significant impact on climate change under CEQA. If a project would contribute its "fair share" of what will be required to achieve those long-term climate goals, then a reviewing agency can find that the impact will not be significant because the project will help to solve the problem of global climate change (62 Cal.4th 220–223).

¹ The 2021 State CEQA Guidelines, including Appendices F and G, can be found at the following website: https://www.califaep.org/docs/CEQA_Handbook_2021.pdf.



Applying this approach, the Air District has analyzed what will be required of new land use development projects to achieve California’s long-term climate goal of carbon neutrality² by 2045. The Air District has found, based on this analysis, that a new land use development project being built today needs to incorporate the following design elements to do its “fair share” of implementing the goal of carbon neutrality by 2045:

Thresholds for Land Use Projects (Must Include A or B)

- A. Projects must include, at a minimum, the following project design elements:
 1. Buildings
 - a. The project will not include natural gas appliances or natural gas plumbing (in both residential and nonresidential development).
 - b. The project will not result in any wasteful, inefficient, or unnecessary energy usage as determined by the analysis required under CEQA Section 21100(b)(3) and Section 15126.2(b) of the State CEQA Guidelines.
 2. Transportation
 - a. Achieve a reduction in project-generated vehicle miles traveled (VMT) below the regional average consistent with the current version of the California Climate Change Scoping Plan (currently 15 percent) or meet a locally adopted Senate Bill 743 VMT target, reflecting the recommendations provided in the Governor’s Office of Planning and Research’s Technical Advisory on Evaluating Transportation Impacts in CEQA:
 - i. Residential projects: 15 percent below the existing VMT per capita
 - ii. Office projects: 15 percent below the existing VMT per employee
 - iii. Retail projects: no net increase in existing VMT
 - b. Achieve compliance with off-street electric vehicle requirements in the most recently adopted version of CALGreen Tier 2.
- B. Projects must be consistent with a local GHG reduction strategy that meets the criteria under State CEQA Guidelines Section 15183.5(b).

If a project is designed and built to incorporate these design elements, then it will contribute its portion of what is necessary to achieve California’s long-term climate goals—its “fair share”—and an agency reviewing the project under CEQA can conclude that the project will not make a cumulatively considerable contribution to global climate change. If the project does not incorporate these design elements, then it should be found to make a significant climate impact because it will hinder California’s efforts to address climate change. These recommended thresholds for land use projects are discussed in more detail in Section 4.

² “Carbon neutrality” is defined in Executive Order B-55-18 as the point at which the removal of carbon pollution from the atmosphere meets or exceeds carbon emissions. Carbon neutrality is achieved when carbon dioxide and other GHGs generated by sources such as transportation, power plants, and industrial processes are less than or equal to the amount of carbon dioxide that is stored, both in natural sinks and mechanical sequestration.



1.2 THRESHOLDS FOR GENERAL PLANS AND RELATED PLANNING DOCUMENTS

The Air District recommends a similar approach for cities and counties adopting general plans and related planning documents that will guide long-range development in their jurisdictions. The Air District recommends that cities and counties evaluate such plans based on whether they will be consistent with California's long-term climate goal of achieving carbon neutrality by 2045. To be consistent with this goal, these plans should reduce GHG emissions in the relevant jurisdiction to meet an interim milestone of 40 percent below the 1990 emission levels by 2030, consistent with Senate Bill (SB) 32, and to support the State's goal of carbon neutrality by 2045. Cities and counties planning to develop in a manner that is not consistent with meeting these GHG reduction targets will have a significant climate impact because they will hinder California's efforts to address climate change.

Thresholds for Plans (Must Include A or B)

- A. Meet the State's goals to reduce emissions to 40 percent below 1990 levels by 2030 and carbon neutrality by 2045; or
- B. Be consistent with a local GHG reduction strategy that meets the criteria under State CEQA Guidelines Section 15183.5(b).

The Air District also strongly recommends that cities and counties adopt climate action plans to document specific strategies and implementation measures to achieve these 2030 and 2045 goals. Robust climate action plans that meet the requirements of CEQA Guidelines Section 15183.5(b) can provide such jurisdictions with a number of benefits. If properly developed, they will provide the substantial evidence a jurisdiction needs to demonstrate that its general plan updates and related planning documents will not have a significant climate impact as outlined in the preceding paragraph. In addition, a jurisdiction can use a qualified climate action plan to evaluate individual land use projects under CEQA. This gives the local jurisdiction the flexibility to tailor requirements for land use projects in its community to the specific circumstances of that community rather than use the Air District's general thresholds for land use projects described above. In addition, a jurisdiction can adopt a climate action plan immediately, without having to wait for its next general plan update cycle.

Thresholds for general plans and related planning documents are discussed in more detail in Section 5. Guidance from the Air District on how to develop and adopt a comprehensive climate action plan that satisfies the detailed requirements of CEQA Guidelines Section 15183.5(b) is set forth in Appendix C to the Air District's Air Quality Guidelines.

1.3 Important Considerations for Using These Thresholds

The Air District has developed these thresholds of significance based on typical residential and commercial land use projects and typical long-term communitywide planning documents such as general plans and similar long-range development plans. As such, these thresholds may not be appropriate for other types of projects that do not fit into the mold of a typical residential or commercial project or general plan update.

Lead agencies should keep this point in mind when evaluating other types of projects. A lead agency does not necessarily need to use a threshold of significance if the analysis and justifications that were used to develop the threshold do not reflect the particular circumstances of the project under review. Accordingly, a lead agency should not use these thresholds if it is faced with a unique or unusual project for which the analyses supporting the thresholds as described in this report do not squarely apply. In such cases, the lead agency should develop an alternative approach that would be more appropriate for the particular project before it, considering all of the facts and circumstances of the project on a case-by-case basis.

In addition, lead agencies should keep in mind that the science of climate change – and California’s regulatory and policy responses to it – are constantly evolving. As the technical and policy considerations on which these thresholds of significance are based advance in the future, lead agencies may need to make adjustments to the thresholds as set forth herein to be consistent with the most current information. As the California Supreme Court has explained, lead agencies are required to “ensure that CEQA analysis stays in step with evolving scientific knowledge and state regulatory schemes” (*Cleveland National Forest Foundation v. SANDAG* (2017) 3 Cal.5th 497, 519). Making appropriate adjustments to these thresholds in light of future developments will ensure that lead agencies comply with this important CEQA mandate.

2 FRAMEWORK FOR ANALYZING IMPACTS UNDER CEQA

The central requirement of the CEQA environmental analysis is to determine whether implementing a project will result in any significant adverse impact on the environment, either individually or cumulatively.

This mandate requires the reviewing agency first to evaluate whether the project will have a significant impact by itself and then to consider whether the project may contribute to a significant cumulative impact in conjunction with other past, present, and reasonably foreseeable future projects that also contribute to the impact.³

In the cumulative context, the analysis has two parts. To evaluate cumulative impacts, the agency must assess (1) whether the overall cumulative impact will be significant and, (2) if the overall impact is significant, whether the incremental contribution that the individual project under review will add to the overall cumulative problem will be cumulatively considerable. As Section 15064(h)(1) of the CEQA Guidelines states:

When assessing whether a cumulative effect requires an EIR [environmental impact report], the lead agency shall consider whether the cumulative impact is significant and whether the effects of the project are cumulatively considerable. An EIR must be prepared if the cumulative impact may be significant and the project’s incremental effect, though individually limited, is cumulatively considerable.

Both parts of this test must be met for a project’s impact to be treated as significant under CEQA. If the overall cumulative impact does not rise to the level of a “significant” impact, or if the project’s incremental

³ A cumulative impact is the change in the environment that results from the incremental impact of the project under review in conjunction with other past, present, and reasonably foreseeable probable future projects (CEQA Guidelines Section 15355).



contribution is not cumulatively considerable, then the project's impact is not treated as significant. (See *San Francisco Baykeeper, Inc. v. State Lands Commission* [2015] [242 Cal.App.4th 202, 222] [project not significant if "the cumulative impact is insignificant or if the project's incremental contribution to the impact is not cumulatively considerable"]; see also CEQA Guidelines Sections 15130[a][3] and 15064[h].)

Cumulatively considerable means that the incremental effect of the specific project under review will be significant when viewed in the context of the overall cumulative problem (CEQA Section 21083[b][2]). CEQA does not require that any incremental addition to a significant cumulative impact, no matter how small, must necessarily be treated as cumulatively considerable. The statute does not require a so-called "one additional molecule" standard, and some projects' incremental contributions would be so minor that their impact does not have to be treated as significant even though the projects would add an additional amount to the significant cumulative impact (*Communities for a Better Environment v. California Resources Agency* [2002] [103 Cal.App.4th 98, 120]; see also CEQA Guidelines Section 15064[h][4].) The level at which the incremental addition becomes cumulatively considerable will depend on the nature of the particular cumulative impact being evaluated. The ultimate test is whether any additional amount should be considered significant in the context of the existing cumulative effect. (CEQA Section 21083[b][2].)

Applying these principles, the environmental impact analysis under CEQA is a four-step process:

- ▶ **Step One: Determine the level at which an impact on the environmental resource under consideration becomes "significant."** This is the touchstone for assessing whether the project may have a significant impact individually or may contribute to a cumulative impact that is significant. The level at which the impact becomes significant will depend on the nature of the environmental resource being evaluated.
- ▶ **Step Two: Evaluate whether the project under review would degrade the environmental resource to such an extent that there would be an impact exceeding the "significant" level determined during Step One.** If implementing the project would cause an impact to exceed that level all by itself, then the project's impact is treated as significant under CEQA and the project requires preparation of an EIR, implementation of feasible mitigation measures to reduce the impact to a less-than-significant level, and consideration of alternatives that would avoid or lessen any significant impacts. If the project under review would not degrade the environmental resource to such an extent that there would be a significant impact, the analysis proceeds to Step Three.
- ▶ **Step Three: Determine whether the contribution of the project combined with the contributions of all other past, present, and reasonably foreseeable future projects would exceed the "significant" level determined during Step One.** If implementing the project would not cause a significant impact by itself, it still must be evaluated to determine whether it would make a cumulatively considerable contribution to a significant cumulative impact. The first element of that analysis is to assess the overall cumulative impact caused by the project in conjunction with other past, present, and reasonably foreseeable future projects affecting the same resource. If the overall cumulative impact exceeds the "significant" level determined during Step One, then the project would contribute to a significant cumulative impact, and the analysis proceeds to Step Four to determine whether that contribution is cumulatively considerable.

- ▶ **Step Four: Determine whether the project’s incremental contribution is cumulatively considerable.** The final step is to determine whether the project’s incremental contribution is cumulatively considerable in light of the overall cumulative impact. If implementing the project would make a cumulatively considerable contribution to a significant cumulative impact, the impact is considered significant under CEQA and the agency must prepare an EIR, impose feasible mitigation measures to bring the incremental contribution below the cumulatively considerable level, and consider alternatives.

The CEQA analysis applies this four-step process to evaluating climate impacts just as it does for all other impacts.

3 ANALYZING IMPACTS ON GLOBAL CLIMATE CHANGE

CEQA requires agencies to consider a project’s impacts on global climate change in the same manner that they consider impacts on other areas in the environmental review document. Climate change is unique, however, given the global nature of the problem.

Step One in the analysis requires determining the level at which climate change becomes a “significant” environmental problem. There is a general consensus that we need to limit the warming of the planet to no more than 1.5 degrees Celsius (°C) in order to maintain a sustainable global climate. Aiming to limit global warming to 1.5°C is a goal recognized by the Paris Agreement on Climate Change and in California’s Executive Order B-55-18, and the Intergovernmental Panel on Climate Change (IPCC) has documented the serious adverse consequences that are expected if the climate warms by more than that amount (IPCC 2018). A 1.5°C rise in global temperatures is therefore an appropriate measure of the level at which climate change will become significant. A global temperature increase of more than that amount will constitute a significant climate impact.

Proceeding to Step Two in the analysis, it is clear that no individual project could have a significant climate impact all by itself, because no project by itself could cause the global temperature to rise by 1.5°C. Indeed, it is difficult to conceive of any project whose GHG emissions would cause global temperature to change in any detectable way. The California Supreme Court acknowledged this situation in its *Center for Biological Diversity* decision, explaining that “an individual project’s emissions will most likely not have any appreciable impact on the global problem by themselves, but they will contribute to the significant cumulative impact caused by greenhouse gas emissions from other sources around the globe” (*Center for Biological Diversity v. Department of Fish & Wildlife* [2015] 62 Cal.4th 204, 219 [citation omitted]).

Moving on to the cumulative analysis, Step Three asks whether the project would contribute to a significant cumulative impact in conjunction with all other past, present, and foreseeable future projects that are contributing to the same impact. With respect to climate change, clearly the answer is yes. Climate change is a cumulative problem caused by millions or billions of individually minor sources all around the globe contributing to the global impact, and it is unquestionably a significant cumulative problem.⁴ The

⁴ CEQA requires the cumulative analysis to consider the contributions from all projects that contribute to the impact (i.e., all projects that contribute to the degradation of the environmental resource being evaluated). (See *City of Long Beach v. Los Angeles Unified School Dist.* [2009])



global climate has already warmed by approximately 1.0°C compared to a preindustrial baseline, and IPCC projects that continued growth in GHG emissions will cause that warming to reach 1.5 °C by 2030–2053 if nothing is done to limit it (IPCC 2018).

The analysis therefore focuses on Step Four: determining whether the project’s GHG emissions would make a cumulatively considerable contribution to the significant problem of global climate change. As the Supreme Court noted in its *Center for Biological Diversity* decision, the question is “whether the project’s incremental addition of greenhouse gases is ‘cumulatively considerable’ in light of the global problem, and thus significant” (*Center for Biological Diversity v. Department of Fish & Wildlife* [2015] 62 Cal.4th 219). This is the challenge that has faced lead agencies in undertaking the CEQA analysis: how to determine the level at which a project becomes cumulatively considerable.

4 THRESHOLDS FOR LAND USE DEVELOPMENT PROJECTS

4.1 THE SUPREME COURT’S “FAIR SHARE” ANALYSIS AND CONSISTENCY WITH CALIFORNIA’S LONG-TERM CLIMATE GOALS

The crucial question in the CEQA climate impact analysis is whether the project under review would make a cumulatively considerable contribution to the significant cumulative problem of global climate change. For land use development projects, the Air District recommends using the approach endorsed by the California Supreme Court in the *Center for Biological Diversity* decision, discussed above, which focuses on determining whether the project would be doing its “fair share” to implement California’s ambitious long-term climate goals. This approach evaluates whether a project’s GHG emissions are cumulatively considerable based on “their effect on the state’s efforts to meet [those] goals...” (*Center for Biological Diversity v. Department of Fish & Wildlife* [2015] 62 Cal.4th 221.) If a new land use project would serve California’s pressing need to provide housing, jobs, and related infrastructure in a manner that supports achieving those climate goals, then it would help to solve the climate change problem, and its GHG emissions should not be treated as cumulatively considerable. As the Supreme Court held, “consistency with meeting [those] statewide goals [is] a permissible significance criterion for project emissions” (*Center for Biological Diversity v. Department of Fish & Wildlife* [2015] 62 Cal.4th 220), and an agency’s “choice to use that criterion does not violate CEQA” (*Center for Biological Diversity v. Department of Fish & Wildlife* [2015] 62 Cal.4th 223).

This approach is based on the principle inherent in CEQA that an individual project would make a less-than-cumulatively-considerable contribution if it would do its part to address the cumulative problem. As the Supreme Court explained, “if a plan is in place to address a cumulative problem, a new project’s incremental addition to the problem will not be ‘cumulatively considerable’ if it is consistent with the plan

[176 Cal.App.4th 889, 907], *Bakersfield Citizens for Local Control v. City of Bakersfield* [2004] [124 Cal.App.4th 1184, 1219 fn. 10], and *Kings County Farm Bureau v. City of Hanford* [1990] [221 Cal.App.3d 692, 720]). In the context of global climate change, this means considering all sources of GHG emissions around the globe that contribute to the global problem. Given the large number of sources involved, the analysis needs to use the “summary of projections” method to assess the magnitude of the total cumulative impact, not the “list of projects” method. (See CEQA Guidelines Section 15130[b].)

and is doing its fair share to achieve the plan's goals" (*Center for Biological Diversity v. Department of Fish & Wildlife* [2015] 62 Cal.4th 223). No individual project needs to solve the entire cumulative problem by itself. Indeed, no individual project could, given that the problem is the result of such a large number of diverse emission sources. But each individual project does need to do what is required of it to ensure that the overall solution is implemented, and if it does that, then its impact on climate change can be treated as less than cumulatively considerable. As the Supreme Court put it in the climate context, "[t]o the extent a project incorporates efficiency and conservation measures sufficient to contribute its portion of the overall greenhouse gas reductions necessary [to achieve the State's climate goals], one can reasonably argue that the project's impact is not cumulatively considerable, because it is helping to solve the cumulative problem..." (*Center for Biological Diversity v. Department of Fish & Wildlife* [2015] 62 Cal.4th 220 [internal quotation marks omitted]).

4.2 USING THE EXECUTIVE ORDER B-55-18 AND THE 2045 CARBON NEUTRALITY GOAL IN THE "FAIR SHARE" ANALYSIS

The *Center for Biological Diversity* case was decided in 2015, and it specifically addressed only the Assembly Bill (AB) 32 goal of attaining 1990 emission levels by 2020 statewide, not the longer-term goal for 2045. However, we are now past the 2020 milestone. At this point, the focus has shifted to the longer-term goals and ultimately to carbon neutrality by 2045. Moreover, the Supreme Court has recognized the necessity and appropriateness of using these longer-term goals as the touchstone for the CEQA analysis. As it held in *Cleveland National Forest Foundation v. SANDAG*, these longer-term goals express "what scientific research has determined to be the level of emissions reductions necessary to stabilize the climate by midcentury and thereby avoid catastrophic effects of climate change" (*Cleveland National Forest Foundation v. SANDAG* [2017] 3 Cal.5th 497, 513). They represent "the scientifically-supported level of emissions reduction needed to avoid significant disruption of the climate and [are] used as the long-term driver for state climate change policy development" (*Cleveland National Forest Foundation v. SANDAG* [2017] 3 Cal.5th 497, 513 (citation omitted)⁵).

The consistency analysis approved by the Supreme Court in *Center for Biological Diversity* can be applied to these longer-term goals in the same way it was applied to the AB 32 2020 goal. If a project would be consistent with meeting these long-term State climate goals, then its climate impact can be seen as less than cumulatively considerable "because it is helping to solve the cumulative problem of greenhouse gas emissions as envisioned by California law" (*Center for Biological Diversity v. Department of Fish & Wildlife* [2015] 62 Cal.4th 220 (citation omitted)).

Moreover, although the 2045 goal is set forth in an executive order and not in a statute, as with the 2020 AB 32 goal that the Supreme Court addressed in *Center for Biological Diversity*, the Executive Order B-55-18 goal is appropriate to use for developing a threshold of significance given the science supporting it. The Supreme Court explicitly rejected the argument that an executive order cannot be used for this purpose because it has not been adopted by statute in the *SANDAG* case. It explained that the executive order at

⁵ These statements were referring to the older Executive Order S-3-05, which included an 80-percent reduction target by 2050, but they apply with equal force to the more recent Executive Order B-55-18.



issue there “expresses the pace and magnitude of reduction efforts that the scientific community believes is necessary to stabilize the climate. This scientific information has important value to policymakers and citizens in considering the emission impacts of a project...” (*Cleveland National Forest Foundation v. SANDAG* [2017] 3 Cal.5th 515). Agencies are required to design their CEQA analyses “based to the extent possible on scientific and factual data,” and if an executive order best embodies the current state of the scientific and factual data, an agency may use it as the basis for its CEQA analysis (*Ibid.* (quoting CEQA Guidelines Section 15064[b])).

4.3 DETERMINING A LAND USE PROJECT’S “FAIR SHARE” FOR GETTING TO CARBON NEUTRALITY BY 2045

The “fair share” analysis looks at how a new land use development project needs to be designed and built to ensure that it will be consistent with the goal of carbon neutrality by 2045. This is California’s current articulation of what will be required to achieve long-term climate stabilization at a sustainable level, as articulated in Executive Order B-55-18. If a land use project incorporates all of the design elements necessary for it to be carbon neutral by 2045, then it will contribute its portion of what is needed to achieve the State’s climate goals and will help to solve the cumulative problem. It can therefore be found to make a less-than-cumulatively-considerable climate impact.

A land use project’s “fair share” will not necessarily include everything that will need to happen in order to achieve carbon neutrality by 2045. There will likely be certain aspects of achieving carbon neutrality that are beyond the scope of how a land use project is designed and thus cannot reasonably be allocated to its “fair share.” For example, becoming carbon neutral by 2045 will require California’s electrical power generators to shift to 100-percent carbon-free energy resources, which is not something that can be controlled through the design of new land use projects. But for those aspects that can be controlled or influenced by how such projects are designed, projects need to address those aspects in order to contribute their “fair share” of what is needed to attain carbon neutrality. If a project is not designed and built to ensure that it can be carbon neutral by 2045, then it will impede California’s ability to achieve its long-term climate goals and should be treated as making a cumulatively considerable contribution to global climate change.

To determine the “fair share,” the analysis should therefore focus on the design elements that need to be incorporated into the project in order to lay the foundation for achieving carbon neutrality by 2045. As GHG emissions from the land use sector come primarily from building energy use and from transportation, these are the areas that need to be evaluated to ensure that the project can and will be carbon neutral. With respect to building energy use, this can be achieved by replacing natural gas with electric power and by eliminating inefficient or wasteful energy usage. This will support California’s transition away from fossil fuel-based energy sources and will bring the project’s GHG emissions associated with building energy use down to zero as our electric supply becomes 100 percent carbon free. With respect to transportation, projects need to be designed to reduce project-generated VMT and to provide sufficient electric vehicle (EV) charging infrastructure to support the shift to EVs. As explained below, the Air District recommends using a threshold of a 15-percent reduction in project-generated VMT per capita compared with existing

levels (or other, more current percentage to the extent further analysis shows that a different level of reduction is needed) and providing EV charging infrastructure as specified in the California Green Building Standards Code (CALGreen) Tier 2 standards. If a land use project being designed and built today incorporates the design elements necessary for the project to be carbon neutral by 2045, then it will contribute its “fair share” to achieving the State’s climate goals. A lead agency can therefore conclude that it will make a less-than-cumulatively-considerable climate impact.

There is no proposed construction-related climate impact threshold at this time. Greenhouse gas emissions from construction represent a very small portion of a project’s lifetime GHG emissions. The proposed thresholds for land use projects are designed to address operational GHG emissions which represent the vast majority of project GHG emissions.

The following sections provide a more detailed discussion of the framework for evaluating the design elements necessary for a project to be consistent with California’s long-term climate goals. The Air District recommends that lead agencies use the design elements as the threshold of significance for land use projects under the Supreme Court’s “fair share” approach discussed above.

Thresholds for Land Use Projects (Must Include A or B)

- A. Projects must include, at a minimum, the following project design elements:
 - 1. Buildings
 - a. The project will not include natural gas appliances or natural gas plumbing (in both residential and nonresidential development).
 - b. The project will not result in any wasteful, inefficient, or unnecessary energy usage as determined by the analysis required under CEQA Section 21100(b)(3) and Section 15126.2(b) of the State CEQA Guidelines.
 - 2. Transportation
 - a. Achieve a reduction in project-generated vehicle miles traveled (VMT) below the regional average consistent with the current version of the California Climate Change Scoping Plan (currently 15 percent) or meet a locally adopted Senate Bill 743 VMT target, reflecting the recommendations provided in the Governor’s Office of Planning and Research’s Technical Advisory on Evaluating Transportation Impacts in CEQA:
 - i. Residential projects: 15 percent below the existing VMT per capita
 - ii. Office projects: 15 percent below the existing VMT per employee
 - iii. Retail projects: no net increase in existing VMT
 - b. Achieve compliance with off-street electric vehicle requirements in the most recently adopted version of CALGreen Tier 2.
- B. Be consistent with a local GHG reduction strategy that meets the criteria under State CEQA Guidelines Section 15183.5(b).



4.3.1 Building Energy Use

Energy used in residential and nonresidential buildings in California comes primarily from natural gas and electricity, the generation and consumption of which can result in GHG emissions. Natural gas usage emits GHGs directly when it is burned for space heating, cooking, hot water heating and similar uses, whereas electricity usage emits GHGs indirectly to the extent that it is generated by burning carbon-based fuels. For the building sector to achieve carbon neutrality, natural gas usage will need to be phased out and replaced with electricity usage, and electrical generation will need to shift to 100-percent carbon-free sources. To support these shifts, new projects need to be built without natural gas and with no inefficient or wasteful energy usage.

ELECTRICITY

Eliminating GHG emissions associated with building electricity usage will be achieved by decarbonizing California's electrical generation infrastructure. California has committed to achieving this goal by 2045 through SB 100, the 100 Percent Clean Energy Act of 2018. SB 100 strengthened the State's Renewables Portfolio Standard (RPS) by requiring that 60 percent of all electricity provided to retail users in California come from renewable sources by 2030 and that 100 percent come from carbon-free sources by 2045.

The land use sector will benefit from RPS because the electricity used in buildings will be increasingly carbon-free, but implementation does not depend (directly at least) on how buildings are designed and built. RPS will be implemented by the generators that produce and sell the electricity, not by the end users of that electricity. Implementing SB 100 is therefore not part of the "fair share" that falls to land use development projects to ensure that California reaches its 2045 carbon neutrality target.

Nevertheless, land use projects do have an important role to play on the demand side to ensure that SB 100 can feasibly be implemented. Inefficient electricity usage will hinder the shift to renewable power generation by requiring additional carbon-free generating resources to be developed, increasing the cost of shifting to renewables and other carbon-free energy sources, and delaying full implementation longer than necessary. Thus, to the extent that new land use projects have a role to play in ensuring that SB 100 is successfully implemented, that role is to maximize the efficiency with which they use electricity and to eliminate any wasteful or unnecessary usage. If a new land use project maximizes efficiency and eliminates wasteful and unnecessary usage, then it will implement its "fair share" in this area, consistent with achieving the State's long-term climate goals. Conversely, if a project is not designed to use electricity in an efficient manner, then it will hinder the successful implementation of SB 100 and the State's long-term climate goals.

CEQA requires lead agencies to evaluate a project's potential for wasteful, inefficient, or unnecessary energy usage under CEQA Section 21100(b)(3) and Section 15126.2(b) of the State CEQA Guidelines, along with State CEQA Guidelines Appendix F and Appendix G, Section VI. The Air District recommends using the results of this analysis to determine whether the project will implement its "fair share" with respect to supporting the implementation of SB 100. If the energy analysis required under CEQA Section 21100(b)(3) shows that a project will not result in any wasteful, inefficient, or unnecessary electrical usage, then it will

be consistent with implementing SB 100 and will not make a cumulatively considerable climate impact with respect to building electrical usage. If the project is found to involve wasteful, inefficient, or unnecessary electrical usage, then the lead agency should conclude that it will make a cumulatively considerable impact and treat it as significant in this regard.

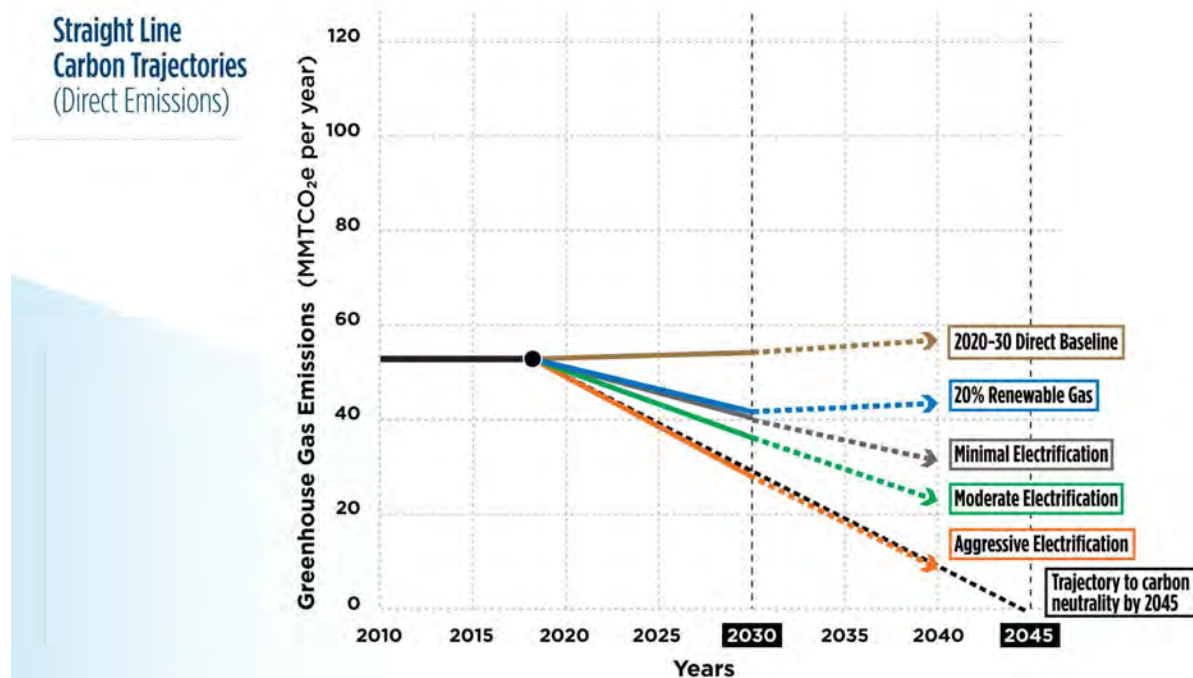
NATURAL GAS

Regarding natural gas usage, new land use development projects must be built without any natural gas infrastructure in order to be consistent with achieving the 2045 carbon neutrality goal. There is no practical way to eliminate the GHG emissions that are generated by burning natural gas, so the land use sector will need to fully eliminate natural gas usage in buildings in order to achieve the goal of carbon neutrality. Given the difficulty of retrofitting existing buildings to replace the use of natural gas with the use of electricity, California needs to stop building natural gas infrastructure in new buildings if it is going to be able to achieve full electrification by the 2045 target date. Retrofitting an existing building to replace natural gas infrastructure with electrical service is far more difficult and expensive than simply building a new all-electric building (CEC 2021a; E3 2019). For California to successfully eliminate natural gas usage by 2045, it will need to focus available resources on retrofitting existing natural gas infrastructure. This task will become virtually impossible if we continue to build more natural gas infrastructure that will also need to be retrofit within the next few years.

This need to eliminate natural gas in new projects in order to achieve carbon neutrality in buildings by 2045 is demonstrated by analyses conducted by the California Energy Commission (CEC) in its California Building Decarbonization Assessment (CEC 2021a). CEC published the California Building Decarbonization Assessment primarily in response to the requirements of AB 3232, which required CEC to evaluate how the State can reduce GHG emissions from its residential and commercial building stock by at least 40 percent below 1990 levels by 2030. But CEC went beyond just analyzing that 2030 goal and evaluated what will be necessary to achieve the longer-term goal of carbon neutrality by 2045. The analysis considered a number of different scenarios and projected the total GHG emissions from residential and commercial buildings under each of them. The results of CEC's analysis are shown graphically in Figure 1.



Figure 1 Effectiveness of CEC-Modeled Electrification Scenarios at Achieving Carbon Neutrality by 2045



Source: CEC 2021a:14

The CEC's analysis shows that only the most aggressive electrification scenario will put the building sector on track to reach carbon neutrality by 2045. Anything that hinders such aggressive efforts will jeopardize California's chances of achieving full building decarbonization by 2045 and impair the state's ability to reach its long-term climate goals. Installing natural gas infrastructure in new buildings will do so because it will add even more infrastructure that will need to be retrofit with electricity between now and 2045. New projects therefore need to eliminate natural gas in order to implement their "fair share" of achieving the long-term 2045 carbon neutrality goal. If a project does not use natural gas in its buildings, then a lead agency can conclude that it is consistent with achieving the 2045 carbon neutrality goal and will not have a cumulatively considerable impact on climate change. If a project does use natural gas, then it will hinder California's ability to decarbonize its building sector. In that case, the lead agency should conclude that it will make a cumulatively considerable impact and treat it as significant.

4.3.2 Transportation

The second principal source of GHG emissions associated with land use comes from transportation. Decarbonization of the transportation infrastructure serving land use development will come from shifting the motor vehicle fleet to EVs, coupled with a shift to carbon-free electricity to power those vehicles. Land use projects cannot directly control whether and how fast these shifts are implemented, but they can and do have an important indirect influence on California's transition to a zero-carbon transportation system.

New land use development can influence transportation-related emissions in two areas related to how it is designed and built. First, new land use projects need to provide sufficient EV charging infrastructure to serve the needs of project users who will be driving EVs. If project users cannot find the charging

infrastructure they need to charge their vehicles at the residential, commercial, and other buildings they frequent, they will be discouraged from switching to an EV. But if those buildings provide sufficient charging infrastructure to make driving an EV easy and efficient, then users will find it easy to choose to drive an EV, and the rate of EV penetration will be accelerated. It is therefore very important for land use projects to provide the EV charging infrastructure needed to support growing EV usage.

Second, new land use projects can influence transportation-related GHG emissions by reducing the amount of VMT associated with the project. Motor vehicle transportation does not need to be eliminated entirely in order for the land use sector to achieve carbon neutrality, as carbon-free vehicle technology can be used (e.g., EVs powered by carbon-free electricity sources). But for that goal to be realistically implemented by 2045, California will need to reduce its per-capita VMT. How land use development is designed and sited can have a significant influence on how much VMT the project will generate. New land use projects need to provide alternatives to motor vehicle–based transportation such that VMT per capita can be reduced to levels consistent with achieving carbon neutrality by 2045.

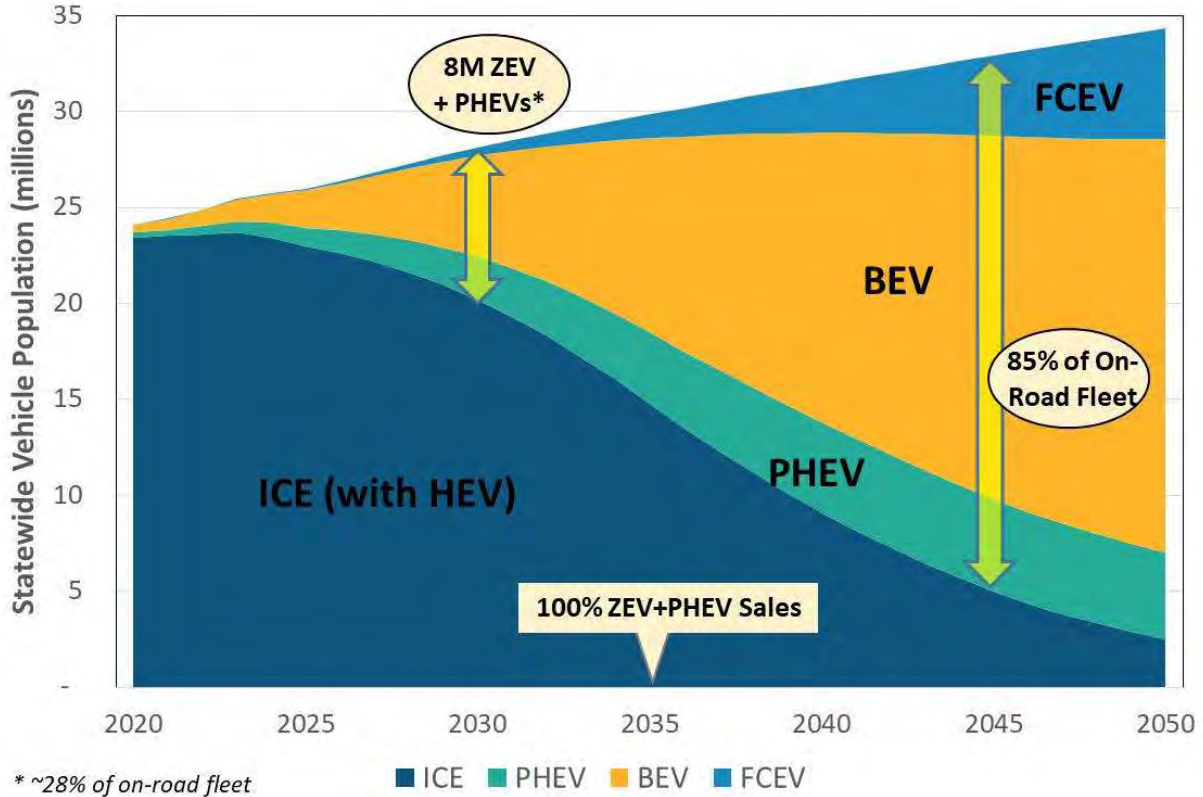
The design elements that new land use projects need to incorporate to address these two areas are outlined below.

EV CHARGING INFRASTRUCTURE

To implement the decarbonization of California’s motor vehicle transportation, the California Air Resources Board (CARB) has adopted a comprehensive Mobile Source Strategy incorporating a suite of policies to promote the shift away from fossil fuel–powered vehicles (CARB 2021b). These policies include aggressive targets for EV penetration, including Executive Order B-16-12’s goal of 1.5 million zero-emission vehicles (ZEVs) on the road by 2025 and Executive Order N-79-20’s call for all new light-duty vehicles sold in California to be battery electric or plug-in hybrid by 2035. CARB’s modeling projects that these efforts will result in as many as 8 million light-duty EVs in the statewide fleet by 2030 and that 85 percent of the on-road fleet will be EVs by 2045 (CARB 2021b:94–95). The results of CARB’s modeling for its 2020 Mobile Source Strategy scenario are shown in Figure 2, below.



Figure 2 Statewide Light-Duty Vehicle Technology Penetration in the On-Road Fleet



Source: CARB 2021b

Notes: BEV = battery electric vehicle; FCEV = fuel cell electric vehicle; HEV = hybrid electric vehicle; ICE = internal combustion engine vehicle; PHEV = plug-in electric vehicle; ZEV = zero emission vehicle.

Implementing this widespread shift to EVs will require the installation of extensive EV charging infrastructure, and new development will need to provide its “fair share” of that infrastructure. Indeed, new development has an especially important role to play, as installing EV charging infrastructure in new buildings is far less expensive than retrofitting existing buildings. CARB has found that installing EV charging infrastructure in a new building can save an estimated \$7,000–\$8,000 per parking space compared with retrofitting it later (CARB 2019a:19).

The requirements for EV charging infrastructure in new land use development projects are governed by the CALGreen regulatory standards. These standards are set forth in Title 24 of the California Code of Regulations, and they are regularly updated on a 3-year cycle. The CALGreen standards consist of a set of mandatory standards that are legally required for new development, as well as two more aggressive sets of voluntary standards known as Tier 1 and Tier 2. Although the Tier 1 and Tier 2 standards are voluntary, they often form the basis of future mandatory standards adopted in subsequent updates.

The CalGreen standards have recently been updated (2022 version) and will be in effect from January 1, 2023, through December 31, 2025. The 2022 CALGreen standards seek to deploy additional EV chargers in various building types, including multifamily residential and nonresidential land uses. They include requirements for both EV capable parking spaces and the installation of Level 2 EV supply equipment for multifamily residential and nonresidential buildings. The 2022 CALGreen standards go beyond previous

iterations and include requirements for both EV readiness and the actual installation of EV chargers. As with previous iterations, the 2022 CALGreen standards include both mandatory requirements and more aggressive voluntary Tier 1 and Tier 2 provisions.

The 2022 CALGreen mandatory standards were adopted based on what will be required to serve anticipated EV charging demand through the year 2025. CARB evaluated what will be required to serve demand through 2025 as part of its role in ensuring that the CALGreen standards support California's long-range climate goals pursuant to AB 341 (Health and Safety Code Section 18930.5[b]). CARB suggested a number of necessary revisions for the 2022 iteration of the standards, including an increase in the percent of parking spaces in certain types of projects that must be EV-capable from the earlier 6 percent to the current 10 percent. These revisions were based on CARB's assessment of the level of EV infrastructure that will be required to support the Executive Order B-16-12 target of 1.5 million ZEVs on the road by 2025. CARB conducted this analysis in 2019 using the Electric Vehicle Infrastructure Projection model (EVI-Pro) developed by the National Renewable Energy Laboratory and the California Energy Commission. Using EVI-Pro, CARB projected the amount of EV charging infrastructure required by 2025 and then calculated the amount of infrastructure expected by 2025 under existing mandatory codes and standards. The results of this analysis showed a gap between what would be achieved under existing codes and standards and what will be needed as of 2025 (CARB 2019a). The revised 2022 CALGreen mandatory standards adopted for the current 2023–2025 cycle are intended to close this gap and ensure that the charging infrastructure needs of 2025 will be met.

However, providing EV charging infrastructure to meet expected demand as of 2025 will not be sufficient to support the much more extensive level of EV penetration anticipated farther into the future. As shown in Figure 2, the number of EVs on the road is projected to grow exponentially, and the demand for EV charging infrastructure will increase accordingly. If a project provides only enough infrastructure to satisfy 2025 demand, it will fall well short of what project users will need as the State progresses toward 2045. The Air District therefore recommends using the more aggressive Tier 2 CALGreen standards to evaluate whether new land use development projects will provide their "fair share" of EV charging infrastructure. This approach is also consistent with CARB's assessment that the Tier 2 standards will need to be made mandatory in CALGreen to support the exponential increase in EV adoption rates as we move past 2025 (CARB 2019a:16).

Looking toward a post-2025 horizon is also appropriate because land use development projects have a long lifetime and will be in use in future years when extensive EV penetration is projected. To be consistent with implementing California's 2045 climate goals, such projects cannot simply provide a level of infrastructure aimed at 2025 levels of EV use, as is reflected in the current CALGreen mandatory standards. A new land use development project will need to implement the more aggressive Tier 2 CALGreen standard for its impact to be less than significant in this area.

VEHICLE MILES TRAVELED

With respect to VMT, CARB studies have shown that California will not be able to achieve its long-term climate goals if we continue our current high level of VMT per capita. The State will need to significantly reduce its VMT per capita in order to attain the goal of carbon neutrality by 2045 (CARB 2021b:105–126).



New land use projects have an important role to play in doing so, as the way a project is sited and designed can significantly affect how the people who use the project will get around. For example, project siting and design can affect whether project users will be forced into making long car trips on a regular basis or whether they will be able to take advantage of alternative transportation options for their daily travel needs. New land use projects will need to be built with reduced levels of VMT per capita in order to implement their “fair share” of what it will take to eliminate GHG emissions from the transportation sector.

CARB has developed an analytical methodology for determining the level of VMT reduction that will be necessary to achieve California’s long-term GHG emissions goals. This methodology calculates the total statewide VMT that California can accommodate and still hit its emissions targets and then divides that total statewide VMT by the State’s projected population as of the target year. This calculation gives the amount of VMT per capita that the State can accommodate consistent with achieving the target. CARB’s methodology then compares this targeted VMT-per-capita number with current VMT per capita to establish the reduction from current baseline levels necessary in order to hit the target.

CARB developed this methodology in conjunction with the VMT-per-capita threshold that the Governor’s Office of Planning and Research (OPR) adopted for evaluating transportation impacts pursuant to SB 743 (see CEQA Guidelines Section 15064.3). SB 743 required lead agencies to abandon the old “level of service” metric for evaluating a project’s transportation impacts, which was based solely on the amount of delay experienced by motor vehicles. This metric was criticized for prioritizing motor vehicle transportation and disincentivizing alternative modes, such as public transit, walking, and biking. SB 743 tasked OPR with developing an alternative metric to assess transportation impacts, and it directed OPR to base its alternative metric on factors such as reducing GHG emissions and developing multimodal transportation networks (CEQA Section 21099[b][1]). OPR concluded that the VMT-per-capita metric was the most appropriate for this purpose, and it published new Guidelines Section 15064.3 in November 2017.

CARB applied its methodology in support of OPR’s VMT-per-capita metric to determine the appropriate level of VMT reduction that would allow the State to attain its long-term emissions goals, looking initially to the 2050 long-term target of an 80-percent reduction in GHG emissions compared to 1990 levels (CARB 2019b). CARB found that total statewide VMT would need to be limited to 1,035 million miles driven per day in order to achieve that target, consisting of 908 million light-duty-vehicle miles and 127 million heavy-duty-vehicle miles. With the State’s population projected to grow to 49 million people by 2050, this works out to a per-capita VMT of 18.51 miles per day for light-duty vehicles and 21.09 miles per day for all vehicle types combined.⁶ Given current baseline per-capita VMT levels of 22.24 miles per day for light-duty vehicles and 24.61 miles per day for all vehicle types, the reductions needed to achieve the 2050 goal are 16.8 percent for light-duty vehicles and 14.3 percent for all vehicle types combined. CARB’s calculations are summarized in Table 1.

⁶ Statewide population projections are provided by the California Department of Finance, and VMT projections are provided by CARB’s scenario planning tool, Vision (CARB 2019b:5).

Table 1 Per-Capita VMT Reductions Necessary to Attain 2050 GHG Reduction Target

	Light-Duty Vehicles	All Vehicle Types
Baseline VMT/capita	22.24 miles per day	24.61 miles per day
2050 VMT/capita	18.5 miles per day	21.09 miles per day
Reduction needed	16.8%	14.3%

Based on this analysis (as well as other factors), OPR recommended using a 15-percent reduction in per-capita VMT as an appropriate threshold of significance for evaluating transportation impacts, as this level of VMT addresses transportation and corresponds to what would be needed to attain the State's 2050 climate target (OPR 2018).⁷

CARB is currently updating this analysis for the 2045 carbon neutrality target in connection with its 2022 Scoping Plan Update. Although that work is ongoing and CARB has not finalized its revised analysis, CARB has suggested that it will use the same 15-percent-per-capita VMT reduction threshold that it derived in connection with the 2050 target. Specifically, in October 2021, CARB updated its Mobile Source Strategy, an important constituent of the Scoping Plan, using the same 15-percent reduction target as used in previous plans (CARB 2021b:105). The Air District therefore recommends that lead agencies use OPR's 15-percent per-capita VMT reduction threshold for evaluating land use projects (OPR 2018). Alternatively, to the extent CARB determines that a different threshold would be more appropriate for purposes of the 2045 carbon neutrality target in connection with its work on the 2022 Scoping Plan Update, lead agencies should use that 2045-specific threshold instead. If a land use project is designed and built so that its associated VMT per capita is reduced to the extent determined to be necessary by CARB, then it will implement its "fair share" of the VMT reductions needed to attain the State's long-term climate goals and can be found to have a less-than-significant climate impact.

Finally, it is worth noting that some local jurisdictions may have developed their own VMT-per-capita thresholds for use in CEQA transportation analyses pursuant to SB 743. If such a jurisdiction-specific VMT-per-capita threshold is available and applicable, the Air District recommends that lead agencies use it in their climate impact analyses, provided that it was established based on what it will take to achieve California's long-term climate goals in a manner akin to the analysis outlined above. If an SB 743 transportation threshold is not established at a level commensurate with achieving those climate goals, then it would not be appropriate to use it to evaluate climate impacts. But if it is based on the level of VMT necessary for the local jurisdiction to attain climate neutrality by 2045, then a lead agency can use it to evaluate whether a project is doing its "fair share" with respect to ensuring that VMT is reduced sufficient to achieve the State's climate goals.

OPR has provided guidance to local jurisdictions on choosing appropriate local VMT reduction thresholds in its Technical Advisory on Evaluating Transportation Impacts in CEQA (OPR 2018). The advisory contains technical recommendations regarding assessment of VMT, thresholds of significance, and mitigation measures. It specifies recommended thresholds of significance for residential, office, and retail projects,

⁷ The 15-percent reduction is compared to existing VMT per capita measured as either regional VMT per capita or city VMT per capita (OPR 2018:15).



which are reflected in the “Thresholds for Land Use Projects” section on page 10 of this document. These types of projects reflect the vast majority of land use projects implemented in the Bay Area. For other types of projects, lead agencies should follow the guidance provided in the OPR advisory. OPR may update or supplement this advisory in the future in response to new information and advancements in modeling and methods, so lead agencies should continue to track the development of the advisory and always use the most recent version.

5 THRESHOLDS FOR GENERAL PLANS AND SIMILAR LONG-TERM COMMUNITY-WIDE PLANNING DOCUMENTS

Local governments are essential partners in achieving California’s goal to reduce GHG emissions. Local governments not only approve specific land use development projects but have primary authority to plan for and zone how and where land is developed within their jurisdiction to accommodate population growth and the changing needs of their communities. CEQA also applies to these planning decisions, and local governments are required to evaluate the climate impacts when adopting such plans.

Thresholds for Plans (Must Include A or B)

- A. Meet the State’s goals to reduce emissions to 40 percent below 1990 levels by 2030 and carbon neutrality by 2045; or
- B. Be consistent with a local GHG reduction strategy that meets the criteria under State CEQA Guidelines Section 15183.5(b).

5.1 REDUCING GHG EMISSIONS TO MEET GHG REDUCTION TARGETS

For long-term communitywide planning documents (e.g., general plans, long-range development plans, climate action plans) to have a less-than-significant climate impact, they must demonstrate that GHG emissions from the jurisdiction will decline consistent with California’s GHG reduction targets of 40 percent below 1990 levels by 2030 and carbon neutrality by 2045. A city or county that plans to develop in a manner that will cause emissions to exceed these targets will hinder the State’s ability to achieve its climate goals and thus will have a significant climate impact. Conversely, a city or county that will develop in a way that will meet those targets will support the State’s ability to achieve its climate goals and thus will have a less-than-significant impact on GHG emissions. Therefore, a communitywide long-term plan must demonstrate that the community will have GHG emissions 40 percent below its 1990 levels by 2030 and support the State’s goal of carbon neutrality by 2045.

5.2 CLIMATE ACTION PLANS

The Air District encourages local jurisdictions to develop climate action plans as a means of demonstrating that their communities—including existing and new buildings and infrastructure—will develop in accordance with meeting the statewide GHG reduction targets. A robust climate action plan identifies a land use design, a transportation network, goals, policies, and implementation measures that will achieve

the required GHG emissions targets of 40 percent below 1990 levels by 2030 and support the State’s goal of achieving carbon neutrality by 2045. If a jurisdiction adopts such a climate action plan, it can then use that plan when it adopts its general plan updates and similar long-range planning documents to provide the basis for demonstrating that the jurisdiction’s GHG emissions will decline consistent with the State’s 2030 and 2045 targets. This demonstration will allow the jurisdiction to make the required CEQA determination that its general plan and similar planning documents will not have a significant climate impact, as discussed in Section 5.1, above.

Furthermore, a robust climate action plan developed and adopted in accordance with the requirements for a “plan for the reduction of greenhouse gas emissions” set forth in CEQA Guidelines Section 15183.5 will provide additional benefits related to approving specific development projects. Guidelines Section 15183.5(b)(2) provides that if a jurisdiction has adopted a climate action plan that satisfies all of the Section 15183.5 requirements, the jurisdiction can find that a project that is consistent with the plan will not make a cumulatively considerable contribution to global climate change under CEQA. Adopting a climate action plan with requirements and implementation measures governing specific types of projects—and what those projects must do to ensure that the jurisdiction’s GHG emissions achieve the required targets—can provide a great deal of certainty for project applicants and agency decision makers. A proposed project that complies with all the specified requirements and implementation measures will not be found to be significant under Guidelines Section 15183.5(b)(2). Local jurisdictions also will be able to tailor the applicable requirements and mitigation measures to their specific communities rather than rely on the Air District’s general thresholds for evaluating land use projects, discussed in Section 4, above.

CEQA Guidelines Section 15183.5(b)(1) lays out the specific criteria to be included in local GHG reduction strategies that can enable CEQA streamlining benefits for future land use projects. Such plans must:

- ▶ quantify GHG emissions, both existing and projected over a specified period, resulting from activities in a defined geographic area;
- ▶ establish a level, based on substantial evidence, below which the contribution to GHG emissions from activities covered by the plan would not be cumulatively considerable;
- ▶ identify and analyze the GHG emissions resulting from specific actions or categories of actions anticipated in the geographic area;
- ▶ specify measures or a group of measures, including performance standards, that substantial evidence demonstrates, if implemented on a project-by-project basis, would collectively achieve the specified emissions level;
- ▶ establish a mechanism to monitor the plan's progress toward achieving the level and to require amendment if the plan is not achieving specified levels; and
- ▶ be adopted in a public process following environmental review.

These requirements are somewhat vague in some cases, and the Air District cautions jurisdictions developing climate action plans to take care that their plans are comprehensive and fully satisfy the letter and the spirit of the Section 15183.5 process. Climate action plans that do not satisfy all of these required



elements will not be eligible for use in approving later projects under Guidelines Section 15183.5(b)(2), and they will not provide the substantial evidence necessary to demonstrate that the jurisdiction's general plan updates and related long-range planning documents will have a less-than-significant impact as outlined in Section 5.1.

The Air District has published guidance on how a jurisdiction can develop a climate action plan that satisfies the requirements of Guidelines Section 15183.5(b)(1), which is included as Appendix C to the CEQA Air Quality Guidelines document. Jurisdictions developing climate action plans should refer to and follow that guidance to strengthen their plan's ability to comply with all Section 15183.5(b)(1) requirements and allow it to be used to evaluate climate impacts under Section 15183.5(b)(2).

The Air District strongly encourages jurisdictions to adopt local GHG reduction strategies—either as a stand-alone climate action or sustainability plans or as a part of the general plan—that meet the Section 15183.5(b)(1) criteria. Adopting a robust GHG reduction strategy that satisfies these requirements can bring many benefits to the community:

- ▶ It will identify measures that the city or county will need to take to ensure that its GHG emissions will be consistent with the statewide climate protection targets, that the jurisdiction can then use to make the consistency determination for its general plan updates.
- ▶ The city or county will be able to use the Section 15183.5(b)(1)-compliant GHG reduction strategy to approve specific land use development projects that are consistent with the strategy. This will provide a method for analyzing projects under CEQA that is tailored to the specific needs and policy goals of the individual jurisdiction, and it will allow the city or county to use that tailored methodology instead of the more general thresholds approach developed by the Air District for use regionwide.
- ▶ Cities and counties can develop Section 15183.5(b)(1) GHG reduction strategies immediately, without waiting for their next general plan update cycle.

This approach to local climate planning, tied to the SB 32 and carbon neutrality goals, promotes reductions on a plan level without impeding the implementation of GHG-efficient development, and recognizes the initiative of many Bay Area communities that have already developed or are developing a GHG reduction plan. A qualified climate action plan will provide the evidentiary basis for making CEQA findings that development consistent with the plan will result in feasible, measurable, and verifiable GHG reductions consistent with broad State goals such that projects approved under the plan will achieve their "fair share" of GHG emission reductions.

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ATTACHMENT 3

PUBLIC COMMENTS AND STAFF RESPONSES REGARDING PROPOSED THRESHOLDS OF SIGNIFICANCE FOR CLIMATE IMPACTS AND JUSTIFICATION REPORT

SUMMARY OF COMMENTS AND STAFF RESPONSES REGARDING THE PROPOSED UPDATE TO CEQA THRESHOLDS OF SIGNIFICANCE FOR CLIMATE IMPACTS AND ASSOCIATED JUSTIFICATION REPORT

List of Commenters

The following table lists the individuals and organizations from whom Air District staff received written comments prior to the March 18, 2022 comment deadline.

Commenter	Contact Information
Association of Environmental Professionals (AEP)	Michael Hendrix, Chair, and Members of the AEP Climate Change Committee Letter, March 18, 2022
Natural Resources Defense Council (NRDC)	Ann Alexander, Senior Attorney Letter, March 17, 2022
San Francisco Planning Department	Devyani Jain, Deputy Environmental Review Officer Letter, March 16, 2022
SPUR	Michael Lane, State Policy Director Letter, March 17, 2022
Element Markets	Mark Havel, Director, Environmental Products Letter, March 18, 2022
Building Industry Association Bay Area (BIA)	Paul Campos, Senior Vice President of Governmental Affairs and General Counsel Email, March 17, 2022
Hanson Bridgett LLP	Robin Baral, Email, March 3, 2022
Baseline Environmental Consulting	Yilin Tian, Environmental Engineer Email, March 3, 2022
EMC Planning Group (EMC)	Ron Sisseem, Senior Principal Email, March 16, 2022
First Carbon Solutions	Lance Park, Senior Air Quality Scientist Email, March 16, 2022
Napa Climate Now!	Christina Benz Email, March 17, 2022

Summary of comments and responses

Implementation timing

Specify that the thresholds of significance shall apply only to those development projects for which an application has been deemed complete at least six months after the Air District adopts the updated guidelines.

BIA, SPUR, Hanson Bridgett

Can agencies use current thresholds while updated thresholds are still underway?

First Carbon Solutions

Response:

Staff will recommend that the Air District Board of Directors make the recommended Thresholds of Significance effective upon adoption by the Air District Board of Directors and should be applied to projects for which the Notice of Preparation is issued and environmental analysis begun on or after the adoption date. These thresholds are Air District *recommendations* to local Lead Agencies; as such, whether and when to use the thresholds is a decision to be made by the respective Lead Agencies. However, it is important to remember that significance determinations must be based upon scientific and factual data and must be supported by substantial evidence. The Air District's current GHG thresholds and CEQA Guidelines are based on the State's 2020 targets which are now superseded by the 2030 targets established in SB 32. Until the updated Thresholds of Significance for Climate Impacts are adopted, cities and counties should continue to follow Air District guidance per recent [comment letters](#) and evaluate whether projects or plans are consistent with California's long-term climate goals.

Offsetting and alternative mitigation

Add a quantitative option for meeting significance for projects – either a quantitative brightline level of emissions, or option to offset the specific design elements in the proposed thresholds with alternative replacement strategies.

AEP, EMC Planning

Can certified voluntary offset be included as an offsite mitigation measure?

Elemental Markets, AEP

There is currently no mention of use of offsets in the Justification Report. Suggest providing guidance on best practices for lead agencies that choose to use voluntary offsets to mitigate GHG emissions.

AEP

Allow VMT to be mitigated with non-VMT offset reductions elsewhere within the scope of the project.

AEP, EMC Planning

The proposed thresholds to evaluate climate impacts from land use projects are qualitative, therefore there is no bright-line (quantitative) level to mitigate below. I.e., significance is determined by whether a project will impede California’s ability to achieve its long-term climate goals. Projects that decline to integrate these qualitative design elements can alternatively demonstrate consistency with a local Greenhouse Gas (GHG) Reduction Strategy that meets the criteria of the State CEQA Guidelines section 15183.5(b). Continuing to approve projects that extend the natural gas infrastructure and avoid supporting EV and VMT-reducing infrastructure will lock in permanent sources of GHG emissions that will be very difficult and costly to reverse later, thus impeding California’s ability to reach carbon neutrality. The CEC’s analysis shows that only the most aggressive electrification scenario will put the building sector on track to reach carbon neutrality by 2045. Anything that hinders such aggressive efforts will jeopardize California’s chances of achieving full building decarbonization by 2045 and impair the state’s ability to reach its long-term climate goals.

These proposed thresholds to evaluate climate impacts support California’s ability to achieve its long-term climate goals. Relying on offsets to mitigate climate impacts from either projects or plans can be challenging, as 1) evolving case law is limiting the universe of appropriate types of offsets, 2) there is less of a guarantee that emission reductions from offsets will endure over the long-term compared to avoiding emissions through project design, and 3) the availability of offset projects that are truly additional may significantly decrease as more and more regulatory approaches to reduce emissions are implemented as we approach 2045.

Threshold applicability to different types of projects

Provide thresholds and/or guidance for additional land-use project types.

AEP

While the thresholds were developed to apply to the majority of projects evaluated pursuant to CEQA, i.e., residential and commercial projects, the project-level threshold design elements can apply to many other types of projects, or portions of projects. Additionally, the Air District is available to support lead agencies in their determination of how to apply these thresholds of significance, and will be sharing guidance and best practices for certain distinct project types including warehouses and data centers.

Expand threshold of significance analysis to include oil and gas related land use projects.

NRDC

Staff will be investigating options to update the current stationary source thresholds for Climate Impacts later this year.

Would these threshold apply to woodlands and forest-type projects?

County of Napa

These thresholds would most likely not be appropriate for use with forest projects that do not include buildings, vehicle parking or significant vehicle travel.

What about thresholds and guidance for projects like warehouses?

Baseline Environmental Consulting

Depending on the specific project, these thresholds could apply to a warehouse project. The design elements for building energy use can be applied to warehouses, as can the EV parking and the VMT elements. The 2022 CalGreen update includes requirements for EV capability for off-street loading docks for warehouses, retail and grocery store projects. As mentioned above, Air District staff is considering developing guidance on best practices for some distinct project types. Additionally, the Air District is available to support lead agencies in their determination of how to apply these thresholds of significance and will be sharing guidance and best practices for certain distinct project types including warehouses.

General comments

Achieving carbon neutrality is not an appropriate target for local climate action and general plans, given the limited resources for locally offsetting GHG emissions in most jurisdictions.

AEP, El Cerrito Environmental Quality Committee

The Air District agrees that different communities have different challenges and opportunities in pursuing the carbon neutrality goal. Recent climate action plans show that local governments have consistently been able to demonstrate quantitatively how the 2030 target will be met. Building the 2045 carbon neutrality target into CAPs is a newer challenge and has proven to be more difficult, particularly in the absence of statewide guidance on the role expected of local jurisdictions in meeting the statewide carbon neutrality target. And yet, we know from scientific reports released by the Intergovernmental Panel on Climate Change (IPCC) that we must achieve these GHG reduction goals in order to prevent cataclysmic climate change. Therefore, climate action plans should aggressively pursue GHG reductions with a preponderance of enforceable, mandatory measures that move the community as close to carbon neutrality as possible, and include a strong, detailed implementation strategy that shows how the community will address residual emissions over time with re-evaluation and strengthening of the GHG reduction strategy as advances in technologies, innovations and statewide policies and actions make carbon neutrality achievable. For example, the State is likely to have a role in addressing local residual emissions through statewide efforts such as carbon sequestration and removal.

Executive Order B-55-18 is not a state mandate but a goal that does not specify any plan or implementation measures, and therefore should not be used as a threshold of significance under CEQA (Cleveland National Forest Foundation et. al. v. San Diego Association of Governments [2017], 3 Cal. 5th 497, Supreme Court Case No. 223603)).

AEP

Although the 2045 goal is set forth in an executive order and not in a statute, as with the 2020 AB 32 goal that the Supreme Court addressed in *Center for Biological Diversity*, the Executive Order B-55-18 goal is appropriate to use for developing a threshold of significance given the science supporting it. The Supreme Court explicitly rejected the argument that an executive order cannot be used for this purpose because it has not been adopted by statute in the SANDAG case. It explained that the executive order at issue there “expresses the pace and magnitude of reduction efforts that the scientific community believes is necessary to stabilize the climate. This scientific information has important value to policymakers and citizens in considering the emission impacts of a project” (*Cleveland National Forest Foundation v. SANDAG* [2017] 3 Cal.5th 515). Agencies are required to design their CEQA analyses “based to the extent possible on scientific and factual data,” and if an executive order best embodies the current state of the scientific and factual data, an agency may use it as the basis for its CEQA analysis (quoting CEQA Guidelines Section 15064[b]).

A “one-size-fits-all” threshold for VMT is not appropriate, and cities should be allowed to determine appropriate VMT levels for their jurisdictions.

AEP

The approach to VMT follows the well-researched and supported guidance by the Governor’s Office of Planning and Research (OPR) in its Technical Advisory on Evaluating Transportation Impacts in CEQA. OPR’s Technical Advisory states, “Based on OPR’s extensive review of the applicable research, and in light of an assessment by the California Air Resources Board quantifying the need for VMT reduction in order to meet the State’s long-term climate goals, OPR recommends that a per capita or per employee VMT that is fifteen percent below that of existing development may be a reasonable threshold,” and that, “achieving 15 percent lower per capita (residential) or per employee (office) VMT than existing development is both generally achievable and is supported by evidence that connects this level of reduction to the State’s emissions goals.” OPR’s guidance allows for local jurisdictions to choose between city-wide or regional VMT levels when applying their reduction requirements. While understanding that in some unique situations, achieving a 15 percent reduction in per capita/employee below city or regional VMT levels might be challenging, it is nonetheless well-established by CARB and OPR that this is a reasonable threshold to use for CEQA (see Justification Report, page 17)

It is unclear in the current guidance whether the Plan-Level thresholds are applicable to general plans only or whether this threshold approach would be applicable to specific plans and/or projects with a post-2030 horizon year.

The Air District has developed these thresholds of significance based on typical long-term communitywide planning documents such as general plans and similar long-range development plans. These plans typically have strategies captured in long-range plans that have strategies implemented over a 20-year, or longer, time horizon and include discretionary planning activities, such as zoning. Long-range plans can be referred to by different names, but typically include general plans and general plan elements, specific plans, area plans, community plans, congestion management plans, and annexations of lands and service areas. Plans that are a compilation of individual projects only should be evaluated against the project-level thresholds.

Provide guidance for lead agencies on how to adjust the CalEEMod defaults to accommodate these BMPs.

AEP

The proposed thresholds to evaluate climate impacts from land use projects are qualitative, and therefore do not require quantitative evaluation. However, many lead agencies do choose to use CalEEMod as one of the evaluation tools when developing local GHG reduction plans and strategies. The Air District’s supportive Guidelines will include an appendix to assist users with the California Emissions Estimator Model (CalEEMod) Version 2020.4.0 for projects located in the Bay Area. CalEEMod provides default values for Bay Area–specific modeling parameters. This appendix will be updated from time to time as new versions of CalEEMod is released. In addition, the California Air Pollution Control Officers Association (CAPCOA) has recently released the *Handbook for Analyzing Greenhouse Gas Emission Reductions, Assessing Climate Vulnerabilities, and Advancing Health and Equity* (GHG Handbook), with updated and new quantification guidance for mitigating GHG emissions for CEQA projects. A new, updated version of CalEEMod based on the methodologies in the Handbook will be released online later this Spring. (<https://www.airquality.org/residents/climate-change/ghg-handbook-caleemod>)

Explicitly state that GHG emissions from construction activities associated with CEQA projects are considered less-than-significant, given their short-term and temporary nature.

AEP

There is no proposed construction-related climate impact threshold at this time. Greenhouse gas emissions from construction represent a very small portion of a project’s lifetime GHG emissions. The proposed thresholds for land use projects are designed to address operational GHG emissions which represent the vast majority of project GHG emissions. (This clarification will be added to the Justification Report.)

Clarify how a project can demonstrate that it “maximizes the efficiency with which they use electricity.”

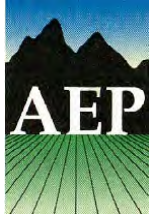
CEQA requires lead agencies to evaluate a project’s potential for wasteful, inefficient, or unnecessary energy usage under Section 21100(b)(3) and Section 15126.2(b) of the State CEQA Guidelines, along with State CEQA Guidelines Appendix F and Appendix G, Section VI.5. The Air District recommends using the results of this analysis to determine whether the project will implement its “fair share” with respect to supporting the implementation of SB 100. (SB 100 strengthened the State’s Renewables Portfolio Standard to achieve increased levels of carbon-free electricity.) To the extent that new land use projects have a role to play in ensuring that SB 100 is successfully implemented, that role is to maximize the efficiency with which they use electricity and to eliminate any wasteful or unnecessary usage. If the energy analysis required under CEQA Section 21100(b)(3) shows that a project will not result in any wasteful, inefficient, or unnecessary energy usage, then it will be consistent with implementing SB 100 and will not make a cumulatively considerable climate impact with respect to building electrical usage.

Suggest the Air District reorganize the design elements in the project thresholds to prioritize a reduction in vehicle miles traveled (VMT) first, followed by the EV measure.

San Francisco Planning Department

Staff will re-order the transportation design elements in the project threshold tables, on pages 2 and 10 in the Justification Report.

COMMENT LETTERS SUBMITTED



ASSOCIATION OF
ENVIRONMENTAL
PROFESSIONALS

March 18, 2022

Bay Area Air Quality Management District
375 Beale Street, Suite 600
San Francisco, CA

ELECTRONIC SUBMITTAL

Subject: Comments on BAAQMD's Draft Justification Report: CEQA Thresholds for Evaluating Significance of Climate Change Impacts from Land Use Projects and Plans, Dated February 16, 2022.

On behalf of the Association of Environmental Professionals (AEP), Climate Change Committee, we appreciate the opportunity to provide comments on Bay Area Air Quality Management District's (BAAQMD or District) *Draft Justification Report: CEQA Thresholds for Evaluating Significance of Climate Change Impacts from Land Use Projects and Plans, Dated February 16, 2022.*

AEP is a non-profit organization of California's environmental professionals. AEP's Climate Change Committee (Committee) members are actively involved in supporting California cities and counties in the evaluation of greenhouse gas (GHG) emissions impacts for new development subject to the California Environmental Quality Act (CEQA), preparing communitywide GHG emissions inventories and forecasts and developing and implementing Climate Action Plans (CAPs). GHG emissions thresholds for CEQA is of great interest to the Committee and our CEQA and climate action planning work with California cities and counties, especially as it relates to local target setting and CEQA significance thresholds. The Committee supports BAAQMD in its challenging work to establish GHG emissions thresholds to support the State's GHG reduction goals under Senate Bill 32, Executive Order S-03-05, and Executive Order B-55-18.

The Justification Report is a good first step on identifying a potential path to evaluate GHG emissions impacts under the CEQA. Use of Best Management Practices (BMPs) as a way of identifying consistency with the California Air Resources Board's (CARB) Scoping Plan would allow for a simplified way of processing residential and commercial land use projects. However, the Justification Report does not fully vet this concept for all land use types or allow for alternative means of evaluating GHG emissions impact under CEQA. Of greatest concern with this Committee is the concept that the State's carbon neutrality goal under Executive Order B-55-18 is a mandatory threshold that should be applicable to local GHG reduction plans (such as Climate Action Plans) and long-range plans; and therefore, to land use projects intending to streamline GHG impacts analysis via consistency with such plans.

AEP's Climate Change Committee has the following key comments on the 2022 Justification Report:

Streamlining from Climate Action Plans without a Carbon Neutrality Target (Pending Appendix C Guidance on CAPs)

Redefining 'consistency with CEQA Guidelines Section 15183.5' to be applicable to only GHG reduction plans that demonstrate how the community achieves the Executive Order B-55-18 carbon neutrality goal threatens the ability of lead agencies to move forward with local climate change and resiliency efforts.

Executive Order B-55-18 is not a state mandate but a goal. Based on current caselaw, Executive Orders are not thresholds of significance under CEQA (*Cleveland National Forest Foundation et. al. v. San Diego Association of*

Governments [2017], Cal5th Supreme Court Case No. 223603]). This is specifically true for Executive Order B-55-18 because it does not specify any plan or implementation measures to achieve its goal.

The current climate action planning framework is outlined in CARB’s 2017 Scoping Plan. There is nothing in CARB’s 2017 Scoping Plan which identifies that a carbon neutrality target for local jurisdictions is necessary for the state to achieve its GHG reduction targets.¹ The Draft 2022 Scoping Plan is anticipated to be released by CARB for public review in May 2022. Based on the March 15, 2022 *Scoping Plan Update – Initial Modeling Results Workshop*, none of the alternatives analyzed can achieve carbon neutrality without carbon dioxide removal (CDR), which is not a policy or measure that can be effectively implemented by local governments and other local lead agencies under CEQA or in a GHG reduction plan. Therefore, it is anticipated that any local goal identified in the proposed 2022 Scoping Plan would not require carbon neutrality of cities and counties themselves. To date, there is no evidence to demonstrate that lead agencies would need to plan for carbon neutrality to ensure less than significant impacts under CEQA.

We are concerned that BAAQMD’s threshold approach would disincentivize climate action planning in general because communities may abandon their GHG reduction planning efforts because it is not feasible today for a local jurisdiction to meet a carbon neutral target without a commitment to obtain GHG offset credits for all emissions not directly avoided or offset through sequestration efforts. Local jurisdictions do not control the emissions standards for cars, trucks, and equipment; only the state can regulate vehicles and equipment and the state does not have a committed zero carbon plan for all vehicles and equipment. More broadly, the state does not currently have a plan that guarantees a path to carbon neutrality by 2045. Without such a plan, it is impossible for a local jurisdiction to rely on those things that only the state can control, and this places an undue burden on a local jurisdiction to demonstrate carbon neutrality in its long-range planning. We may get there in time, but it’s not possible today.

Additionally, the carbon neutrality targets have the potential to disincentivize jurisdictions from providing additional, ambitious measures to achieve post-2030 targets because carbon neutrality is not feasible for jurisdictions to demonstrate without the use of voluntary GHG offsets. Requiring local GHG reduction plans to achieve carbon neutrality would also disincentivize lead agencies from wanting to meet the strict requirements of CEQA Guidelines Section 15183.5 to be “CEQA-qualified” to allow for CEQA streamlining of future projects. Having a GHG reduction plan is a good thing. Requiring lead agencies to achieve an infeasible or extraordinarily costly goal is not an incentive for jurisdictions to choose to evaluate GHG emissions impacts under CEQA with a GHG reduction plan. As a result, the Committee is concerned about adverse effects this guidance will have on the future of climate action planning in the Bay Area, which have historically been a defensible approach for CEQA.

Given current technological, economic, and regulatory limitations, carbon neutrality for local GHG reduction plans is not achievable without voluntary GHG offset credits. The Justification Report is silent on use of voluntary GHG offsets and does not provide guidance to lead agencies of their use. The only jurisdiction in California that has identified a goal to achieve carbon neutrality is the City of San Luis Obispo.² However, the GHG reduction plan identifies that use of voluntary GHG offsets is necessary to achieve the City’s local carbon neutrality target. The Justification Report does not currently provide guidance on the use of voluntary GHG offsets in achieving carbon neutrality goals. Yet, without use of voluntary GHG offsets, no jurisdiction would currently be able to provide a GHG reduction plan that achieves carbon neutrality.

It is our recommendation that the focus of GHG reduction plans continue to be for the near-term 2030 GHG reduction target that is consistent with the legislative target of Senate Bill 32. However, nothing precludes a lead agency from identifying and evaluating a post-2030 GHG reduction target that is consistent with Executive Order S-03-05 or Executive Order B-55-18; this just shouldn’t be a requirement for a local GHG reduction plan to be a qualified plan under CEQA Guidelines Section 15183.5. BAAQMD may consider recommending that GHG reduction plans show how

¹ In fact, the 2017 Scoping Plan says, “Achieving net zero increases in GHG emissions, resulting in no contribution to GHG impacts, may not be feasible or appropriate for every project, however, and the inability of a project to mitigate its GHG emissions to net zero does not imply the project results in a substantial contribution to the cumulatively significant environmental impact of climate change under CEQA.”

² San Luis Obispo, City of. 2020, August 19. Climate Action Plan for Community Recovery and Associated California Environmental Quality Act Greenhouse Gas Thresholds and Guidance. <https://www.slocity.org/government/department-directory/city-administration/office-of-sustainability/climate-action/climate-action-plan-1949>

a community is on the trend toward carbon neutrality beyond 2030 (such as in 2035), without mandating full compliance with a 2045 carbon neutral target.

GHG Thresholds for Long-Range (post-2030) Plans and Projects

A Plan-Level project is currently defined in the BAAQMD CEQA Guidelines as general-plan level projects only. It is unclear in the current guidance whether the Plan-Level thresholds are applicable to general plans only or whether this threshold approach would be applicable to specific plans and/or projects with a post-2030 horizon year.

It should be noted that plan level thresholds which require carbon neutrality (i.e., a “net zero” threshold) for long-range, post-2030 projects are problematic, for the same reasons described above. Lead agencies should be able to identify a trajectory to achieve more aggressive GHG reduction goals for 2050 or 2045 based on the project’s horizon year as a path to evaluate GHG emissions impacts under CEQA.

The Project-Level Thresholds for all Project Types

The proposed thresholds do not currently include guidance for project types other than residential, mixed use, and traditional commercial development. This is problematic because residential and commercial land use projects are not the only land use types that lead agencies need to evaluate under CEQA. A snapshot of “recent projects” as of March 5, 2022, identified that out of 313 projects submitted to the Office of Planning and Research (OPR) CEQAnet.ca.gov database that the vast majority were not residential and commercial projects that would cleanly fit the criteria identified by BAAQMD in the justification report.

Consider adding performance criteria or quantitative thresholds for other project types such as schools, institutional uses, parks, medical facilities, industrial/warehouse projects, and infrastructure projects. We understand that thresholds are not intended to be one-size-fits all and there will be unique projects that do not fit within established threshold frameworks; however, expanding the threshold framework to include typical land uses such as industrial/warehouses and education would extend the usefulness of this guidance and create less uncertainty with lead agencies who choose to apply the BAAQMD recommendations. Nonetheless, understanding not all projects can be covered in the threshold framework, it would be helpful for the BAAQMD to include a statement which indicates that the thresholds are not intended to be applicable to all projects and an option is to work with the BAAQMD to identify an appropriate approach, as stated on the March 10, 2022, workshop. Clear guidance as to what projects these thresholds are not appropriate for would be helpful and would avoid people trying to fit square pegs in round holes (e.g., they would know they have to come up with their own framework and the District recognizes that).

- **Warehousing / Distribution Projects.** Consider performance targets to ensure consistency with CARB’s Mobile Source Strategy. For example, specific measures required for warehouse projects to expedite near-zero emission (NZE) and zero emission (ZE) truck use and ZE yard equipment.
- **Biotech and Lifesciences Uses:** Consider performance standards with respect to sterilization needs. Currently steam requirements for sterilization are prescribed by the US Food and Drug Administration (FDA) or other programs and electric boilers are expensive and inefficient. Consider a declining performance standard that allows for specialty uses of natural gas steam generation while technology for electric boilers becomes as efficient as natural gas.

Vehicle Miles Traveled Threshold

Individual jurisdictions are adopting vehicle miles traveled (VMT) thresholds for Senate Bill 743. The VMT threshold for SB 743 does not necessarily align directly with the methodology to calculate VMT for GHG emissions. For SB 743, many jurisdictions base VMT on a “boundary” method rather than “project-generated” VMT. Additionally, jurisdictions are making policies decisions on how to calculate “regional average” VMT (e.g., MTC region, county, city, or other).

We recommend that the BAAQMD guidance not cite a one size fit all VMT threshold for GHGs because there is great variety in land use/transit settings in the Bay Area and every location should not have the same VMT reduction burden. The guidance should allow cities to determine the appropriate VMT threshold for GHGs for their jurisdiction.

It is also recommended that GHG emissions associated with VMT that are above the VMT threshold can be mitigated with GHG emission reduction measures or offsets. Under CEQA, if there is a feasible way to mitigate an impact to below a threshold level, then a lead agency can make a finding that the impact is reduced to a less than significant levels. The guidance should allow for any reduction of GHG emissions to mitigate VMT-related GHG emissions and mitigation should not be limited to only VMT reduction. Mitigating VMT with VMT reduction only may be a matter for the transportation analysis but should not be a factor for the GHG analysis.

Replacement Strategies

The BMPs listed in the Justification Report provide no flexibility to lead agencies. It may not be feasible for all land use projects to achieve the BMPs identified. Unlike the Sacramento Metropolitan Air Quality Management District GHG threshold approach, the Justification Report does not offer replacement strategies or alternative quantification methods to offer a path forward to mitigate the GHG emissions impacts of these projects.

It should be noted that consistency with the CARB Scoping Plan is one valid approach to evaluate GHG emissions impact under CEQA. However, it is not the only path for land use projects to evaluate GHG emissions impacts. Many jurisdictions are utilizing a net zero threshold for development projects, because a net zero threshold would not contribute to a GHG impact. Under BAAQMD's current threshold approach, a net zero project may still have a significant GHG impact if it used natural gas or wasn't able to reduce VMT enough (such as environmental leadership development projects pursuant to Assembly Bill 900). We don't see any evidence that a net zero threshold is not adequate under CEQA.

We are concerned that if the BAAQMD provides no flexibility, such as allowing projects to offset the emissions with any parts of the project that don't meet the BMPs by equivalent reductions, then CEQA lead agencies may decide to not follow the BAAQMD guidelines. We think it better for the District to provide guidelines that can be feasibly used by most land use projects (and possibly others) and that can achieve wide consistency in CEQA practice. Without some flexibility, we may see substantial departure from these guidelines in practice, especially in the immediate future.

Prohibition on Natural Gas

The current approach does not allow for projects with natural gas use to conclude less-than-significant GHG impacts. However, for certain facilities such as life sciences and restaurants, electricity may not be a feasible substitute for natural gas in all circumstances. Consider allowing jurisdictions the flexibility of allowing for natural gas if additional GHG emissions reductions (beyond other requirements) could be achieved in other sectors (such as EV charging which exceeds CALGreen Tier 2 or VMT reductions that exceed 15 percent below existing levels).

Further, the existing California Building Code and 2017 Scoping Plan does not assume that all new development is 100 percent electric. Members of AEP's Committee have assisted jurisdictions with REACH Codes that include natural gas prohibitions and have helped local governments set up regulatory framework needed. However, most REACH codes have identified exceptions and exemptions from this requirement, such as for certain restaurants. Similarly, it is presumed that the 2017 Scoping Plan provides for some instances of natural gas use in new development as a replacement energy source for certain technologies.

We understand that since the recommended threshold approach is qualitative, there are no quantitative levels to mitigate below. However, for projects that do not fit cleanly within the threshold framework or otherwise cannot meet the BMPs, it would be helpful to have a quantitative approach as an alternative avenue to evaluate significance. For example, for a project that cannot completely eliminate natural gas, GHG emissions from its natural gas use can be estimated and offset by another means of reducing project-generated GHG emissions (such as a zero net energy building). Accordingly, it is recommended that BAAQMD consider other replacement strategies or allow for use of voluntary GHG credits to mitigate this sector's GHG emissions.

Guidance on GHG Reduction Strategies

BAAQMD should provide guidance to lead agencies on additional GHG emissions reduction strategies that could be implemented for long-range and plan-level projects to achieve the post-2030 carbon neutrality goals.

Adjustments to CalEEMod for BMPs

Because BAAQMD is currently recommending BMPs such as fuel switching and EV Capable development, BAAQMD should provide guidance for modifying the CalEEMod defaults to account for these changes. While lead agencies would no longer have to model GHG emissions under BAAQMD's proposed BMP approach, lead agencies will still be required to model criteria air pollutants and it is still good practice to quantify the project's GHG emissions per CEQA Guidelines Section 15064.4. As such BAAQMD should provide guidance for lead agencies on how to adjust the CalEEMod defaults to ensure modeling is internally consistent with this assumption.

Clarification for Construction GHG Emissions

BAAQMD should explicitly state that GHG emissions from construction activities associated with CEQA projects are considered less-than-significant, given their short-term and temporary nature. This was stated by District staff during the March 5, 2022, workshop, but it is not stated in the justification report.

Clarification of Wasteful, Inefficient, or Unnecessary Electrical Usage

Thresholds for Land Use Projects, A(1)(b) states that "The project will not result in any wasteful, inefficient, or unnecessary electrical usage as determined by the analysis required under CEQA Section 21100(b)(3) and Section 15126.2(b) of the State CEQA Guidelines." This question is similarly asked in the Energy analysis under Appendix G of the CEQA Guidelines and common questions have been how to define "wasteful, inefficient, and unnecessary" energy usage. However, there are no numeric thresholds established for evaluating energy impacts and comparison to regional or statewide consumption is not a meaningful comparison as individual projects consume a small amount compared to regional demand. In reality, no project purposefully uses electricity in a wasteful, inefficient, or unnecessarily way. Additional clarification of what a project's "fair share" is to support implementation of Senate Bill 100 and how a project can demonstrate that it "maximizes the efficiency with which they use electricity" would be helpful.

Due to the lack of accepted thresholds for Energy analysis, there is currently little rigor in CEQA analyses on this topic. These sections are nearly entirely descriptive, and it is very rare for a project to conclude they are wasteful, inefficient, or unnecessary. In absence of thresholds, this is common sense. A proponent proposes a project that needs energy and with California's leading edge energy efficiency requirements, in the big world it's hard to objectively say there is waste, inefficiency, or lack of necessity. Consequently, we recommend deleting any reference to the energy part of the District's CEQA thresholds for GHGs.

Clarification on the Use of Voluntary GHG Offsets for CEQA Projects

The 2017 Scoping Plan identified use of voluntary GHG offsets as valid mitigation under CEQA. Likewise, use of voluntary GHG offsets has been identified by CARB for Assembly Bill 900 projects. Use of offsets is also specifically allowed under the CEQA Guidelines Sections 15126.4(c)(3), 151370(e), 21168.6.5(i)(1), and 15364. Although there have been appellate court rulings out of the Fourth District court regarding the specific standards to validate offsets, offsets, done properly, are a technically sound way of reducing emissions and they are still being used in CEQA documents to mitigate GHG emissions impacts. The court rulings did not prohibit the use of offsets. Instead, they highlighted that voluntary GHG credits, like any mitigation under CEQA, must have substantial evidence of why they will work and procedures to make sure they work. That is feasible to do.

The members of the committee have been involved in work involving offsets firsthand and know how to make sure they are valid. The voluntary carbon market has established registries and protocols to ensure that offsets done through those registries and through those protocol are valid. Voluntary GHG credits do not have to follow CARB protocols for the Cap-and-Trade system to be valid because the voluntary market has sufficient protocols to make sure that offsets are as real and valid as any other CEQA mitigation When a mitigation can be shown to work (as offsets

AEP CLIMATE CHANGE COMMITTEE

have already shown for a long time), we are not aware of any reason in CEQA that it should be prohibited. Given that post-2030 projects would be required to chart a trajectory toward carbon neutrality, there is a role for use of voluntary offsets in CEQA between now and when the state is approaching carbon neutrality. Additional guidance from the Air District on best practices for lead agencies that choose to use voluntary offsets to mitigate GHG emissions impacts would be beneficial.

We appreciate your assistance in developing potential GHG thresholds and for providing substantial evidence that lead agencies and CEQA practitioners can use to justify GHG thresholds in CEQA documents. Your expert judgement and experience help lead agencies streamline project review and ensures consistent CEQA analyses in the Bay Area. We understand it's a lot of effort and appreciate the opportunity to comment.

Sincerely,

AEP CLIMATE CHANGE COMMITTEE

Michael Hendrix, Chair (LSA Associates)
Pierre Glaize (ICF)
Michael Keinath (Ramboll)
Haseeb Qureshi (Urban Crossroads)
Jennifer Reed (Dudek)
Brian Schuster (ESA)
Nicole Vermilion (PlaceWorks)
Rich Walter (ICF)

NOTE: The Opinions expressed herein are those of the individual members of the Committee and not the firms they represent.



March 17, 2022

Via electronic mail (ceqa@baaqmd.gov)

Abby Young
Bay Area Air Quality Management District
375 Beale Street, Suite 600
San Francisco, CA 94105

Re: Comment Concerning CEQA Thresholds for Evaluating the Significance of Climate Impacts from Land Use Projects and Plans

Dear Ms. Young:

Natural Resources Defense Council (NRDC) submits this comment concerning BAAQMD's Draft Justification Report: CEQA Thresholds for Evaluating the Significance of Climate Impacts From Land Use Projects and Plans (Report). We are not providing comment at this time concerning the substance of the proposal as outlined within its current scope; but are encouraging you to consider expanding the scope of your analysis to address the development of thresholds of significance specifically for oil and gas-related land use projects.

We understand that the intention of the Report was to address greenhouse gas (GHG) significance thresholds for a narrow band of land use projects: "typical residential and commercial land use projects and typical long-term communitywide planning documents." Report at 3. We appreciate your specific directive to lead agencies that they need not use the analysis outlined in the Report if that analysis does not "reflect the particular circumstances of the project under review," or represents "a unique or unusual project for which the analyses supporting the thresholds as described in this report do not squarely apply." *Id.* at 4.

That said, we believe oil and gas projects are a large and distinct class of land use projects for which CEQA GHG thresholds of significance should be defined, in a manner that reflects the nature of those projects and their relationship to California's climate goals. These projects are enormous contributors to California's GHG emissions totals. CARB GHG inventory data for the period 2000-2017 indicate that refining and associated hydrogen plants accounted for

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28 percent of California industrial sector GHG emissions, and oil and gas production accounted for another 22 percent of such emissions.¹

Given the magnitude of this contribution, it is essential to clearly define the manner in which these large-scale GHG emissions will be assessed in CEQA analysis. Fossil fuel projects are conceptually entirely different from the residential and transportation projects addressed in the Report, such that the Report’s proposed analytical methodology is largely inapplicable to them.

First, unlike the residential projects addressed in the Report and in the California Supreme Court’s decision in *Center for Biological Diversity v. Department of Fish & Wildlife* (2015) 62 Cal.4th 204 in which it is grounded, fossil fuel projects are fundamentally incompatible with California’s goal of net zero emissions by 2050. The deep decarbonization needed in the transportation sector to meet that goal requires elimination of fossil fuels to the maximum extent feasible, to be replaced primarily by battery electric vehicles and clean synthetic fuels. While housing projects clearly will continue to be necessary and have a place in a decarbonized economy, fossil fuel projects will not. The goal of California climate policy is to replace them with clean alternatives. Thus, there can be no question – as there is in the case of residential development – whether a fossil fuel project that expands or perpetuates production meets its “fair share” of carbon reduction needed to meet climate goals. Such projects will need to be eliminated in a decarbonized economy, not merely operated with a “fair share” of reduced emissions.

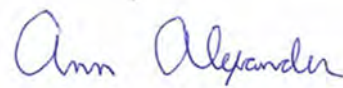
Second, unlike many other types of land use projects, fossil fuel projects tend to produce significantly more GHG emissions indirectly than directly when their lifecycle emissions are appropriately accounted for. Any supply-side fossil fuel infrastructure project – e.g., a well, tanker terminal, pipeline, or refinery – causes not only emissions associated with operation of the project itself, but also downstream emissions that will result when the end product is combusted. Refineries and transportation projects additionally incent upstream production, whose emissions should be accounted for in CEQA as well. Federal law associated with the National Environmental Policy Act (NEPA) has long recognized the importance of calculating lifecycle GHG emissions in environmental reviews, and has required agencies to compute downstream combustion emissions as part of NEPA analysis. See, e.g., *Wilderness Workshop v. U.S. Bureau of Land Mgmt.*, 342 F. Supp. 3d 1145, 1156 (D. Colo. 2018) (“BLM must quantify and reanalyze the indirect effects that emissions resulting from combustion of oil and gas in the plan area may have on GHG emissions.”); *San Juan Citizens Alliance v. U.S. Bureau of Land Mgmt.*, 326 F. Supp. 3d 1227, 1242 (D.N.M. 2018) (BLM’s reasoning for not analyzing indirect GHG emissions was “contrary to the reasoning in several persuasive cases that have determined that combustion emissions are an indirect effect”); *W. Org. of Res. Councils v. U.S. Bureau of Land Mgmt.*, No. CV 16-21-GF-BMM, 2018 WL 1475470, at *13 (D. Mont. Mar. 26, 2018) (“NEPA requires BLM to consider in the EIS the environmental consequences of the downstream combustion of the coal, oil and gas resources potentially open to development under these [Resource Management Plans.]”); *Mont. Env’tl. Info. Ctr. v. U.S. Office of Surface Mining*, 274 F.

¹ Derived from CARB, California Greenhouse Gas Emissions for 2000 to 2017, https://ww3.arb.ca.gov/cc/inventory/pubs/reports/2000_2017/ghg_inventory_trends_00-17.pdf.

Supp. 3d 1074, 1099 (D. Mont. 2017) (federal defendant’s NEPA review “failed to adequately address the indirect and cumulative impacts of greenhouse gas emissions from expansion of the Mine”); *High Country Conservation Advocates v. U.S. Forest Serv.*, 52 F. Supp. 3d 1174, 1198 (D. Colo. 2014) (“reasonably foreseeable effect” of downstream combustion “must be analyzed, even if the precise extent of the effect is less certain”). A similar requirement needs to be firmly stated and consistently implemented in CEQA reviews of proposals to construct, expand, or extend the life of fossil fuel projects.

We appreciate BAAQMD’s work to develop appropriate GHG thresholds of significance, and are happy to discuss the question of fossil fuel projects further if you would like.

Very truly yours,



Ann Alexander
Senior Attorney
aalexander@nrdc.org



March 16, 2022

Bay Area Air Quality Management District
Planning and Climate Protection Division
375 Beale Street, Suite 600
San Francisco, CA 94105
Sent via email

Re: **Draft Justification Report: CEQA Thresholds for Evaluating the Significance of Climate Impacts From Land Use Projects and Plans**

Dear Abby Young:

The San Francisco Planning Department is pleased to provide this letter of support for the Bay Area Air Quality Management District's (Air District) Draft Justification Report: CEQA Thresholds for Evaluating the Significance of Climate Impacts From Land Use Projects and Plans (report) and the proposed greenhouse gas thresholds in the report. Thank you for considering and incorporating our feedback on these thresholds in prior communications with the Air District. The thresholds in this document are important and welcome guidance on identifying land use development projects that would meet their fair share in achieving the state's greenhouse gas reduction goals. We support the identification of such thresholds and have provided the following recommendations to further strengthen the thresholds and this document.

We appreciate the Air District's recommendation that VMT thresholds for land use development projects be consistent with the Office of Planning and Research's (OPR) *Technical Advisory on Evaluating Transportation Impacts in CEQA* or be consistent with VMT per capita thresholds developed by local jurisdictions, provided they are based on an analysis of a project's fair share contribution to achieving the state's long-term climate goals. **We recommend the Air District reorganize the thresholds and report to prioritize a reduction in vehicle miles traveled (VMT) first for transportation.** VMT is the best available metric for determining whether a land use development project contributes to greenhouse gas emissions. Reducing per capita VMT is the best available tool for reducing transportation-related greenhouse gas emissions.

The proposed electric vehicle (EV) charging threshold is an important step in recognizing the role this type of infrastructure plays in incentivizing EV adoption and reducing transportation-related greenhouse gas emissions for applicable projects. We recommend the Air District revise the EV charging threshold to: **"If providing vehicular parking spaces, achieve compliance with electric vehicle requirements in the most recently adopted version of CALGreen Tier 2."**

EV charging infrastructure should not be required for projects that would not otherwise include off-street vehicular parking. Vehicular parking encourages vehicular travel, and thereby increases greenhouse gas emissions. For example, additional vehicular traffic can delay public transit making it less reliable and slower and thus less desirable as a transportation mode, inducing people to switch to automobiles. Requiring off-street vehicular parking spaces to install EV charging would also reduce development space for more critical uses, such as housing, and increase conflicts on the roadways due to new and unnecessary driveways. It would also increase the cost of land use development projects, which could suppress the development of housing. We recommend the Air District refine the report to be clearer that the threshold related to EV charging is only for land use development projects proposing off-street vehicular parking.

This guidance will support San Francisco's existing approaches for assessing greenhouse gas emissions. This guidance will also be an enormous benefit to other lead agencies. Thank you again for this opportunity to provide comments on the draft report and proposed thresholds. Your consideration of these recommendations is appreciated, and we welcome any question or comments you may have. Please contact Jenny Delumo at Jenny.Delumo@sfgov.org regarding these comments.

Sincerely,

A handwritten signature in black ink, appearing to read 'Devyani Jain', with a stylized flourish at the end.

Devyani Jain

Deputy Environmental Review Officer

March 17, 2022

Bay Area Air Quality Management District
Attn. Alexander Crockett, Interim Chief Executive Officer/Air Pollution Control Officer
375 Beale Street, Suite 600
San Francisco, CA 94105

Re: CEQA Thresholds for Evaluating the Significance of Climate Impacts – Comments

Dear Mr. Crockett:

On behalf of the San Francisco Bay Area Planning and Urban Research Association (SPUR), I write to respectfully request that the Bay Area Air Quality Management District (BAAQMD) clarify, as it did in 2010, that the proposed CEQA thresholds of significance, if adopted, will apply prospectively only. **A clear effective date for the updated guidelines will provide certainty and support local governments' efforts to address the state's housing shortage.**

SPUR is a nonprofit public policy organization in the San Francisco Bay Area. We bring people together from across the political spectrum to develop solutions to the big problems cities face, including the need for affordable housing. Through research, education and advocacy, SPUR works to create an equitable, sustainable and prosperous region.

In particular, we request that the air district, in its resolution adopting the draft thresholds and forthcoming updated guidelines, clearly indicate that the updated thresholds and guidelines are intended to apply to development projects in which the application was deemed complete at least six months after the date that the updated thresholds or guidelines are adopted.

We recognize that the air district's recommended thresholds are guidelines and subject to formal adoption by lead agencies, however, BAAQMD can provide clear intent for their effective date, in order to clarify, and offer a measure of legal protection to critical housing projects undergoing environmental review at the time of the guidelines' adoption where issues regarding recirculation of an EIR or MND could be raised, and in the analogous situation where revisions to approved projects are being considered, and where subsequent CEQA review is being considered. In accordance with existing case law, many cities and counties have conducted analysis under the existing thresholds and guidelines and did not update or recirculate analysis to address the air district's mid-project release of the draft thresholds. (*See Chaparral Greens v. City of Chula Vista* (1996) 50 Cal. App. 4th 1150-51).

Incorporating an effective date for any updated guidelines would support existing case law favoring the finality of past environmental decisions based on regulations existing at the time when environmental review initially commenced. (*See Concerned Dublin Citizens v. City of Dublin* (2013) 214 Cal. App. 4th 1301, 1320; *Cleveland Nat'l Forest Found. v. San Diego Assn. of Governments* (2017) 17 Cal. App. 5th 413, 426; *Citizens Against Airport Pollution v. City of San Jose* (2014) 227 Cal. App. 4th 788.) Lead agencies, of course, would have the discretion to adopt any guidelines on an expedited schedule, but many

local cities and counties, which are expediting review of housing development projects to comply with state laws, will find the air district's existing guidelines and thresholds to be satisfactory. The prospect of having to redo air quality analyses, which can entail tens of thousands of dollars and months if not years of delay, is concerning.

Accordingly, we request the air district, as it did in 2010, provide for an effective date of its updated guidelines and clarify that they apply to projects with applications that may be deemed complete at least six months after the air district formally updates its guidelines. We are requesting that the timing is tied to the date of when applications are deemed complete, in order to coincide with vesting dates under Senate Bill 330 and the Housing Accountability Act and to ensure that the air district's rules are coordinated with the existing statutory framework for processing housing projects.

Finally, we request that the thresholds clarify that "General Plans and Related Planning Documents" includes specific plans, master plans and other planning-level documents. This appears to be implied, but clarity in the air district's documents would be of great assistance.

Thank you for your careful consideration of these comments and requests.

Sincerely,

A handwritten signature in blue ink that reads "Michael Lane". The signature is written in a cursive, flowing style.

Michael Lane, State Policy Director
SPUR



Abby Young
Planning and Climate Protection Division
375 Beale Street, Suite 600
San Francisco, CA 94105

Element Markets commends the Bay Area Air Quality Management District’s work on defining recommend thresholds of significance and agrees that thresholds must be framed in the context of California’s climate goal of carbon neutrality by 2045.

In order to achieve the 2045 goal, it is understandable that projects should, where possible, include design elements that eliminate natural gas usage, improve energy efficiency, promote electric vehicles, and reduce vehicle miles traveled. However, in certain instances, projects may require the use of limited amounts of natural gas or other fossil fuels for commercial and/or industrial purposes. For projects with an unavoidable greenhouse gas (GHG) emissions footprint, Element Markets recommends that retirement of voluntary certified GHG credits be included as an offsite mitigation measure.

Qualifying voluntary certified GHG credits should be generated by adhering to an approved set of methodologies or protocols that have undergone scientific review to confirm the avoidance or removal of GHGs through a specific project activity. Certification by a reputable non-profit registry, e.g., the Climate Action Reserve, American Carbon Registry, or Verra, should serve as demonstration that credits are real, additional, verifiable/confirmable, enforceable, and permanent.

The thresholds report rightly recognizes climate change as a global issue. However, recent CEQA case law has established a preference for GHG credits generated local to the project subject to CEQA or within California. While there is currently a relatively low number of California-based certified GHG credits available for use toward CEQA GHG mitigation, peer reviewed methodologies do exist or are currently being developed that will allow for verifiable offset generation from registered projects located in the state of CA. Protocol development and the registration of offset projects are rigorous processes undergo peer review and public consultations, and therefore in many cases require a long lead time to begin generating certified GHG credits. Examples of projects that can generate credits in California include forest conservation, reforestation, regenerative agriculture, avoided wildfire emissions, and avoiding or destroying short-lived climate pollutants such as methane and hydrofluorocarbons.

While we understand the preference for “in-state” offset projects, we also recommend that consideration be given for the use of certified GHG credits generated in the United States but outside of California. Geographical hierarchy of credit locations can still be prescribed, but given the sheer scale of the climate crisis, ambitiousness of California’s carbon neutrality goals, and the rigorous requirements for generating a certified GHG credit as detailed in this comment, we recommend the eligible use of certified GHG credits generated within the boundaries of the United States.

From: Yilin Tian [REDACTED]
Sent: Monday, March 14, 2022 5:39 PM
To: Matthew Hanson; Patrick Sutton
Subject: Updated CEQA GHG threshold - warehouses

Hi Matthew,

My name is Yilin and I'm an Environmental Engineer at Baseline Environmental Consulting. I attended the workshop on the proposed GHG thresholds for land use projects and plans on March 10. It was mentioned that the updated thresholds are intended to cover typical projects (i.e. residential development). For special types of projects, such as warehouses, the recommended approach is to call the Air District to discuss what will be an appropriate threshold to use.

We are working on a warehouse project located between East Arques Avenue, Oakmead Parkway, and Central Expressway in Sunnyvale. The project includes demolition of existing buildings in an office complex and construction of industrial warehouse facilities with approximately 500,000 square feet of building floor area.

We were wondering if we could schedule a phone call with you to discuss what GHG thresholds will be appropriate to use for this specific project.

Looking forward to hearing from you.

Sincerely
Yilin

From: Paul Campos [REDACTED]
Sent: Thursday, March 17, 2022 9:49 AM
To: Henry Hilken <HHilken@baaqmd.gov>; Abby Young <ayoung@baaqmd.gov>
Subject: GHG Threshold Comment

Hello Henry and Abby,

BIA Bay Area greatly appreciates the District's consideration of our prior comments and respectfully offers this additional comment and request regarding the effective date of the revised GHG Thresholds.

We think it appropriate for the District to clarify that its revised recommended CEQA thresholds of significance, upon adoption, would apply prospectively. In particular, we request that the district, in its forthcoming updated guidelines or in its resolution adopting the draft thresholds, clearly indicate that any updated guidelines, including thresholds of significance, shall apply only to those development projects with applications that are or may be deemed complete at least six months after the air district adopts the updated guidelines. While we appreciate that the air district's recommended thresholds are guidelines, and subject to formal adoption by lead agencies reviewing projects, we believe that including such a provision on the effective date of the district's guidelines will clarify, and offer a measure of legal protection, to critical housing projects undergoing environmental review at the time of the guidelines' adoption, where recirculation of a CEQA document is a concern, and in the analogous situation where revisions to approved projects are being considered, and where subsequent CEQA review is being considered. In accordance with existing case law, many cities and counties conducted analysis under the existing thresholds and guidelines, and did not update or recirculate analysis to address the air district's mid-project release of the draft thresholds. (See *Chaparral Greens v. City of Chula Vista* (1996) 50 Cal. App. 4th 1150-51.) Incorporating an effective date for any updated guidelines would support existing case law favoring the finality of past environmental decisions based on regulations existing at the time when environmental review initially commenced. (See *Concerned Dublin Citizens v. City of Dublin* (2013) 214 Cal. App. 4th 1301, 1320; *Cleveland Nat'l Forest Found. v. San Diego Assn. of Governments* (2017) 17 Cal. App. 5th 413, 426; *Citizens Against Airport Pollution v. City of San Jose* (2014) 227 Cal. App. 4th 788.) Lead agencies, of course, would have the discretion to adopt any guidelines on an expedited schedule, but many local cities and counties, which are updating housing elements and expediting review of housing development projects to comply with state laws, will find the air district's existing guidelines and thresholds to be satisfactory. The prospect of having to redo air quality analyses, which can entail tens of thousands of dollars and months if not years of delay, is concerning. The district's clarification of an effective date for applying its updated guidelines would provide certainty and support local governments' efforts to address, expeditiously, the state's housing shortage. As you know, a key consideration under CEQA is in preserving the finality of completed environmental review, and disfavoring recirculation and supplementation of CEQA documents. Accordingly, we request the air district, as it did in 2010, provide for an effective date of its updated guidelines, and clarify that they apply to projects with applications that may be deemed complete at least six months after the air district formally updates its guidelines. We are requesting that the trigger be the date of deemed application completion so as to coincide with vesting dates under Senate Bill 330 and the Housing Accountability Act; coordinating the air district's rules with these important legislative frameworks would simplify the processing of qualified housing projects.

Finally, we request clarification that thresholds for "General Plans and Related Planning Documents" includes specific plans and other planning-level documents. This result appears to be implied, but clarity

in the air district's documents would be of great assistance.

Thank you,

Paul Campos

From: webmaster@baaqmd.gov <webmaster@baaqmd.gov>

Sent: Thursday, March 3, 2022 12:03 PM

To: BAAQMD CEQA <ceqa@baaqmd.gov>

Subject: CEQA Question Notification

SUMMARY

First name: Robin

Last name: Baral

Organization: Hanson Bridgett LLP

Questions: Will the updated thresholds include a clear statement that they will only apply to projects where a Notice of Preparation or Initial Study was prepared after the BAAQMD's adoption date of the new thresholds?

From: Ron Sisseman [REDACTED]
Sent: Tuesday, March 22, 2022 12:00 PM
To: Abby Young <ayoung@baaqmd.gov>
Subject: Construction GHGs

Abby:

Another one-off recommendation to provide some type of guidance about construction GHGs. Treat in the same way described in BAAQMD's 2017 CEQA guidelines (no threshold but disclose) or something else?

Thanks,

Ron

From: Ron Sisseem [REDACTED]
Sent: Wednesday, March 16, 2022 2:44 PM
To: Abby Young <ayoung@baaqmd.gov>
Cc: Andrea Gordon <AGordon@baaqmd.gov>; Wendy Goodfriend <wgoodfriend@baaqmd.gov>
Subject: RE: New GHG Threshold Guidance

Abby:

Hmmm on the qualitative part ???. SMAQMD does provide alternatives to meeting one or more of their BMPs, which as I'm sure you know, are similar to BAAQMD's (see section 5.3, Alternative Greenhouse Gas Reduction Measures in SMAQMD's Greenhouse Gas Thresholds for Sacramento County). And many of the local jurisdictions in which we work don't have qualified CAPs, which makes that a non-option, though I understand BAAQMD's push to motivate them to adopt such plans.

And yes, re VMT. If the project, even after mitigation, is above the applicable VMT threshold(s), then what? The GHG emissions from the balance of VMT by which a VMT-mitigated project exceeds a threshold could be calculated, with that volume mitigated through other GHG reduction strategies. We commonly do CEQA work on projects that are consistent with their respective general plans, that through no fault of the local agency (as expressed through general plan land use and policy) or the applicant, have significant VMT impacts. True that if the VMT impact itself is unavoidable, an EIR would be required and the inability of the project to meet the BAAQMD VMT performance standard becomes moot. The EIR triggered by the VMT impact would then have to evaluate GHG impacts as well. But if there were options to complying with those BMPs, including VMT, then the EIR may not have to find the GHG impact to also be unavoidable.

Cheers,

Ron

From: Ron Sisseem [REDACTED]
Sent: Wednesday, March 16, 2022 12:38 PM
To: 'Jakub Zielkiewicz' <jzielkiewicz@baaqmd.gov>
Cc: Abby Young <ayoung@baaqmd.gov>
Subject: New GHG Threshold Guidance

Jakub:

Hope all is well and that the workshop last week went well. Unfortunately, I was not able to attend.

I don't recall that options to meeting the project specific thresholds were discussed in the first workshop, nor are they discussed in the updated Justification document. Was this topic discussed last week? Are there alternatives to meeting the intent of the thresholds if for some reason a project can comply with one or more of them?

For example, if a project is considered infeasible by an applicant if it is 100% electric (e.g. projects with restaurant end users where the end users require natural gas for cooking, but where the project is feasible at say 75% electric and 25% natural gas), is there an alternative way to reduce GHGs by quantifying the emissions "overage" from exceeding the threshold and mitigating for that volume. Also, as you well know, it is challenging if not impossible for many projects to meet the OPR VMT thresholds, not because of how they are designed per se, but because of their locations in smaller, growing cities. If VMT mitigations are employed to the max extent feasible/practical and VMT is still significant, can the GHG volume by which VMT exceeds the threshold be calculated and otherwise mitigated for? You also know that the SMAQMD does provide guidance on alternative compliance.

At EMC, we've already started to steer lead agencies and applicants in the direction of BAAQMD's new threshold approach. That said, we also need to understand options, as both interests have queried about the same. Otherwise, there well could be many projects for which an EIR is required solely due to the infeasibility of meeting one or more of the GHG thresholds – and I don't think that is BAAQMD's intention.

Thanks!

Ron

From: Lance Park [REDACTED]
Sent: Wednesday, March 16, 2022 2:46 PM
To: Abby Young <ayoung@baaqmd.gov>
Cc: Jessica Coria <jcoria@fcs-intl.com>
Subject: Updated GHG Thresholds - Timing

Hi Abby,

I hope you're doing well. We are beginning to get more and more questions about which thresholds will apply to projects currently underway once the updated GHG thresholds are adopted. I just wanted to see if I could consult you on this really quick.

The updated thresholds will apply to all projects whose NOP issuance date or the commencement of analysis (if no NOP) comes after the adoption of the updated thresholds (for lead agencies electing to use the BAAQMD's thresholds and supporting substantial evidence). Whereas, if the updated thresholds are adopted while a project analysis is underway, the lead agency may still choose to use the current thresholds. Is that correct? I'm just talking about those specific circumstances where a project is actively being worked on at the time the updated thresholds are adopted.

Thanks,

Lance Park

From: Christina Benz [REDACTED]
Sent: Thursday, March 17, 2022 4:41 AM
To: BAAQMD CEQA
Cc: Chris Benz; Jim Wilson; Linda Brown; Lynne Baker; Marilyn Knight-Mendelson; Wagenknecht, Brad
Subject: Support for Proposed CEQA Thresholds for Land Use Projects

I am writing on behalf of Napa Climate NOW!, a grassroots community group focused on science-based climate actions, to support the proposed CEQA threshold that buildings not include natural gas appliances or plumbing (in both residential and nonresidential development).

We need to do everything possible to reduce methane emissions. This requirement is absolutely necessary if the state is to reach carbon neutrality by 2045.

We urge the Air District to adopt this threshold.
Thank you,

Chris Benz



BAY AREA
AIR QUALITY
MANAGEMENT
DISTRICT

ATTACHMENT 4

MOBILE SOURCE AND CLIMATE IMPACTS COMMITTEE MEETING MEMORANDUMS

BAY AREA AIR QUALITY MANAGEMENT DISTRICT

Memorandum

To: Chairperson Teresa Barrett and Members
of the Mobile Source and Climate Impacts Committee

From: Alexander Crockett
Interim Acting Executive Officer/APCO

Date: March 24, 2022

Re: Proposed Update to California Environmental Quality Act (CEQA) Thresholds of
Significance for Climate Impacts and Associated Justification Report

RECOMMENDED ACTION

Staff requests that the Committee recommend the Board of Directors adopt the proposed Thresholds of Significance for Climate Impacts and the associated Justification Report.

BACKGROUND

The California Environmental Quality Act (CEQA) was signed into law in 1970. CEQA requires that California public agencies study and disclose the environmental impacts of proposed development projects and plans, and limit those impacts to the extent feasible. These environmental impacts include climate change (through greenhouse gas emissions), and air quality, as well as impacts not directly related to the Air District's purview, such as water quality, transportation, and biological resources, among others.

Greenhouse gas emissions from land use development can occur directly, e.g., emissions from combustion devices such as boilers and generators, and indirectly, e.g., from transportation activity associated with a project. Although Air District permits protect public health by assuring that stationary sources of air pollution comply with all applicable Air District regulations, the Air District does not have authority to issue permits for GHG emissions from local land use development. City or county land use permits determine whether and where a GHG-emitting project may be located, and local land use permits sometimes do not adequately consider GHG emissions. Although Air District air quality permits may impose conditions on stationary source operations that could also result in GHG co-benefits, Air District permits do not address GHG emissions from transportation, fossil fuel combustion, or other activities. As such, the Air District's ability to influence GHG emissions from land use projects is limited. And while many land use developments result in public concern, with calls for the Air District to take action, limited authority with respect to local land use decisions limits our options.

The Air District’s CEQA Thresholds of Significance for Climate Impacts and the associated Justification Report are tools the Air District employs to further its and the State’s goals of meeting GHG emissions reduction targets. The Air District’s CEQA Thresholds of Significance for Climate Impacts and Justification Report are intended to assist cities, counties, and other lead agencies in analyzing and reducing climate impacts of local projects and plans. The thresholds provide lead agencies with recommended benchmarks for determining whether a project’s or plan’s GHG emissions rise to a level of significance. The Proposed “*Justification Report: CEQA Thresholds for Evaluating the Significance of Climate Impacts from Land Use Projects and Plans*” (Justification Report) provides the rationale and substantial evidence supporting the Thresholds of Significance for Climate Impacts due to GHG emissions. Staff is also developing updated CEQA Guidelines that will provide additional support to local project developers and lead agencies in implementing the thresholds; the updated CEQA Guidelines will be released in Spring 2022.

Substantive changes have occurred with respect to the data and assumptions underlying the analytical methodologies, thresholds, and guidance since the Air District’s last update of its GHG thresholds in June 2010. In addition, the State has taken strong legislative and programmatic action to achieve GHG reductions beyond 2020. Further, noteworthy court decisions related to CEQA litigation have occurred since 2010, creating new parameters that influence how climate impacts due to GHG emissions can be determined and mitigated under CEQA. Accordingly, Air District staff proposes to update the CEQA GHG thresholds to reflect current State legislation, policy guidance and GHG reduction targets, new and revised requirements in the State CEQA Guidelines, case law, improved analytical methodologies, and updated GHG reduction strategies and technologies.

DISCUSSION

Staff has investigated proposed updates to the CEQA Thresholds of Significance for Climate Impacts due to GHG emissions. Key motivations of this effort include the need to update the recommended thresholds to align with the latest State GHG reduction targets for 2030 and 2045, and to support local planning efforts. The current thresholds are outdated, based on the State’s 2008 Scoping Plan and 2020 GHG reduction target, and require updating to reflect current statewide policy, targets and time horizons. Staff proposes updated Thresholds of Significance for Climate Impacts for: 1) Land-use Projects, and 2) Land-use Development Plans.

1. Land-use Projects

For a land-use project’s GHG emissions to be determined to be less than significant, it is proposed that the project must: a) include certain project design elements, *or*; b) be consistent with a local GHG Reduction Strategy. Project design elements include aspects of the project that are within the control of the project developer and that have the potential to “lock in” GHG emissions for the duration of the project-life. The design elements included in the proposed thresholds address GHG emissions from building operations and transportation.

Alternatively, the evaluation of a land-use development project’s GHG impacts could focus on a demonstration that the project is consistent with a local GHG Reduction Strategy, such as a climate action plan, which in turn conforms to State and Air District guidance. Criteria for a GHG Reduction Strategy that supports this type of streamlining is specified in the State of California CEQA Guidelines (section 15183.5(b)). In addition, the Air District is developing further supportive guidance for local GHG Reduction Strategies on how to reflect consistency with the State Guidelines. This supportive guidance will be included in the Air District’s CEQA Guidance to be released later this Spring. The proposed thresholds for land use development projects are summarized in the following table.

Thresholds for Land Use Projects (Must Include A or B)
<p>A. Projects must include, at a minimum, the following project design elements:</p> <ol style="list-style-type: none"> 1. Buildings <ol style="list-style-type: none"> a. The project will not include natural gas appliances or natural gas plumbing (in both residential and nonresidential development). b. The project will not result in any wasteful, inefficient, or unnecessary energy usage as determined by the analysis required under CEQA Section 21100(b)(3) and Section 15126.2(b) of the State CEQA Guidelines. 2. Transportation <ol style="list-style-type: none"> a. Achieve compliance with electric vehicle requirements in the most recently adopted version of <u>CALGreen Tier 2</u>. b. Achieve a reduction in project-generated vehicle miles traveled (VMT) below the regional average consistent with the current version of the California Climate Change Scoping Plan (currently 15 percent) or meet a locally adopted Senate Bill 743 VMT target, reflecting the recommendations provided in the Governor’s Office of Planning and Research’s Technical Advisory on Evaluating Transportation Impacts in CEQA: <ol style="list-style-type: none"> i. Residential projects: 15 percent below the existing VMT per capita ii. Office projects: 15 percent below the existing VMT per employee iii. Retail projects: no net increase in existing VMT
<p>B. Projects must be consistent with a local GHG reduction strategy that meets the criteria under State CEQA Guidelines Section 15183.5(b).</p>

2. Land Use Development Plans

For long-term communitywide planning documents (e.g., general plans, long-range development plans, climate action plans) to be determined to have a less-than-significant climate impact, they must demonstrate that GHG emissions from the jurisdiction will decline in accordance with California’s GHG reduction targets of 40 percent below 1990 levels by 2030 and carbon neutrality by 2045. A local jurisdiction that plans to develop in a manner that will meet those targets will support the State’s ability to achieve its climate goals and thus would be considered to have a less-than-significant impact on GHG emissions. If a jurisdiction has adopted a climate action plan that meets the criteria for a GHG Reduction Strategy under the State CEQA Guidelines and pursuant to Air District’s guidance, it can use that climate action plan to provide the basis for demonstrating that the jurisdiction’s GHG emissions will meet the 2030 and 2045 targets when it adopts a general plan update and similar long-range planning document.

The proposed threshold for plans is summarized in the table below.

Thresholds for Land-use Development Plans (Must Include A or B)
A. Meet the State’s goals to reduce emissions to 40 percent below 1990 levels by 2030 and carbon neutrality by <u>2045</u> ; or
B. Be consistent with a local GHG reduction strategy that meets the criteria under State CEQA Guidelines Section 15183.5(b).

Staff prepared a report to explain and support the recommended thresholds. This report, “*Justification Report: CEQA Thresholds for Evaluating the Significance of Climate Impacts from Land Use Projects and Plans*,” is included as Attachment A. This Justification Report provides the substantial evidence to support adoption of these thresholds by the Board of Directors, as well as the substantial evidence needed by Lead Agencies that choose to use these thresholds to make significance determinations.

Staff is evaluating the recommended thresholds of significance for climate impacts for stationary sources, and will report back to the Board on those thresholds later in 2022. As part of this process, staff will bring early concepts to the Board and will conduct a robust outreach and engagement process.

Staff convened numerous focus groups with local government planning staff, builders, affordable housing developers, environmental advocates and community organizations to discuss this approach for updating the CEQA GHG thresholds and to receive feedback and suggestions. Staff also convened a public workshop on December 9, 2022, opened a 30-day public comment period starting on February 16, 2022, and convened a second public workshop on March 10, 2022.

BUDGET CONSIDERATION/FINANCIAL IMPACT

None. Resources to update and implement the CEQA Thresholds and Guidelines are included in the FYE 2022 and proposed FYE 2023 budgets.

Respectfully submitted,

Alexander Crockett
Interim Acting Executive Officer/APCO

Prepared by: Abby Young
Reviewed by: Henry Hilken

ATTACHMENTS:

1. Justification Report: CEQA Thresholds for Evaluating the Significance of Climate Impacts from Land Use Projects and Plans



**BAY AREA AIR QUALITY
MANAGEMENT DISTRICT**

Draft Justification Report:
**CEQA Thresholds for Evaluating
the Significance of Climate Impacts
From Land Use Projects
and Plans**

February 2022



BAY AREA AIR QUALITY MANAGEMENT DISTRICT

Draft Justification Report

CEQA Thresholds for Evaluating the Significance of Climate Impacts

Jack P. Broadbent

Chief Executive Officer/Air Pollution Control Officer

Veronica Eady

Senior Deputy Executive Officer

Greg Nudd

Deputy Air Pollution Control Officer – Policy

Adan Schwartz

Acting District Counsel

PRINCIPAL CONTRIBUTORS:

Henry Hilken

Director of Planning and Climate Protection

Alexander “Sandy” Crockett

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Wendy Goodfriend, Ph.D.

Air Quality Planning Manager

Jakub Zielkiewicz

Senior Advanced Projects Advisor

BAY AREA AIR QUALITY MANAGEMENT DISTRICT

375 Beale Street, Suite 600
San Francisco, CA 94105
415.749.5000

TECHNICAL ASSISTANCE FROM:



Honey Walters

Principal-in-Charge

Poonam Boparai

Principal

Hannah Kornfeld, AICP

Project Manager

February 2022

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LIST OF ABBREVIATIONS

°C	degrees Celsius
AB	Assembly Bill
Air District	Bay Area Air Quality Management District
CALGreen	California Green Building Standards Code
CARB	California Air Resources Board
CEC	California Energy Commission
CEQA	California Environmental Quality Act
DC	direct current
EIR	environmental impact report
EV	electric vehicle
GHG	greenhouse gas
HCD	California Department of Housing and Community Development
OPR	Governor's Office of Planning and Research
RPS	Renewables Portfolio Standard
SB	Senate Bill
VAC	voltage of alternating current
VMT	vehicle miles traveled
ZEV	zero-emission vehicle



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1 INTRODUCTION AND EXECUTIVE SUMMARY

This report presents the Bay Area Air Quality Management District's (Air District's) recommended thresholds of significance for use in determining whether a proposed project will have a significant impact on climate change. The Air District recommends that these thresholds of significance be used by public agencies to comply with the California Environmental Quality Act (CEQA).

Evaluating climate impacts under CEQA can be challenging because global climate change is inherently a cumulative problem. Climate change is not caused by any individual emissions source but by a large number of sources around the world emitting greenhouse gases (GHGs) that collectively create a significant cumulative impact. CEQA requires agencies in California to analyze such impacts by evaluating whether a proposed project would make a "cumulatively considerable" contribution to the significant cumulative impact on climate change. (See CEQA Guidelines Sections 15064[h] and 15064.4[b].) But CEQA does not provide any further definition of what constitutes a cumulatively considerable contribution in this context. These thresholds of significance are intended to assist public agencies in determining whether proposed projects they are considering would make a cumulatively considerable contribution to global climate change, as required by CEQA.

The Air District's recommended thresholds of significance are summarized below, with a detailed discussion of the basis for the thresholds presented in the remainder of this report. The information provided in this report is intended to provide the substantial evidence that lead agencies will need to support their determinations about significance using these thresholds. This information also provides the substantial evidence to support adoption of these thresholds by the Air District's Board of Directors. (See CEQA Guidelines Section 15064.7 [thresholds must be adopted by the Board of Directors through a public review process and be supported by substantial evidence].)

1.1 THRESHOLDS FOR LAND USE PROJECTS

For land use development projects, the Air District recommends using the approach endorsed by the California Supreme Court in *Center for Biological Diversity v. Department of Fish & Wildlife* (2015) (62 Cal.4th 204), which evaluates a project based on its effect on California's efforts to meet the State's long-term climate goals. As the Supreme Court held in that case, a project that would be consistent with meeting those goals can be found to have a less-than-significant impact on climate change under CEQA. If a project would contribute its "fair share" of what will be required to achieve those long-term climate goals, then a reviewing agency can find that the impact will not be significant because the project will help to solve the problem of global climate change (62 Cal.4th 220–223).

Applying this approach, the Air District has analyzed what will be required of new land use development projects to achieve California’s long-term climate goal of carbon neutrality¹ by 2045. The Air District has found, based on this analysis, that a new land use development project being built today needs to incorporate the following design elements to do its “fair share” of implementing the goal of carbon neutrality by 2045:

Thresholds for Land Use Projects (Must Include A or B)

A. Projects must include, at a minimum, the following project design elements:

1. Buildings

- a. The project will not include natural gas appliances or natural gas plumbing (in both residential and nonresidential development).
- b. The project will not result in any wasteful, inefficient, or unnecessary electrical usage as determined by the analysis required under CEQA Section 21100(b)(3) and Section 15126.2(b) of the State CEQA Guidelines.

2. Transportation

- a. Achieve compliance with electric vehicle requirements in the most recently adopted version of CALGreen Tier 2.
- b. Achieve a reduction in project-generated vehicle miles traveled (VMT) below the regional average consistent with the current version of the California Climate Change Scoping Plan (currently 15 percent) or meet a locally adopted Senate Bill 743 VMT target, reflecting the recommendations provided in the Governor’s Office of Planning and Research’s Technical Advisory on Evaluating Transportation Impacts in CEQA:
 - i. Residential projects: 15 percent below the existing VMT per capita
 - ii. Office projects: 15 percent below the existing VMT per employee
 - iii. Retail projects: no net increase in existing VMT

B. Projects must be consistent with a local GHG reduction strategy that meets the criteria under State CEQA Guidelines Section 15183.5(b).

If a project is designed and built to incorporate these design elements, then it will contribute its portion of what is necessary to achieve California’s long-term climate goals—its “fair share”—and an agency reviewing the project under CEQA can conclude that the project will not make a cumulatively considerable contribution to global climate change. If the project does not incorporate these design elements, then it should be found to make a significant climate impact because it will hinder California’s efforts to address climate change. These recommended thresholds for land use projects are discussed in more detail in Section 4.

¹ “Carbon neutrality” is defined in Executive Order B-55-18 as the point at which the removal of carbon pollution from the atmosphere meets or exceeds carbon emissions. Carbon neutrality is achieved when carbon dioxide and other GHGs generated by sources such as transportation, power plants, and industrial processes are less than or equal to the amount of carbon dioxide that is stored, both in natural sinks and mechanical sequestration.



1.2 THRESHOLDS FOR GENERAL PLANS AND RELATED PLANNING DOCUMENTS

The Air District recommends a similar approach for cities and counties adopting general plans and related planning documents that will guide long-range development in their jurisdictions. The Air District recommends that cities and counties evaluate such plans based on whether they will be consistent with California's long-term climate goal of achieving carbon neutrality by 2045. To be consistent with this goal, these plans should reduce GHG emissions in the relevant jurisdiction to meet an interim milestone of 40 percent below the 1990 emission levels by 2030, consistent with Senate Bill (SB) 32, and to achieve carbon neutrality by 2045. Cities and counties planning to develop in a manner that is not consistent with meeting these GHG reduction targets will have a significant climate impact because they will hinder California's efforts to address climate change.

Thresholds for Plans (Must Include A or B)

- A. Meet the State's goals to reduce emissions to 40 percent below 1990 levels by 2030 and carbon neutrality by 2045; or
- B. Be consistent with a local GHG reduction strategy that meets the criteria under State CEQA Guidelines Section 15183.5(b).

The Air District also strongly recommends that cities and counties adopt climate action plans to document specific strategies and implementation measures to ensure that they will achieve these 2030 and 2045 goals. Robust climate action plans that meet the requirements of CEQA Guidelines Section 15183.5(b) can provide such jurisdictions with a number of benefits. If properly developed, they will provide the substantial evidence a jurisdiction needs to demonstrate that its general plan updates and related planning documents will not have a significant climate impact as outlined in the preceding paragraph. In addition, a jurisdiction can use a qualified climate action plan to evaluate individual land use projects under CEQA. This gives the local jurisdiction the flexibility to tailor requirements for land use projects in its community to the specific circumstances of that community rather than use the Air District's general thresholds for land use projects described above. In addition, a jurisdiction can adopt a climate action plan immediately, without having to wait for its next general plan update cycle.

Thresholds for general plans and related planning documents are discussed in more detail in Section 5. Guidance from the Air District on how to develop and adopt a comprehensive climate action plan that satisfies the detailed requirements of CEQA Guidelines Section 15183.5(b) is set forth in Appendix C to the Air District's Air Quality Guidelines.

1.3 Important Considerations for Using These Thresholds

The Air District has developed these thresholds of significance based on typical residential and commercial land use projects and typical long-term communitywide planning documents such as general plans and similar long-range development plans. As such, these thresholds may not be appropriate for other types of projects that do not fit into the mold of a typical residential or commercial project or general plan update.

Lead agencies should keep this point in mind when evaluating other types of projects. A lead agency does not necessarily need to use a threshold of significance if the analysis and justifications that were used to develop the threshold do not reflect the particular circumstances of the project under review. Accordingly, a lead agency should not use these thresholds if it is faced with a unique or unusual project for which the analyses supporting the thresholds as described in this report do not squarely apply. In such cases, the lead agency should develop an alternative approach that would be more appropriate for the particular project before it, considering all of the facts and circumstances of the project on a case-by-case basis.

In addition, lead agencies should keep in mind that the science of climate change – and California’s regulatory and policy responses to it – are constantly evolving. As the technical and policy considerations on which these thresholds of significance are based advance in the future, lead agencies may need to make adjustments to the thresholds as set forth herein to be consistent with the most current information. As the California Supreme Court has explained, lead agencies are required to “ensure that CEQA analysis stays in step with evolving scientific knowledge and state regulatory schemes” (*Cleveland National Forest Foundation v. SANDAG* (2017) 3 Cal.5th 497, 519). Making appropriate adjustments to these thresholds in light of future developments will ensure that lead agencies comply with this important CEQA mandate.

2 FRAMEWORK FOR ANALYZING IMPACTS UNDER CEQA

The central requirement of the CEQA environmental analysis is to determine whether implementing a project will result in any significant adverse impact on the environment, either individually or cumulatively.

This mandate requires the reviewing agency first to evaluate whether the project will have a significant impact by itself and then to consider whether the project may contribute to a significant cumulative impact in conjunction with other past, present, and reasonably foreseeable future projects that also contribute to the impact.²

In the cumulative context, the analysis has two parts. To evaluate cumulative impacts, the agency must assess (1) whether the overall cumulative impact will be significant and, (2) if the overall impact is significant, whether the incremental contribution that the individual project under review will add to the overall cumulative problem will be cumulatively considerable. As Section 15064(h)(1) of the CEQA Guidelines states:

When assessing whether a cumulative effect requires an EIR [environmental impact report], the lead agency shall consider whether the cumulative impact is significant and whether the effects of the project are cumulatively considerable. An EIR must be prepared if the cumulative impact may be significant and the project’s incremental effect, though individually limited, is cumulatively considerable.

Both parts of this test must be met for a project’s impact to be treated as significant under CEQA. If the overall cumulative impact does not rise to the level of a “significant” impact, or if the project’s incremental

² A cumulative impact is the change in the environment that results from the incremental impact of the project under review in conjunction with other past, present, and reasonably foreseeable probable future projects (CEQA Guidelines Section 15355).



contribution is not cumulatively considerable, then the project's impact is not treated as significant. (See *San Francisco Baykeeper, Inc. v. State Lands Commission* [2015] [242 Cal.App.4th 202, 222] [project not significant if "the cumulative impact is insignificant or if the project's incremental contribution to the impact is not cumulatively considerable"]; see also CEQA Guidelines Sections 15130[a][3] and 15064[h][4].)

Cumulatively considerable means that the incremental effect of the specific project under review will be significant when viewed in the context of the overall cumulative problem (CEQA Section 21083[b][2]). CEQA does not require that any incremental addition to a significant cumulative impact, no matter how small, must necessarily be treated as cumulatively considerable. The statute does not require a so-called "one additional molecule" standard, and some projects' incremental contributions would be so minor that their impact does not have to be treated as significant even though the projects would add an additional amount to the significant cumulative impact (*Communities for a Better Environment v. California Resources Agency* [2002] [103 Cal.App.4th 98, 120]; see also CEQA Guidelines Section 15064[h][4].) The level at which the incremental addition becomes cumulatively considerable will depend on the nature of the particular cumulative impact being evaluated. The ultimate test is whether any additional amount should be considered significant in the context of the existing cumulative effect. (*Ibid.*)

Applying these principles, the environmental impact analysis under CEQA is a four-step process:

- ▶ **Step One:** Determine the level at which an impact on the environmental resource under consideration becomes "significant." This is the touchstone for assessing whether the project may have a significant impact individually or may contribute to a cumulative impact that is significant. The level at which the impact becomes significant will depend on the nature of the environmental resource being evaluated.
- ▶ **Step Two:** Evaluate whether the project under review would degrade the environmental resource to such an extent that there would be an impact exceeding the "significant" level determined during Step One. If implementing the project would cause an impact to exceed that level all by itself, then the project's impact is treated as significant under CEQA and the project requires preparation of an EIR, implementation of feasible mitigation measures to reduce the impact to a less-than-significant level, and consideration of alternatives that would avoid or lessen any significant impacts. If the project under review would not degrade the environmental resource to such an extent that there would be a significant impact, the analysis proceeds to Step Three.
- ▶ **Step Three:** Determine whether the contribution of the project combined with the contributions of all other past, present, and reasonably foreseeable future projects would exceed the "significant" level determined during Step One. If implementing the project would not cause a significant impact by itself, it still must be evaluated to determine whether it would make a cumulatively considerable contribution to a significant cumulative impact. The first element of that analysis is to assess the overall cumulative impact caused by the project in conjunction with other past, present, and reasonably foreseeable future projects affecting the same resource. If the overall cumulative impact exceeds the "significant" level determined during Step One, then the project would contribute to a significant cumulative impact, and the analysis proceeds to Step Four to determine whether that contribution is cumulatively considerable.

- ▶ **Step Four:** Determine whether the project’s incremental contribution is cumulatively considerable. The final step is to determine whether the project’s incremental contribution is cumulatively considerable in light of the overall cumulative impact. If implementing the project would make a cumulatively considerable contribution to a significant cumulative impact, the impact is considered significant under CEQA and the agency must prepare an EIR, impose feasible mitigation measures to bring the incremental contribution below the cumulatively considerable level, and consider alternatives.

The CEQA analysis applies this four-step process to evaluating climate impacts just as it does for all other impacts.

3 ANALYZING IMPACTS ON GLOBAL CLIMATE CHANGE

CEQA requires agencies to consider a project’s impacts on global climate change in the same manner that they consider impacts on other areas in the environmental review document. Climate change is unique, however, given the global nature of the problem.

Step One in the analysis requires determining the level at which climate change becomes a “significant” environmental problem. There is a general consensus that we need to limit the warming of the planet to no more than 1.5 degrees Celsius (°C) in order to maintain a sustainable global climate. Aiming to limit global warming to 1.5 °C is a goal recognized by the Paris Agreement on Climate Change and in California’s Executive Order B-55-18, and the Intergovernmental Panel on Climate Change (IPCC) has documented the serious adverse consequences that are expected if the climate warms by more than that amount (IPCC 2018). A 1.5 °C rise in global temperatures is therefore an appropriate measure of the level at which climate change will become significant. A global temperature increase of more than that amount will constitute a significant climate impact.

Proceeding to Step Two in the analysis, it is clear that no individual project could have a significant climate impact all by itself, because no project by itself could cause the global temperature to rise by 1.5 °C. Indeed, it is difficult to conceive of any project whose GHG emissions would cause global temperature to change in any detectable way. The California Supreme Court acknowledged this situation in its *Center for Biological Diversity* decision, explaining that “an individual project’s emissions will most likely not have any appreciable impact on the global problem by themselves, but they will contribute to the significant cumulative impact caused by greenhouse gas emissions from other sources around the globe” (*Center for Biological Diversity v. Department of Fish & Wildlife* [2015] 62 Cal.4th 204, 219 [citation omitted]).

Moving on to the cumulative analysis, Step Three asks whether the project would contribute to a significant cumulative impact in conjunction with all other past, present, and foreseeable future projects that are contributing to the same impact. With respect to climate change, clearly the answer is yes. Climate change is a cumulative problem caused by millions or billions of individually minor sources all around the globe contributing to the global impact, and it is unquestionably a significant cumulative problem.³ The

³ CEQA requires the cumulative analysis to consider the contributions from all projects that contribute to the impact (i.e., all projects that contribute to the degradation of the environmental resource being evaluated). (See *City of Long Beach v. Los Angeles Unified School Dist.* [2009])



global climate has already warmed by approximately 1.0 °C compared to a preindustrial baseline, and IPCC projects that continued growth in GHG emissions will cause that warming to reach 1.5 °C by 2030–2053 if nothing is done to limit it (IPCC 2018).

The analysis therefore focuses on Step Four: determining whether the project’s GHG emissions would make a cumulatively considerable contribution to the significant problem of global climate change. As the Supreme Court noted in its *Center for Biological Diversity* decision, the question is “whether the project’s incremental contribution of greenhouse gases is ‘cumulatively considerable’ in light of the global problem, and thus significant” (*Center for Biological Diversity v. Department of Fish & Wildlife* [2015b] 62 Cal.4th 219). This is the challenge that has faced lead agencies in undertaking the CEQA analysis: how to determine the level at which a project becomes cumulatively considerable.

4 THRESHOLDS FOR LAND USE DEVELOPMENT PROJECTS

4.1 THE SUPREME COURT’S “FAIR SHARE” ANALYSIS AND CONSISTENCY WITH CALIFORNIA’S LONG-TERM CLIMATE GOALS

The crucial question in the CEQA climate impact analysis is whether the project under review would make a cumulatively considerable contribution to the significant cumulative problem of global climate change. For land use development projects, the Air District recommends using the approach endorsed by the California Supreme Court in the *Center for Biological Diversity* decision, discussed above, which focuses on determining whether the project would be doing its “fair share” to implement California’s ambitious long-term climate goals. This approach evaluates whether a project’s GHG emissions are cumulatively considerable based on “their effect on the state’s efforts to meet [those] goals.” (*Center for Biological Diversity v. Department of Fish & Wildlife* [2015] 62 Cal.4th 221.) If a new land use project would serve California’s pressing need to provide housing, jobs, and related infrastructure in a manner that supports achieving those climate goals, then it would help to solve the climate change problem, and its GHG emissions should not be treated as cumulatively considerable. As the Supreme Court held, “consistency with meeting [those] statewide goals [is] a permissible significance criterion for project emissions” (*Center for Biological Diversity v. Department of Fish & Wildlife* [2015] 62 Cal.4th 220), and an agency’s “choice to use that criterion does not violate CEQA” (*Center for Biological Diversity v. Department of Fish & Wildlife* [2015] 62 Cal.4th 223).

This approach is based on the principle inherent in CEQA that an individual project would make a less-than-cumulatively-considerable contribution if it would do its part to address the cumulative problem. As the Supreme Court explained, “if a plan is in place to address a cumulative problem, a new project’s incremental addition to the problem will not be ‘cumulatively considerable’ if it is consistent with the plan

[176 Cal.App.4th 889, 907], *Bakersfield Citizens for Local Control v. City of Bakersfield* [2004] [124 Cal.App.4th 1184, 1219 fn. 10], and *Kings County Farm Bureau v. City of Hanford* [1990] [221 Cal.App.3d 692, 720]). In the context of global climate change, this means considering all sources of GHG emissions around the globe that contribute to the global problem. Given the large number of sources involved, the analysis needs to use the “summary of projections” method to assess the magnitude of the total cumulative impact, not the “list of projects” method. (See CEQA Guidelines Section 15130[b].)



and is doing its fair share to achieve the plan's goals" (*Center for Biological Diversity v. Department of Fish & Wildlife* [2015] 62 Cal.4th 223). No individual project needs to solve the entire cumulative problem by itself. Indeed, no individual project could, given that the problem is the result of such a large number of diverse emission sources. But each individual project does need to do what is required of it to ensure that the overall solution is implemented, and if it does that, then its impact on climate change can be treated as less than cumulatively considerable. As the Supreme Court put it in the climate context, "[t]o the extent a project incorporates efficiency and conservation measures sufficient to contribute its portion of the overall greenhouse gas reductions necessary [to achieve the State's climate goals], one can reasonably argue that the project's impact is not cumulatively considerable, because it is helping to solve the cumulative problem" (*Center for Biological Diversity v. Department of Fish & Wildlife* [2015] 62 Cal.4th 220).

4.2 USING THE EXECUTIVE ORDER B-55-18 AND THE 2045 CARBON NEUTRALITY GOAL IN THE "FAIR SHARE" ANALYSIS

The *Center for Biological Diversity* case was decided in 2015, and it specifically addressed only the Assembly Bill (AB) 32 goal of attaining 1990 emission levels by 2020 statewide, not the longer-term goal for 2045. However, we are now past the 2020 milestone. At this point, the focus has shifted to the longer-term goals and ultimately to carbon neutrality by 2045. Moreover, the Supreme Court has recognized the necessity and appropriateness of using these longer-term goals as the touchstone for the CEQA analysis. As it held in *Cleveland National Forest Foundation v. SANDAG*, these longer-term goals express "what scientific research has determined to be the level of emissions reductions necessary to stabilize the climate by midcentury and thereby avoid catastrophic effects of climate change" (*Cleveland National Forest Foundation v. SANDAG* [2017] 3 Cal.5th 497, 513). They represent "the scientifically-supported level of emissions reduction needed to avoid significant disruption of the climate and [are] used as the long-term driver for state climate change policy development" (*Cleveland National Forest Foundation v. SANDAG* [2017] 3 Cal.5th 497, 513 (citation omitted)⁴).

The consistency analysis approved by the Supreme Court in *Center for Biological Diversity* can be applied to these longer-term goals in the same way it was applied to the AB 32 2020 goal. If a project would be consistent with meeting these long-term State climate goals, then its climate impact can be seen as less than cumulatively considerable "because it is helping to solve the cumulative problem of greenhouse gas emissions as envisioned by California law" (*Center for Biological Diversity v. Department of Fish & Wildlife* [2015] 62 Cal.4th 220 (citation omitted)).

Moreover, although the 2045 goal is set forth in an executive order and not in a statute, as with the 2020 AB 32 goal that the Supreme Court addressed in *Center for Biological Diversity*, the Executive Order B-55-18 goal is appropriate to use for developing a threshold of significance given the science supporting it. The Supreme Court explicitly rejected the argument that an executive order cannot be used for this purpose because it has not been adopted by statute in the *SANDAG* case. It explained that the executive order at issue there "expresses the pace and magnitude of reduction efforts that the scientific community believes

⁴ These statements were referring to the older Executive Order S-3-05, which included an 80-percent reduction target by 2050, but they apply with equal force to the more recent Executive Order B-55-18.



is necessary to stabilize the climate. This scientific information has important value to policymakers and citizens in considering the emission impacts of a project” (*Cleveland National Forest Foundation v. SANDAG* [2017] 3 Cal.5th 515). Agencies are required to design their CEQA analyses “based to the extent possible on scientific and factual data,” and if an executive order best embodies the current state of the scientific and factual data, an agency may use it as the basis for its CEQA analysis (*Ibid.* (quoting CEQA Guidelines Section 15064[b])).

4.3 DETERMINING A LAND USE PROJECT’S “FAIR SHARE” FOR GETTING TO CARBON NEUTRALITY BY 2045

The “fair share” analysis looks at how a new land use development project needs to be designed and built to ensure that it will be consistent with the goal of carbon neutrality by 2045. This is California’s current articulation of what will be required to achieve long-term climate stabilization at a sustainable level, as articulated in Executive Order B-55-18. If a land use project incorporates all of the design elements necessary for it to be carbon neutral by 2045, then it will contribute its portion of what is needed to achieve the State’s climate goals and will help to solve the cumulative problem. It can therefore be found to make a less-than-cumulatively-considerable climate impact.

A land use project’s “fair share” will not necessarily include everything that will need to happen in order to achieve carbon neutrality by 2045. There will likely be certain aspects of achieving carbon neutrality that are beyond the scope of how a land use project is designed and thus cannot reasonably be allocated to its “fair share.” For example, becoming carbon neutral by 2045 will require California’s electrical power generators to shift to 100-percent carbon-free energy resources, which is not something that can be controlled through the design of new land use projects. But for those aspects that can be controlled or influenced by how such projects are designed, projects need to address those aspects in order to contribute their “fair share” of what is needed to attain carbon neutrality. If a project is not designed and built to ensure that it can be carbon neutral by 2045, then it will impede California’s ability to achieve its long-term climate goals and should be treated as making a cumulatively considerable contribution to global climate change.

To determine the “fair share,” the analysis should therefore focus on the design elements that need to be incorporated into the project in order to lay the foundation for achieving carbon neutrality by 2045. As GHG emissions from the land use sector come primarily from building energy use and from transportation, these are the areas that need to be evaluated to ensure that the project can and will be carbon neutral. With respect to building energy use, this can be achieved by replacing natural gas with electric power and by eliminating inefficient or wasteful electricity usage. This will support California’s transition away from fossil fuel-based energy sources and will bring the project’s GHG emissions associated with building energy use down to zero as our electric supply becomes 100 percent carbon free. With respect to transportation, projects need to be designed to reduce project-generated VMT and to provide sufficient electric vehicle (EV) charging infrastructure to support the shift to EVs. As explained below, the Air District recommends using a threshold of a 15-percent reduction in project-generated VMT per capita compared with existing levels (or other, more current percentage to the extent further analysis shows that a different

level of reduction is needed) and providing EV charging infrastructure as specified in the California Green Building Standards Code (CALGreen) Tier 2 standards. If a land use project being designed and built today incorporates the design elements necessary for the project to be carbon neutral by 2045, then it will contribute its “fair share” to achieving the State’s climate goals. A lead agency can therefore conclude that it will make a less-than-cumulatively-considerable climate impact.

The following sections provide a more detailed discussion of the framework for evaluating the design elements necessary for a project to be consistent with California’s long-term climate goals. The Air District recommends that lead agencies use the design elements as the threshold of significance for land use projects under the Supreme Court’s “fair share” approach discussed above.

Thresholds for Land Use Projects (Must Include A or B)

- A. Projects must include, at a minimum, the following project design elements:
 1. Buildings
 - a. The project will not include natural gas appliances or natural gas plumbing (in both residential and nonresidential development).
 - b. The project will not result in any wasteful, inefficient, or unnecessary electrical usage as determined by the analysis required under CEQA Section 21100(b)(3) and Section 15126.2(b) of the State CEQA Guidelines.
 2. Transportation
 - a. Achieve compliance with electric vehicle requirements in the most recently adopted version of CALGreen Tier 2.
 - b. Achieve a reduction in project-generated vehicle miles traveled (VMT) below the regional average consistent with the current version of the California Climate Change Scoping Plan (currently 15 percent) or meet a locally adopted Senate Bill 743 VMT target, reflecting the recommendations provided in the Governor’s Office of Planning and Research’s Technical Advisory on Evaluating Transportation Impacts in CEQA:
 - i. Residential projects: 15 percent below the existing VMT per capita
 - ii. Office projects: 15 percent below the existing VMT per employee
 - iii. Retail projects: no net increase in existing VMT
- B. Be consistent with a local GHG reduction strategy that meets the criteria under State CEQA Guidelines Section 15183.5(b).

4.3.1 Building Energy Use

Energy used in residential and nonresidential buildings in California comes primarily from natural gas and electricity, the generation and consumption of which can result in GHG emissions. Natural gas usage emits GHGs directly when it is burned for space heating, cooking, hot water heating and similar uses, whereas electricity usage emits GHGs indirectly to the extent that it is generated by burning carbon-based fuels. For the building sector to achieve carbon neutrality, natural gas usage will need to be phased out and replaced with electricity usage, and electrical generation will need to shift to 100-percent carbon-free



sources. To support these shifts, new projects need to be built without natural gas and with no inefficient or wasteful electricity usage.

ELECTRICITY

Eliminating GHG emissions associated with building electricity usage will be achieved by decarbonizing California's electrical generation infrastructure. California has committed to achieving this goal by 2045 through SB 100, the 100 Percent Clean Energy Act of 2018. SB 100 strengthened the State's Renewables Portfolio Standard (RPS) by requiring that 60 percent of all electricity provided to retail users in California come from renewable sources by 2030 and that 100 percent come from carbon-free sources by 2045.

The land use sector will benefit from RPS because the electricity used in buildings will be increasingly carbon-free, but implementation does not depend (directly at least) on how buildings are designed and built. RPS will be implemented by the generators that produce and sell the electricity, not by the end users of that electricity. Implementing SB 100 is therefore not part of the "fair share" that falls to land use development projects to ensure that California reaches its 2045 carbon neutrality target.

Nevertheless, land use projects do have an important role to play on the demand side to ensure that SB 100 can feasibly be implemented. Inefficient electricity usage will hinder the shift to renewable power generation by requiring additional carbon-free generating resources to be developed, increasing the cost of shifting to renewables and other carbon-free energy sources, and delaying full implementation longer than necessary. Thus, to the extent that new land use projects have a role to play in ensuring that SB 100 is successfully implemented, that role is to maximize the efficiency with which they use electricity and to eliminate any wasteful or unnecessary usage. If a new land use project maximizes efficiency and eliminates wasteful and unnecessary usage, then it will implement its "fair share" in this area, consistent with achieving the State's long-term climate goals. Conversely, if a project is not designed to use electricity in an efficient manner, then it will hinder the successful implementation of SB 100 and the State's long-term climate goals.

CEQA requires lead agencies to evaluate a project's potential for wasteful, inefficient, or unnecessary electricity usage under CEQA Section 21100(b)(3) and Section 15126.2(b) of the State CEQA Guidelines, along with State CEQA Guidelines Appendix F and Appendix G, Section VI.⁵ The Air District recommends using the results of this analysis to determine whether the project will implement its "fair share" with respect to supporting the implementation of SB 100. If the energy analysis required under CEQA Section 21100(b)(3) shows that a project will not result in any wasteful, inefficient, or unnecessary electrical usage, then it will be consistent with implementing SB 100 and will not make a cumulatively considerable climate impact with respect to building electrical usage. If the project is found to involve wasteful, inefficient, or unnecessary electrical usage, then the lead agency should conclude that it will make a cumulatively considerable impact and treat it as significant in this regard.

⁵ The 2021 State CEQA Guidelines, including Appendices F and G, can be found at the following website: https://www.califaep.org/docs/CEQA_Handbook_2021.pdf.

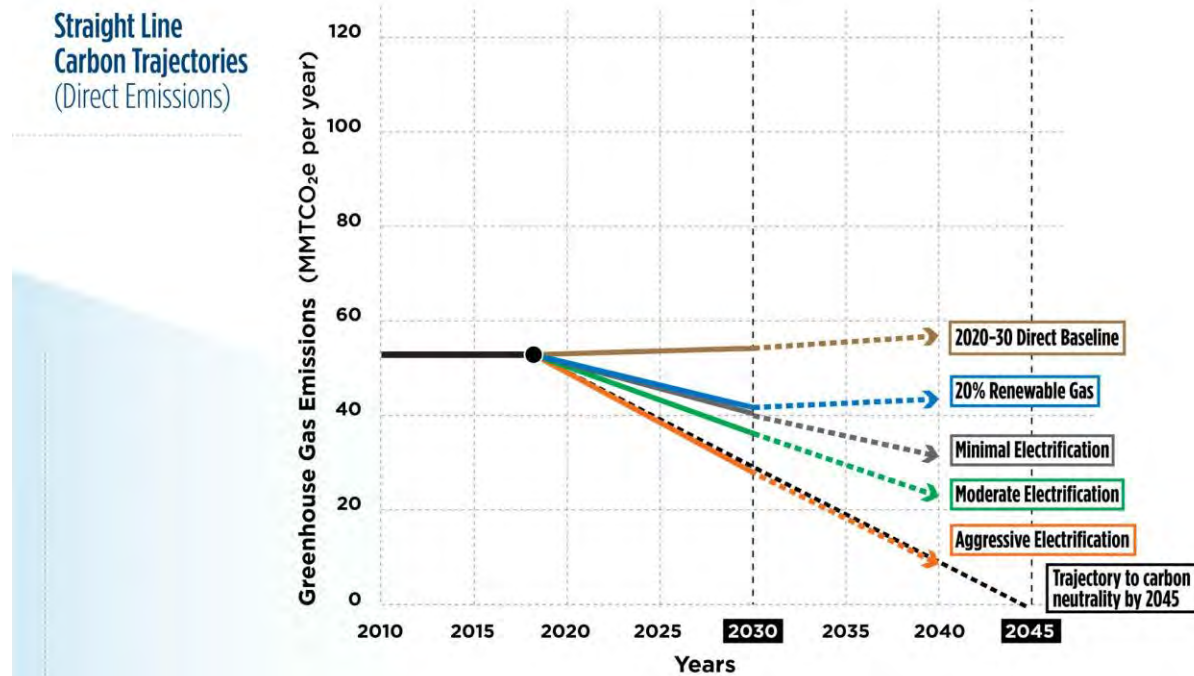
NATURAL GAS

Regarding natural gas usage, new land use development projects must be built without any natural gas infrastructure in order to be consistent with achieving the 2045 carbon neutrality goal. There is no practical way to eliminate the GHG emissions that are generated by burning natural gas, so the land use sector will need to fully eliminate natural gas usage in buildings in order to achieve the goal of carbon neutrality. Given the difficulty of retrofitting existing buildings to replace the use of natural gas with the use of electricity, California needs to stop building natural gas infrastructure in new buildings if it is going to be able to achieve full electrification by the 2045 target date. Retrofitting an existing building to replace natural gas infrastructure with electrical service is far more difficult and expensive than simply building a new all-electric building (CEC 2021a; E3 2019). For California to successfully eliminate natural gas usage by 2045, it will need to focus available resources on retrofitting existing natural gas infrastructure. This task will become virtually impossible if we continue to build more natural gas infrastructure that will also need to be retrofit within the next few years.

This need to eliminate natural gas in new projects in order to achieve carbon neutrality in buildings by 2045 is demonstrated by analyses conducted by the California Energy Commission (CEC) in its California Building Decarbonization Assessment (CEC 2021a). CEC published the California Building Decarbonization Assessment primarily in response to the requirements of AB 3232, which required CEC to evaluate how the State can reduce GHG emissions from its residential and commercial building stock by at least 40 percent below 1990 levels by 2030. But CEC went beyond just analyzing that 2030 goal and evaluated what will be necessary to achieve the longer-term goal of carbon neutrality by 2045. The analysis considered a number of different scenarios and projected the total GHG emissions from residential and commercial buildings under each of them. The results of CEC's analysis are shown graphically in Figure 1.



Figure 1 Effectiveness of CEC-Modeled Electrification Scenarios at Achieving Carbon Neutrality by 2045



Source: CEC 2021a:14

The CEC's analysis shows that only the most aggressive electrification scenario will put the building sector on track to reach carbon neutrality by 2045. Anything that hinders such aggressive efforts will jeopardize California's chances of achieving full building decarbonization by 2045 and impair the state's ability to reach its long-term climate goals. Installing natural gas infrastructure in new buildings will do so because it will add even more infrastructure that will need to be retrofit with electricity between now and 2045. New projects therefore need to eliminate natural gas in order to implement their "fair share" of achieving the long-term 2045 carbon neutrality goal. If a project does not use natural gas in its buildings, then a lead agency can conclude that it is consistent with achieving the 2045 carbon neutrality goal and will not have a cumulatively considerable impact on climate change. If a project does use natural gas, then it will hinder California's ability to decarbonize its building sector. In that case, the lead agency should conclude that it will make a cumulatively considerable impact and treat it as significant.

4.3.2 Transportation

The second principal source of GHG emissions associated with land use comes from transportation. Decarbonization of the transportation infrastructure serving land use development will come from shifting the motor vehicle fleet to EVs, coupled with a shift to carbon-free electricity to power those vehicles. Land use projects cannot directly control whether and how fast these shifts are implemented, but they can and do have an important indirect influence on California's transition to a zero-carbon transportation system.

New land use development can influence transportation-related emissions in two areas related to how it is designed and built. First, new land use projects need to provide sufficient EV charging infrastructure to serve the needs of project users who will be driving EVs. If project users cannot find the charging

infrastructure they need to charge their vehicles at the residential, commercial, and other buildings they frequent, they will be discouraged from switching to an EV. But if those buildings provide sufficient charging infrastructure to make driving an EV easy and efficient, then users will find it easy to choose to drive an EV, and the rate of EV penetration will be accelerated. It is therefore very important for land use projects to provide the EV charging infrastructure needed to support growing EV usage.

Second, new land use projects can influence transportation-related GHG emissions by reducing the amount of VMT associated with the project. Motor vehicle transportation does not need to be eliminated entirely in order for the land use sector to achieve carbon neutrality, as carbon-free vehicle technology can be used (e.g., EVs powered by carbon-free electricity sources). But for that goal to be realistically implemented by 2045, California will need to reduce its per-capita VMT. How land use development is designed and sited can have a significant influence on how much VMT the project will generate. New land use projects need to provide alternatives to motor vehicle–based transportation such that VMT per capita can be reduced to levels consistent with achieving carbon neutrality by 2045.

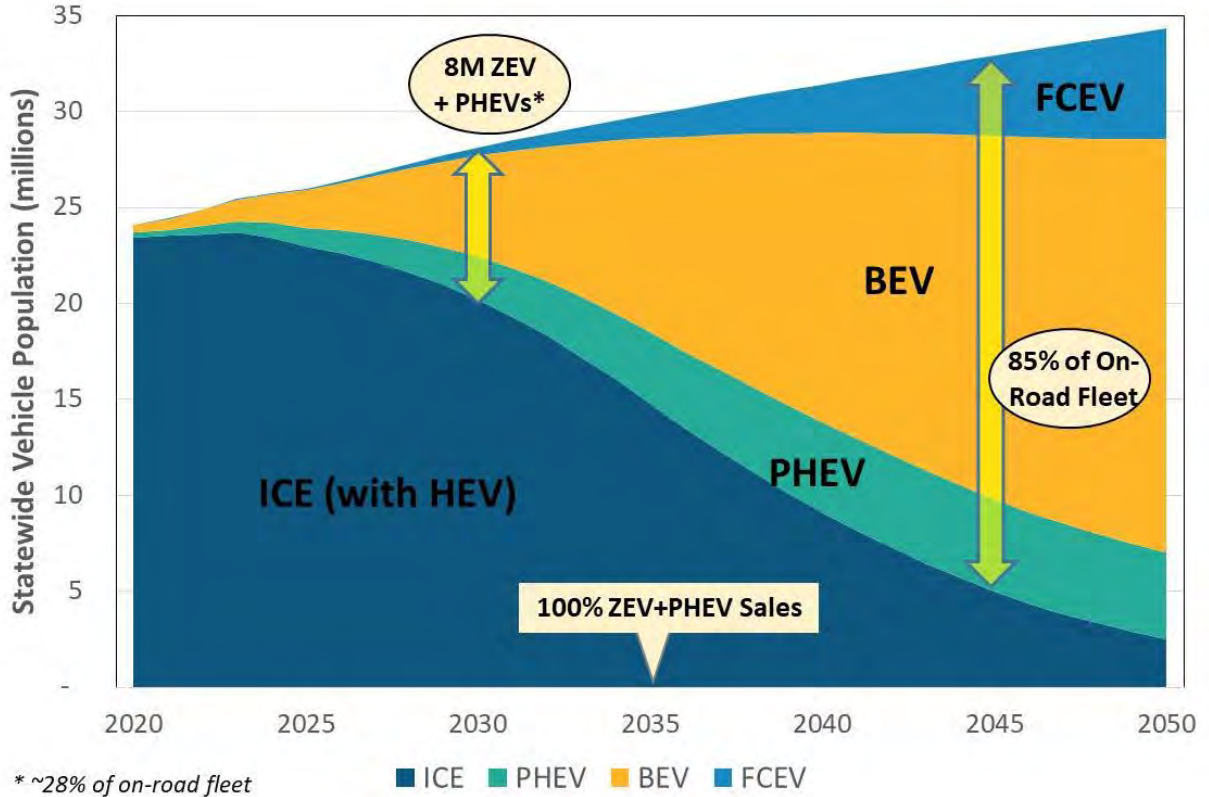
The design elements that new land use projects need to incorporate to address these two areas are outlined below.

EV CHARGING INFRASTRUCTURE

To implement the decarbonization of California’s motor vehicle transportation, the California Air Resources Board (CARB) has adopted a comprehensive Mobile Source Strategy incorporating a suite of policies to promote the shift away from fossil fuel–powered vehicles (CARB 2021b). These policies include aggressive targets for EV penetration, including Executive Order B-16-12’s goal of 1.5 million zero-emission vehicles (ZEVs) on the road by 2025 and Executive Order N-79-20’s call for all new light-duty vehicles sold in California to be battery electric or plug-in hybrid by 2035. CARB’s modeling projects that these efforts will result in as many as 8 million light-duty EVs in the statewide fleet by 2030 and that 85 percent of the on-road fleet will be EVs by 2045 (CARB 2021b:94–95). The results of CARB’s modeling for its 2020 Mobile Source Strategy scenario are shown in Figure 2, below.



Figure 2 Statewide Light-Duty Vehicle Technology Penetration in the On-Road Fleet



Source: CARB 2021b

Notes: BEV = battery electric vehicle; FCEV = fuel cell electric vehicle; HEV = hybrid electric vehicle; ICE = internal combustion engine vehicle; PHEV = plug-in electric vehicle; ZEV = zero emission vehicle.

Implementing this widespread shift to EVs will require the installation of extensive EV charging infrastructure, and new development will need to provide its “fair share” of that infrastructure. Indeed, new development has an especially important role to play, as installing EV charging infrastructure in new buildings is far less expensive than retrofitting existing buildings. CARB has found that installing EV charging infrastructure in a new building can save an estimated \$7,000–\$8,000 per parking space compared with retrofitting it later (CARB 2019a:19).

The requirements for EV charging infrastructure in new land use development projects are governed by the CALGreen regulatory standards. These standards are set forth in Title 24 of the California Code of Regulations, and they are regularly updated on a 3-year cycle. The CALGreen standards consist of a set of mandatory standards that are legally required for new development, as well as two more aggressive sets of voluntary standards known as Tier 1 and Tier 2. Although the Tier 1 and Tier 2 standards are voluntary, they often form the basis of future mandatory standards adopted in subsequent updates.

The CalGreen standards have recently been updated (2022 version) and will be in effect from January 1, 2023, through December 31, 2025. The 2022 CALGreen standards seek to deploy additional EV chargers in various building types, including multifamily residential and nonresidential land uses. They include requirements for both EV capable parking spaces and the installation of Level 2 EV supply equipment for multifamily residential and nonresidential buildings. The 2022 CALGreen standards go beyond previous

iterations and include requirements for both EV readiness and the actual installation of EV chargers. As with previous iterations, the 2022 CALGreen standards include both mandatory requirements and more aggressive voluntary Tier 1 and Tier 2 provisions.

The 2022 CALGreen mandatory standards were adopted based on what will be required to serve anticipated EV charging demand through the year 2025. CARB evaluated what will be required to serve demand through 2025 as part of its role in ensuring that the CALGreen standards support California's long-range climate goals pursuant to AB 341 (Health and Safety Code Section 18930.5[b]). CARB suggested a number of necessary revisions for the 2022 iteration of the standards, including an increase in the percent of parking spaces in certain types of projects that must be EV-capable from the earlier 6 percent to the current 10 percent. These revisions were based on CARB's assessment of the level of EV infrastructure that will be required to support the Executive Order B-16-12 target of 1.5 million ZEVs on the road by 2025. CARB conducted this analysis in 2019 using the Electric Vehicle Infrastructure Projection model (EVI-Pro) developed by the National Renewable Energy Laboratory and the California Energy Commission. Using EVI-Pro, CARB projected the amount of EV charging infrastructure required by 2025 and then calculated the amount of infrastructure expected by 2025 under existing mandatory codes and standards. The results of this analysis showed a gap between what would be achieved under existing codes and standards and what will be needed as of 2025 (CARB 2019a). The revised 2022 CALGreen mandatory standards adopted for the current 2023–2025 cycle are intended to close this gap and ensure that the charging infrastructure needs of 2025 will be met.

However, providing EV charging infrastructure to meet expected demand as of 2025 will not be sufficient to support the much more extensive level of EV penetration anticipated farther into the future. As shown in Figure 2, the number of EVs on the road is projected to grow exponentially, and the demand for EV charging infrastructure will increase accordingly. If a project provides only enough infrastructure to satisfy 2025 demand, it will fall well short of what project users will need as the State progresses toward 2045. The Air District therefore recommends using the more aggressive Tier 2 CALGreen standards to evaluate whether new land use development projects will provide their "fair share" of EV charging infrastructure. This approach is also consistent with CARB's assessment that the Tier 2 standards will need to be made mandatory in CALGreen to support the exponential increase in EV adoption rates as we move past 2025 (CARB 2019a:16).

Looking toward a post-2025 horizon is also appropriate because land use development projects have a long lifetime and will be in use in future years when extensive EV penetration is projected. To be consistent with implementing California's 2045 climate goals, such projects cannot simply provide a level of infrastructure aimed at 2025 levels of EV use, as is reflected in the current CALGreen mandatory standards. A new land use development project will need to implement the more aggressive Tier 2 CALGreen standard for its impact to be less than significant in this area.

VEHICLE MILES TRAVELED

With respect to VMT, CARB studies have shown that California will not be able to achieve its long-term climate goals if we continue our current high level of VMT per capita. The State will need to significantly reduce its VMT per capita in order to attain the goal of carbon neutrality by 2045 (CARB 2021b:105–126).



New land use projects have an important role to play in doing so, as the way a project is sited and designed can significantly affect how the people who use the project will get around. For example, project siting and design can affect whether project users will be forced into making long car trips on a regular basis or whether they will be able to take advantage of alternative transportation options for their daily travel needs. New land use projects will need to be built with reduced levels of VMT per capita in order to implement their “fair share” of what it will take to eliminate GHG emissions from the transportation sector.

CARB has developed an analytical methodology for determining the level of VMT reduction that will be necessary to achieve California’s long-term GHG emissions goals. This methodology calculates the total statewide VMT that California can accommodate and still hit its emissions targets and then divides that total statewide VMT by the State’s projected population as of the target year. This calculation gives the amount of VMT per capita that the State can accommodate consistent with achieving the target. CARB’s methodology then compares this targeted VMT-per-capita number with current VMT per capita to establish the reduction from current baseline levels necessary in order to hit the target.

CARB developed this methodology in conjunction with the VMT-per-capita threshold that the Governor’s Office of Planning and Research (OPR) adopted for evaluating transportation impacts pursuant to SB 743 (see CEQA Guidelines Section 15064.3). SB 743 required lead agencies to abandon the old “level of service” metric for evaluating a project’s transportation impacts, which was based solely on the amount of delay experienced by motor vehicles. This metric was criticized for prioritizing motor vehicle transportation and disincentivizing alternative modes, such as public transit, walking, and biking. SB 743 tasked OPR with developing an alternative metric to assess transportation impacts, and it directed OPR to base its alternative metric on factors such as reducing GHG emissions and developing multimodal transportation networks (CEQA Section 21099[b][1]). OPR concluded that the VMT-per-capita metric was the most appropriate for this purpose, and it adopted new Guidelines Section 15064.3 in November 2017.

CARB applied its methodology in support of OPR’s VMT-per-capita metric to determine the appropriate level of VMT reduction that would allow the State to attain its long-term emissions goals, looking initially to the 2050 long-term target of an 80-percent reduction in GHG emissions compared to 1990 levels (CARB 2019b). CARB found that total statewide VMT would need to be limited to 1,035 million miles driven per day in order to achieve that target, consisting of 908 million light-duty-vehicle miles and 127 million heavy-duty-vehicle miles. With the State’s population projected to grow to 49 million people by 2050, this works out to a per-capita VMT of 18.51 miles per day for light-duty vehicles and 21.09 miles per day for all vehicle types combined.⁶ Given current baseline per-capita VMT levels of 22.24 miles per day for light-duty vehicles and 24.61 miles per day for all vehicle types, the reductions needed to achieve the 2050 goal are 16.8 percent for light-duty vehicles and 14.3 percent for all vehicle types combined. CARB’s calculations are summarized in Table 1.

⁶ Statewide population projections are provided by the California Department of Finance, and VMT projections are provided by CARB’s scenario planning tool, Vision (CARB 2019b:5).

Table 1 Per-Capita VMT Reductions Necessary to Attain 2050 GHG Reduction Target

	Light-Duty Vehicles	All Vehicle Types
Baseline VMT/capita	22.24 miles per day	24.61 miles per day
2050 VMT/capita	18.5 miles per day	21.09 miles per day
Reduction needed	16.8%	14.3%

Based on this analysis (as well as other factors), OPR recommended using a 15-percent reduction in per-capita VMT as an appropriate threshold of significance for evaluating transportation impacts, as this level of VMT addresses transportation and corresponds to what would be needed to attain the State's 2050 climate target (OPR 2018).⁷

CARB is currently updating this analysis for the 2045 carbon neutrality target in connection with its 2022 Scoping Plan Update. Although that work is ongoing and CARB has not finalized its revised analysis, CARB has suggested that it will use the same 15-percent-per-capita VMT reduction threshold that it derived in connection with the 2050 target. Specifically, in October 2021, CARB updated its Mobile Source Strategy, an important constituent of the Scoping Plan, using the same 15-percent reduction target as used in previous plans (CARB 2021b:105). The Air District therefore recommends that lead agencies use OPR's 15-percent per-capita VMT reduction threshold for evaluating land use projects (OPR 2018). Alternatively, to the extent CARB determines that a different threshold would be more appropriate for purposes of the 2045 carbon neutrality target in connection with its work on the 2022 Scoping Plan Update, lead agencies should use that 2045-specific threshold instead. If a land use project is designed and built so that its associated VMT per capita is reduced to the extent determined to be necessary by CARB, then it will implement its "fair share" of the VMT reductions needed to attain the State's long-term climate goals and can be found to have a less-than-significant climate impact.

Finally, it is worth noting that some local jurisdictions may have developed their own VMT-per-capita thresholds for use in CEQA transportation analyses pursuant to SB 743. If such a jurisdiction-specific VMT-per-capita threshold is available and applicable, the Air District recommends that lead agencies use it in their climate impact analyses, provided that it was established based on what it will take to achieve California's long-term climate goals in a manner akin to the analysis outlined above. If an SB 743 transportation threshold is not established at a level commensurate with achieving those climate goals, then it would not be appropriate to use it to evaluate climate impacts. But if it is based on the level of VMT necessary for the local jurisdiction to attain climate neutrality by 2045, then a lead agency can use it to evaluate whether a project is doing its "fair share" with respect to ensuring that VMT is reduced sufficient to achieve the State's climate goals.

OPR has provided guidance to local jurisdictions on choosing appropriate local VMT reduction thresholds in its Technical Advisory on Evaluating Transportation Impacts in CEQA (OPR 2018). The advisory contains technical recommendations regarding assessment of VMT, thresholds of significance, and mitigation measures. It specifies recommended thresholds of significance for residential, office, and retail projects,

⁷ The 15-percent reduction is compared to existing VMT per capita measured as either regional VMT per capita or city VMT per capita (OPR 2018:15).



which are reflected in the “Thresholds for Land Use Projects” section on page 10 of this document. These types of projects reflect the vast majority of land use projects implemented in the Bay Area. For other types of projects, lead agencies should follow the guidance provided in the OPR advisory. OPR may update or supplement this advisory in the future in response to new information and advancements in modeling and methods, so lead agencies should continue to track the development of the advisory and always use the most recent version.

5 THRESHOLDS FOR GENERAL PLANS AND SIMILAR LONG-TERM COMMUNITY-WIDE PLANNING DOCUMENTS

Local governments are essential partners in achieving California’s goal to reduce GHG emissions. Local governments not only approve specific land use development projects but have primary authority to plan for and zone how and where land is developed within their jurisdiction to accommodate population growth and the changing needs of their communities. CEQA also applies to these planning decisions, and local governments are required to evaluate the climate impacts when adopting such plans.

Thresholds for Plans (Must Include A or B)

- A. Meet the State’s goals to reduce emissions to 40 percent below 1990 levels by 2030 and carbon neutrality by 2045; or
- B. Be consistent with a local GHG reduction strategy that meets the criteria under State CEQA Guidelines Section 15183.5(b).

5.1 REDUCING GHG EMISSIONS TO MEET GHG REDUCTION TARGETS

For long-term communitywide planning documents (e.g., general plans, long-range development plans, climate action plans) to have a less-than-significant climate impact, they must demonstrate that GHG emissions from the jurisdiction will decline in accordance with California’s GHG reduction targets of 40 percent below 1990 levels by 2030 and carbon neutrality by 2045. A city or county that plans to develop in a manner that will cause emissions to exceed these targets will hinder the State’s ability to achieve its climate goals and thus will have a significant climate impact. Conversely, a city or county that will develop in a way that will meet those targets will support the State’s ability to achieve its climate goals and thus will have a less-than-significant impact on GHG emissions. Therefore, a communitywide long-term plan must demonstrate that the community will have GHG emissions 40 percent below its 1990 levels by 2030 and carbon neutrality by 2045 through the full implementation of the plan.

5.2 CLIMATE ACTION PLANS

The Air District encourages local jurisdictions to develop climate action plans as a means of demonstrating that their communities—including existing and new buildings and infrastructure—will develop in accordance with meeting the statewide GHG reduction targets. A robust climate action plan identifies a land use design, a transportation network, goals, policies, and implementation measures that will achieve

the required GHG emissions targets of 40 percent below 1990 levels by 2030 and carbon neutrality by 2045. If a jurisdiction adopts such a climate action plan, it can then use that plan when it adopts its general plan updates and similar long-range planning documents to provide the basis for demonstrating that the jurisdiction's GHG emissions will meet the 2030 and 2045 targets. This demonstration will allow the jurisdiction to make the required CEQA determination that its general plan and similar planning documents will not have a significant climate impact, as discussed in Section 5.1, above.

Furthermore, a robust climate action plan developed and adopted in accordance with the requirements for a "plan for the reduction of greenhouse gas emissions" set forth in CEQA Guidelines Section 15183.5 will provide additional benefits related to approving specific development projects. Guidelines Section 15183.5(b)(2) provides that if a jurisdiction has adopted a climate action plan that satisfies all of the Section 15183.5 requirements, the jurisdiction can find that a project that is consistent with the plan will not make a cumulatively considerable contribution to global climate change under CEQA. Adopting a climate action plan with requirements and implementation measures governing specific types of projects—and what those projects must do to ensure that the jurisdiction's GHG emissions achieve the required targets—can provide a great deal of certainty for project applicants and agency decision makers. A proposed project that complies with all the specified requirements and implementation measures will not be found to be significant under Guidelines Section 15183.5(b)(2). Local jurisdictions also will be able to tailor the applicable requirements and mitigation measures to their specific communities rather than rely on the Air District's general thresholds for evaluating land use projects, discussed in Section 4, above.

CEQA Guidelines Section 15183.5(b)(1) lays out the specific criteria to be included in local GHG reduction strategies that can enable CEQA streamlining benefits for future land use projects. Such plans must:

- ▶ quantify GHG emissions, both existing and projected over a specified period, resulting from activities in a defined geographic area;
- ▶ establish a level, based on substantial evidence, below which the contribution to GHG emissions from activities covered by the plan would not be cumulatively considerable;
- ▶ identify and analyze the GHG emissions resulting from specific actions or categories of actions anticipated in the geographic area;
- ▶ specify measures or a group of measures, including performance standards, that substantial evidence demonstrates, if implemented on a project-by-project basis, would collectively achieve the specified emissions level;
- ▶ establish a mechanism to monitor the plan's progress toward achieving the level and to require amendment if the plan is not achieving specified levels; and
- ▶ be adopted in a public process following environmental review.

These requirements are somewhat vague in some cases, and the Air District cautions jurisdictions developing climate action plans to take care that their plans are comprehensive and fully satisfy the letter and the spirit of the Section 15183.5 process. Climate action plans that do not satisfy all of these required elements will not be eligible for use in approving later projects under Guidelines Section 15183.5(b)(2), and



they will not provide the substantial evidence necessary to demonstrate that the jurisdiction's general plan updates and related long-range planning documents will have a less-than-significant impact as outlined in Section 5.1.

The Air District has published guidance on how a jurisdiction can develop a climate action plan that satisfies the requirements of Guidelines Section 15183.5(b)(1), which is included as Appendix C to the CEQA Air Quality Guidelines document. Jurisdictions developing climate action plans should refer to and follow that guidance to strengthen their plan's ability to comply with all Section 15183.5(b)(1) requirements and allow it to be used to evaluate climate impacts under Section 15183.5(b)(2).

The Air District strongly encourages jurisdictions to adopt local GHG reduction strategies—either as a stand-alone climate action or sustainability plans or as a part of the general plan—that meet the Section 15183.5(b)(1) criteria. Adopting a robust GHG reduction strategy that satisfies these requirements can bring many benefits to the community:

- ▶ It will identify measures that the city or county will need to take to ensure that its GHG emissions will be consistent with the statewide climate protection targets, that the jurisdiction can then use to make the consistency determination for its general plan updates.
- ▶ The city or county will be able to use the Section 15183.5(b)(1)–compliant GHG reduction strategy to approve specific land use development projects that are consistent with the strategy. This will provide a method for analyzing projects under CEQA that is tailored to the specific needs and policy goals of the individual jurisdiction, and it will allow the city or county to use that tailored methodology instead of the more general thresholds approach developed by the Air District for use regionwide.
- ▶ Cities and counties can develop Section 15183.5(b)(1) GHG reduction strategies immediately, without waiting for their next general plan update cycle.

This approach to local climate planning, tied to the SB 32 and carbon neutrality goals, promotes reductions on a plan level without impeding the implementation of GHG-efficient development, and recognizes the initiative of many Bay Area communities that have already developed or are developing a GHG reduction plan. A qualified climate action plan will provide the evidentiary basis for making CEQA findings that development consistent with the plan will result in feasible, measurable, and verifiable GHG reductions consistent with broad State goals such that projects approved under the plan will achieve their “fair share” of GHG emission reductions.

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BAY AREA
AIR QUALITY
MANAGEMENT
DISTRICT

ATTACHMENT 5

**A RESOLUTION OF THE BOARD OF DIRECTORS OF THE
BAY AREA AIR QUALITY MANAGEMENT DISTRICT ADOPTING
CEQA THRESHOLDS FOR EVALUATING THE SIGNIFICANCE
OF CLIMATE IMPACTS FROM LAND USE PROJECTS AND PLANS**

BAY AREA AIR QUALITY MANAGEMENT DISTRICT

RESOLUTION NO. 2022-

A Resolution of the Board of Directors of the Bay Area Air Quality Management District Adopting CEQA Thresholds for Evaluating the Significance of Climate Impacts From Land Use Projects and Plans

RECITALS

WHEREAS, Section 15064.7 of the California Environmental Quality Act (CEQA) Guidelines encourages public agencies to adopt thresholds of significance to use in the determination of the significance of environmental effects, and states that thresholds of significance adopted for general use as part of the agency's environmental review process must be adopted by ordinance, resolution, rule or regulation; developed through a public review process; and supported by substantial evidence;

WHEREAS, pursuant to Section 15067.4, CEQA Thresholds of Significance are identifiable, quantitative, qualitative, or performance levels of a particular environmental effect, non-compliance with which means the effect will normally be determined to be significant under CEQA, and compliance with which means the effect normally will be determined to be less than significant under CEQA;

WHEREAS, on June 2, 2010, the Board of Directors (Board) of the Bay Area Air Quality Management District (District) adopted "Thresholds of Significance for Use in Determining the Significance of Projects' Environmental Effects under the California Environmental Quality Act" (2010 CEQA Thresholds), including thresholds of significance for greenhouse gas (GHG) emissions by non-stationary source projects and stationary source projects;

WHEREAS, since adoption of the 2010 CEQA Thresholds, a general consensus has been reached by the scientific and international community that global warming must be limited to no more than 1.5 degrees Celsius above pre-industrial levels to maintain a sustainable global climate and avoid catastrophic consequences of climate change;

WHEREAS, since adoption of the 2010 CEQA Thresholds, analytical methodologies as well as GHG reduction strategies and technologies have progressed and improved;

WHEREAS, since the adoption of the 2010 CEQA Thresholds, State law, policy, and guidance documents have evolved to reflect current scientific knowledge and understanding regarding greenhouse gas emissions and climate change, further resulting in updated case law, and these changes and updates necessitated review of the GHG thresholds in the 2010 CEQA Thresholds;

WHEREAS, the Board finds it appropriate to adopt the updated "CEQA Thresholds for Evaluating the Significance of Climate Impacts From Land Use Projects and Plans" (Climate Impact Thresholds) as set forth in Exhibit A, attached hereto and incorporated herein by reference, for use

by District staff and by other appropriate agencies at their discretion in determining whether projects may have a significant GHG impact for purposes of CEQA analyses;

WHEREAS, the Climate Impact Thresholds do not alter the existing procedural and substantive requirements of CEQA under California law, but simply clarify the level at which, in the District's considered opinion, an environmental effect should normally be considered "significant" for purposes of existing CEQA law;

WHEREAS, the Climate Impact Thresholds were developed through an extensive public review process, which included numerous focus groups with local government planning staff, builders, affordable housing developers, environmental advocates and community organizations; publication of the *Draft Justification Report: CEQA Thresholds for Evaluating the Significance of Climate Impacts From Land Use Projects and Plans* on February 16, 2022; a 30-day public comment period from February 16, 2022 through March 18, 2022; two virtual public workshops held on December 9, 2021 and March 10, 2022; and staff's presentation of the initial concepts and recommendation of the final proposed thresholds of significance to the Mobile Source and Climate Impacts Committee of the Board of Directors on September 23, 2021 and on March 24, 2022;

WHEREAS, District staff considered and responded in writing to all written comments received during the comment period;

WHEREAS, the Climate Impact Thresholds are supported by substantial evidence as documented in the *Justification Report: CEQA Thresholds for Evaluating the Significance of Climate Impacts From Land Use Projects and Plans (Justification Report)*, and other documentation compiled by District staff;

WHEREAS, the substantial evidence as documented in the *Justification Report* and other documentation establishes that the Climate Impact Thresholds reflect the levels at which environmental effects should be considered "significant" for the purposes of CEQA;

WHEREAS, the Climate Impact Thresholds are consistent with the principles and jurisprudence of CEQA law as set forth in CEQA, its implementing regulations, and applicable judicial interpretations;

WHEREAS, the April 20, 2022 public meeting of the Board to consider adoption of the Climate Impact Thresholds was properly noticed and convened in accordance with all requirements of law;

WHEREAS, at the April 20, 2022 Board meeting, the subject matter of the Climate Impact Thresholds was discussed with interested persons in accordance with all provisions of law;

WHEREAS, the April 20, 2022 Board meeting and other public review opportunities that the District has provided regarding the Climate Impact Thresholds constitute a public review process as required by Section 15064.7;

WHEREAS, District staff has prepared and presented to this Board the *Justification Report* and the written responses to the comments received during the comment period, which have been considered by the Board;

WHEREAS, the documents and other materials that constitute the record of the public review process under Section 15064.7, on which this Resolution is based, are located at the Bay Area Air Quality Management District, 375 Beale Street, Suite 600, San Francisco, 94105, and the custodian for these documents is Ms. Marcy Hiratzka, Clerk of the Boards;

WHEREAS, District staff recommends that the Board adopt the Climate Impact Thresholds;

WHEREAS, the Board concurs with recommendation of District staff regarding the Climate Impact Thresholds;

WHEREAS, the Climate Impact Thresholds are not subject to CEQA review, based on the following:

1. The District complied with CEQA Guidelines Section 15064.7 in establishing the Climate Impact Thresholds. Section 15064.7 establishes the required procedure for enacting generally applicable thresholds of significance such as the Climate Impact Thresholds and does not require CEQA review of such thresholds.
2. The Climate Impact Thresholds are advisory only, administrative in nature, do not affect air emissions from any sources, and will not cause a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment. Any potential impact would be speculative. Accordingly, they are not a project within the meaning of CEQA. (Pub. Resources Code, § 21065.)
3. The Climate Impact Thresholds have no possibility of causing significant environmental effects within the meaning of CEQA. (CEQA Guidelines, § 15061(b)(3).)

RESOLUTION

NOW, THEREFORE, BE IT RESOLVED that pursuant to the authority granted to it by law, the Board of Directors of the Bay Area Air Quality Management District does hereby adopt the Climate Impact Thresholds, as set forth in Exhibit A, with instructions to staff to correct any typographical or formatting errors before final publication of the Climate Impact Thresholds.

BE IT FURTHER RESOLVED that the District believes that the Climate Impact Thresholds are most appropriately applied to CEQA projects for which a Notice of Preparation is issued and environmental analysis is begun after the date of adoption of this Resolution.

BE IT FURTHER RESOLVED that the above Recitals are true and correct and are hereby incorporated by reference.

The foregoing Resolution was duly and regularly introduced, passed and adopted at a regular meeting of the Board of Directors of the Bay Area Air Quality Management District on the Motion of Director _____, seconded by Director _____, on the ____ day of _____, 2022 by the following vote of the Board:

AYES:

NOES:

ABSENT:

Karen Mitchoff
Chairperson of the Board of Directors

ATTEST:

Davina Hurt
Secretary of the Board of Directors

EXHIBIT A

**PROPOSED CEQA THRESHOLDS FOR EVALUATING
THE SIGNIFICANCE OF CLIMATE IMPACTS
FROM LAND USE PROJECTS AND PLANS**

DRAFT

EXHIBIT A

Thresholds for Land Use Projects (Must Include A or B)

- A. Projects must include, at a minimum, the following project design elements:
 - 1. Buildings
 - a. The project will not include natural gas appliances or natural gas plumbing (in both residential and nonresidential development).
 - b. The project will not result in any wasteful, inefficient, or unnecessary energy usage as determined by the analysis required under CEQA Section 21100(b)(3) and Section 15126.2(b) of the State CEQA Guidelines.
 - 2. Transportation
 - a. Achieve a reduction in project-generated vehicle miles traveled (VMT) below the regional average consistent with the current version of the California Climate Change Scoping Plan (currently 15 percent) or meet a locally adopted Senate Bill 743 VMT target, reflecting the recommendations provided in the Governor's Office of Planning and Research's Technical Advisory on Evaluating Transportation Impacts in CEQA:
 - i. Residential projects: 15 percent below the existing VMT per capita
 - ii. Office projects: 15 percent below the existing VMT per employee
 - iii. Retail projects: no net increase in existing VMT
 - b. Achieve compliance with off-street electric vehicle requirements in the most recently adopted version of CALGreen Tier 2.
- B. Projects must be consistent with a local GHG reduction strategy that meets the criteria under State CEQA Guidelines Section 15183.5(b).

Thresholds for Plans (Must Include A or B)

- A. Meet the State's goals to reduce emissions to 40 percent below 1990 levels by 2030 and carbon neutrality by 2045; or
- B. Be consistent with a local GHG reduction strategy that meets the criteria under State CEQA Guidelines Section 15183.5(b).



Alfredo Pedroza, Chair
Napa County and Cities

April 20, 2022

Nick Josefowitz, Vice Chair
San Francisco Mayor's Appointee

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Deputy Executive Director, Policy

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Brad Paul
Deputy Executive Director, Local
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RE: Support for CEQA Thresholds for Evaluating the Significance of Climate Impacts
From Land Use Projects and Plans

Dear Chair Mitchoff:

The Metropolitan Transportation Commission (MTC) is pleased to support the Bay Area Air Quality Management District's (Air District) Draft Justification Report on CEQA Thresholds for Evaluating the Significance of Climate Impacts from Land Use Projects and Plans.

As the metropolitan planning organization (MPO) for the nine-county San Francisco Bay Area, MTC develops a long-range transportation plan and Sustainable Communities Strategy (SCS) to meet federal and state climate and housing goals. Plan Bay Area 2050 (PBA 2050), the region's current plan/SCS adopted in October 2021, focuses on four key elements: housing, the economy, transportation, and the environment, and outlines thirty-five strategies for growth and investment to meet and exceed federal and state requirements, including greenhouse gas (GHG) reduction targets.

The thresholds, project-level design element, and the vehicle miles traveled (VMT) reduction design element outlined in the Air District's Draft Justification Report will support PBA 2050 goals as well as the following PBA 2050 strategies in particular:

- Economy Strategy 4. Allow greater commercial densities in Growth Geographies
- Environment Strategy 3. Fund energy upgrades to enable carbon neutrality in all existing commercial and public buildings
- Environment Strategy 8. Expand clean vehicle initiatives
- Environment Strategy 9. Expand transportation demand management initiatives
- Housing Strategy 3. Allow a greater mix of housing densities and types in Growth Geographies
- Housing Strategy 4. Build adequate affordable housing
- Transportation Strategy 8. Build a Complete Streets network.
- Transportation Strategy 10. Enhance local transit frequency, capacity and reliability

Generally, the use of the thresholds of significance by lead agencies across the Bay Area will help to facilitate implementation of PBA2050.

PBA 2050 charts a course for a Bay Area that is affordable, connected, diverse, healthy, and vibrant. Having recommended CEQA thresholds that extend through 2045 supports long-term land use planning at both the regional and local levels.

MTC and Air District staff collaborate regularly on climate policy development and programs. The Air District is a critical partner in helping to achieve the vision for the Bay Area laid out in PBA 2050. Developing strong yet feasible thresholds of significance for climate impacts is an important contribution to achieving that vision. MTC supports adoption of the Thresholds of Significance.

Sincerely,

A handwritten signature in blue ink that reads "Alix Bockelman". The signature is fluid and cursive, with a long horizontal line extending to the right.

Alix Bockelman
Deputy Executive Director, Policy

AB:KS

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