



BAY AREA
AIR QUALITY
MANAGEMENT
DISTRICT

**California Environmental Quality Act
Guidelines Update**

**Public Review
Comments & Responses**

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RESPONSE TO COMMENTS RECEIVED ON THE CEQA GUIDELINES UPDATE AND REVISED THRESHOLDS

Letter #	Date	Contact	Affiliation
1	2/26/2009	Jessica Range	SF Planning
2	2/26/2009	Amy Cohen	BAEHC
3	2/26/2009	Noah Housh	City of Santa Rosa
4	2/26/2009	Rich Walter	ICF Jones & Stokes
5	3/6/2009	Jenny Bard	American Lung Association in California
6	3/10/2009	Nora Monette	David J Powers
7	3/23/2009	Shari Libicki	Environ
8	3/24/2009	Darin Ranelletti	City of Oakland
9	4/27/2009	Rich Walter	ICF Jones & Stokes
10	5/14/2009	Rachel Hiatt	SFCTA
11	6/1/2009	Tom Rivard	SF Public Health
12	6/2/2009	Rajiv Bhatia	SF Public Health
13	6/23/2009	Gillian Adams	ABAG
14	6/26/2009	Michael Zischke	Cox Castle Nicholson
15	7/1/2009	Jennifer Schulte	Environ
16	9/8/2009		NRDC
17	9/9/2009	Karen Cohn	SFATF/BAEHC
18	9/9/2009	Michael Koinath	Environ
19	9/9/2009	Jennifer McDougall	UC Berkeley
20	9/23/2009	Jennifer Schulte	Environ
21	9/24/2009	David Clore	LSA
22	9/24/2009	Shabnam Barati	Impact Sciences
23	10/5/2009	John Rahaim	SF Planning
24	10/5/2009	James Reyff	Illingworth and Rodkin
25	10/6/2009	Richard Lyon/Paul Campos	CBIA & HBA
26	10/7/2009	Nora Monette	David J Powers
27	10/8/2009	Gary Darling	Delta Diablo Sanitation District
28	10/8/2009	Bill Wycko	SF Planning
29	10/9/2009	Joni Pattillo	City of Dublin
30	10/9/2009	Eric Angstadt	City of Oakland
31	10/9/2009	Jackie Kepke	CA Wastewater Climate Change Group
32	10/9/2009	Rajeev Bhatia	Dyett & Bhatia
33	10/11/2009	David Schonbrunn	Transdef

34	10/12/2009	Doug Kimsey	MTC
35	10/13/2009	Gillian Hayes	City of Santa Rosa
36	10/14/2009	Brian Mathews	Stopwaste
37	10/16/2009	Jennifer McDougall	UC Berkeley
38	10/19/2009	Shari Libicki	Environ
39	10/20/2009	Richard Lyon/Paul Campos	CBIA & HBA
40	10/22/2009	Annette Walton	Stanford Real Estate Office
41	10/23/2009	Wendel Brunner	Contra Costa Health Services
42	10/26/2009	Belinda Smith	
43	10/26/2009	Charles Bryant	City of Emeryville
44	10/26/2009	Bill Wycko	SF Planning
45	10/26/2009	Dan Marks	City of Berkeley
46	10/26/2009	Bill Quinn	CEEB
47	10/26/2009	Terrence Grindall	City of Newark
48	10/26/2009	Matthew Vespa	Center for Biological Diversity
49	10/26/2009	Christine Cordero	Ditching Dirty Diesel Collaborative
50	10/26/2009	Jared Bluemenfeld	SF Environment
51	10/26/2009	Jeff Schwob	City of Fremont
52	10/26/2009	Gordon Mar	Bay Area Environmental Health Coalition
53	10/26/2009	Patrick Roche	Contra Costa County Conservation Dept.
54	10/26/2009	Albert Lopez	Alameda County Community Development
55	10/26/2009	Kathleen Livermore	City of San Leandro
56	10/26/2009	Susan Frost	City of Livermore
57	10/26/2009	David Schonbrunn	Transdef
58	10/26/2009	Peter Ingram	City of Redwood City
59	10/26/2009	Jenny Bard & Andy Katz	Bay Area Clean Air Task Force
60	10/26/2009	Carmela Campbell	City of Union City
61	10/26/2009	Catherine Reheis Boyd	WSPA
62	10/26/2009	Gloria Thornton	SF Asthma Task Force
63	10/26/2009	Paul Jensen	City of San Rafael
64	10/26/2009	Ernest Pacheco	Citizens Against Pollution
65	10/28/2009	Joseph Horwedel	City of San Jose

Comment Letter #: 00
Master Responses to Comments

Response to Comments:

MR-1 Desire to balance the potential for unintended consequences of proposed thresholds (e.g., administrative burden, discouraging infill) with scientific basis and disclosure of significant impacts under CEQA.

Several commenters expressed a concern that BAAQMD's proposed thresholds would result in preparation of an Environmental Impact Report (EIR) or Mitigated Negative Declaration (MND) for many projects that would have otherwise been accompanied by an Initial study (IS) or exempt from environmental review. Specifically, commenters were concerned that the proposed screening levels for GHG emissions and TAC impacts would result in the need for a more rigorous level of environmental documentation than has been previously required of Lead Agencies.

These are indeed very important considerations, but above all, the determination to prepare an EIR is based on the potential for significant effects on the environment that cannot be addressed by a MND (CEQA Guidelines Section 15064). Air quality impact significance criteria, in the case of BAAQMD's proposed thresholds, are based on substantial evidence. Evidence includes epidemiologic data and scientific studies linking the impact on public health with air pollutant emissions concentration data, evaluated and analyzed with the BAAQMD's subject matter expertise. See Appendix D of the updated CEQA Guidelines, *Justification for Thresholds*, for detailed descriptions of substantial evidence and threshold development.

BAAQMD acknowledges that preparation of an EIR is typically more costly and takes months or, in some cases, years more to prepare than initial studies, negative declarations, or exemptions. However, the purpose of CEQA is to disclose significant impacts to the public, inform the public that the environment is being protected, inform public agencies on the environmental consequences of their discretionary actions, and hold public agency representatives accountable for their actions. BAAQMD's proposed air quality thresholds are based on substantial evidence. If there is a fair argument that a proposed project would exceed BAAQMD's proposed thresholds (once adopted), and impacts cannot be mitigated to below the thresholds, then an EIR would be required. Administrative convenience is not an appropriate basis for BAAQMD to adopt a less stringent threshold of significance, especially given that substantial evidence supports the connection between the proposed thresholds and a project's significant impact or cumulatively considerable contribution to a cumulative significant impact.

The proper place for Lead Agencies to balance the consequences of their discretionary approvals is in the Findings and Statement of Overriding Considerations. If the Lead Agency believes that a project's benefits outweigh the environmental concerns associated with implementing the project, then the Agency may still approve the project, and adopt a Statement of Overriding Considerations (CEQA Guidelines Sections 15092, 15096(h)). If BAAQMD were to adopt a threshold based on administrative convenience, rather than substantial evidence, the public may be deprived of the opportunity to be informed about environmental impacts on its community or on public health. If a proposed development project would expose its residents to unhealthy concentrations of air pollutants, then

that is pertinent information to which the public and decision makers need access. The proposed thresholds are the basis for determining whether receptors would be exposed to substantial pollutant concentrations as a result of a project. Similarly, if a proposed project would generate emissions greater than either of the proposed GHG thresholds (i.e., 1,100 MT CO₂e/year and 4.6 MT CO₂e/service population/year), the project would result in a cumulatively considerable contribution of GHG emissions to the cumulative impact of climate change, and would impair the state's ability to comply with AB 32 mandates.

MR-2 The proposed GHG threshold would essentially eliminate the CEQA infill exemption.

There are two exemptions for infill projects in the CEQA Guidelines. Section 15195 provides a specific exemption for Residential Infill Projects and Section 15332 provides a more general, categorical exemption for infill projects.

Projects that comply with all five criteria outlined in the Residential Infill Exemption, CEQA Guidelines Section 15195, would be exempt from CEQA notwithstanding the proposed GHG thresholds, so long as the project does not fall under any of the exceptions stated in Section 15195(b), including the requirement that there is no "reasonable possibility that the project will have a project-specific, significant effect on the environment due to unusual circumstances." The fact that a project may exceed one or both of the proposed quantitative GHG thresholds would not, on its own, signify that the project will have a project-specific, significant effect on the environment due to unusual circumstances. The proposed GHG thresholds represent the level at which the impacts of a project would be considered cumulatively considerable under CEQA. However, as explained in previous documents, no single project on its own could have GHG emissions so high that such emissions cause a significant impact on global climate change. Thus, in general, the application of the proposed GHG thresholds would have no impact on the applicability of the Residential Infill Exemption. Before applying the exemption, however, as always, the lead agency must consider whether the project would cause another impact which would create a "reasonable possibility that the project will have a project-specific, significant effect on the environment due to unusual circumstances."

In addition, many projects would still be considered for exemption under Section 15332 of the CEQA guidelines, In-Fill Development Projects. This categorical infill exemption is intended to exempt projects from procedural requirements that would not have a significant impact on the environment. According to BAAQMD's analysis of its proposed GHG thresholds, projects that would exceed the 4.6 MT CO₂e/SP/year threshold or the 1,100 tons CO₂e/year threshold would contribute substantially to the cumulative impact of climate change, and would therefore have a significant impact. Thus, it would be appropriate for projects that do not meet BAAQMD's thresholds to either change project attributes, design, etc., to meet the thresholds or disclose potential climate change impacts and mitigate those impacts as feasible, either through preparation of an MND or an EIR (or a focused EIR if climate change were the only impact for which there is a fair argument that the impact may be significant).

MR-3 The proposed approach to GHG analysis in the Guidelines would not promote regional smart growth and does not minimize CEQA process requirements for certain projects that further the region's smart growth goals.

Staff notes that the purpose of the CEQA thresholds is to identify what BAAQMD would consider a significant air quality impact under CEQA, not to promote regional smart growth or other policy objectives of BAAQMD. Staff has developed proposed GHG thresholds or levels of GHG emissions which, based on substantial evidence developed with BAAQMD's expertise, will have a significant impact under CEQA. Nevertheless, Staff believes that application of the proposed GHG thresholds will encourage regional smart growth and infill development because it will be more difficult for Greenfield development to meet the proposed thresholds.

For a cumulative impact to be significant, the project must result in a cumulatively considerable contribution to a significant impact. AB 32 is California's leading legislation which sets the state's near-term goals for reducing GHG emissions, in order to begin to solve the cumulative impact of global climate change. As explained in detail in the *Proposed Thresholds of Significance* Report, Staff has developed proposed GHG thresholds such that projects that comply with the thresholds will comply with AB 32 goals and therefore not be cumulatively considerable because they will be helping to solve the cumulative problem as addressed by AB 32.

Staff believes that its proposed qualitative threshold of compliance with a Qualified Climate Action Plan (or equivalent policies, ordinances and programs) will serve to encourage careful upfront planning for smart, GHG-efficient regional growth. Under the proposed threshold, for lead agency's that have adopted a Qualified Climate Action Plan (or equivalent policies, ordinances and programs), projects that are consistent with such plans will be afforded a presumption of insignificance. Thus, when a lead agency conducts programmatic planning for smart growth within its jurisdiction, consistent with the goals of AB 32, CEQA process requirements for individual projects consistent with such planning will be minimized based on Staff's proposed thresholds.

For lead agencies without Qualified Climate Action Plans (or equivalent policies, ordinances and programs), BAAQMD has proposed two quantitative GHG thresholds that would apply at the project-level: 1,100 MT CO₂e/year and 4.6 MT CO₂e/SP/year, which also encourage smart growth. Thus, if a proposed project would conflict with AB 32 goals by accommodating development in a GHG-inefficient way (i.e., would result in greater than 4.6 MT CO₂e/SP/year) or the emissions are considered substantial (i.e., 1,100 MT CO₂e/year), the project would result in a cumulatively considerable contribution to the cumulative impact of climate change, and the impact would be significant. If a project would generate less than 1,100 MT CO₂e/year, it would result in less-than-cumulatively considerable GHG emissions, and this impact would be less than significant. If the project would generate more than 1,100 MT CO₂e/year, but less than 4.6 MT CO₂e/SP/year, the project's GHG emissions would comport with achieving AB 32 emission reduction goals, and the project's cumulative impact would be less than considerable and, therefore, less than significant. Thus, a large project can still be considered to have a less-than-significant impact on GHG emissions if it meets the 4.6 MT CO₂e/SP/year threshold, which would only be possible if the project accommodates growth in a very GHG-efficient manner (i.e., the project is well-planned). Similarly, a comparatively small project that exceeds 1,100 MT CO₂e/yr or 4.6 MT CO₂e/SP/year can have a cumulatively considerable, and therefore, significant impact on GHG emissions. The cumulative effect of many projects that would generate individually limited GHG emissions is at the very heart of this cumulative impact issue.

The basis of the 4.6 MT CO₂e/SP/year GHG threshold is closely aligned with the very aggressive emission reduction goals of AB 32. See Appendix D of the *Draft Air Quality Guidelines* for threshold justification and development. Vehicle miles traveled is one of the best indicators of a land use development project's GHG emissions. Thus, if a project increases density, mix of land uses, jobs/housing balance, transit proximity and orientation, connectivity, these are the ways by which the project would promote mode shift away from vehicle travel, and reduce the project's GHG emissions. Implementing energy efficiency measures and water conservation measures would also act to reduce the project's GHG emissions. Increasing density and jobs/housing balance increases the project's service population (denominator in BAAQMD's proposed GHG threshold), which would bring the project closer to meeting the 4.6 MT CO₂e/SP/year threshold. Thus, the proposed GHG thresholds very much promote "smart-growth" in the region.

The approach to application of BAAQMD's proposed thresholds would treat projects equally, prima facie, but project attributes that would reduce GHG emissions would be revealed in the analysis. The approach is location-sensitive because proximity to transit, employment, and amenities would act to reduce vehicle trips and VMT, which would be reflected in the project's estimated GHG emissions.

The proposed GHG efficiency-based service population threshold treats all projects equally, is based on substantial evidence, and sheds light on a project's consistency with the state's AB 32 GHG reduction goals as considerations for significance determination.

Specifically, commenters were concerned that BAAQMD's proposed approach does not minimize CEQA process requirements for certain projects that further the region's smart growth goals. CEQA requires substantial evidence in support of significance thresholds and BAAQMD's thresholds are closely tied to AB 32 GHG reduction goals (substantial evidence), which relates the thresholds themselves to promotion of smart growth principles. Thus, projects that truly incorporate the appropriate level of smart growth principles and design features would not exceed the quantitative thresholds and thereby be eligible for streamlined CEQA process requirements.

MR-4 A quantitative GHG threshold will promote piecemealing of projects.

Commenters shared concerns that BAAQMD's proposed "bright line" threshold of 1,100 MT CO₂e/year will promote piecemealing (i.e., segmentation) of projects in order to be perceived as resulting in GHG emissions below the threshold and avoiding the subsequent requirement to implement feasible mitigation. This concern is valid, and is a common issue in other resource areas. CEQA Guidelines 15378 broadly defines "Project" as "the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment..."

As explained in *Citizens Ass'n for Sensible Dev. of Bishop Area v. County of Inyo* (1985) 172 Cal. App. 3d 151, CEQA mandates "... that environmental considerations do not become submerged by chopping a large project into many little ones--each with a minimal potential impact on the environment--which cumulatively may have disastrous consequences." *Citizens Ass'n for Sensible Dev. of Bishop Area v. County of Inyo* (1985) 172 Cal. App. 3d 151, 165 citing *Bozung v. Local Agency Formation Comm'n*,

(1975) 13 Cal. 3d 263, 283-284; *Rural Land Owners Ass'n. v. Lodi City Council* (1983) 143 Cal. App. 3d 1013, 1024.

Thus, it would be at the peril of an applicant or lead agency to approach development in a piecemeal fashion in order to evade the bright line threshold, as piecemeal review will not withstand legal scrutiny and lead agencies will risk having their CEQA analyses overturned.

Furthermore, under Staff's proposal, lead agencies will also have the option of applying the proposed GHG efficiency-based threshold. Lead agencies may find that GHG efficient well-integrated and well-planned projects can meet 4.6 MT CO₂e/SP/year threshold and thus have the presumption of insignificance, even where those projects would have GHG emissions greater than the bright line threshold.

MR-5 Proposed GHG thresholds will interfere with SB 375 implementation.

Development of regional emission reduction targets, due in 2010, and Sustainable Community Strategies (SCS) pursuant to SB 375, due in 2013, are still years away. BAAQMD's proposed GHG thresholds are intended to serve as interim thresholds, and will be revisited by BAAQMD, as appropriate. Qualifying projects would still enjoy CEQA streamlining benefits offered by SB 375, and BAAQMD's proposed thresholds would not supersede or interfere with SB 375 implementation in any way. It is anticipated that the same type of low carbon development needed to meet the regional GH targets are the same as those meeting the proposed thresholds. Finally, SB 375 does not preempt land use authority reserved for local governments.

MR-6 Limitations of modeling tools.

Many commenters were concerned with the applicability of modeling tools currently available to perform emissions estimates. Particular concerns included the applicability of URBEMIS to the BAAQMD's jurisdiction. However, no commenters offered suggestions for alternative methods or emissions modeling tools. Advantages of URBEMIS are that it is a widely-used program by CEQA practitioners, and offers consistency in emission factors and standardized calculation methods. BAAQMD acknowledges the limitations of URBEMIS, but in the absence of another publicly available air quality modeling program, recommends use of URBEMIS for evaluation of air quality impacts. BAAQMD's proposed analytical methodology includes steps to attempt to make URBEMIS more project-specific, wherever possible, such as overriding default model assumptions to reflect project design features and location attributes.

It is possible that new emissions modeling tools will become available in the years ahead that will be more sensitive to project attributes, but until that time, the limitations of modeling tools do not excuse the Lead Agency from making a meaningful attempt at evaluating an impact. BAAQMD has offered guidance for doing so in its *CEQA Draft Air Quality Guidelines*. If a Lead Agency has access to a model or method that it believes is more appropriate for evaluation of air quality impacts, the Lead Agency should explain the reasoning within the CEQA document that supports deviation from BAAQMD's guidance. Lead Agencies are also encouraged to consult with BAAQMD on use of alternative approaches to emissions modeling.

MR-7 More detailed guidance is requested on a variety of topics.

Many commenters sought additional detailed guidance, additional screening tables, and prescriptive text on a variety of topics. Several of these requests were addressed in the current version of the *CEQA Draft Air Quality Guidelines*. However, the proposed Guidelines are intended to serve as general guidance and cannot prescribe a methodological approach for every type of project or situation. Basic methodology for common project types and situations is provided. Additional technical resources will be provided and updated on the District website. The Lead Agency still must use its judgment in applying the guidelines to a given situation. BAAQMD strongly encourages Lead Agencies to consult with the District whenever necessary. If an Agency is unsure of how to apply the guidance to a particular situation, the Agency should seek input from District staff.

MR-8 Inadequate public process and outreach for the CEQA Guidelines Update.

The Air District has provided, and invited, a number of opportunities for stakeholder input and public participation during the development process of the CEQA Guidelines update.

Air District Staff hosted the first workshop on the CEQA Guidelines update on February 26, 2009. At that time, Staff introduced the CEQA Guidelines update process, which thresholds are anticipated to be revised and developed, and invited public input on potential concepts for thresholds.

In April 2009, Staff hosted a series of three workshops (on 4/27, 4/29, and 4/30) throughout the Bay Area to present threshold options for criteria pollutants, toxics, odors, and greenhouse gas emissions. Prior to the workshops, staff published a preliminary workshop draft thresholds of significance options report for public comment. The options in the report were identified by stakeholders at the first CEQA workshop and by Air District staff and our consultants.

On September 4, Staff published a *CEQA Draft Air Quality Guidelines* for public comment. The comment due date was scheduled for September 25 and then extended to October 9 and subsequently to October 26, 2009.

The next round of workshops, four all together, were held in September/October 2009 (on 9/8, 9/9, 9/10, and 10/2). At the workshops, Staff presented the recommended thresholds of significance included in the *CEQA Draft Air Quality Guidelines* and solicited public input.

Staff reviewed the proposed thresholds with the CARE Task Force on September 23, 2009. Staff also held meetings and made presentations during this process with business organizations, local government staff, and other stakeholder groups to receive input on District proposals.

On October 8, the Air District released a *Revised Draft CEQA Thresholds Options and Justification Report* for public comment. The report contained revised thresholds based on stakeholder input received at the September/October workshops. The report provided substantial evidence and justification for the District-recommended thresholds. Comments on the Thresholds Report were due on October 26, 2009.

Staff reported to the Board of Directors on the status of the CEQA Guidelines updated at the Executive Committee meetings on March 16, June 29, and September 24, 2009; at the September 10, 2009

Climate Protection Committee meeting; and is schedule to do so at the November 16, 2009 Stationary Source Committee meeting.

On November 2, Staff published the *Proposed CEQA Thresholds of Significance* report, which contains Staff's revised recommended thresholds, based on stakeholder comments and further BAAQMD Staff review and analysis, and the substantial evidence supporting those thresholds. The Air District will initiate a public hearing to consider testimony for the staff-recommended thresholds detailed in the report. The public hearing will start on Wednesday, November 18, 2009 and will be continued on Wednesday, December 2, 2009, at which time the Board of Directors will consider adoption of the proposed thresholds. Written comments on the staff-recommended thresholds are due November 23.

#1



CEQA Guidelines Update Comment Card

We need your input!

The Bay Area Air Quality Management District is updating its CEQA Guidelines and seeking your input. The CEQA Guidelines Update will review, revise, and develop significance thresholds, assessment methodologies, and mitigation strategies for criteria pollutants, air toxics, odors, and greenhouse gas emissions.

CONTACT INFORMATION (Optional):

Name: Jessica Range
Affiliation: SF Planning
Email: Jessica.range@sfplanning.org

① Will the white paper put forth thresholds + an analysis —
(drawbacks + benefits) of each threshold?

② How closely are you working w/ CARB on their GHG thresholds?
How are you going to make sure they are in sync?

#1



Comment Letter #: 1

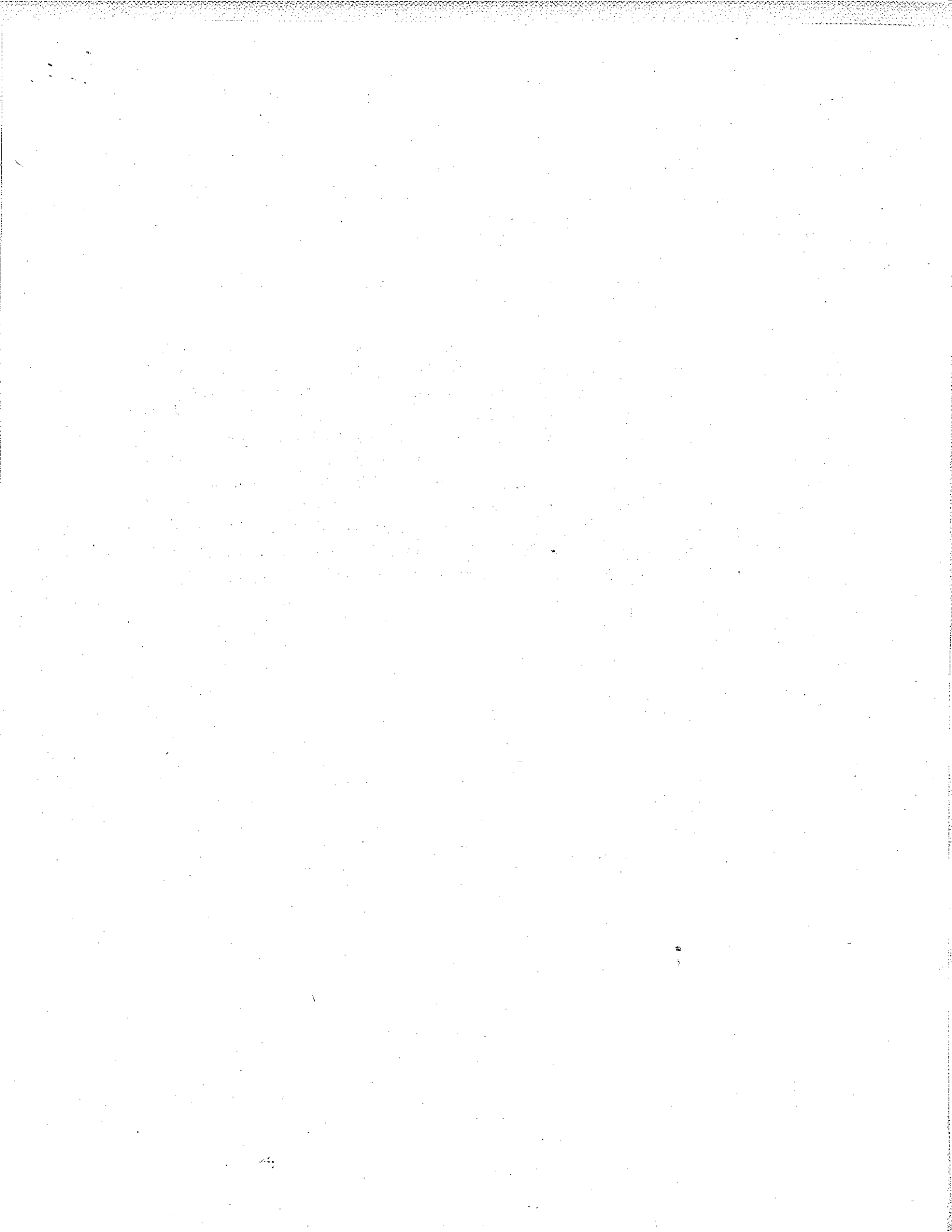
Date: February 26, 2009

From: Jessica Range, City of San Francisco Planning Department

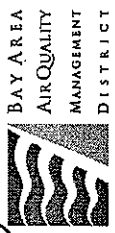
Response to Comments:

- 1-1 Yes, the Draft CEQA Thresholds Options Report, published in April 2009, evaluates the different threshold options being considered for each threshold.

- 1-2 Early on the Air District worked closely with the California Air Resources Board (CARB) staff to develop a statewide GHG threshold. However, it is our understanding that CARB's work on developing a statewide GHG threshold has been suspended indefinitely. Given the increasing urgency to address the impacts of climate change in a substantive and consistent approach, repeated calls for assistance from local agencies on how to address climate change in CEQA analyses and the absence of direction from state agencies, the Air District feels it is appropriate and necessary to move forward with an interim CEQA threshold for GHG emissions. As stated in the *Proposed Thresholds of Significance* report (November 2, 2009), the proposed GHG thresholds are interim thresholds and will be revisited as AB32 Scoping Plan measures and SB 375 are implemented or when CARB develops a statewide GHG threshold. The Air District's proposed GHG thresholds are based on AB 32 GHG emission reduction goals and take into consideration emission reduction strategies outline in ARB's Scoping Plan.



2/26/09



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CONTACT INFORMATION (Optional):

Name: Amy Cohen
Affiliation: BAEHC
Email: acohen@go.ego.edu

preliminary comments: D. more protective stas. in high impact areas are ^{inc. for increase} ~~needed~~ ^{inc. for increase}

incremental approach fails to fully eval. potential health & env'tl impacts. a real cumulative approach that considers ~~the~~ ^{pre-~~existing~~} concentrations & existing burdens on impacted populations is critical.

compliance w/ the thresholds & signif. does not automatically mean the proposed project would not have signif. impact. must allow for "fair argument" & potentially signif. impacts.

need signif. criteria for TALS criteria (esp PM2.5) ^{as this is a and a whole context}



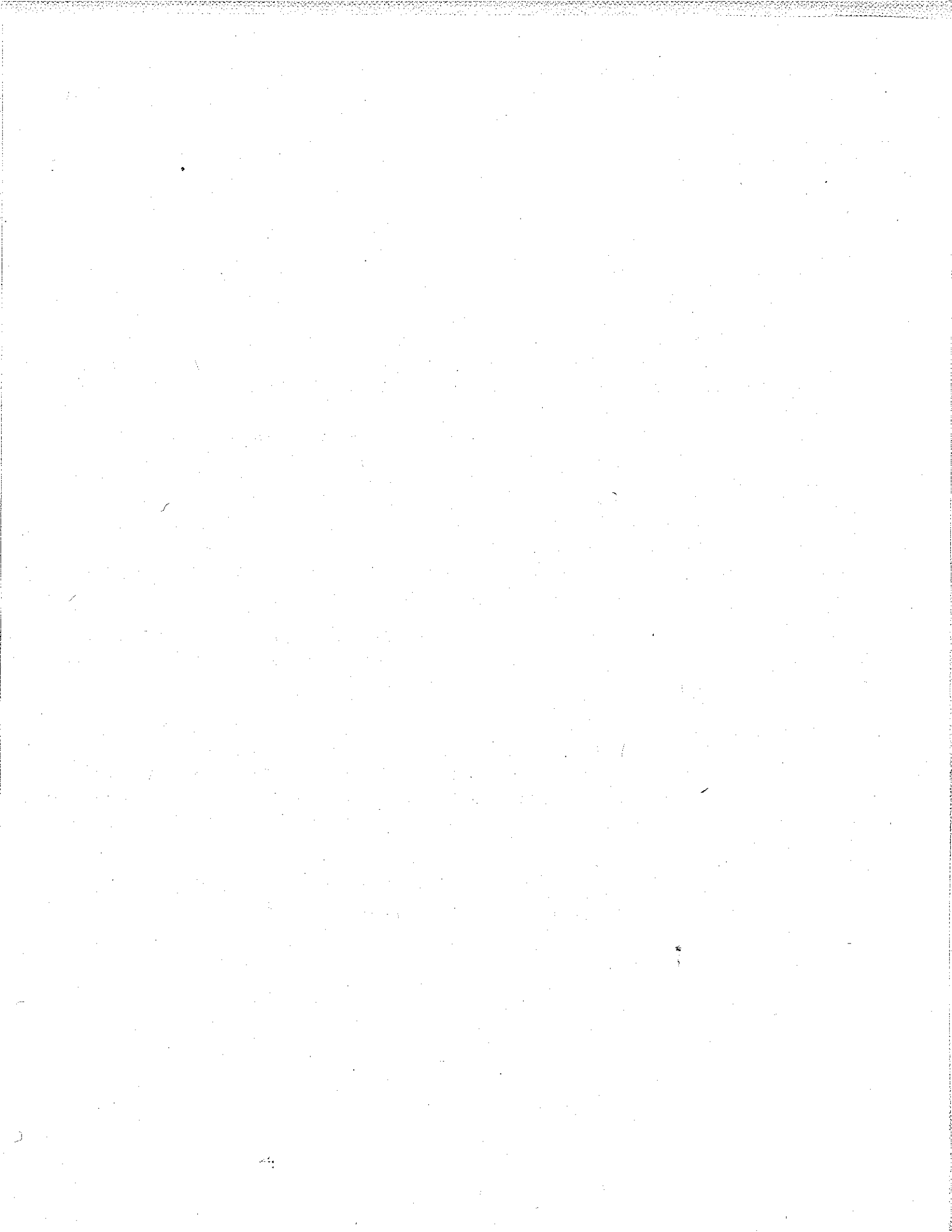
Comment Letter #: 2

Date: February 26, 2009

From: Amy Cohen, Bay Area Environmental Health Coalition

Response to Comments:

- 2-1 The Proposed Thresholds of Significance report (November 2, 2009), recommends a single community risk and hazards threshold for all areas in the Bay Area, including impacted communities. Staff agrees with several commenters that the problem of certain areas being disproportionately adversely impacted should be addressed as a cumulative impacts problem. Staff has revised the proposed thresholds to do so. Under staff's current proposal, areas that are disproportionately burdened with TAC emissions sources in the local vicinity will benefit from a cumulative analysis threshold that will require projects to evaluate the cumulative impact of all such sources within a 1,000 foot radius of the proposed project. This revised approach will provide a tool for lead agencies to carefully consider whether to site new sources or receptors in disproportionately burdened areas, without establishing different health risk standards for different segments of the population. In addition, the Air District believes that withdrawing the earlier, more stringent threshold, is also appropriate in light of using OEHHA's more conservative risk factors (substantially increasing estimated risk levels) and the addition of community risk reduction plans. Risk reduction plans provide a programmatic approach to a localized problem, address existing sources of risks and hazards, and require design standards of new development not always available through the CEQA process.
- 2-2 The *Proposed Thresholds of Significance* report contains individual project and cumulative thresholds for community risk and hazard. The cumulative approach considers all existing and planned emission sources within a 1,000 foot radius from the fence-line of a source or receptor.
- 2-3 The CEQA Guidelines are meant to assist lead agencies in evaluating a proposed project or plan's air quality impacts. The CEQA Guidelines do not fit or capture all situations; it is a lead agencies responsibility to judge whether the CEQA Guideline thresholds may or may not apply to a proposed project or plan. Compliance with an adopted threshold does not necessarily mean a project has a less than significant impact; the "fair argument" standard under CEQA prevails. See also Master Responses MR-3 and MR-7.
- 2-4 The *Proposed Thresholds of Significance* report contains significance criteria for criteria pollutants, ozone precursors, greenhouse gas, air toxic emissions, and odors.



CEQA Guidelines Update Comment Card

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The Bay Area Air Quality Management District is updating its CEQA Guidelines and is seeking your input. The CEQA Guidelines Update will review, revise, and develop significance thresholds, assessment methodologies, and mitigation strategies for criteria pollutants, air toxics, odors, and greenhouse gas emissions.

CONTACT INFORMATION (Optional):

Name: Noah Housh
Affiliation: City of Santa Rosa
Email: nhoush@srcity.org

- Please provide quantitative thresholds (bidding scale seems appropriate)
- Need community or regional specific thresholds for real improvements in those areas
- Should include project, cumulative, & existing impacts for thresholds
ie. proximity to transit use of local materials
- Identify specific mitigations or methodologies to mitigate impacts
- Provide direction on methodologies for measuring project/cumulative levels of GHG impacts We currently use the Urbem's software but have no direction on its effectiveness or standardization
- Separate out temp impacts (construction) vs. permanent (vehicle trips/miles per day)



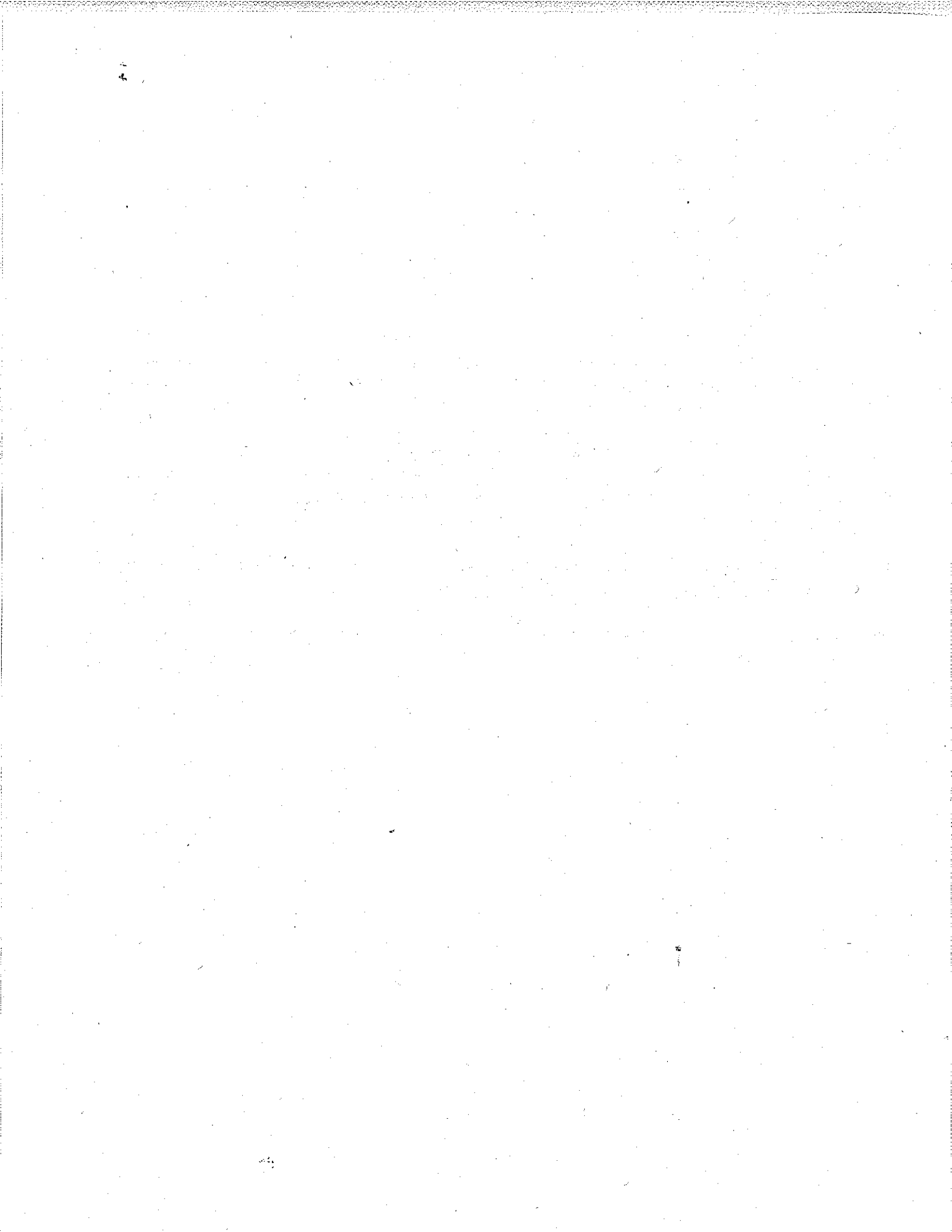
Comment Letter #: 3

Date: February 26, 2009

From: Noah Housh, City of Santa Rosa

Response to Comments:

- 3-1 The *Proposed Thresholds of Significance* report (November 2, 2009) provides quantitative significance criteria for criteria pollutants, particulate matter from fugitive dust, greenhouse gas, air toxic emissions and odor impacts.
- 3-2 The *Proposed Thresholds of Significance* report contains individual project and cumulative thresholds for community risk and hazard. The cumulative approach considers all existing emission sources within a 1,000 foot radius from the fence-line of a source or receptor.
- 3-3 The updated CEQA Guidelines (most recent draft published in September 2009) contains methodologies and mitigation measures to mitigate impacts from construction and operational activities in projects and plans for criteria pollutants, ozone precursors, greenhouse gas, and air toxic emissions, local carbon monoxide, and odor impacts.
- 3-4 The updated CEQA Guidelines provides direction on methodologies for evaluating greenhouse gas emissions, including direct and indirect GHG emissions.
- 3-5 The *Proposed Thresholds of Significance* report provides thresholds for construction and operation related emissions separately.



CEQA Guidelines Update Comment Card

2/26/09

#4

H1, GRES!

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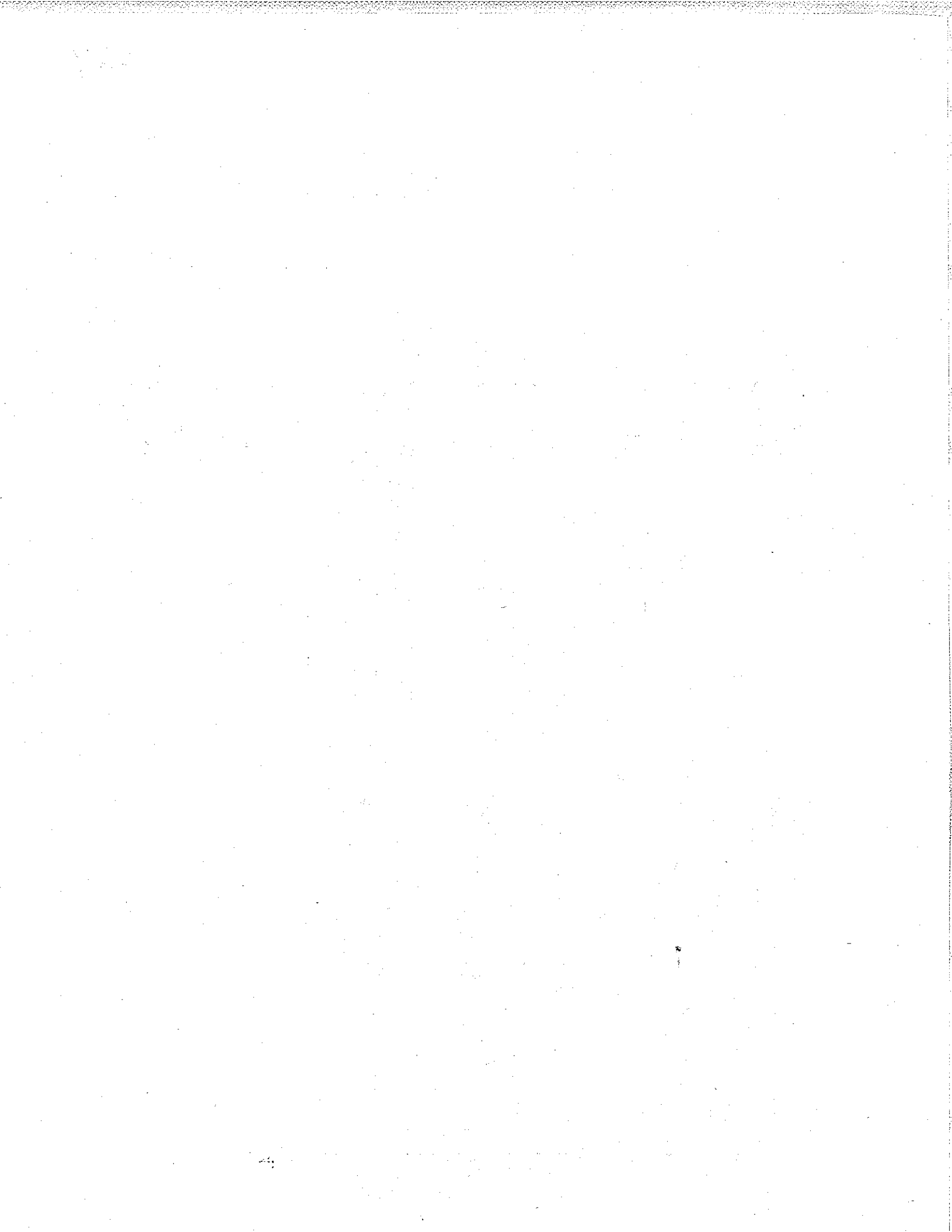
CONTACT INFORMATION (Optional):

Name: RICH WALTER
Affiliation: ICF JONES & STOKES
Email: rwalter@jstokes.com

① DPM: Make sure and evaluate both project-level and cumulative thresholds for cancer risk (e.g. if 10 in a million and project is under - what is the cumulative impact?)

② DPM: Please provide guidance on screening analysis and dispersion analysis. Suggest tiering of effort for efficiency.

③ GHG: Think careful about VMT. Consider leaving VMT GHG to EIRIS Planning Dept



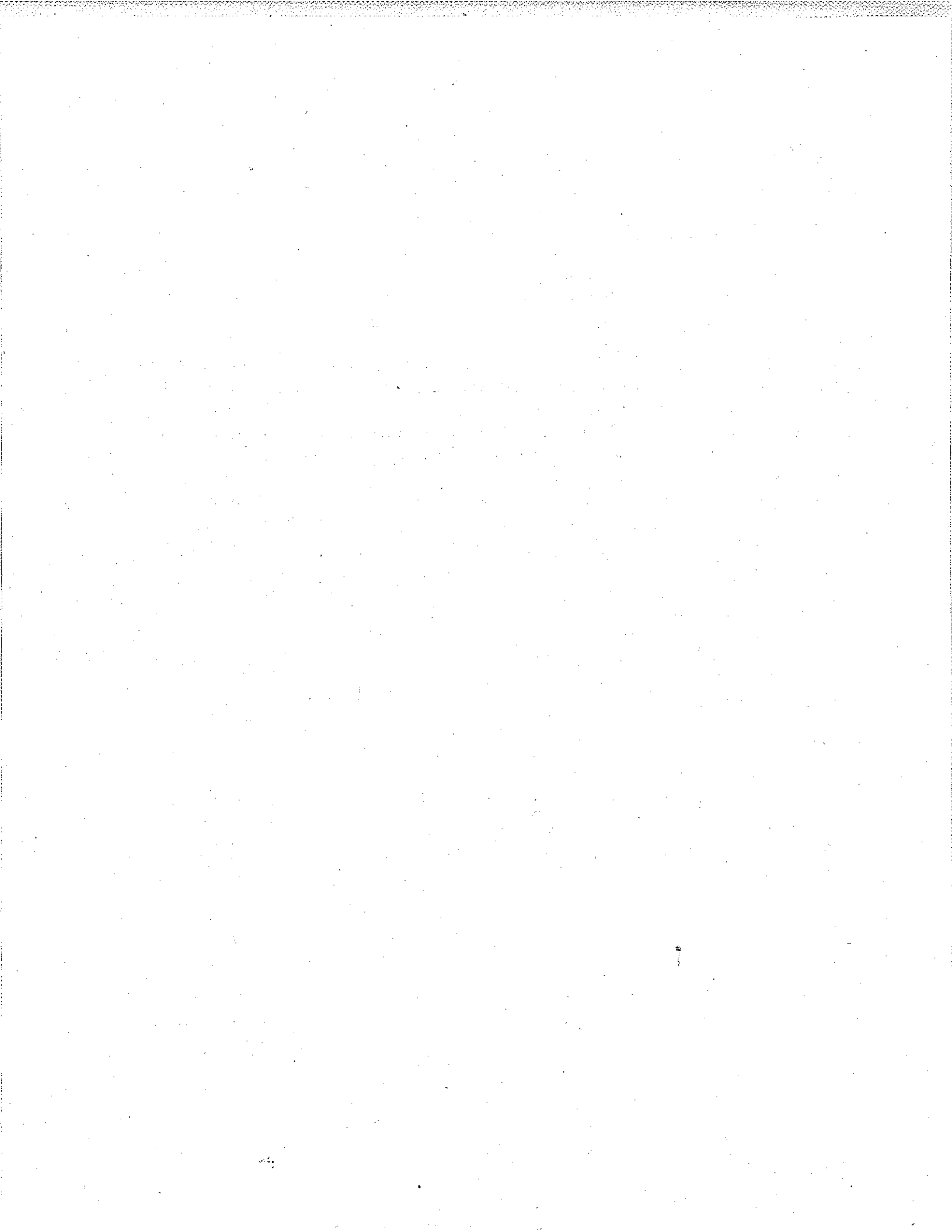
Comment Letter #: 4

Date: February 26, 2009

From: Rich Walter, ICF Jones and Stokes

Response to Comments:

- 4-1 The *Proposed Thresholds of Significance* report (November 2, 2009), contains individual project and cumulative thresholds for community risk and hazard including specific threshold for PM_{2.5}, and cancer and non-cancer risk.
- 4-2 The Air District intends to provide tables with screening analysis and risk modeling from toxic air emission sources in the Bay Area to assist lead agencies in evaluating community risk and hazard.
- 4-2.1 As stated in the *Proposed Thresholds of Significance* report (November 2, 2009), the proposed GHG thresholds are interim thresholds and could be revisited when SB 375 required plans have been fully adopted.



#5

From: Jenny Bard [mailto:JBard@alac.org]
Sent: Friday, March 06, 2009 5:07 PM
To: Nadine Wilmot
Subject: RE: Clean Air Plan comments

Hi Nadine,

Attached are the summary recommendations that the public health subgroup came up with that we will be discussing as full Advisory Board on Wednesday. We included as #10 that "appropriate" recommendations be included in public hearing process for the CEQA guidelines update and Clean Air Plan. Let me know if these recommendations attached can be incorporated or if I need to submit something separately.

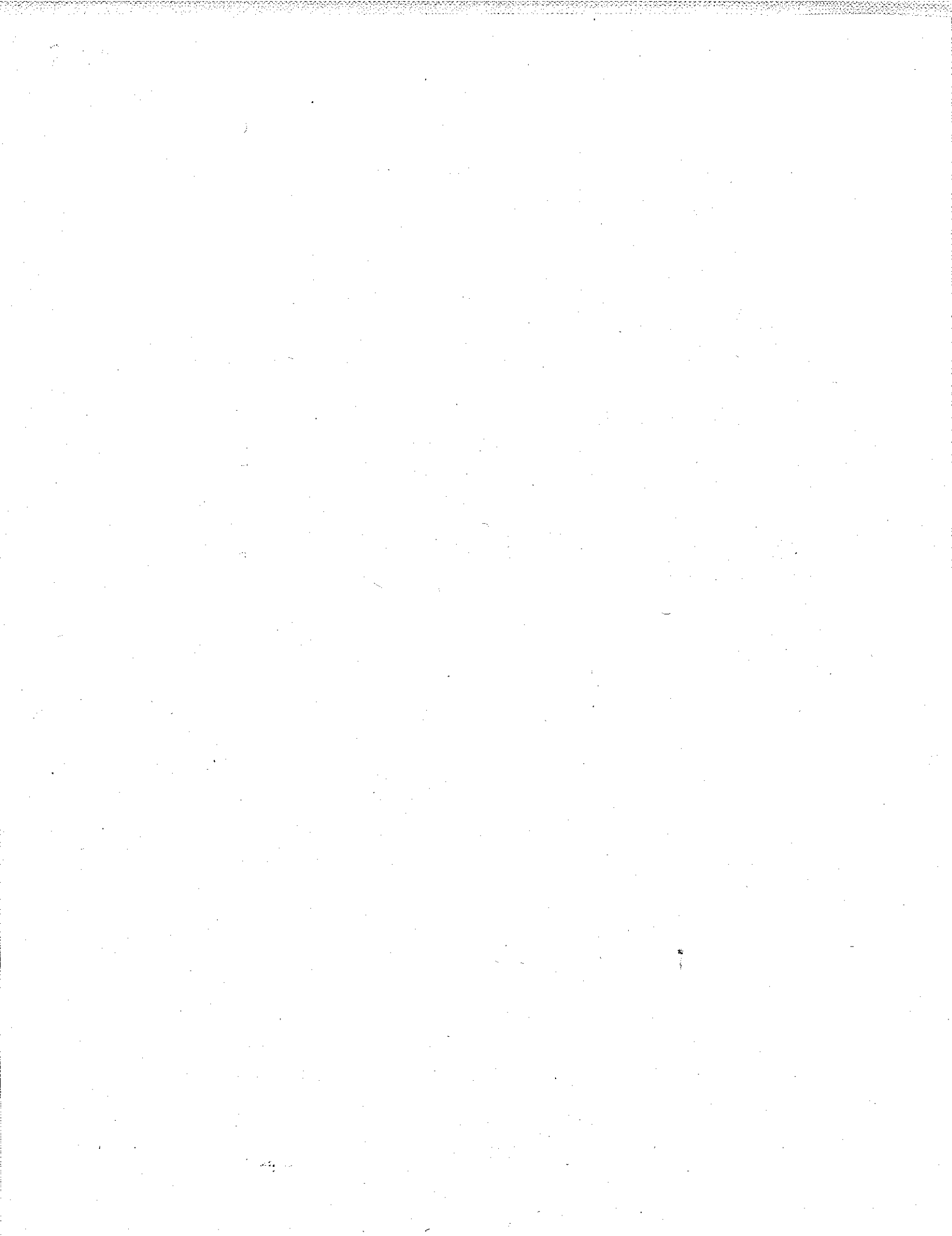
I would also like to include health impact assessments as they relate to cumulative impacts analysis, as one of the specific recommendations from the health officer presentations.

Thank you!

Jenny

Jenny Bard
Regional Air Quality Director
American Lung Association of California
Fighting for Air

115 Talbot Avenue
Santa Rosa, CA 95404
707-527-5864
707-542-6111 fax
www.californialung.org



DRAFT REPORT ON THE FEBRUARY 11, 2009 ADVISORY COUNCIL MEETING
ON AIR QUALITY AND PUBLIC HEALTH FOR DISCUSSION BY THE
ADVISORY COUNCIL

SUMMARY

The following presentations were made at the February 11, 2009 The Advisory Council Meeting on Air Quality and Public Health:

1. *Community Air Risk Evaluation Program (CARE) Overview* by Phil Martien, PhD, CARE Program Manager, Bay Area Air Quality Management District.
2. *Public Health, Air Quality, & Equity* by Dr. Anthony Iton. Anthony Iton, M.D., J.D., MPH is the Alameda County Health Officer. Dr. Iton received his training at Johns Hopkins Medical School, Cornell/New York Hospital, Yale, and UC Berkeley and is board certified in internal medicine and preventive medicine. Dr. Iton also has a law degree and a Master's of Public Health from UC Berkeley and is a member of the California Bar. He has worked as an HIV disability rights attorney, a health care policy analyst with Consumers Union West Coast Regional Office, and as a physician and advocate for the homeless at the San Francisco Public Health Department. Dr. Iton primary interest is the health of disadvantaged populations and the contributions of race, class, wealth, education, geography, and employment to health status. He has asserted that the biggest single contributor to our country's vulnerability to bioterrorism is the lack of a universal system of health insurance for all Americans. Dr. Iton collaborated with California Newsreel in the creation of *Unnatural Causes ... Is Inequality Making Us Sick?* This is currently being shown on public television stations across the country.
3. *Health Disparities in Contra Costa* by Dr. Wendel Brunner. Dr. Wendel Brunner is the Director of Public Health for the Contra Costa County Health Services Department. Contra Costa has a population of over one million people with 18 cities in the San Francisco Bay Area. The Health Department has been working the City of Richmond to develop and implement a Health Element for the Richmond General Plan. Since he became public health director nearly 20 years ago, Dr. Brunner has stood boldly behind movements such as environmental justice, an effort to force government and industry to counter years of neglect suffered by poor minority neighborhoods. In 1984, with Brunner as director, the county became the first in the nation to adopt a strict anti-smoking ordinance. In 2000, the county adopted a "zero tolerance" policy toward domestic violence.
4. *Air Pollution Hot Spots: Unregulated Health and Environmental Justice Issues in the United States* by Dr. Rajiv Bahtia. Dr. Bhatia received his Medical

Doctorate from Stanford and a Masters in Public Health from UC Berkeley. He has practiced medicine since 1989. Since 1998, he has served as the Director of Occupational and Environmental Health for the City and County of San Francisco's Department of Public Health. Bhatia is also an Assistant Clinical Professor of Medicine at the University of California at San Francisco and teaches a course in the Health Impact Assessment of Public Policy at UC Berkeley.

5. *Air Quality and Public Health Santa Clara County* by Dr. Martin Fenstershieb. Dr. Marty Fenstersheib has been the Health Officer for Santa Clara County since 1994. He has been active at the local, state and national levels in the area of disaster preparedness since 1997. Dr. Fenstersheib has made various presentations about Pandemic Influenza to various community groups and organizations. Dr. Fenstersheib is the VP of the Santa Clara County Medical Association and the past President of the California Conference of Local Health Officials.

The speakers discussed health disparities related to air quality and potential mitigation measures in Alameda, Contra Costa, Santa Clara and San Francisco counties.

DISCUSSION MEETING

.....

KEY POINTS – for discussion by Advisory Council

1. Ill health is concentrated in low-income communities of color. Health and Social inequities are positively correlated with exposure to sources of air pollution, such as freeways and industrial sources.
2. Communities need to be armed with information and tools to protect Public Health. Air Quality data is not presented in a form that is easily accessible or usable to either Public Health or the General Public. This concern applies both to the content of the data (e.g., quantitative data, geographies represented) and the language (reading level) of the data presented.
3. More detailed and localized data are needed to assist public health departments in assessing health impacts from air pollution sources. Data drives policy.
4. PM 2.5 has greater health impacts than ozone and toxic air contaminants (TACs), 10 times more than ozone and 20 times more than TACs in California. Federal and State programs geared towards criteria pollutants address regional targets and do not identify hotspots. This represents an important gap in monitoring.
5. Integration of Public Health into land use decision-making is critical, but the financial constraints of Public Health Departments necessitate BAAQMD cooperation and guidance in this process.
6. The Environmental Impact Report (EIR) process is one of the means that the air district has to require mitigation of health impacts from land use planning. Don't limit what BAAQMD does, or what data it makes available, to what is within the regulatory jurisdiction. BAAQMD can foster greater improvement in Public Health, and in community relations, by expanding its leadership role beyond what it is legally required to do. If we have strong regional targets to reduce greenhouse gases (GHG), we get the co-benefits of reduction in all pollution.
7. BAAQMD must be more proactive in regulating mobile sources of pollution within the legal constraints. Indirect Source Review is important for this reason.
8. BAAQMD should recognize roadways as a source to be measured—much of the data made the connection between roadways and health outcomes in the bordering communities. Areas within 500 feet of roadways are generally the most impacted and there are reliable models of air dispersion to predict pollution accumulation.
9. BAAQMD is a fellow health agency whose charge is to improve air quality to protect public health. There was a theme of collaboration—Public Health has a strong relationship with the community and can facilitate linkages between BAAQMD and community groups.
10. One of the ways to create change is to shift the status quo imbalance of power (industry and policymakers vs. community). This imbalance is the root cause of health inequity. BAAQMD can play an important role in helping communities advocate for themselves.

EMERGING ISSUES – for discussion by Advisory Council

1. Health Disparities and the relationship to *Cumulative Impacts*.
2. Noise pollution has negative health impacts, and is often present in the same locations as other pollutants.
3. Roadways are currently unregulated sources, falling outside the focus of both BAAQMD and CARB.
4. The use of Health Impacts Assessments is a promising part of the Environmental Review process.
5. The study of the health impacts of fine PM is a growing field in environmental health research.

RECOMMENDATIONS – for discussion by Advisory Council

1. Incorporate Fine PM into the CARE Program and require “hot spot” analysis of regional projects. Also, incorporate this hot spot analysis into updated CEQA guidelines. Consider establishing a PM 2.5 action level. Consider additional localized saturation monitoring studies along freeway corridors and in impacted areas, like the CARE Program West Oakland Measurement Study.
2. Collect data at the neighborhood level, through monitoring or modeling, and through *community based participatory methods*, like the CARE Program West Oakland On-road Diesel Truck Survey, to better assess localized impact. Data should be understandable enough that community residents can use it to push for change. Conduct monitoring to confirm modeling results (ambient concentrations) of PM emissions from major roadways.
3. Add a Health Officer (HO) position to the BAAQMD staff, similar to the position at the South Coast AQMD. The HO could provide guidance on decision making, help educate the public on health impacts of air pollution, and assist local governments with land use planning strategies that reduce air pollution and greenhouse gasses.
4. Set strong regional GHG reduction targets that will have co-benefits of reducing air pollution in impacted communities
5. Increase technical assistance to local jurisdictions for land use planning, such as establishing General Plan best practices and commenting on EIR’s.
6. Identify roadways as sources for TACs and criteria air pollutants. BAAQMD can provide technical assistance by preparing a methodology for measuring this source in Environmental Review processes and providing mitigation strategies.
7. Be more aggressive in requiring pollution reduction plans from major polluters, such as ports, and in monitoring implementation of those plans.
8. Support implementation of Container Fees at Ports to pay for air pollution mitigation and public health programs (rather than for congestion relief, which means an increase in PM and GHG), and support the anticipated state level resurrected Lowenthal bill. Investigate other strategies to fund emissions reduction and transit, such as gas taxes and increased vehicle license fees.
9. Implement Indirect Source Rules (ISR) and ensure protection for overburdened communities

10. Incorporate appropriate recommendations from the health officer presentations into the public hearing process for the CEQA Guidelines update and the Clean Air Plan 2008. Present this full report to the Board of Directors.

Comment Letter #: 5

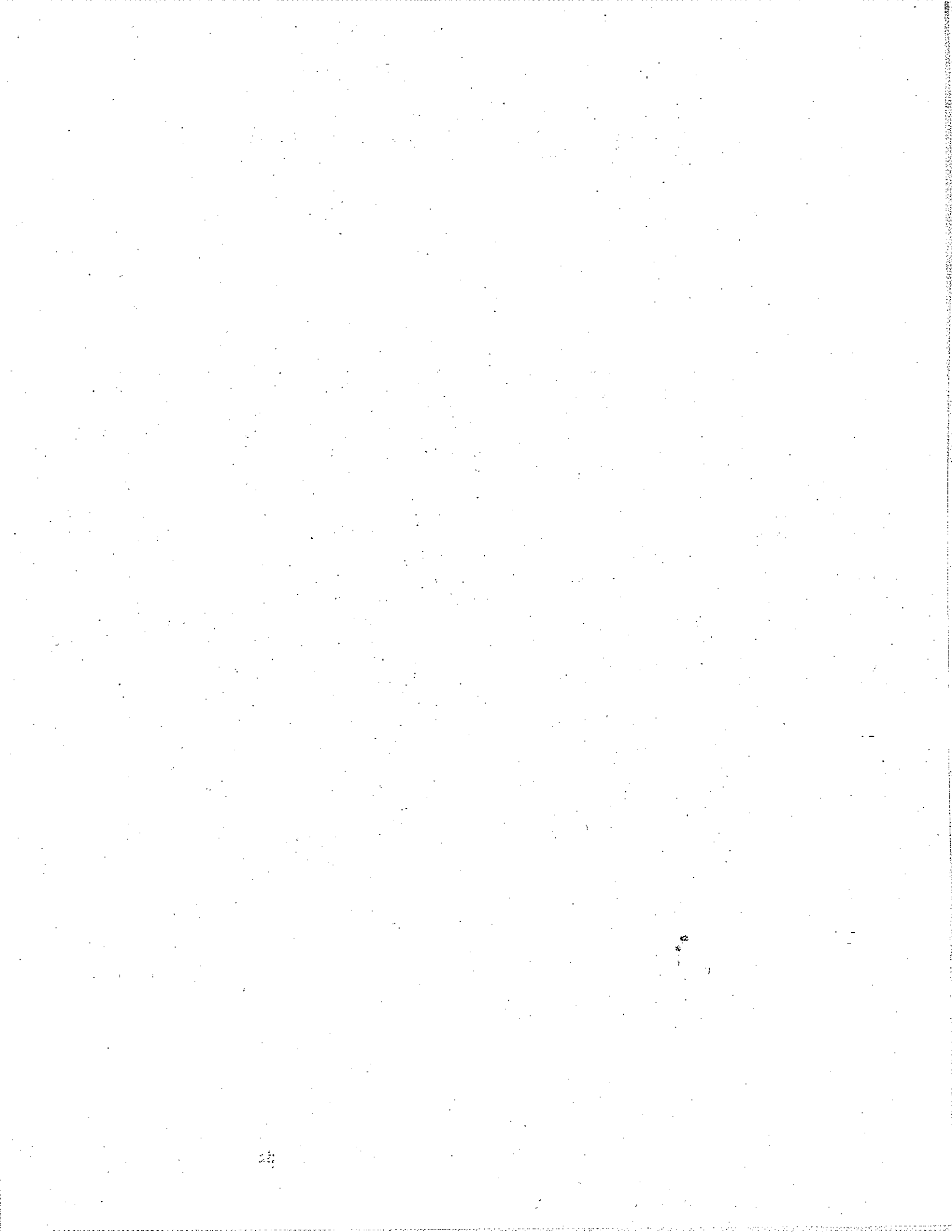
Date: March 6, 2009

From: Jenny Bard, Regional Air Quality Director, American Lung Association in California

Response to Comments:

- 5-1 The *Proposed Thresholds of Significance* report (November 2, 2009), contains individual project and cumulative thresholds for community risk and hazard including specific threshold for PM_{2.5}, and cancer and non-cancer risk.

- 5-2 The Air District intends to provide tables with screening analysis and risk modeling from toxic air emission sources in the Bay Area to assist lead agencies in evaluating community risk and hazard as part of the CEQA Guidelines. The CEQA Guidelines also contains recommended analysis methodologies and mitigation measures for evaluating and reducing community risk and hazard impacts.



From: Nora Monette
To: Gregory Tholen;
CC:
Subject: Comments on BAAQMD CEQA Guidelines Update -
 Cumulative Thresholds for Criteria Pollutants
Date: Tuesday, March 10, 2009 11:45:06 AM
Attachments:

Greg,

I would like to submit comments for the District's consideration as a part of the BAAQMD CEQA Guidelines Update.

The current BAAQMD CEQA Guidelines identify thresholds of significance for several types of impacts, including cumulative air quality impacts. I would like to recommend that the focus of cumulative impact assessment be on general plan impacts and a consideration of changes in both population *and* jobs.

As was mentioned at the workshop on February 26th, there is a very short period (if at all) when a local general plan is consistent with the ABAG projections upon which the most recent Clean Air Plan is based. ABAG projections are updated every two years and the Clean Air Plan is updated less frequently. In addition, General Plans can be modified up to four times per year. Since this is the case, there needs to be a mechanism or specific method for evaluating modifications to plans during these interim periods.

ABAG Projections are just that, projections of population and job growth at a discrete point in time. The actual population or job growth that occurs, and the location of that growth, is often different than projected due to economic and other factors. That said, overall the growth may not be substantially different than anticipated by local agencies or BAAQMD. For an example, please refer to a comparison ABAG projections and actual growth in the City of San Jose (see http://www.sanjoseca.gov/planning/gp_update/meetings/03-09-09/ABAG_Growth-v-Actual.pdf) and a comparison of projected growth in San Jose General Plans to actual growth (see http://www.sanjoseca.gov/planning/gp_update/meetings/03-09-09/GP_Growth-v-Realized.pdf). This may also be the case for other local jurisdictions within the Bay Area.

As to a methodology, perhaps the method for evaluating cumulative modifications to

6-1

General Plans could be based upon a sensitivity analysis of the amount of additional jobs and housing growth (or VMT and/or VHT) that would result in new physical impacts and trigger the need for additional mitigation measures (i.e., transportation control measures included in General Plans). If cumulatively, changes to a jurisdiction's General Plan (and/or General Plan buildout within a subregion or County) would be great enough to require changes to CAP measures, a jurisdiction could be required to add additional transportation control measures to their General Plan as mitigation. This would require that jurisdictions keep track of all General Plan changes after the latest adoption of a Clean Air Plan. A consistency determination would then be made by either the local jurisdiction, the County, ABAG, or BAAQMD using a standard methodology. The consistency determination could also factor in the location and type of growth and whether it would be considered consistent with the CAP as "smart growth".

6-1

Keeping a "running total" of consistency of General Plan Land Use Diagrams with CAP assumptions and mitigation measures would allow projects consistent with a General Plan to "tier" off analysis done either for a General Plan update or cumulative General Plan amendments.

For individual development projects where there is no General Plan amendment, I would like to recommend that the thresholds for cumulative impacts discussed on page 18 of the current BAAQMD CEQA Guidelines be changed. If a project is consistent with the currently adopted General Plan *and* would not have a significant impact from project operations, it would not be considered to have a cumulative air quality impact that would require preparation of an EIR. This would assume that substantial cumulative effects have been analyzed as a part of a strengthened and refined General Plan cumulative analysis under the updated Guidelines. That analysis may also consider factors such as infill, transit access, and density and not merely population or job increases in a vacuum. This would be consistent with the current Guideline references to relative changes in VMT.

6-2

Thank you for your consideration of these comments and we look forward to reviewing the draft Thresholds White Paper in April.

Nora Monette
Principal Project Manager
David J. Powers & Associates
phone: 408.248.3500 ex. 132
fax: 408.248.9641

DJP&A is a Green Business
Please Recycle

Comment Letter #: 6

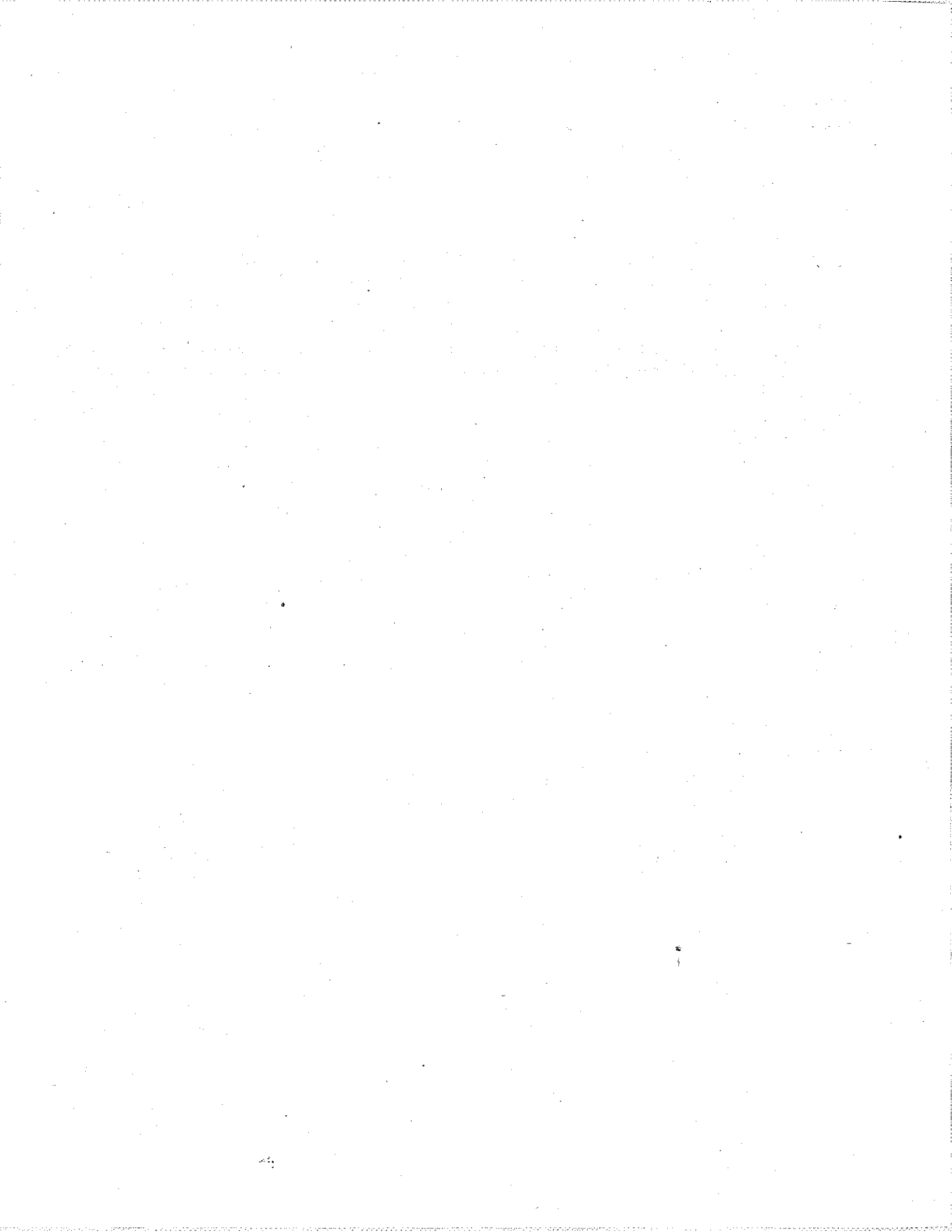
Date: March 10, 2009

From: Nora Monette, Principal Project Manager, David J. Powers & Associates

Response to Comments:

6-1 The revised plan-level GHG threshold in the *Proposed Thresholds of Significance* report (November 2, 2009) reflects the commenter's suggestion. The revised plan-level GHG threshold recommends that if a proposed project is consistent with an adopted qualified climate action plan, or Sustainable Communities Strategy, it can be presumed that it will not have significant GHG emission impacts. In addition, for local governments that have not yet adopted a qualified climate action plan as defined by the CEQA Guidelines, they have the option to demonstrate that their collective set of climate action policies, ordinances, and other projects are consistent with AB 32.

6-2 See response above.



ENVIRON

March 23, 2009

Mr. Greg Tholen
Principal Environmental Planner
Bay Area Air Quality Management District
939 Ellis Street
San Francisco, CA 94109

Subject: GDC Comments on the BAAQMD CEQA Threshold Guidelines

Dear Mr. Tholen:

On behalf of the Green Developer's Coalition (GDC) member companies, ENVIRON is submitting comments on the development of Bay Area Air Quality Management District (BAAQMD) Greenhouse Gas (GHG) Thresholds of Significance under California Environmental Quality Act (CEQA), presented during the February 26th BAAQMD CEQA Guidelines Update meeting. The GDC consists of developers who believe that large master-planned communities can balance employment, housing, and shopping for new population centers, while also helping to meet California's sustainability and GHG emissions goals. Since June 2008, ENVIRON has represented the GDC on the South Coast Air Quality Management District (SCAQMD) CEQA GHG threshold working group.

The GDC supports the development of a state-wide approach to greenhouse (GHG) threshold guideline development for CEQA purposes, such as is currently being undertaken by the California Air Resources Board (ARB). Because ARB is currently drafting CEQA GHG threshold guidelines, the GDC recommends that BAAQMD should not adopt CEQA GHG threshold guidelines at this time, but rather, look to ARB for guidance.

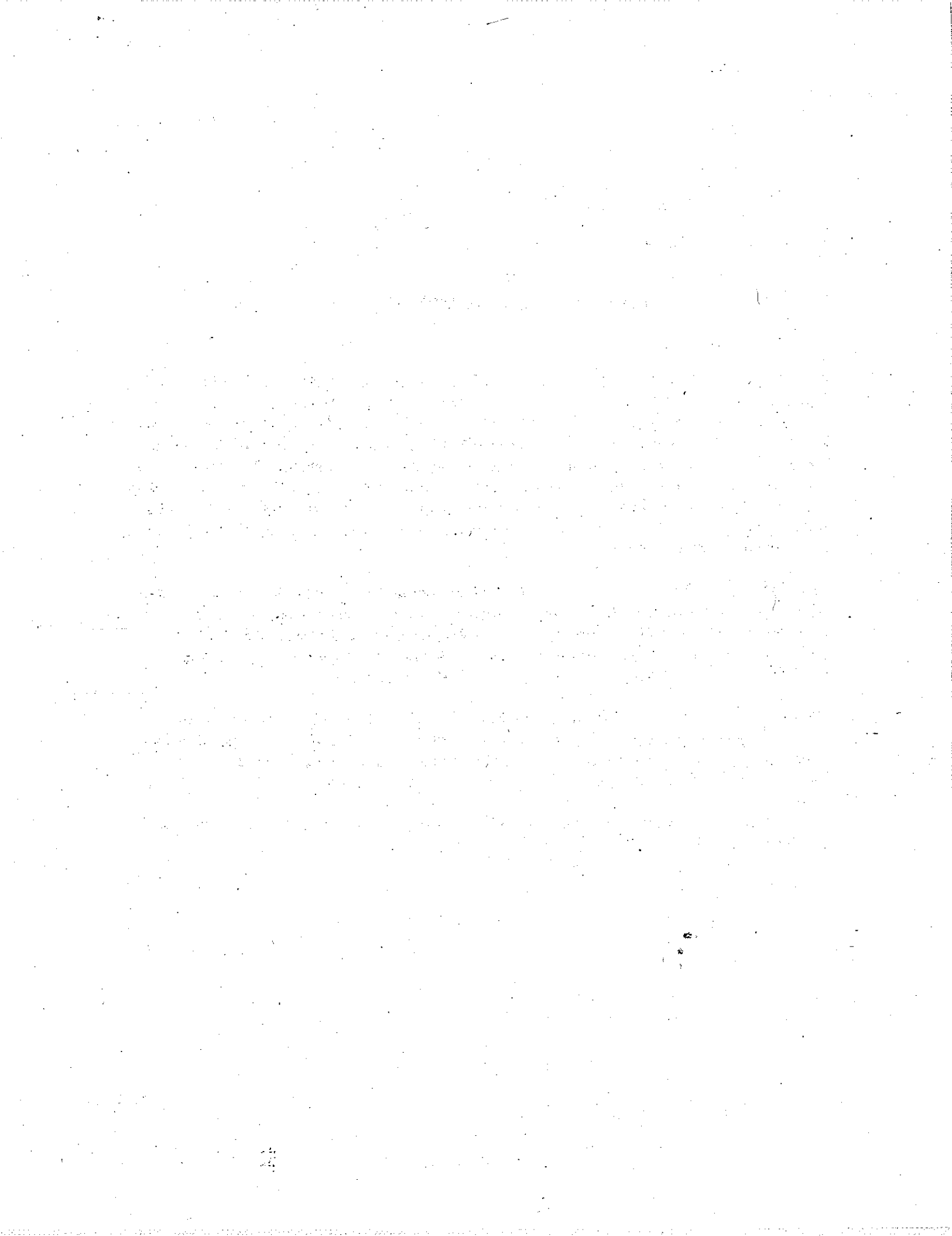


Whereas the localized emission and dispersion of air toxics within an air basins warrants regional regulatory oversight, GHG emissions are a global issue that are not impacted by local geospatial emissions concentrations or meteorological effects. Accordingly, there is little rationale for the development of GHG threshold guidelines on a local level.

We appreciate the opportunity to comment on the development of the CEQA Thresholds of Significance.

Sincerely,

Shari Beth Libicki, Ph.D.
Global Air Quality Practice Area Leader



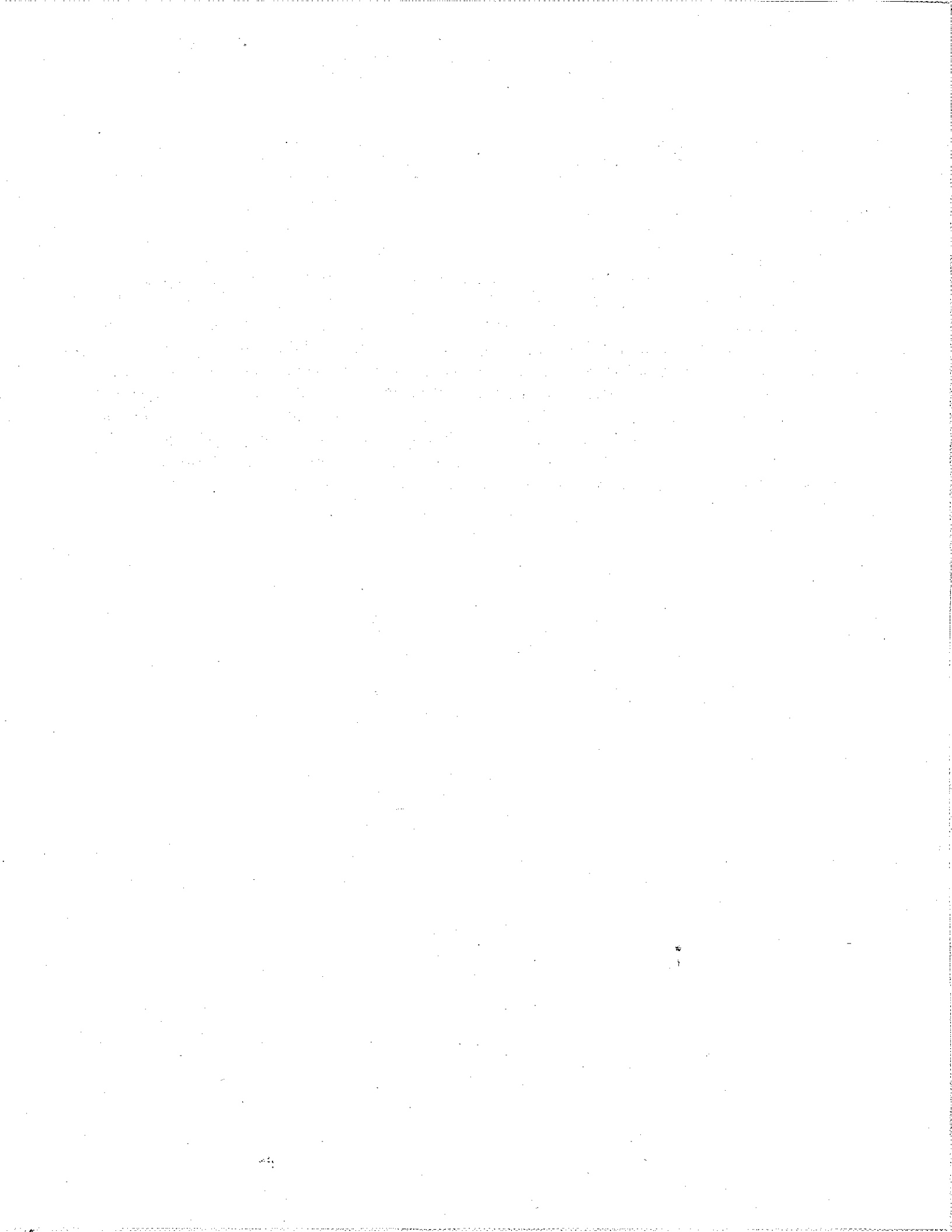
Comment Letter #: 7

Date: March 23, 2009

From: Shari Labicki Ph.D, Principal, Environ

Response to Comments:

7-1 Early on the Air District worked closely with the California Air Resources Board (CARB) staff develop a statewide GHG threshold. However, it is our understanding that CARB's work on developing a statewide GHG threshold has been suspended indefinitely. Given the increasing urgency to address the impacts of climate change in a substantive and consistent approach, repeated calls for assistance from local agencies on how to address climate change in CEQA analyses and the absence of direction from state agencies, the Air District feels it is appropriate and necessary to move forward with an interim CEQA threshold for GHG emissions. As stated in the *Proposed Thresholds of Significance* report (November 2, 2009), the proposed GHG thresholds are interim thresholds and will be revisited as AB32 Scoping Plan measures and SB 375 are implemented or when CARB develops a statewide GHG threshold. The Air District's proposed GHG thresholds are based on AB 32 GHG emission reduction goals and take into consideration emission reduction strategies outline in ARB's Scoping Plan.



From: Ranelletti, Darin
To: Gregory Tholen;
CC:
Subject: BAAQMD CEQA Update Comments
Date: Tuesday, March 24, 2009 10:27:13 AM
Attachments:

Greg,

I attended the February 26, 2009, public workshop on the BAAQMD CEQA Guidelines Update. Thank you for the workshop and the opportunity to review and comment on BAAQMD's approach to the CEQA Guidelines Update. The City of Oakland expects to submit formal comments on the draft of the revised CEQA Guidelines when they are published. In the meantime, we have the following preliminary comments:

The City supports clean air policies and the analysis of air quality impacts during the planning and environmental review process. However, BAAQMD needs to consider the effects of new thresholds on infill development that may be consistent with local, regional and state development goals. Projects that would otherwise normally be exempt from environmental review under CEQA that now exceed the new thresholds would require a Mitigated Negative Declaration or an EIR. The preparation of a Mitigated Negative Declaration or an EIR is certainly a disincentive to infill development due to the time, expense and uncertainty involved. New thresholds that would trigger an impact and require a Mitigated Negative Declaration or an EIR for ordinary transit-oriented infill development would run counter to current initiatives to encourage infill. In order to protect air quality and introduce a level of certainty to the planning and environmental review process, the City recommends that the revised CEQA Guidelines identify specific performance standards and/or project features (e.g., air filters and transportation demand management (TDM) measures in new projects) that, when uniformly incorporated into development projects in accordance with section 15183(f) of the State CEQA Guidelines, will substantially mitigate potential environmental effects such that the project is self-mitigating and



8-1

the potential air quality impacts of the project under CEQA are considered less than significant. Therefore, a Mitigated Negative Declaration or an EIR would not be required, but the health of project residents and the surrounding population would be protected.

8-1

Like other cities, the City of Oakland is in the process of preparing a Climate Action Plan to encourage energy efficiency and the reduction of greenhouse gas emissions. New BAAQMD climate change thresholds that are inconsistent with local climate plans would result in confusion and inefficiencies in the planning and environmental review process. The City recommends that the revised thresholds defer to locally adopted climate plans, where these plans are adopted, when determining greenhouse gas impacts. So, for example, if a city determined that a proposed project is consistent with the city's climate plan, then the project's potential impact related to greenhouse gas emissions would be considered less than significant. This approach would introduce more certainty into the planning and environmental review process and encourage more cities to adopt energy- and climate-oriented plans and policies.

8-2

Feel free to contact me if you have any questions.

Regards,

Darin Ranelletti

Darin Ranelletti, Planner III
City of Oakland, Planning and Zoning Division
250 Frank H. Ogawa Plaza, Suite 3315
Oakland, California 94612
510-238-3663 direct phone
510-238-6538 fax

Comment Letter #: 8

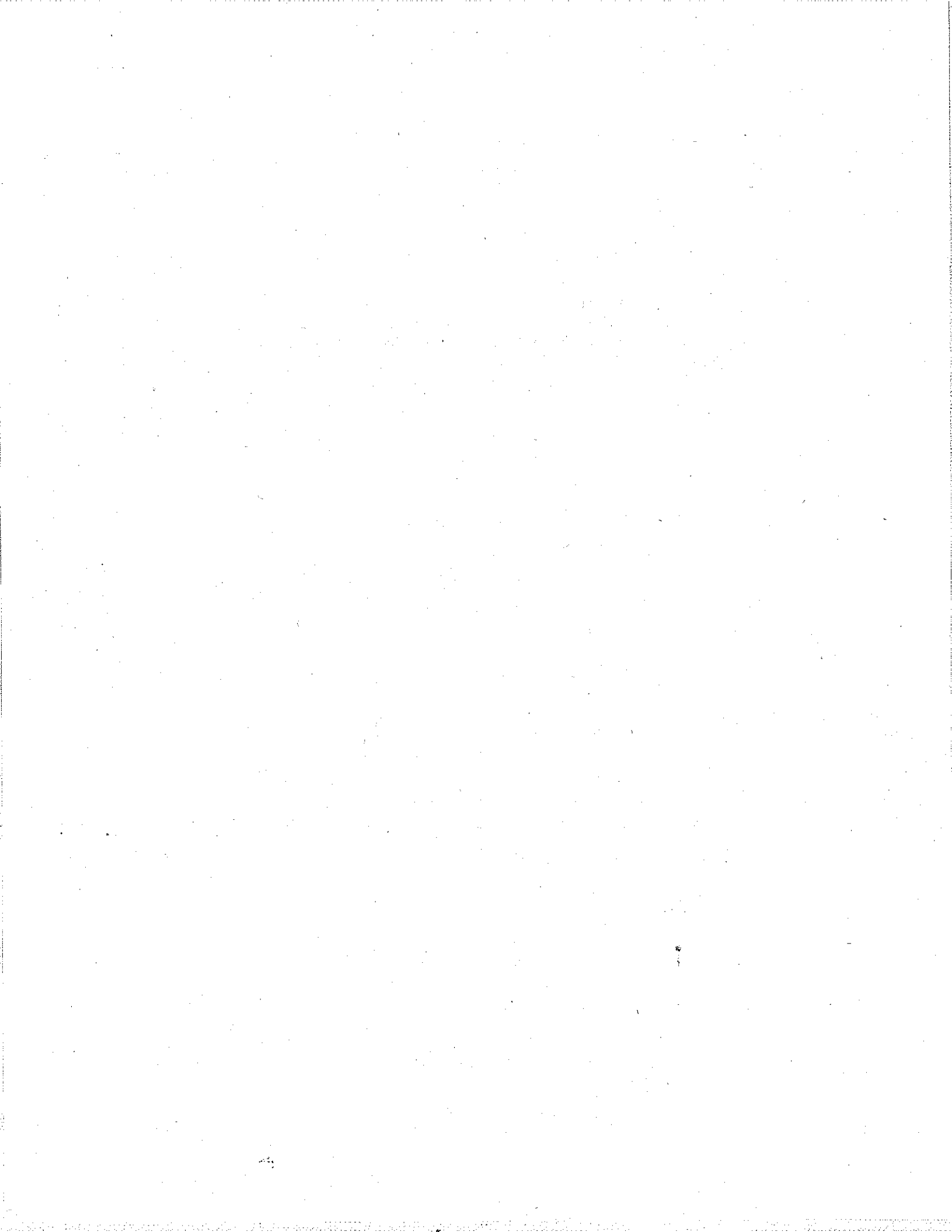
Date: March 24, 2009

From: Darin Ranelletti, Planner III, Planning and Zoning Division, City of Oakland

Response to Comments:

8-1 See Master Responses MR-1 and MR-2.

8-2 In response to this and similar comments, Air District staff, in their final Proposed Thresholds of Significance, has refined the greenhouse gas thresholds to include an initial step where a lead agency may determine that a project in compliance with a qualified climate action plan has a less than significant impact on climate change.





BAY AREA
AIR QUALITY
MANAGEMENT
DISTRICT

CEQA Guidelines Update Comment Card

5/27/09

BAAQMD/EDAW/RMPO:

We need your input!

6 GREAT JOBS!

The Bay Area Air Quality Management District is updating its CEQA Guidelines and is seeking your input. The CEQA Guidelines Update will review, revise, and develop significance thresholds, assessment methodologies, and mitigation strategies for criteria pollutants, air toxics, odors, and greenhouse gas emissions.

CONTACT INFORMATION (Optional):

Name: RICH WALTER
Affiliation: ICF JONES & STOKES
Email: rwalter@jstokes.com

① ~~Allow project applicants to demonstrate~~ Allow project applicants to demonstrate

25 to 35% reduction by comparison of default/BAD 646

calculation to project 646 emissions. Example:

large 700 projects - assume 500 units x 5 tons CO₂E/unit =

2500 tons > 1,175 tons. Doesn't make sense to

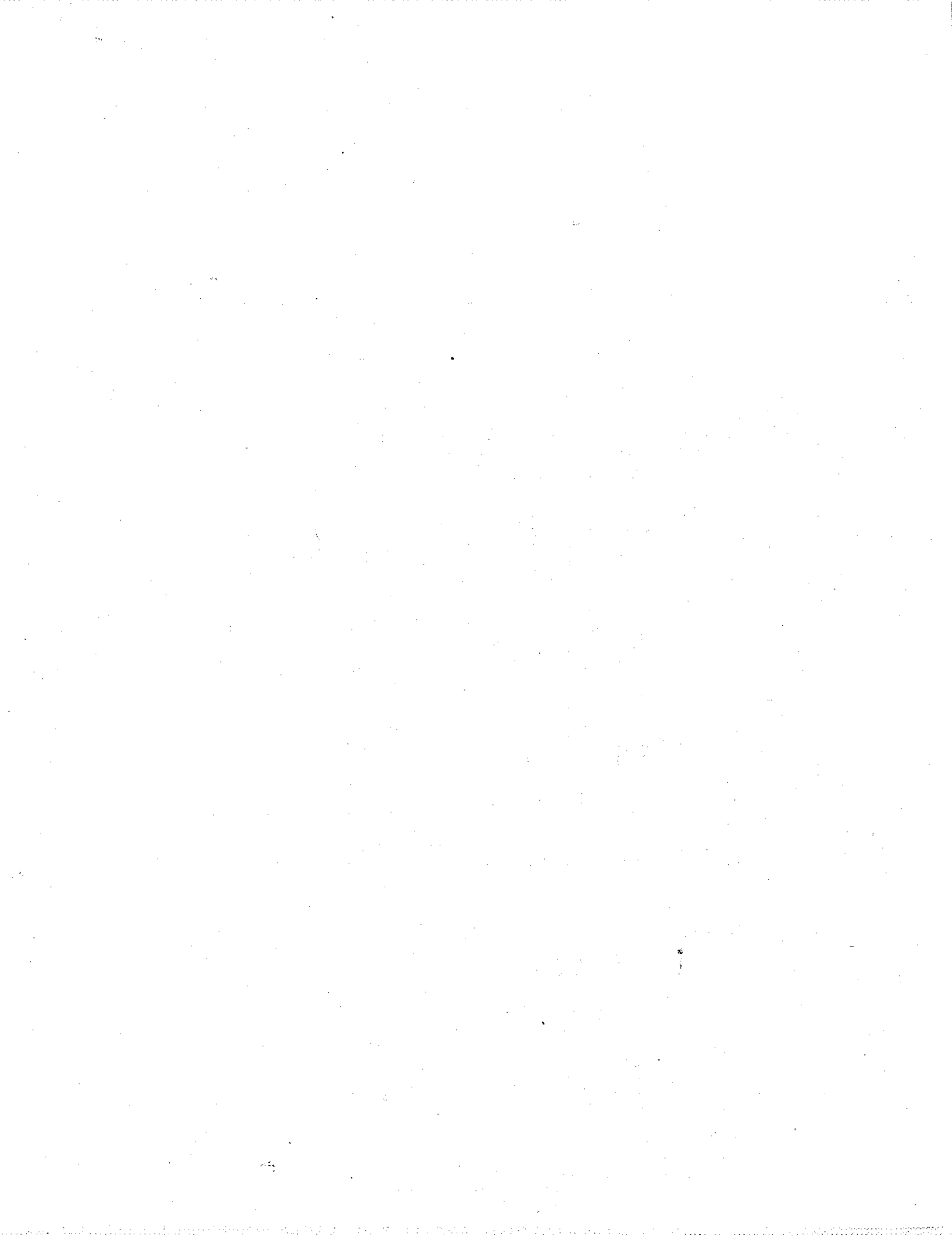
make "good" development get 25-35% "more" mitigation on

top of good design. I think if you do the math, you will

find that if you allow credit for the BAD there are b/w

DIRECT EMISSIONS & BAD, ~~4000~~ you will still get 2.0 MATR!

② GREAT JOB!



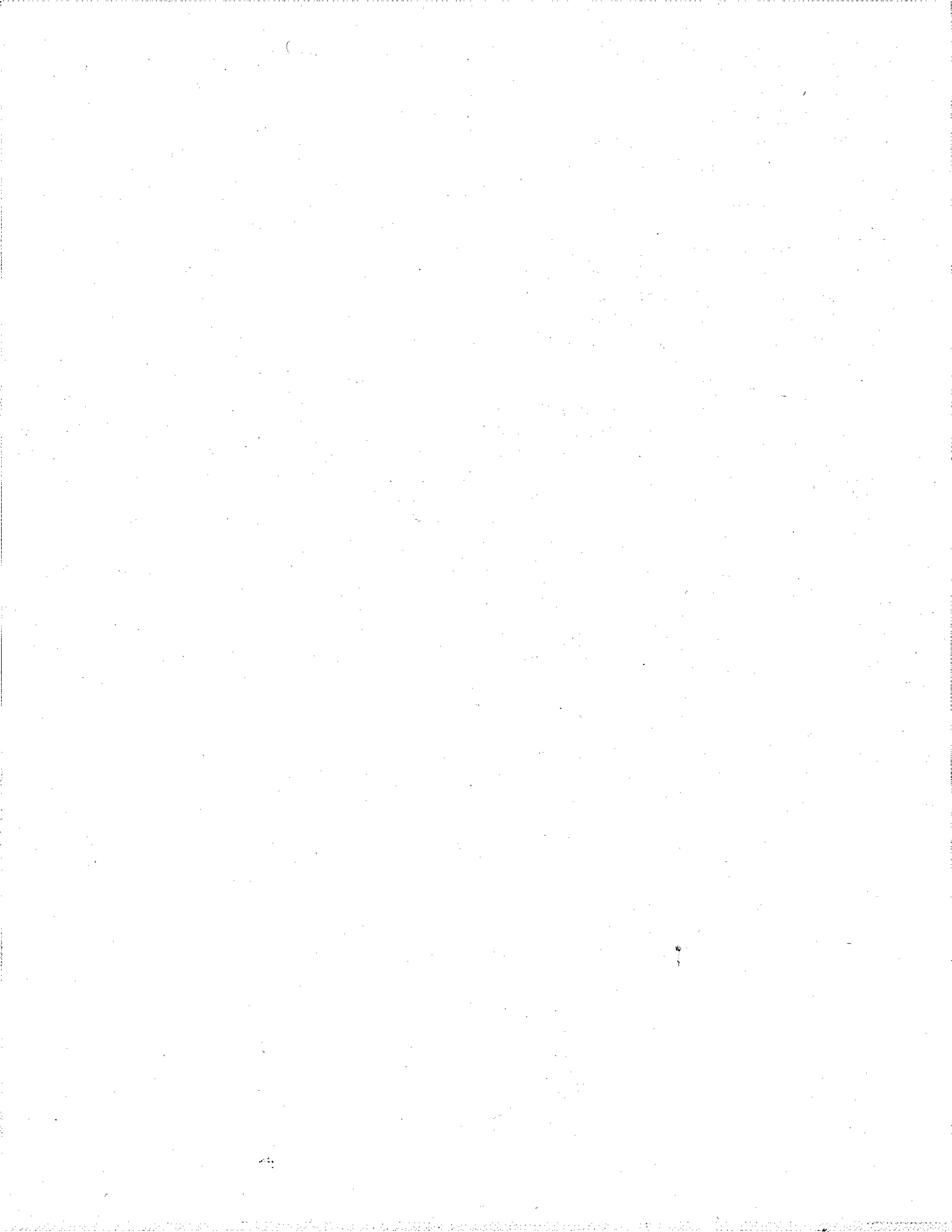
Comment Letter #: 9

Date: April 27, 2009

From: Rich Walter, ICF Jones and Stokes

Response to Comments:

- 9-1 The Air District is recommending a GHG threshold for proposed projects that is intended to achieve the percent reductions mentioned by the commenter. The *Proposed Thresholds of Significance* report (November 2, 2009) states the proposed GHG thresholds for proposed projects and plans. See also Master Responses MR-2 and MR-3.



#10

Sigalle Michael

From: David Vintze
Sent: Thursday, May 14, 2009 6:16 PM
To: Gregory Tholen
Subject: FW: CEQA Workshop Presentation
Attachments: BAAQMD_ceqa_guide.pdf

Please file this as a comment on the thresholds and prepare a response

From: David Burch [mailto:bikeburch@hotmail.com]
Sent: Thursday, May 14, 2009 6:02 PM
To: Gregory Tholen; David Vintze; David Burch
Subject: FW: CEQA Workshop Presentation

Greg / Dave

I'm forwarding msg below that came to my hotmail address a couple weeks ago. (I just checked it for first time in a while.)

Some comments from bike advocates re: CEQA & LOS.

Dave B

From: debhub@igc.org
To: bikeburch@hotmail.com
CC: andrew@bayareabikes.org
Subject: CEQA Workshop Presentation
Date: Tue, 28 Apr 2009 20:17:29 -0700

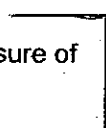
Hi Dave- Hope all is well. I haven't been closely following the CEQA debate, but this relates to BAAQMD, so I thought I'd forward it to you. Best, Deb

Deb Hubsmith
P.O. Box 663
Fairfax, CA 94978
415-454-7430
debhub@igc.org

From: Rachel Hiatt [mailto:rachel.hiatt@sfcta.org]
Sent: Tuesday, April 28, 2009 5:24 PM
To: Andy Thornley; Andrew Casteel
Cc: Robert Raburn; debhub@igc.org; Jason Patton; Michelle.DeRobertis@vta.org; Dave Campbell
Subject: RE: [Advocacy] Fwd: CEQA Workshop Presentation

Hi All,

I think the BAAQMD's workshop is peripherally related to reforming the use of LOS as the measure of Transportation impact in the State Guidelines and in San Francisco.



10-1

The BAAQMD's Guidelines just deal with air quality (AQ) thresholds, true. The AQ thresholds are related to LOS only in the sense that LOS is used as a "screening criterion" to indicate when there may be AQ impacts. See page 16 of the attached, where "LOS impacts" are one of the triggers for a project needing to perform CO analysis. The message here should be that since we're discontinuing LOS as the measure of transportation impact, project sponsors and the Air District will need to rely on a different "trigger" for analyzing CO emissions (such as ATG).

10-1

It would be great if BAAQMD would reinforce our message that LOS is not a good indicator of any other air pollutant other than CO. The Appendix A in the BAAQMD's guidelines lists other relevant 'air quality' legislation, and lists the CMP requirements in this category. Our efforts could be buttressed if BAAQMD more clearly acknowledged that LOS is not a good measure of air quality (and that the CMP legislation is really about reducing driving delays, and not about air quality).

-Rachel

From: andy.sfbike@gmail.com [mailto:andy.sfbike@gmail.com] **On Behalf Of** Andy Thornley
Sent: Tuesday, April 28, 2009 3:19 PM
To: Andrew Casteel
Cc: Robert Raburn; debhub@igc.org; Jason Patton; Michelle.DeRobertis@vta.org; Dave Campbell; Rachel Hiatt
Subject: Re: [Advocacy] Fwd: CEQA Workshop Presentation

I've been laying off engagement with the BAAQMD CEQA process because I didn't think it had anything in it dealing with Transportation topic analysis, just straight air quality thresholds, let me know if someone has a shortcut to anything in the BAAQMD work that speaks to LOS or Transportation topic stuff and I'll jump right on it . . .

--Andy--

On Tue, Apr 28, 2009 at 2:51 PM, Andrew Casteel <andrew@bayareabikes.org> wrote:
Hi Robert,

Thanks for the talking points. I will bring these up in the public comments section.

Andrew Casteel
Executive Director
Bay Area Bicycle Coalition
510.250.0909
510.250.0906 fax
www.bayareabikes.org

On Apr 28, 2009, at 2:42 PM, Robert Raburn wrote:

Retention of Level of Service (LOS) standards in CEQA prioritize motorized travel over other modes. LOS thresholds limit the ability of the Air District promote Clean Air and reduce Greenhouse Gas Emissions. Local jurisdictions are likewise constrained in their ability to implement bicycle, pedestrian, or transit projects in the vicinity of TOD projects. For example, the projected 2035 population at the proposed transit village at MacArthur BART precludes implementing a funded SR2T bike lane project on the largely vacant 6-lane W MacArthur Boulevard. It is absurd to plan for TODs with LOS tools that assume future populations clustered around transit will drive.

10/21/2009

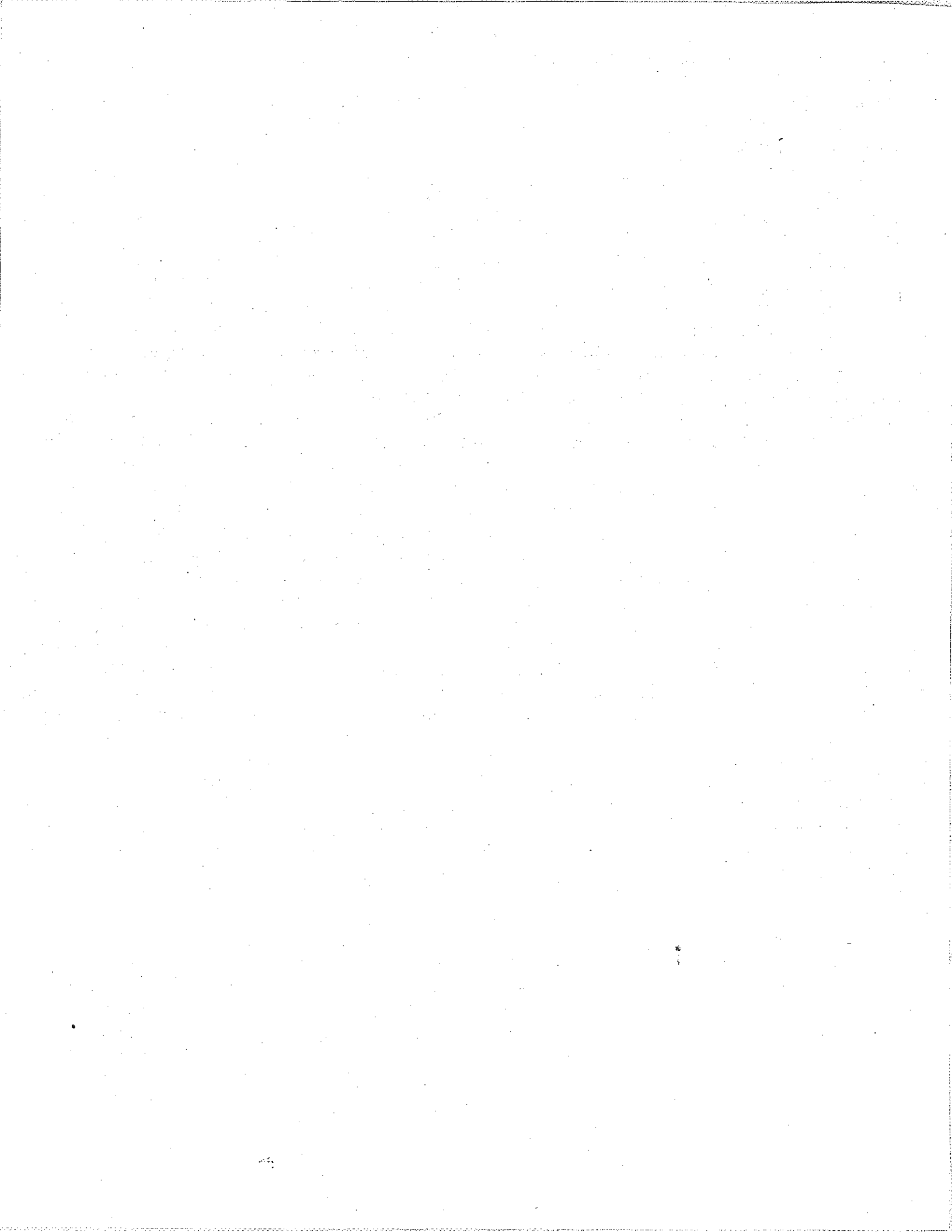
Comment Letter #: 10

Date: April 28, 2009

From: Rachel Hiatt, SFCTA

Response to Comments:

10-1 Air District staff agrees with the commenter that level-of-service (LOS) is not an appropriate indicator of air quality impacts. The draft Air District CEQA Guidelines update proposes to eliminate LOS as a screening criterion for carbon monoxide (CO) impacts. Since the proposed thresholds of significance are the California ambient air quality standards (CAAQS) for CO, staff proposes screening levels based on modeling. The CO modeling for the screening criterion, using conservative meteorological conditions and average vehicle fleet emissions, establishes the maximum level of emissions that would not exceed CO concentrations of the CAAQS.



#11

From: Tom Rivard
To: Gregory Tholen;
CC: Rajiv Bhatia; Phil Martien; Henry Hilken; Virginia Lau;
Subject: comments CEQA thresholds
Date: Monday, June 01, 2009 9:05:27 AM
Attachments:

Hi Greg,

Here are my comments as we discussed last week. In our opinion the Draft CEQA Thresholds of Significance does not give adequate attention or analysis to roadway related exposures. As you know CARB in its Land Use Handbook and the City of San Francisco in its recently passed Article 38 of the SF Health Code have identified roadway exposures as important sources of health impacts. BAAQMD through its CARE program has identified the Southeast of San Francisco as a community at risk primarily based upon cancer risk associated with diesel particulate from roadway sources. For these reasons I would encourage the District to include a section in the draft document that addresses the development of "thresholds of significance" for roadway exposures. Development of threshold criteria would be of tremendous assistance to local government which is tasked with protecting populations placed near high volume roadways. SMAQMD has a complete method for evaluating roadway related exposures and an associated health risk assessment criteria for cancer risks attributable to diesel, benzene and 1,3 butadiene. We would encourage you at a minimum incorporate their cancer risks assessment for diesel roadway exposure in your document.

11-1

Since health professionals view death by all causes as significant we would like to see the thresholds of significance for roadway exposure based upon health outcomes in addition to cancer. CARB (2002, 2008) has completed extensive analysis of non-cancer health and mortality outcomes and developed concentration response function for particulate exposure. The Land Use Handbook reviews the epidemiological evidence to support the relationship between roadway proximity and cancer mortality as well as children's non-cancer health outcomes. The San Francisco Department of Public Health has produced the Assessment and Mitigation of Air

11-2

Pollutant Health Effects from Intra-urban Roadways: Guidance for Land Use Planning and Environmental Review(2008) which provides a reasonable methodology for developing roadway threshold of significance based upon particulate matter. The tools exist to develop roadway thresholds of significance for the new CEQA guidance.

11-2

The foundation has been created and it would be beneficial to local government if the BAAQMD could provide further guidance for establishing roadway significance thresholds for particulates and organic gases. In this manner a more precise and scientific evaluation of the risk associated with locating new residential development proximal to high volume traffic could be used instead of applying a distance criteria without meteorological and emissions analysis. Perhaps more importantly failure to address roadway significance thresholds reduces the capacity of local government and community groups to engage exposures that are occurring at existing housing. Without guidance from the District the work of protecting residents impacted by freeway and arterial traffic and improving their health outcomes through such mitigations strategies as traffic and truck reduction, bicycling, walking, indoor air filtration and exterior window and door sealing is hampered by lack of a clear goal and objective criteria embodied in a quantitative threshold. Please keep us posted of your work and progress in this direction and let us know if we can be of any assistance.

11-3

Tom Rivard
Senior Environmental Health Specialist
Department of Public Health
1390 Market St., Suite 210
San Francisco, CA., 94102
415-252-3933
FAX: 415-252-3889

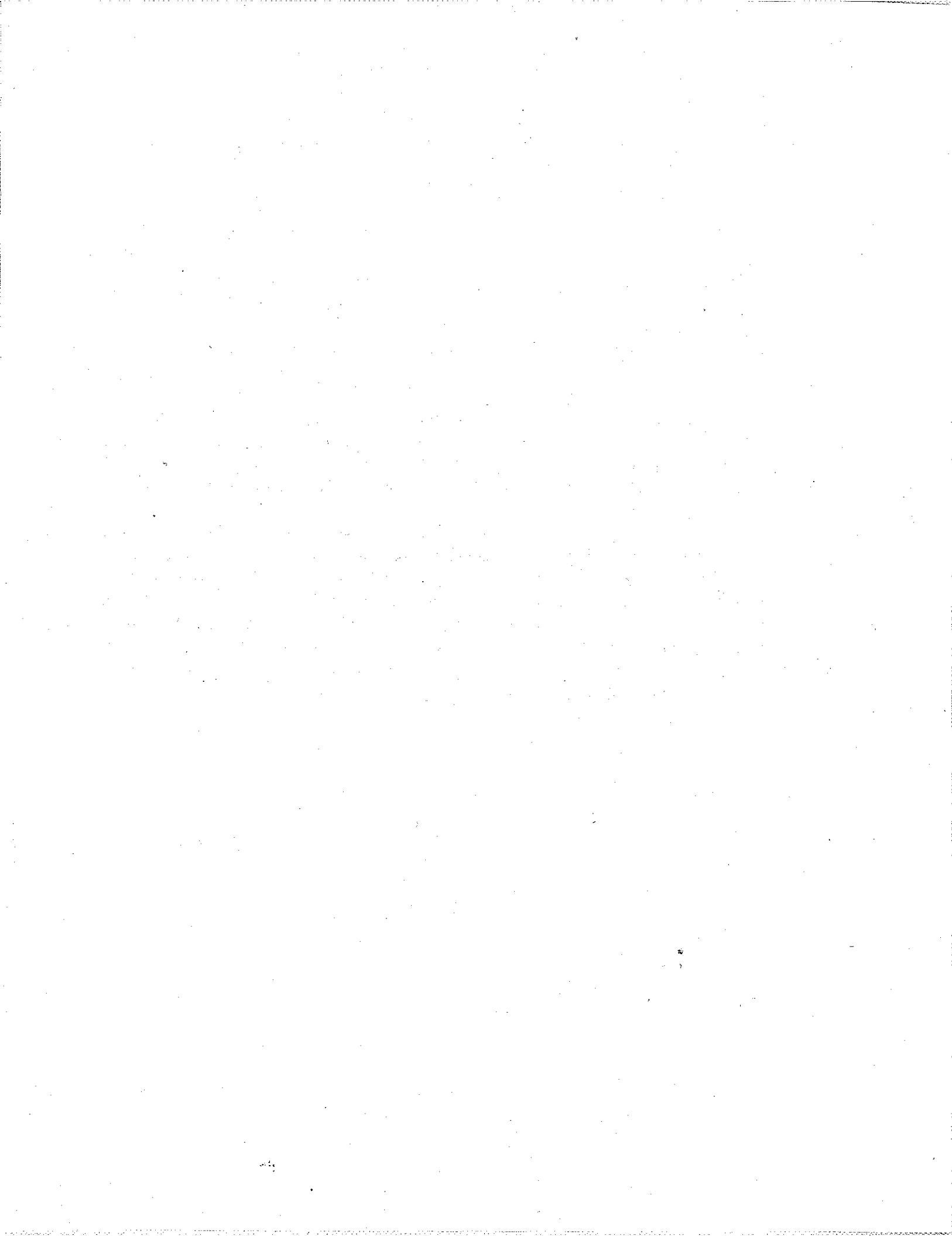
Comment Letter #: 11

Date: June 1, 2009

From: Tom Rivard, Senior Environmental Health Specialist, Environmental Health Section, Department of Public Health, City and County of San Francisco

Response to Comments:

- 11-1 In response to this and similar comments, Air District staff considered other options available for setting risk and hazard thresholds. The Air District's *Proposed Thresholds of Significance* (November 2, 2009) includes revised risks and hazards thresholds. Air District staff is proposing significance thresholds for fine particulate matter (PM_{2.5}) and recommends assessing PM_{2.5} impacts from roadway emissions.
- 11-2 Air District staff relied on work of U.S. EPA and the California Air Resource Board (CARB), including CARB's *Land Use Handbook* (CARB 2005), to develop the proposed risk and hazard thresholds and assessment methodology. The Air District is also using the California Office of Environmental Health Hazard Assessment (OEHHA) revised, more conservative risk assessment guidelines.
- 11-3 Air District staff is proposing stepped thresholds of significance for risks and hazards. First, cities and counties are encouraged to develop risk reduction plans for areas that experience high levels of toxic air contaminants and PM_{2.5} concentrations. Projects in compliance with adopted, qualified risk reductions plans that address the overall problem may be considered less than significant. For areas not included in an adopted, qualified risk reduction plan, thresholds are proposed for maximum levels of excess cancer risk, non-cancer hazard index and ambient increase of PM_{2.5} (for new sources) or exposure (new receptors). New projects that exceed the emissions or exposure limits would be considered to have a significant risk and hazard impact.





#12

June 2, 2009

Henry Hilken
 Director of Planning and Research
 Bay Area Air Quality Management District
 939 Ellis Street
 San Francisco, CA 94109

Dear Mr. Hilken:

Re: Workshop Draft CEQA Thresholds of Significance

I am writing to offer my comments on your recently released *Workshop Draft Options Report for California Environmental Quality Act Thresholds of Significance*. Overall, while I applaud BAAQMD efforts to update this thresholds guidance, I believe that several additional and complimentary health-based significance thresholds are necessary protect sensitive receptors from anticipated human exposure to hazardous air pollutants.

In the *Workshop Draft*, BAAQMD proposes health based thresholds *only* for the subgroup of air pollutants labeled "toxic air contaminants." On the other hand, BAAQMD proposes emissions (but not health) based thresholds for other "criteria air pollutants." This gap would exclude thresholds necessary to protect the public from air pollutant hotspots related to priority criteria air pollutants such as PM 2.5 and NOx. Criteria pollutant standards are not health protective for all sensitive receptors. Furthermore, the historic regulatory distinction between criteria pollutants and TACs is not scientifically meaningful either from a public health or toxicological standpoint. Thresholds for air quality impacts under CEQA should include protective public health based standards for all scientifically established air pollutant hazards where anticipated development decisions can affect those hazards. Below I am suggesting four related recommendations for BAAQMD to consider. These recommendations are justified in the subsequent narrative and case studies.

12-1

Recommendation 1

Overall, recognizing that development decisions may have substantial health impacts both related to exposure from both TACs, criteria pollutants, and other pollutants we would propose re-labeling section 2.3.4 as follows:

12-2

Air pollutant health hazards from stationary and mobile sources.

This section should discuss health hazards associated with both TACs and criteria air pollutants and could enumerate and reference any established dose response relationships between criteria air pollutants and health effects based on the work of the USEPA, CARB and OEHHA.

Recommendation 2

To address the gaps in health based air pollutant exposure thresholds, I would propose the following revisions in the thresholds currently related to "TACs."

Proposed development projects that have the potential to expose sensitive receptors or the general public to any air pollutant, including both pollutants defined as criteria air pollutant and TACs, in excess of the following thresholds from any source, mobile or stationary would be considered to have a significant air quality impact if the:

- *Probability of contracting cancer for the Maximally Exposed Individual (MEI) exceeds 10 in one million.*
- *Ground-level concentrations of non-carcinogenic toxic air contaminants would result in a Hazard Index greater than 1 for the MEI.*
- *Probability of pre-mature mortality for the Maximally Exposed Individual (MEI) exceeds 10 in 1,000,000*
- *Probability of contracting any chronic or life threatening disease for the Maximally Exposed Individual (MEI) exceeds 10 in one million*
- *Probability of avoidable hospitalization for the Maximally Exposed Individual (MEI) exceeds twice that of the area population*

12-3

In the revisions above, I recommend the more inclusive term "air pollutant" instead of the generic but limited sub-category of "TAC." Furthermore, I propose additional thresholds, essentially equivalent in health significance to the proposed thresholds for cancer and hazard index, to capture the full range of health effects associated with air pollutant exposure.

Recommendation 3

There are considerable differences in practice among local jurisdictions with regards to CEQA analysis of impacts related to changes in human exposure to existing environmental hazards. I would therefore recommend that you cite CEQA guidance in Section 15126.2(a) in full and provide more clear direction on the responsibility of jurisdictions to assess and mitigate harms from development decisions that bring sensitive receptors in proximity to existing air quality hazards, both due to stationary and mobile sources. The section could provide clear examples of situations in which an existing air quality hazard and development proposal would trigger CEQA requirements, e.g., proposing new housing adjacent to a busy freeway.

12-4

Recommendation 4

Either within this document or in a subsequent document, I would recommend BAAQMD provide further guidance on specific methods for assessment of exposure and risk for hot spots from mobile sources. This guidance could help implement the goals of the CARB land use handbook.

12-5

Justification

In the current draft of Workshop Draft Options Report California Environmental Quality Act Thresholds of Significance, BAAQD includes two health based thresholds for hazards associated with air pollutants. Both thresholds appear to apply only to so-called "TACs."

12-6

Proposed development projects that have the potential to expose sensitive receptors or the general public to any TAC in excess of the following thresholds from any source, mobile or stationary would be considered to have a significant air quality impact if the:

- *Probability of contracting cancer for the Maximally Exposed Individual (MEI) exceeds 10 in one million.*
- *Ground-level concentrations of non-carcinogenic toxic air contaminants would result in a Hazard Index greater than 1 for the MEI.*

It is important to acknowledge that the common distinction made between criteria air pollutants and TACs is regulatory convention and does not have a scientific or toxicological basis. Clean Air Act (CAA) listed criteria pollutants have associated ambient air quality standards while TACs generally do not. However, this distinction is scientifically less meaningful for the following reasons

1. Criteria air pollutants fundamentally act via toxicological mechanisms to harm human health
2. Health impacts from exposure to criteria air pollutants occur in predictable and dose dependent ways;
3. Both CARB and the USEPA have acknowledged that established ambient air quality standards for criteria air pollutants are not health protective for all populations;
4. Both CARB and the USEPA has quantified that adverse population-level health impacts due to criteria air pollutants exist occur below standards;
5. Criteria air pollutants from mobile source frequently result in unregulated and unmonitored local impacts or "hot spots;"
6. Cancer is not the only or necessarily the most sensitive health endpoint for the health effects of a particular air pollutant.

A comprehensive and adequate set of significance thresholds would recognize the range of human hazards and all air pollutants, whether or not the pollutant was labeled a criteria pollutant or TAC. The thresholds for TACs in the *Workshop Draft* currently leave an important gap with regards to the breadth of knowledge regarding health impacts, and specifically with regards to potential health impacts due to criteria air pollutants.

Using of these limited thresholds is likely to result in unmitigated health impacts. For example, mobile sources, particularly on road motor vehicles, are a major source of cumulative air pollution exposure and local air pollutant hot spots in urban areas. Vehicle hot spots can include multiple pollutants such as particulate matter, nitrogen oxides, diesel exhaust and benzene. DPM, PM 2.5 and nitrogen dioxide are all correlated with roadway proximity. Cancer is not the only or necessarily most significant health impact of exposure to roadway air pollution hot spots. Health research has consistently demonstrated that children living within 100-200 meters of freeways or busy roadways have poorer lung function and more asthma and respiratory symptoms than those living further away. These effects have been found independent of pollutant or vehicle type and it would be inappropriate to attribute roadway related health effects to a single type of pollutant, vehicle, or fuel.

Based on the breadth of health impacts, in 2005, the California Air Resources Board issued guidance on preventing roadway related air quality conflicts, suggesting localities avoid placing new sensitive uses within 500 ft of many freeways. The Handbook reviews the epidemiological evidence to support the relationship between roadway proximity and cancer mortality as well as children's non-cancer health outcomes. There has also been substantial and corroborating evidence on this issue since the publication of the Handbook.

12-6

12-7

Current ambient air pollution standards would not protect people from health effects from air pollutant hotspots from criteria pollutants. For example, in regulatory risk assessment, the California Air Resources Board (CARB (2002, 2008) has adopted concentration response functions for chronic exposure to particulate exposure and diverse health outcomes including premature mortality, asthma hospitalizations, respiratory illness, and short term disability. These regulatory assessments make clear that there is *no threshold* for the adverse health effects of PM 2.5 and avoidable health impacts are occurring at exposure levels below current state standards. Especially noteworthy is the consensus based concentration response function for chronic exposure to particulate exposure and mortality which estimated that every 10 ug/ m³ increase in PM 2.5 exposure translates into a 10% increase in the overall mortality rate.

12-8

The following hypothetical example below illustrates the serious public health liability in ignoring the multiple hazards from chronic exposure to particulate matter. In this example, I hypothesize a sensitive receptor is proposed to be located near a freeway where roadway-attributable concentrations at the receptor is 0.25 ug/m³ with 10% of emissions from diesel engines. Irrespective of the background level of PM 2.5 or DPM, for an individual with lifetime exposure, the additional hazard from nearby vehicles to residents for lung cancer would be 7.5 per million while the excess hazard for pre-mature mortality would be 893 deaths per million. In other words, the lifetime hazard due to PM 2.5 from a typical roadway hotspot at a given exposure level is 100 times greater for pre-mature mortality as it is for cancer. The example clearly illustrates that mortality hazards from the criteria pollutant PM 2.5 can greatly significantly exceed the cancer hazard from Diesel Exhaust, a potent TAC, for a typical and common exposure scenario.

12-9

Hazards of Premature Mortality and Cancer Associated With Exposure to PM 2.5

Parameter	Value	Reference
Additional PM _{2.5} Concentration (ug/ m ³)	0.25	Hypothetical
Mortality Hazard from Chronic PM 2.5 Exposure		
Relative Risk All-cause Mortality (excluding injuries)	1.01	CARB, 2008
Crude Mortality Incidence Rate Excluding Injuries (Deaths per 100,000 persons per year)	714	California County Health Status Profiles 2006
Excess Annual Pre-mature Mortality (Deaths Per Million Persons Per Year)	18	Calculated
Excess Annual Hazard of Pre-mature Mortality (Deaths Per Million Persons over 50 years)	893	Calculated
Diesel Cancer Hazard From Chronic PM 2.5 Exposure		
PM 2.5 Diesel Exhaust Fraction	10%	Typical Urban Freeway
Diesel Exhaust Concentration (ug/m ³)	0.025	Calculated
Diesel Exhaust Cancer Unit Risk Factor ((ug/m ³)-1)	3.00E-04	California Office of Environmental Health Hazard Assessment
Lifetime Excess Hazard of Cancer (Cancers per Million Exposed Persons)	7.5	

It is currently feasible to apply the recommended thresholds in the context of CEQA and development planning given using available methods to estimate exposure and to predict health impacts. Standard EPA approved modeling tools, such as the CAL3QHCR dispersion models exist to assess exposures to roadway hotspots associated with DPM, PM 2.5 and NOx. The City of San Francisco under Article 38 of the SF Health Code uses these tools to assess local air pollution mortality hazard associated with roadway air pollution exposures as important sources of health impacts. San Francisco Department of Public Health has produced the *Assessment and Mitigation of Air Pollutant Health Effects from Intra-urban Roadways: Guidance for Land Use Planning and Environmental Review*(2008) which outlines a methodology for developing roadway threshold of significance based upon particulate matter. SMAQMD has a similar method for evaluating roadway related exposures and an associated health risk assessment criteria for cancer risks attributable to diesel, benzene and 1,3 butadiene.

12-10

Below we provide an example of an air quality analysis at a proposed development in San Francisco that estimates both cancer hazards from the DPM fraction of PM 2.5 and the mortality hazard from concomitant exposure to total PM 2.5. Executive Park is a proposed mixed use residential community adjacent to and to the east of US 101 at the southern border of San Francisco. The parameters and assumptions for this analysis are provided as an attachment. Figures 1 and 2 illustrate the annual average PM 2.5 concentrations and modeled DPM concentrations attributable to roadway emissions at this site. As detailed in the table, the modeled roadway attributable concentrations of PM 2.5 range from <0.10 to 0.5 at the project site. The maximum concentration translates into a 0.5% maximum excess annual risk of mortality for those exposed or 1785 excess premature deaths per million people exposed over a 50 year period. The maximum modeled level of diesel particulate matter in the Executive Park Project was 0.2. The excess Cancer Risk attributable to a lifetime exposure to traffic diesel particulate matter (DPM) at this level would be 60 cancers in one million exposed people.

12-11

Figure 1 Spatial Extent of Roadway PM 2.5 Emissions from US 101 at Alana Street (Annual Average ugs/ m³).

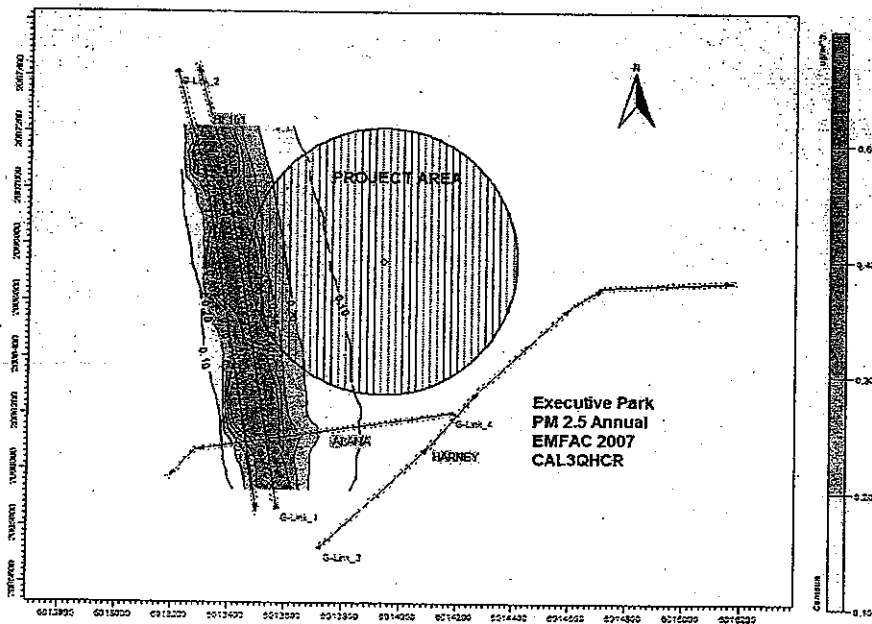
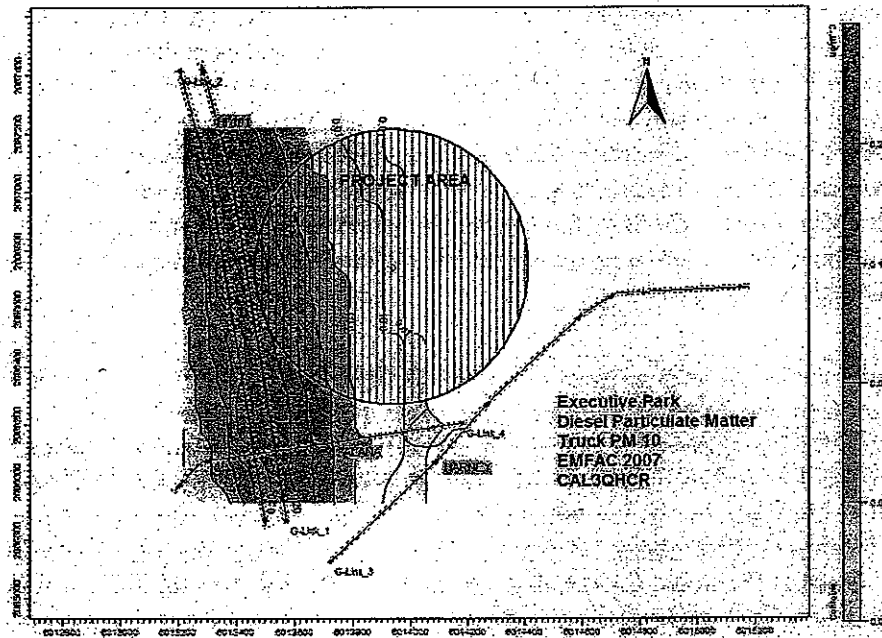


Figure 2. Spatial Extent of Diesel Particulate Matter (DPM) from US 101 at Alana Street (Annual Average $\mu\text{g}/\text{m}^3$).



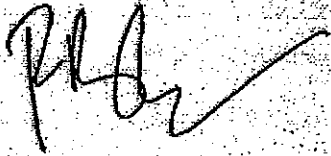
12-11

Maximum modeled $\text{PM}_{2.5}$ and Diesel PM Concentrations from Roadway Sources and Associated Mortality Hazards for the Project Site for the Executive Park Sub Area Plan in San Francisco

Roadway Location & AADT	Maximum Roadway $\text{PM}_{2.5}$ Concentration ($\mu\text{g}/\text{m}^3$)	Mortality Hazard Attributable Chronic $\text{PM}_{2.5}$ Exposure	Maximum Roadway DPM Concentration ($\mu\text{g}/\text{m}^3$)	Cancer Hazard Attributable to Roadway Diesel PM
US 101 @ Alana 216,000 vehicles/day	0.5	1785 excess deaths per million with 50 year exposure	0.2	60 excess cancers per million population with lifetime exposure

Thank you in advance for your consideration of these comments. Clear and health-protective guidance from BAAQMD for local government will support the work of public health and community organizations. I would appreciate an opportunity to discuss any questions you may have about these recommendations or their rationale.

Sincerely,

A handwritten signature in black ink, appearing to read 'R. Bhatia', with a long horizontal flourish extending to the right.

Rajiv Bhatia, MD, MPH

Parameter for Dispersion Analysis	Assumptions and Source
Traffic data	Peak hour traffic volume. Annual average traffic volume. Percentage of Truck Traffic from the California Department of Transportation Traffic Data Website
Vehicle Emissions rates	California Air Resources Board EMFAC 2007
Traffic speed	25mph local, 30 mph arterial, 55mph freeway
Temperature and Humidity	Area Annual Average (e.g., 50% relative humidity, and 50 degrees F)
Surface meteorology	San Francisco International Airport (Available at the Meteorological Resource Center, http://www.webmet.com/State_pages/met_ca.htm)
Number of Receptors	Minimum six receptors per acre
Concentration Response Function for Chronic PM 2.5 exposure and long term mortality	1% Increase in Rate of Non-Injury Mortality per unit ug /m ³ increase in PM 2.5 (CARB 2008)
Cancer Unit Risk Factors for	3 X 10 ⁻⁴ (Office of Environmental Health Hazard Assessment 2002)
Annual Crude Non-Injury Mortality Rate for San Francisco	733 /100,000 (California DPH County Health Status Profiles 2006)

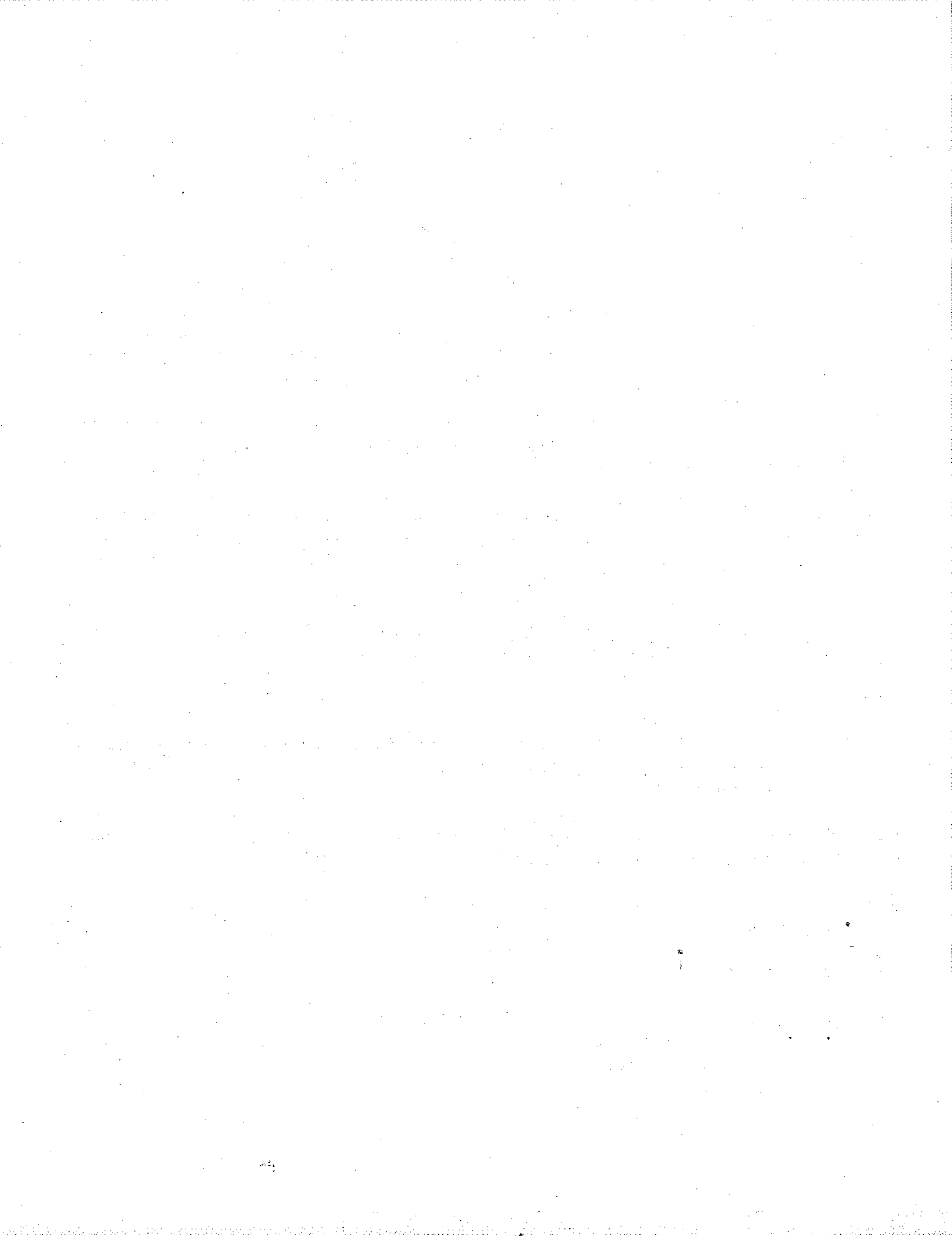
Comment Letter #: 12

Date: June 2, 2009

From: Rajiv Bhatia, MD, MPH, Director of Environmental Health, Department of Public Health, City and County of San Francisco

Response to Comments:

- 12-1 See comment response 11-1.
- 12-2 The *Proposed Thresholds of Significance* (November 2, 2009) and revised CEQA Guidelines combines thresholds of significance for cancer, non-cancer and PM_{2.5} in the Air Districts' recommended assessment of *Community Risk and Hazards* impacts sections, which considers impacts from stationary and mobile sources of toxic air contaminant and PM_{2.5}. Also see comment response 11-2.
- 12-3 See comment response 11-3 and 12-2. Air District staff did not at this time further explore options that included pre-mature mortality, probability of contracting any chronic or life-threatening disease or probability of avoidable hospitalization.
- 12-4 The proposed thresholds of significance and revised CEQA Guidelines make clear the Air District interpretation of State CEQA Guidelines Section 15126.2(a). The risk and hazard thresholds apply to projects that propose to bring sensitive receptors into any area that may expose them to air quality hazards.
- 12-5 The revised CEQA Guidelines include recommended methodology and mitigation measures to assess impacts from exposure to roadway risks and hazards.
- 12-6 See comment response 11-3 and 12-2.
- 12-7 In the revised CEQA Guidelines the Air District also recommends avoiding placing sensitive receptors within 500 feet of freeways and high-volume roadways, based on recommendations in CARB's *Land Use Handbook* (CARB 2005).
- 12-8 Air District staff concurs with the commenter's summary of regulatory assessments concluding that adverse health effects occur at concentrations below the CAAQS for PM_{2.5}.
- 12-9 Air District staff acknowledges the hypothetical example comparing additional ambient PM_{2.5} exposure to other risk and mortality levels. Also see comment response 11-3.
- 12-10 Comment noted.
- 12-11 Air District staff has reviewed the referenced example and discussed PM_{2.5} modeling analyses prepared by SFDPH staff in development of the proposed thresholds of significance and revised CEQA Guidelines. Also see comment response 11-3.



ASSOCIATION OF BAY AREA GOVERNMENTS

Representing City and County Governments of the San Francisco Bay Area



#13

MEMO

June 23, 2009

To: Jean Roggenkamp, Air District
FR: ABAG Staff
RE: ABAG comments about Air District CEQA Guidelines update

We are writing to provide comments about the Air District's proposals to update its California Environmental Quality Act (CEQA) Guidelines. In particular, these comments are directed at the options for setting thresholds of significance for Toxic Air Contaminants.

In considering changes to these guidelines, the Air District has emphasized the importance of addressing the air quality concerns in the six priority communities identified through the Community Air Risk Evaluation (CARE) program. The purpose of the CARE program is to evaluate and reduce the health risks from exposure to outdoor toxic air contaminants. The Air District has committed to targeting its resources, policies, and regulatory actions to reduce toxic air contaminants in these areas.

13-1

To identify the priority communities, the Air District used an inventory of stationary, area, and mobile emissions sources to model the concentrations of toxic air contaminants throughout the region, weighted by their toxicity. These concentrations were then compared to demographic and health data that showed the geographic distribution of sensitive populations, such as children, seniors, and low-income residents. The Air District used these population-weighted emissions as the basis for identifying the six priority communities with both high emissions and significant sensitive populations.

We strongly support the Air District's commitment to protecting public health and reducing emissions in these highly impacted areas. In particular, we encourage the Air District's efforts to limit new sources of toxic air contaminants, particularly those related to mobile sources. According to Air District studies, diesel particulate matter from on-road and off-road mobile sources are the greatest single contributor (over 80 percent) of the toxic air contaminant cancer risk in the Bay Area. Policies and programs to reduce driving and lower truck and vehicle emissions provide the most direct benefits to residents and workers in these areas.

13-2

While we support limits on the addition of new emission sources in these priority communities, we are concerned about any steps the Air District might take that would limit the introduction of new residents and workers into these areas. Many areas within the Air District's priority communities have also been identified by local governments as Priority Development Areas (PDAs) through the FOCUS program. The PDAs are infill development opportunity areas where local governments are committed to developing housing, amenities, and services to meet the needs of residents in a pedestrian-friendly environment near transit.

13-3

Given the inherent challenges of infill development in these areas, it is likely that adding another layer of complexity with these new toxic air contaminant standards will lead developers to look to places where development is easier. Discouraging development in the PDAs would undermine efforts to encourage a more focused growth pattern that capitalizes on the region's existing transportation and infrastructure investments. As you are aware, through FOCUS, the four regional agencies and their local government partners are working to promote growth in these areas to reduce the amount of driving in the region—which would have a positive impact on air quality. It would be counterproductive if the Air District's proposed threshold changes act as a deterrent to growth in these areas and push development to greenfield sites in the outer suburbs, where the amount of driving required would be greater.

13-3

Impeding development in PDAs would also represent a lost opportunity to provide community members with needed investments in housing, jobs, services, parks and open spaces, and other amenities. In addition, since requirements on new developments would not address the sources of toxic air contaminants, it is likely they would have a very limited impact in addressing the community's air quality concerns. For example, mitigation measures such as air filters on buildings would only protect inhabitants in new buildings while they are indoors—and would not lead to benefits that could be shared by the community as a whole.

We believe it sends the wrong message to existing residents in these communities, who have had to deal with poor air quality for long periods of time, to require protections only for new buildings. If the fundamental premise of the Air District's proposed threshold changes is to protect public health, then it would be more appropriate to have these standards extend to all buildings (and the people in them) that are at risk.

13-4

Given the need to balance air quality concerns with the potential benefits of infill development, the Air District should evaluate the relative merits of proposed mitigation measures based on their effectiveness, costs, ease of implementation, and any potential for discouraging development in these areas. In addition, if the proposed guideline changes affect development patterns within the region, the impacts will be felt for a long period of time. Given this fact, we feel that decisions about the proposed regulations should be informed by models that show the effects of regulations on diesel emissions that will be implemented in the near future (such as the ban on pre-1994 trucks and those from 1994-2006 without soot filters that was recently passed by the Port of Oakland) on the air quality in the priority communities.

13-5

Finally, to ensure that any proposed regulations have a solid foundation, more work needs to be done to understand the specific impacts of toxic air contaminants on different areas. The Air District has already acknowledged that the population-weighted emissions are only a surrogate for estimating actual exposures. The modeling would also benefit from a better understanding about the link between poverty, access to health care, and the risk of exposure. We also believe the Air District could improve the public's understanding of these complicated issues by providing more detailed information about the modeling underlying the cancer risk assessments, the limitations of the results, and how to interpret the data presented.

13-6

Please send any comments to Gillian Adams (GillianA@abag.ca.gov or 510-464-7911).

Comment Letter #: 13

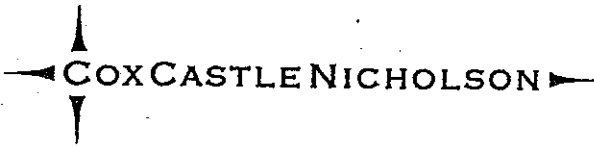
Date: June 23, 2009

From: Gillian Adams, Association of Bay Area Governments

Response to Comments:

- 13-1 Ongoing work from the Air District's Community Air Risk Evaluation (CARE) Program was instrumental in the development of the proposed risk and hazards thresholds of significance. The CARE program is committed to reducing risk and hazard impacts, both existing and new, in communities of high concern. The proposed thresholds and assessment methodologies are based on CARE program-based modeling. CARE modeling was used to highlight the importance of addressing elevated levels of toxic air contaminant concentrations experienced in some Bay Area communities through appropriate CEQA thresholds of significance.
- 13-2 Comment noted. Diesel particulate matter from mobile sources is the single greatest source community risk in the Bay Area.
- 13-3 The Air District supports infill development that occurs in a balanced, health-protective manner. The proposed risk and hazard thresholds were designed first to identify significant adverse health impacts from new source emissions and exposure to new receptors. The purpose of the proposed threshold levels is to ensure that no source creates, and no receptor endures, a significant adverse impact from any individual project, and that the total of all nearby directly emitted risk and hazard emissions is also not significantly adverse. See also Master Responses MR-2 and MR-2.
- 13-4 See comment response 13-3. In order reduce overall ambient levels of risk, programs need to be developed not only to address necessary reductions in new development through CEQA, but also to address reductions from existing sources that are not subject to CEQA. See also Master Response MR-1.
- 13-5 The primary purpose of thresholds of significance established for CEQA review is to identify adverse impacts to the environment, including where a new project proposes to attract people to an area that experiences adverse risk. See also Master Response MR-1.
- 13-6 The proposed thresholds of significance are not proposed as regulation. The thresholds are recommendations to Lead Agencies assessing the impacts of new development. It is the Lead Agency's discretion to use the recommended thresholds. Extensive information about the CARE program, definitions of impacted communities and supporting modeling and results can be found on the Air District's website (<http://www.baaqmd.gov/Divisions/Planning-and-Research/Planning-Programs-and-Initiatives/CARE-Program.aspx>) or by contacting CARE Program staff.





#14

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555 California Street, 10th Floor
San Francisco, California 94104-1513
P 415.392.4200 F 415.392.4250

Michael H. Zischke
415.262.5109
mzischke@coxcastle.com

File No. 54419

June 26, 2009

Greg Tholen
Bay Area Air Quality Management District
969 Ellis Street
San Francisco CA 94109

Re: Comments of the California Building Industry Association and the Home Builders Association of Northern California on the April 2009 Workshop Draft Options Report for CEQA Thresholds of Significance

Dear Mr. Tholen:

On behalf of the California Building Industry Association (CBIA) and the Home Builders Association of Northern California (HBANC), we appreciate the opportunity to provide comments on the District's Workshop Draft Options Report for California Environmental Quality Act Thresholds of Significance (the "Workshop Report" or "Report").

CBIA is a statewide trade association representing over 6,500 member companies involved in residential and light commercial construction including homebuilders, trade contractors, architects, engineers, designers, suppliers and other industry professionals. CBIA member companies account for over 80% of all new homes sold in California each year. Statewide in normal years, homebuilding activity contributes more than \$60 billion to the state's economy and generates 525,000 jobs.

HBANC is an association comprised of hundreds of homebuilders, developers, property owners, contractors, subcontractors, building trades, suppliers, engineers and design professionals and others involved in the business of providing housing in the Bay Area. HBANC's mission includes advocacy in support of housing opportunities for prospective homebuyers and renters, and legal representation of the interests of its members and the community in supporting the provision of housing opportunities affordable for all segments of the community and enforcement of California laws governing housing and residential development.

Both CBIA and HBANC have been proactive in working to develop CEQA standards that reflect California's goals to reduce greenhouse (GHG) gas emissions, pursuant to and consistent with AB 32, the California Global Warming Solutions Act. CBIA and HBANC have also both been active in developing and implementing energy conservation standards that will help to achieve the GHG reductions sought by AB 32, and both organizations also worked at great length to develop the final version of Senate Bill 375, to coordinate transportation planning, land use planning, and GHG reduction goals.

We understand that the Workshop Report is intended only to evaluate options for CEQA thresholds of significance within the District's jurisdiction and is not meant to serve as a set of draft thresholds. Accordingly, this comment letter provides general comments regarding the options outlined in the Report and the supporting analysis. We look forward to the opportunity to provide more specific comments after we review the District's proposed draft CEQA thresholds, which we understand the District intends to publish this summer.

Finally, CBIA and HBANC understand the District's desire to update its existing CEQA thresholds of significance. The existing 1999 CEQA Thresholds have provided critical guidance to lead agencies and developers in evaluating the impacts of development projects within the District's territory. As time has passed, however, the 1999 Thresholds have become dated. The District's efforts to update these existing thresholds is important, and CBIA and HBANC hope to work with the District to be sure that the update to the 1999 thresholds helps to provide workable guidance and certainty to both lead agencies and the project applicants for projects under review.

A. Introductory Comments

1. Appropriate Nature and Role of CEQA Thresholds

CBIA and HBANC are deeply concerned that the Workshop Report confuses the role of CEQA thresholds, and the role of air quality regulations. This is demonstrated both by language in the Workshop Report as well as the discussion in the accompanying Powerpoint prepared by District staff. It is critically important that the District refocus this effort on standards for determining CEQA significance, rather than policy driven regulatory objectives that appear to be a part of the Workshop Report and the work to date on developing the new thresholds.

The Workshop Report and the accompanying Powerpoint properly reflect the fact that the District's thresholds, when adopted, will be advisory guidelines for lead agencies to consider. It is critical, however, that these guidelines be drafted to serve as CEQA thresholds, not as regulatory mandates. The purpose of a CEQA threshold is to assist lead agencies in determining whether a project has a significant effect on the environment, which is defined as a "substantial or potentially substantial, adverse change in the environment." Public Resources Code § 21068. A threshold of significance is in turn defined in the CEQA Guidelines as "an identifiable quantitative, qualitative or performance level of a particular environmental effect." CEQA Guideline § 15064.7. Although air quality regulatory policy mandates may be relevant in determining significance, CEQA thresholds of significance are evaluative, and should not be viewed as a tool to achieve regulatory policy objectives. It is critical to keep regulations and policy objectives, and thresholds, separate and distinct.

14-1

This point is most dramatically illustrated by the Powerpoint prepared for the April public workshop. In setting forth the objectives of the Guidelines, nowhere is there a reference to determining significance in the CEQA process. Instead, the objectives of the Guidelines are presented as regulatory mandates to reduce emissions and support transit oriented smart growth and infill development. By beginning the Guidelines formulation process with such a regulatory and policy driven focus, particularly with respect to the proposals for GHG emissions, the District is embarking on an effort that is duplicative of, and likely inconsistent with, the substantial transportation and land use planning effort now being initiated as a result of the Legislature's passage of SB 375, as well as the work being carried out by the California Air Resources Board to implement AB 32. The objectives that are set forth by the District as the basis for these thresholds are in fact being carried out through the SB 375 and AB 32 processes. The District's process should be refocused on determining significance, and not in duplicating and possibly interfering with the AB 32 and SB 375 processes approved and directed by the Legislature.

The Workshop Report itself also confuses and conflates the role of CEQA Guidelines and the role of regulatory mandates. For instance, the Report discusses a significance threshold for GHG emissions (Plan-Based Approach Option 1C) that would establish a GHG emissions threshold, but still require projects whose GHG emissions are *under* that threshold to implement mitigation measures to reduce their GHG emissions by five percent. Requiring a reduction beyond a significance threshold is a regulatory policy function, and it is inappropriate to confuse the setting of regulatory policy with the development of CEQA significance threshold. CEQA imposes a duty on lead agencies to mitigate project impacts to a less-than-significant level, but does not provide any legal authority for requiring mitigating measures beyond that point. (Public Resources Code § 21004.). The fundamental question at issue in the development of air quality thresholds of significance should be: what level of emissions attributable to a given project would contribute, on either a project-level or a cumulative basis, to a significant impact to the environment?

2. Transparency of the Recommended Thresholds

CBIA and HBANC are concerned that the discussion in the Workshop Report poses serious transparency and workability issues that need to be resolved as the District works to translate these options into recommended thresholds that can be used by lead agencies and project applicants. Even though it does not purport to propose specific CEQA thresholds, the Report does attempt to explain the options for establishing such thresholds and the bases and analyses which underlie those options. Based on our review, several sections of the Report, particularly those concerning criteria air pollutants and precursors and GHG emissions, are not written in a manner which allows lead agencies subject to the District's jurisdiction, or homebuilders who will be submitting development applications with air quality analyses, to straightforwardly evaluate and comment on the practicality and workability of the proposed options. Lead agencies and homebuilders will be among the primary end-users of the new District CEQA thresholds, so it is essential that the development of these thresholds be undertaken in a manner that is clear and easily comprehensible, so that stakeholders can make meaningful and substantive comments upon the proposed thresholds.

To provide greater transparency, when the draft thresholds are released, the assumptions and the analyses that underlie the formulation of those thresholds should be clearly and plainly stated. If there is a reference to assumptions or analysis in an appendix, that information should be briefly summarized. Also, all of the underlying analysis and documents used or relied upon in formulating the thresholds should be listed and those materials should all be made available for public review, so that those materials can be evaluated in the process of commenting upon the proposed thresholds. The thresholds should also be set forth in a clear and understandable manner, so that both the regulated community and lead agencies can determine how the thresholds would be applied to the wide variety of development projects that are typically considered by lead agencies.

14-2

3. Workability of the Recommended Thresholds

The thresholds that are to be developed by the District must also be workable and clear, so that they may be interpreted and applied in practice by lead agency staff and project applicants. It is important for the District to recognize that these thresholds will be applied in a wide range of contexts. The thresholds will be applied generally in determining whether EIRs or negative declarations will be prepared for a wide variety of projects. Also, the thresholds will be applied in determining the significance of the impacts for a wide variety of projects, from large projects for which EIRs are prepared to medium size projects for which smaller EIRs or mitigated negative declarations are prepared, to much smaller projects for which short negative declarations or mitigated negative declarations are prepared. Ideally, a threshold should be capable of being applied by a project planner filling out an environmental information form on behalf of an applicant, or by lead agency staff filling out a CEQA initial study checklist on behalf of the lead agency, without the need for reference to extensive external sources. In sum, the thresholds must be user-friendly.

14-3

As one example of this, the discussion of Option 1A (the numeric-only threshold) for GHG emissions indicates that project applicants and lead agencies could use readily available computer models to estimate a project's GHG emissions. It would be a dramatic shift in CEQA practice for smaller projects, particularly the wide range of projects for which negative declarations and mitigated negative declarations are prepared, if lead agencies and applicants were routinely required to use a computer model, rather than some simpler methodology, to estimate emissions and determine air quality significance. A great number of negative declarations and mitigated negative declarations are now prepared for smaller residential housing projects (including many smaller projects in an infill context) without the use of a methodology that requires a computer program. We are concerned that this increases the cost and complexity of CEQA review for such smaller projects, and also requires the project planners and agency staff who typically prepare such reviews to engage independent consulting firms with access to computer models, when it is common practice for many negative declarations and mitigated negative declarations for smaller projects to be prepared without the need for a specialty consulting firm to estimate emissions.

4. Significant Overstatement of Anticipated Development

There is a fundamental flaw underlying the overall analysis in the Workshop Report, because the Report is founded on estimates of future development based on prior levels of development that are no longer being achieved. In fact, the current level of development and anticipated development has dropped precipitously. These estimates thus are not a realistic or sound basis upon which to base future projections of development and related emissions levels, or the formulation of appropriate thresholds.

To provide some examples, the Construction Industry Research Board reports indicate that, on a statewide basis, building permits were obtained for 64,752 total units in 2008, and 44,400 total units are projected for 2009. This compares to substantially higher levels of housing starts both in 1990 and for the years 2001 to 2007. In 1990, there were 164,313 total units statewide, and for 2001 through 2005, the number of statewide housing starts ranges from 148,757 to 212,960. Thus, on a statewide basis, there has been roughly a 75% reduction in the level of development since 1990, and roughly a two-thirds reduction in development when compared to figures from 2001 to 2007.

Likewise in the Bay Area, data from the Construction Industry Research Board show the number of permitting units dramatically declining over recent years. For the Bay Area, CIRB's April 22, 2009 report indicates there were 26,901 permitted in 2005, 24,308 permitted in 2006, 19,288 units permitted in 2007, and 12,558 permitted in 2008. Based on the statewide data, it is anticipated that the 2009 figure for the Bay Area will be substantially reduced.

The data on housing starts demonstrates that the projections in the Workshop Report substantially overstate the anticipated amount of development, and thus substantially overstate the anticipated amount of all pollutant emissions. The projections thus also overstate the amount of projected reduction that may be achieved via the application of the proposed thresholds.

In our view, using projections some twelve years out into the future as the basis for determining thresholds of significance is inherently flawed, because such projections are based on a look backwards and do not reflect the dynamism of the economy and real estate industry. Consider, for example, the significant shift in recent years towards more in-fill development and more transit oriented development. Any approach which bases future projections on past activity is going to miss the mark to some extent, because projections simply cannot anticipate the reaction of the real estate marketplace to the changing landscape of development constraints. Rather than using such projections as the foundation for the formulation of thresholds, we recommend generally that the District focus on developing a threshold that is tied to the achievement of air quality standards, rather than an approach based so fundamentally on development projections. For example, as discussed below in our comments regarding GHG emissions, the District should focus on developing a threshold that is tied to achievement of AB 32 standards.

14-4

B. Criteria Air Pollutants and Precursors

1. No Basis for CO and SO₂ Thresholds

The Workshop Report states at page 15 that the San Francisco Bay Area is currently in attainment with respect to CO and SO₂ emissions, and thus that operational thresholds were not evaluated because "it is not foreseeable that there would be any impacts that could cause a violation" of the California air standard for these pollutants. Given this statement, there is no basis for recommending the proposed thresholds set forth in Table 6 for these two pollutants.

14-5

2. Questionable Basis for Changing ROG and NOX Thresholds

We question whether there is an appropriate basis for reducing the ROG and NOX threshold of significance from their current level of 15 tons per year and 80 pounds per day. In brief, prior to changing the current threshold or the methodology upon it is based, the District should demonstrate that there is a problem with the current threshold, and the case for adopting a change has not been made in the Workshop Report. Instead, the purported justification for these reductions is an extensive and complicated analysis based on overstated development projections, as discussed above. The purported need for new thresholds also appears to be contradicted by the findings in the January 29 draft air conformity analysis for the Transportation 2035 plan proposed to be adopted by the Metropolitan Transportation Commission. That finding of conformity with current ozone standards would appear to indicate that reduced thresholds are not required to be implemented to achieve compliance with the applicable air quality standards.

14-6

C. GHG Emissions

1. Comments on the Regulatory Background

The regulatory background set forth in the Workshop Report should be revised and refocused on AB 32. First, this section, alone among the sections in the Workshop Report, includes a discussion of "scientific and regulatory justification." The justification for evaluating GHG emissions, however, should be based on governing state law, as it is the case with the other pollutants discussed in the Workshop Report. That governing state law is AB 32.

14-7

Also, the discussion of Executive Order S-3-05 should be deleted. That Executive Order applies to actions of state agencies, not to the type of actions that are considered by lead agencies in the Bay Area who will be applying the District's thresholds to evaluate land use projects.

Finally, the draft CEQA Guidelines relating to the analysis of GHG emissions have been forwarded by the Office of Planning and Research to the Natural Resources Agency and that Agency has announced that it will begin the formal rulemaking process shortly. Those draft Guidelines have been prepared at the direction of the Legislature, and will be binding on lead agencies statewide when adopted, including lead agencies in the Bay Area. The revised version of the Workshop Report should evaluate those guidelines and insure that the proposed thresholds for GHG emissions can be implemented consistent with those draft Guidelines.

2. Development Assumptions

As noted above, the rate of development assumed by the Workshop Report in the analysis of GHG emissions is substantially flawed, as it assumes that data concerning the rate of development over the last 10 years is as sound and appropriate basis for projecting future growth over the next 10 years. As stated above, the rate of development in recent years has declined precipitously. In fact, there is no credible economic forecast suggesting development will return to 2001 to 2008 levels in the foreseeable future.

14-8

3. Consistency of GHG Thresholds with State Legislation and Guidelines

The District's proposed CEQA thresholds for GHG emissions should be consistent with state legislation and upcoming state guidelines on this topic. In this area, the District is not writing on blank slate. With the passage of AB 32 and SB 375, the Legislature has both established overall GHG reduction goals and established a process of linking land use and transportation planning to achieve those goals. The District's thresholds should focus on determining the significance of the GHG emissions attributable to a project, but should not seek to implement land use regulatory directives that would be duplicative of, and likely inconsistent with, the process now being carried out pursuant to SB 375. Similarly, the formulation of statewide CEQA Guidelines for the consideration, evaluation and mitigation of GHG emissions is well along, with the submission of proposed guidelines from the Office of Planning and Research to the Natural Resources Agency, as directed by SB 97. The District should insure that its proposed thresholds are consistent with the statewide Guidelines, so that lead agencies and applicants are not placed in the untenable situation of not being able to satisfy state CEQA Guidelines while utilizing District thresholds.

14-9

In particular, the thresholds should be based on, and consistent with, the substantial substantive work that has been done by CARB in determining what California must do to comply with AB 32's mandates. In developing the AB 32 Scoping Plan, CARB has set forth several metrics that can and should be used in developing the thresholds that will be applied by lead agencies considering proposed new developments. In the Scoping Plan, AB 32's mandate has been converted into the metric of "million metric tons of carbon dioxide equivalent" or MMTCO₂E. CARB has determined that, without compliance with AB 32 and other emission reduction mandates, California's projected greenhouse gas emissions in 2020 would be 596 MMTCO₂E, and AB 32's goal of reducing emissions to 1990 levels can be measured against this "business as usual" 2020 scenario. CARB has also determined that California's 1990 emissions were 427 MMTCO₂E, so that California must reduce its emissions by 169 MMTCO₂E, or 28.3 per cent, below the 2020 business as usual scenario. As noted in the Draft Workshop Report, this reduction is comparable to approximately a 10 per cent reduction from average 2002-2004 emissions. To the extent lead agencies use numeric metrics to determine the significance of a project's contribution to global climate change or whether that contribution can be reduced to a level that is less than cumulatively considerable, these are the metrics that should be used, and they should thus provide the foundation for any numeric threshold that is developed by the District.

Based on this substantial work by CARB, the District could adopt a threshold which would require that projects demonstrate either a reduction of 28.3% below the 2020 business as usual scenario, or a reduction of 10% from average 2002-2004 emissions. This relatively simple threshold would have the benefit of being clearly based on an understandable set of calculations that have already been conducted and vetted by CARB, and such a threshold would also be flexible enough to be applied to the wide variety of projects that come before Bay Area lead agencies. Consistent with CEQA's provisions delegating to lead agencies the responsibility for determining the significance of impacts, such a threshold would provide guidance to lead agencies but also allow lead agencies the flexibility to tailor compliance with the thresholds to meet the particular situations that are presented by different projects in different areas.

This type of flexibility is critical to providing workable and achievable means of meeting AB 32's goals, because the effectiveness of various methods of reducing emissions varies from jurisdiction to jurisdiction. For example, in parts of the Bay Area, providing water is energy intensive, and reducing water usage may be a more effective means of reducing GHG emissions than other measures. Similarly, in some jurisdictions, facilitating public transit is an effective emissions reduction measure. In other jurisdictions or areas such measures will do little to conserve energy and reduce emissions. Lead agencies in different parts of the Bay Area are best suited to determine which mix of emissions reduction measures would be most effective, and a simple and clear threshold based upon the emissions reductions required to meet AB 32 goals would be a workable and flexible approach for Bay Area lead agencies and for homebuilders and other project applicants. In brief, providing this type of clear direction based on CARB's work to date, and allowing for a flexibility in applying the thresholds, helps to achieve the most bang for the emissions reduction buck.

4. Option 1: Plan Based Approach

The Workshop Report describes two main options for developing a threshold of significance for GHG emissions. The first option, referred to as the Plan-Based Approach, would set a significance threshold based on AB 32 GHG emission reduction goals, while taking into consideration emission reduction strategies outlined in CARB's Scoping Plan. Further, the Workshop Report concludes that, after taking into account the reductions in GHG emissions that would be obtained through implementation of CARB's Scoping Plan measures, the AB 32-mandate of achieving 1990-equivalent levels of GHG emissions could be achieved through a 2.8 percent reduction in "land-use-driven" emission sectors (i.e. those that are quantified for a project pursuant to a CEQA analysis [on-road passenger vehicles, commercial and residential natural gas, commercial and residential electricity consumption, and domestic wastewater treatment]."

a. CBIA and HBANC support the aspect of the Plan Based Approach that calculates the reductions that would be achieved through overall standards such as the tailpipe emission reduction standards in the Pavley bill (AB 1493), and then calculating the remaining amount of reductions required of development projects. However, it is unclear how the District calculated that applying a 2.8 percent reduction to those emissions sectors would "result in an equivalent fair share of 2.0 MMT/per year reductions in GHG emissions from new land use development." This should be clarified. In addition, the District should consider formulating the thresholds in a manner which allows a particular project to make an individualized determination of

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consistency with AB 32 and the required reductions, including the estimate of reductions due to measures such as the Pavley bill. For example, if the District's thresholds were to set forth an overall percentage reduction that could be applied against business as usual for all projects due to statewide regulations such as the Pavley bill, that would meet CEQA requirements, support achievement of AB 32 goals and create a workable threshold that would greatly assist in the preparation of negative declarations and mitigated negative declarations for smaller housing projects.

14-10

b. Option 1A, the Numeric-Only Threshold (Bright Line) option, would ask if project-generated GHG emissions were greater than the "mass emission level." If so, the impact would be considered significant and unavoidable. The Workshop Report states that the "mass emissions level" could be "chosen based on the mitigation effectiveness anticipated to be achieved per project to meet the aggregate emission reductions of 2.0 MMT needed in the District by 2020." This approach epitomizes what appears to be the District's conflation of its role as a regulatory agency and as an air quality regulatory agency attempting to establish a CEQA threshold of significance. This is also substantially more complicated than a simple threshold based on the calculations already performed by CARB of the emissions reductions needed to meet AB 32 goals.

c. At the same time that Option 1A is unnecessarily complicated, it is also of more limited utility because it is suggested as only a screening threshold. As the discussion on page 25 of the Option Report indicates, under the application of this threshold, a certain percentage of projects would be above the significance threshold and would thus have to implement feasible mitigation measures to meet their CEQA obligations. This type of screening threshold can only be used at the initial stage of determining whether an impact is potentially significant. In contrast, the District's existing thresholds have broader utility and have been used both in determining potential significance and also in determining the significance of projects following mitigation. Basing a threshold on the percentage reductions needed to meet AB 32 goals, as already calculated by CARB, would provide a threshold of broader utility, that could be used both at the beginning of the CEQA process, as well as when lead agencies are making determinations at the conclusion of the process about whether impacts have been mitigated to a less than significant level.

14-11

d. The draft staff report prepared by the San Joaquin Valley Air Pollution Control District dated June 30 ("Climate Change Action Plan: Addressing Greenhouse Gas Emissions Under the California Environmental Quality Act") evaluates an approach similar to Option 1A and identifies some of the substantial problems with the approach. As that report notes at page 49, without supporting scientific information, establishing a mass emission level as a trigger for CEQA review and mitigation requirements may be arbitrary, and it is not clear that CEQA authorizes the imposition of mitigation on larger projects to compensate for emissions that are not reduced by smaller projects. This report also proposes a threshold based on performance standards tied to AB 32 goals and the work CARB has already performed in calculating the type of emissions reduction needed to meet those goals.

e. Option 1B, the Performance Standards-Only Threshold, would require that all CEQA projects not categorically or statutorily exempt from CEQA achieve a

14-12

minimum 24 percent reduction in GHG emissions. This approach, unlike Option 1A, would not give any credit to a project for emissions reductions achieved through implementation of the Scoping Plan, as it would assume those measures are part of business as usual, or baseline calculations, for the project. Given that implementation of the Scoping Plan is part of the reductions that will be implemented to achieve AB 32's goals, it is inappropriate to exclude those reductions from the calculations applicable to any particular project. This would also create a significance threshold that is, essentially, a constantly moving target, without any evidence to demonstrate that the target would remain valid under CEQA.

14-12

f. Finally, Option 1C, a combination of Performance Standards and Numeric Threshold, would require that projects which generate GHG emissions over a certain numeric threshold be required to mitigate their emissions, while those falling below that threshold would still have to implement a prescribed set of performance standards to achieve a 5 percent emissions reduction. Again, this approach conflates regulatory goals concerning the reduction of GHG emissions with CEQA's requirement that potentially significant impacts be evaluated, and mitigated when it is feasible to do so. CEQA provides no authority for lead agencies to impose mitigation measures on projects that *will not* result in significant impacts.

14-13

g. In sum, there are workability and flexibility problems for each of the potential options evaluated in the Options Report. As indicated above, we believe it makes more sense for the District to develop GHG significance thresholds based on statewide GHG reduction goals and the scientific analysis on which these goals are based. The thresholds should also reflect the work that has already been performed by CARB and employ the workable metrics that CARB has developed as part of its analysis. An approach based on performance standards keyed to AB 32, such as the proposed threshold now being considered by the San Joaquin Valley APCD, would be both more workable and more effective.

14-10
cont'd
(see pg. 8-9)

h. Given that the development of thresholds of significance for GHG emissions is still evolving, and that the development of California policy for reducing GHG emissions is still evolving through the implementation of AB 32 and SB 375, we believe that a CEQA GHG emissions threshold must be based on the work that been done and the underlying science on which that work is based. We expect that such a threshold will be an interim threshold, as the draft Workshop Report recognizes, and will be further developed as the science and policy evolves.

D. Toxic Air Contaminants

1. New Receptor Siting

We appreciate the District's careful admonition in Section 2.3.5.2 that CEQA is concerned only with physical changes caused by a project which implicate existing sources of TACs. We also appreciate the Workshop Report's acknowledgement that there needs to be a thoughtful balance between prioritizing high density transit oriented development to achieve reductions in criteria air pollutants and GHGs and siting sensitive receptors near high concentrations of TACs.

14-14

2. Comments on Option 1

The Report's discussion of creating a significance threshold for project-generated area and mobile source TACs is a source of substantial concern. The Report suggests that the District could impose a requirement of the installation of Toxic Best Available Control Technology (TBACT) on project-generated area and mobile source TAC emissions, rather than only on stationary-source TAC emissions as it does now. The Report further states that "the District would identify a list of TBP [Toxic Best Practices] for non-stationary sources to implement if they are above the one in a million [the current stationary-source threshold] threshold."

First, this discussion appears to be a proposal for a new District regulation that would vastly expand the District's regulatory jurisdiction with regard to non-stationary source emissions of TACs, rather than simply a discussion of a CEQA significance threshold for TACs. Consistent with our general comments at the beginning of this letter, this approach inappropriately crosses the line between the District's regulatory rulemaking role and its voluntary decision to adopt CEQA thresholds of significance.

Second, the Report contains no discussion as to how a project's area and mobile TAC emissions would be measured, or how the project's TACs could be addressed through the installation of TBACT – an approach that was developed for *stationary* sources. We would oppose any effort to use the District's CEQA thresholds of significance to regulate area and mobile-source emissions related to development projects as though they were petroleum refineries, or any other classic stationary TAC source.

3. Comments on Option 2

Option 2 proposes to establish a different threshold for TAC emissions in areas subject to the District's Community Air Risk Evaluation program. Setting different thresholds for different areas is a dramatic departure from existing CEQA practice both with respect to air quality impacts and environmental impacts in general. CEQA's existing provisions regarding the analysis and mitigation of cumulative impacts provide the appropriate mechanism for dealing with situations where an area is disproportionately adversely affected by a particular pollutant. Under the cumulative impact regime, a new TAC source in such an area would be required to mitigate its contribution to the cumulative impact, or if the impact cannot be mitigated, the project would be determined to have a significant and unavoidable impact. This existing and well established mechanism should be applied in areas where communities are cumulatively impacted from TAC emissions, rather than creating a separate and different threshold.

Evaluating whether a different air quality standard should be applied in certain areas is a policy and regulatory choice that should be expressly evaluated as such. Absent a legislative or regulatory determination that different air standards are appropriate in different areas, it is inappropriate, and inconsistent with existing CEQA practice, to recommend a different threshold be applied in certain areas or communities.

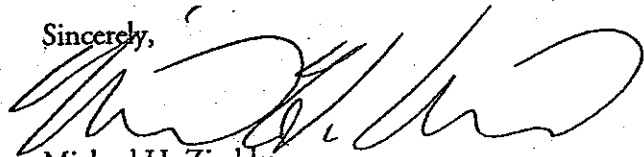
14-15

14-16

Greg Tholen
June 26, 2009
Page 12

CBIA and HBANC very much appreciate the opportunity to provide these comments, and look forward to working with District staff in the further development and formulation of effective and workable CEQA thresholds of significance.

Sincerely,



Michael H. Zischke

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cc: Richard Lyon, California Building Industry Association
Paul Campos, Home Builders Association of Northern California

Comment Letter #: 14

Date: June 26, 2009

From: Michael H. Zischke, Cox Castle & Nicholson LLP, on behalf of the California Building Industry Association and the Home Builders Association of Northern California

Response to Comments:

- 14-1 Staff is not intending the proposed thresholds as regulations nor as an exercise of the District's regulatory authority to impose air pollution control requirements, and the proposed thresholds would not impose any regulatory requirements that would require specific sources to implement specific emissions controls. To the contrary, the proposed thresholds are intended to support the important policies underlying CEQA as established by the Legislature and the Resources agency. These policies include ensuring that lead agencies evaluate projects' environmental impacts and avoid approving projects with significant adverse impacts; and encouraging expert agencies to develop thresholds of significance to help lead agencies in making significance determinations. It is these policy objectives of CEQA that the District furthers in adopting thresholds of significance. Staff therefore disagree that adopting the proposed thresholds would be an unauthorized exercise of regulatory authority, and believe instead that doing so would be an appropriate means to further CEQA's environmental goals. In keeping with these principles, staff do agree with the commenters that CEQA thresholds need to be consistent with the concept of significance under CEQA, which provides that mitigation can be imposed only where impacts are above a level of significance. Staff are therefore not proposing any thresholds that would require mitigation for impacts that are found to be less-than-significant.
- 14-2 Staff has provided a great deal of additional explanation and analysis since this comment letter was submitted to help affected entities and the public understand the basis for the proposed thresholds. Staff believes that this additional work has provided the further explanation that these commenters requested.
- 14-3 In the revised CEQA Guidelines staff has included many screening tables and guidance on estimating a project's emissions and mitigating significant impacts. The screening criteria will allow small projects to easily that they are below the threshold and require no further analysis. Where further analysis may be necessary, staff is providing much of the upfront modeling and analysis to relieve Lead Agency staff and project proponents of this burden. The recommended analytical tools are readily available, most often at no cost for the user, and have been in use for many years. For GHG analyses, staff recommends using the URBEMIS model, which has been used by practitioners for decades, and staff is developing easily understood guidance to include GHG emission estimates not yet included in the URBEMIS model. For risk and hazard analyses, the Air District intends to provide tables with screening analysis and risk modeling from toxic air emission sources in the Bay Area to assist lead agencies in evaluating community risk and hazard as part of the CEQA Guidelines.
- 14-4 The development projections used in BAAQMD's TOS sensitivity analysis were based on future population and employment growth projections from the California Department of Finance and Economic Development Department, and were not based on past development trends, as the commenter asserts. The dataset obtained from the CEQA projects database is based on past development projects, but was only used to derive the types and size distribution of projects that were subject to CEQA in BAAQMD's jurisdiction (e.g., thousand square feet of retail proposed under a single

development project, number of residential dwelling units proposed under a single development project). BAAQMD acknowledges that historical data does not necessarily represent future development project attributes, but absent any other type of dataset, BAAQMD felt past project size distributions were appropriate to use for this exercise. The project size and type frequency distributions were used to allocate projected development (which was treated independently of past development) into representative project categories or "bins" (e.g., 1-50,000 square feet of retail, 50,001-100,000 square feet of retail, etc.) that were used in the TOS sensitivity analysis. BAAQMD's approach to development projections was based on DOF and EDD data, which has a good track record of projecting demographic growth in California. Because DOF and EDD are reliable sources for growth projection data, BAAQMD does not anticipate that development, air pollutant emissions, or emissions reduction potential was substantially overestimated. The commenter's assertion that projections were based on looking backwards is inaccurate. Please refer to Appendix D of the November 2009 version of the *Draft Air Quality Guidelines*.

- 14-5 Staff agrees with this comment that, as an overall regional matter, CO and SO₂ emissions are not a significant cumulative-impact concern because the Bay Area has been in compliance with the NAAQS for these pollutants for some time. Staff is therefore not proposing any thresholds based on the NAAQS for these pollutants.

Staff would note that CO can be a localized concern because certain projects can contribute to localized CO "hotspots", however, even where CO is not a problem on a broader, regional scale. This situation is reflected in the proposed thresholds for local CO.

- 14-6 The proposed ROG and NO_x thresholds are based on the threshold level above which offsets are required for stationary sources under District regulation 2-2-302. The offsets trigger level used to be 15 tons per year at the time the District's current thresholds were adopted, but it has been reduced to 10 tons per year. Staff is proposing to reduce the CEQA significance thresholds for ROG and NO_x consistent with the change in the offset trigger level.

- 14-7 Staff agrees with the commenters that the greenhouse gas thresholds should be based on AB32. The proposed thresholds are based on the AB32 greenhouse gas reductions target, and would ensure that emissions from new projects will be consistent with achieving the AB32 goals. Staff disagree that EO S-3-05 should not be included in the discussion of the regulatory background, as it is an important element on the regulatory landscape that lead agencies should be aware of. Furthermore, the EO S-3-05 emissions reduction trajectory is consistent with the AB32 2020 reduction goal of reaching 1990 emissions levels by that date, and so thresholds based on achieving the AB32 goal will also be consistent with EO S-3-05. Finally, staff agrees that the thresholds should be consistent with the proposed OPR/Resource Agency amendments to the state CEQA guidelines. The proposed thresholds are consistent with those proposed amendments, and would provide lead agencies with a tool for determining significance when evaluating greenhouse gas impacts under the amendments when they are adopted.

- 14-8 See response 14-4 above regarding the basis for the District's development estimates.

- 14-9 Staff agree that the thresholds should be consistent and not conflict with AB32, SB375, and the proposed OPR/Resources Agency amendments to the state CEQA guidelines. The proposed thresholds are consistent with and do not conflict with any of those statewide efforts to address greenhouse gas

concerns under CEQA. With respect to achieving the AB32 goal by establishing a threshold that requires individual projects to demonstrate a certain percentage reduction based on calculations by CARB, staff believes that there is not necessarily one and only one appropriate and supportable approach to determining significance under CEQA. Staff believes that there may well be merits to such an approach, and in fact considered a percentage-reduction threshold earlier in the threshold development process. Staff has ultimately concluded that the approach it has proposed – using alternatively a bright-line threshold of 1,100 MT/yr or a greenhouse-gas efficiency metric of 4.6 MT/yr per service population – is more appropriate than a percentage-reduction approach.

- 14-10 The District's analysis of the percentage additional reduction and mass of reductions (MMT/yr) that would be needed from new land-use projects to achieve the AB32 goals has changed slightly from when this comment was submitted. The District's refined analysis shows that an additional 2.3% reduction, or 1.6 MMT/yr, is necessary. This revised analysis was summarized in the District's November 2, 2009 thresholds report and supporting documentation. With respect to allowing projects to make an individualized determination of consistency with AB32, staff agrees that consistency with AB32 should be the touchstone of determining significance under CEQA, but has concluded that its proposed approach would be preferable to requiring a certain percentage emissions reduction as described in response to the previous comment.
- 14-11 Staff disagrees that the use of a "bright-line" numeric emissions threshold would establish a substantive regulation instead of a measure of CEQA significance. The threshold will not require any source to implement any particular control technology as a result of District regulatory authority. To the contrary, the threshold will provide a means for lead agencies to evaluate the significance of a project's emissions, based on the substantial evidence the District has developed that a significance threshold at this level will help provide for, and be consistent with, achieving the AB32 goal. Developing such thresholds is encouraged by Section 15064.7 of the state CEQA Guidelines. Staff also disagrees that the threshold would be used only as a screening measure to determine whether mitigation would be required. The threshold would also apply to determine significance after mitigation is imposed, and projects that cannot reduce their emissions below 1,100 MT/yr would be considered significant (unless the alternative 4.6 MT/yr per service population is used and the project's emissions are below that level). Staff also disagrees that the establishment of this bright-line emissions level would be arbitrary. To the contrary, the level is based on substantial evidence and detailed evaluation and calculations showing that the threshold is based on achieving the AB32 goal. Finally, staff disagrees with the commenters' assertion that establishing a bright-line threshold in a cumulative-impact context such as global climate change is impermissible under CEQA because it would allow smaller projects to avoid implementing mitigation at the expense of larger projects which may require additional mitigation to ensure that the cumulative problem is adequately addressed. If this were the case under CEQA, there could be no level below which an incremental contribution to the cumulative problem would be less than "cumulatively considerable", because any time such a threshold is used it necessarily exempts smaller projects from mitigation requirements leaving more work to be done by the larger projects to address the cumulative problem. And that is clearly not the law under CEQA, as the CEQA guidelines expressly provide for establishing levels below which a small project's contribution is less than "cumulatively considerable" and therefore less than significant. (See CEQA Guidelines §§ 15064(h), 15064.7.) Staff therefore disagree that providing a bright-line level below which projects will be less-than-significant and will not require mitigation is prohibited by CEQA, as long as it is supported by substantial evidence as the proposed thresholds are here.

- 14-12 Staff is no longer considering such an option, and it is not part of the proposed thresholds.
- 14-13 Staff is no longer considering such an option, and it is not part of the proposed thresholds.
- 14-14 The District acknowledges the comments and appreciates the feedback.
- 14-15 The proposed thresholds of significance are not regulations and do not require any projects to implement any particular pollution control measures. To the contrary, the thresholds are tools for lead agencies to use in complying with their CEQA responsibility to analyze the significance of projects before them for approval. CEQA clearly applies to all types of environmental impacts, including emissions from area and mobile sources as well as stationary sources, and so it is appropriate for the District to provide guidance through its thresholds of significance for lead agencies evaluating area and mobile source emissions for projects that will involve such emissions. Furthermore, staff's current proposal does not include any requirement that sources implement TBACT. The Air District intends to provide tables with screening analysis and risk modeling from toxic air emission sources in the Bay Area to assist lead agencies in evaluating community risk and hazard as part of the CEQA Guidelines. In addition, the revised CEQA Guidelines reference the CAPCOA *Health Risk Assessments for Proposed Land Use Projects*.
- 14-16 Staff agrees that the problem of certain areas being disproportionately adversely impacted should be addressed as a cumulative impacts problem. Staff has revised the proposed thresholds to do so. Under staff's current proposal, areas that are disproportionately burdened with TAC emissions sources in the local vicinity will benefit from a cumulative analysis threshold that will require projects to evaluate the cumulative impact of all such sources within a 1,000 foot radius of the proposed project. This revised approach will provide a tool for lead agencies to carefully consider whether to site new sources or receptors in disproportionately burdened areas, without establishing different health risk standards for different segments of the population.

From: David Vintze
To: Jennifer Schulte;
CC: Shari Libicki; Gregory Tholen;
Subject: RE: GHG CEQA Thresholds Comments on Analysis
Date: Wednesday, July 01, 2009 11:54:01 AM
Attachments:

Thanks Jennifer – hope your recovery from the accident is progressing well. We will review your comments and may call you with questions or comments of our own. Dave

From: Jennifer Schulte [mailto:JSchulte@Environcorp.com]
Sent: Wednesday, July 01, 2009 11:43 AM
To: David Vintze
Cc: Shari Libicki
Subject: GHG CEQA Thresholds Comments on Analysis

David,

As we discussed in our meeting, we reviewed Bay Area Air Quality Management District's (BAAQMD) April 2009 Workshop Draft Options Report California Environmental Quality Act Thresholds of Significance. In particular, ENVIRON reviewed the GHG Emissions Analyses and Options for CEQA Thresholds. In this email, we briefly highlight areas where the GHG emissions analyses might be reconsidered or further elaborated on to explain the rationale behind the calculations. Attached is a sample list of some project design features that you may want to consider. This list is a bit old and we will send you an updated list of suggested project design features later this month. Please feel free to contact Shari or myself if you have any questions.

Construction Emissions

It is unclear what emissions are all included in this threshold (section 2.2.2 of the report). Based on the emissions inventory a total of 1.5 million metric tonnes (MMT) of carbon dioxide equivalent emissions in 1990 and 2.9 MMT

151

in 2020 are attributed to construction emissions. This is made up of off-road construction equipment and 5% of the on-road heavy-duty trucks to account for construction debris and material hauling trips. It doesn't appear that the haul trips are removed from operational Heavy Duty transportation emissions in the operational GHG emissions. This possible double counting should be clarified. It does not appear to also account for worker commuting trips associated with construction projects.

15-1

Operational GHG Emissions

The draft report attempts to account for the San Francisco Bay Area Air Basin (SFBAAB) contribution of GHG emissions attributable to land use according to ARB's 2020 Business as Usual emissions used in the AB32 Scoping Plan. In the text on page 21, emission sectors related to land use are described. This description includes water consumption, but the water sector is not seen in the rest of the document including supporting tables.

15-2

It appears that all emissions for on-road vehicles are included in the emissions attributed to the land use sector. Is it appropriate to attribute all heavy duty vehicle emissions to land use rather than attribute a portion to the goods movement sector? Also, as noted above the trips associated with construction does not appear to be removed.

It appears that all electricity generated is attributed to the land use sector. It is known that specific industries and water supply and conveyance use a large portion of the electricity. Should the electricity attributable to these sectors be excluded from the electricity attributed to the land use sector?

15-3

The SFBAAB accounts for ~20% of the total state population. However, the ratio of emissions in the various sectors between the state and SFBAAB does not always match this as expected. Specifically the natural gas fuel use for residential and commercial buildings is substantially higher than 20%, coming in at approximately 33%.

15-4

The selection of anticipated early action regulations is unclear. We are unclear as to why certain scoping plan measures were excluded from consideration. Some of these measures are:

- Heavy Duty vehicle aerodynamic efficiency
- Heavy Duty and Medium Heavy Duty vehicle hybridization
- Regional Transportation (SB375)
- Various passenger vehicle efficiency measures such as tire inflation
- Million Solar Roofs program

154

Several scoping plan measures were incorporated into an analysis to determine the additional reductions in GHG emissions for the land use sector that could be addressed through CEQA thresholds. The reduction was first determined for the statewide inventory and the same overall percentage reduction was applied to the local inventory. The distribution of sector emissions is not the same between the state and local inventories, thus the same percentages may not be applicable to use. The reduction needed for the SFB AAB to reach 1990 levels for the land use-related sectors is 15.2% instead of the 23.9% needed statewide. If the 21.1% reduction from scoping plan measures is applied to the SFBAAB inventory there is no gap remaining. Based on the differences in reduction needed to reach 1990 levels, it suggests that the scoping plan measures considered may apply differently to the SFBAAB inventory. This appears to be due to differences in percent breakdown of emissions for the different categories. Since reductions due to scoping plan measures are not the same across the sectors, the different distribution of emissions across the sectors will impact the overall percentage reduction due to scoping plan measures. Thus the gap in measures may be different than the gap in the statewide inventory. It is suggested that the percentages and gap should be determined specifically for the SFBAAB inventory using the scoping plan measures selected. For instance, as it is currently in the report, the local inventory uses a larger percentage of fuel for commercial and residential than the statewide inventory. Since the reduction is small for this category the reduction may be estimated incorrectly. Also the local inventory has less heavy duty truck emissions which will also lower the gap.

In applying the reduction for renewable portfolio standard, should the reduction be adjusted to account for the portion of renewable power the SFBAAB already uses, which is a higher percentage than most of the state?

The analysis included reductions attributable to the Green Building Code (GBC) which is not a specific measure of the scoping plan, but overlaps with other measures such as energy efficiency improvements (CR-1 and CR-2). It is unclear how the values attributable to the GBC was determined and applied to the emissions inventories. Table 11 shows percentage reductions in GHG emissions for residential and non-residential building energy use of electricity and natural gas. It is unclear how these percentages were determined based on information in the scoping plan or GBC.

A portion of the electricity was determined to be part of generation while another portion was attributable to residential and non-residential buildings. How was the assignment of residential and commercial electricity use determined? Does this account for energy use by industrial sources or water supply and conveyance?

The specific assumptions of the GBC should be outlined so that it is clear what project design features are still available that would go beyond the GBC as suggested in option 1B of GHG significance thresholds. Are some of the other measures listed in the scoping plan but not considered in this analysis appropriate to include in GHG emission inventories prepared for CEQA if they can be proven enforceable?

There are a few number selections that we are not sure that we understand. For example, Table 11 and Table 12 list different electricity percentages. In addition, the emission factor used in Appendix E for electricity is based on the statewide value rather than the local emission factor which is ~25% lower. It is unclear why the statewide emission factor was selected instead of the SFBAAB specific electricity emission factor.

Jennifer Schulte, Ph.D. | Senior Associate

ENVIRON | www.vironcorp.com

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V: 510.420.2511 | F: 510.655.9517 | jschulte@vironcorp.com

154

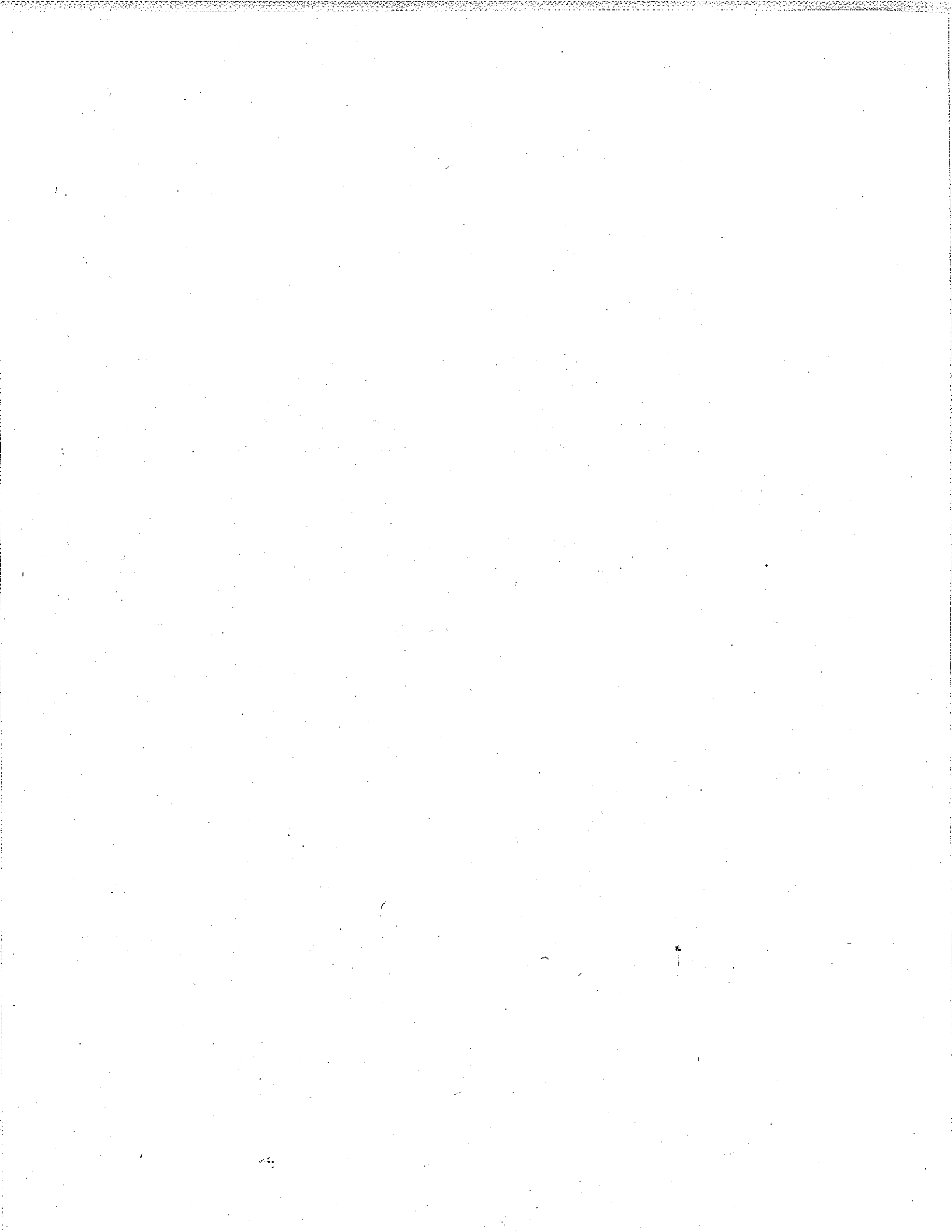
Comment Letter #: 15

Date: July 1, 2009

From: Jennifer Schulte, Senior Associate, Principal, Environ

Response to Comments:

- 15-1 The GHG threshold for construction referred to in this comment has been omitted from the *Proposed Thresholds of Significance* report (November 2, 2009). See Master Response MR-3 for a full response on the assumptions used in the GHG thresholds.
- 15-2 See Master Response MR-3 for a full response on the emission assumptions used in the GHG thresholds.
- 15-3 The updated CEQA Guidelines will provide direction on how lead agencies should calculate GHG emissions from indirect sources, including electricity use and water conveyance.
- 15-4 See Master Response MR-3.



CEQA Standards for Clean Construction

All CEQA projects should meet the following standards for construction to minimize air quality, public health and climate impacts.

Construction Equipment

Equipment¹ greater than 25 horsepower must:

- (1) Meet current emission standards² *and*.
- (2) Be equipped with Best Available Control Technology (BACT)³ for emissions reductions of PM and NOx, *or*
- (3) Use an alternative fuel.⁴

Diesel Trucks

On-road trucks used at construction sites, such as dump trucks, must:

- (1) Meet current emission standards, *or*
- (2) Be equipped with BACT⁵ for emissions reductions of PM and NOx, *and*
- (3) Any trucks hauling materials such as debris or fill, must be fully covered while operating off-site (i.e. in transit to or from the site).

Generators

Where access to the power grid is limited, on-site generators must:

- (1) Meet the equivalent current off-road standards for NOx, *and*
- (2) Meet a 0.01 gram per brake-horsepower-hour standard for PM, *or*
- (3) Be equipped with Best Available Control Technology (BACT) for emissions reductions of PM.

Special Precautions Near Sensitive Sites

All equipment operating on construction sites within 1,000 feet of a sensitive receptor site (such as schools, daycares, playgrounds and hospitals)⁶ would either:

- (1) Meet US EPA Tier IV emission standards *or*
- (2) Install ARB Verified "Level 3" controls (85% or better PM reductions), *and*
- (3) Notify each of those sites of the project, in writing, at least 30 days before construction activities begin.⁷

¹ Equipment refers to vehicles such as excavators, backhoes, bulldozers propelled by an off-road diesel internal combustion engine.

² These standards are described in Division 3 Chapter 9, Article 4, Section 2423(b)(1)(A) of Title 13 of the California Code of Regulations, as amended. An explanation of current and past engine standards can also be accessed at <http://www.dieselnet.com/standards/>. Currently all new equipment are meeting the US EPA Tier II standards and most equipment also meets Tier III standards (all 100HP to 750HP equipment). Note that Tier IV standards would automatically meet the BACT requirement.

³ Here BACT refers to the "Most effective verified diesel emission control strategy" (VDECS) which is a device, system or strategy that is verified pursuant to Division 3 Chapter 14 of Title 13 of the California Code of Regulations to achieve the highest level of pollution control from an off-road vehicle.

⁴ This could include natural gas or biodiesel, which is a fuel comprised of mono-alkyl esters of long chain fatty acids derived from vegetable oils or animal fats, meeting the requirements of ASTM D 6751. However, biodiesel must be proven to be sourced from sustainable feedstocks including waste grease, fats or oil and under certain circumstances, farmed oils that can be proven to be sustainable.

⁵ Here BACT also refers to most effective VDECS as defined by the California Air Resources Board (CARB).

⁶ Sensitive sites are defined and described in the CARB Air Quality and Land Use Planning Guidelines, 2005; <http://www.arb.ca.gov/ch/landuse.htm>.

16-1

Recommendations to Limit Global Warming Pollution from Construction:

- (1) Prohibit all non-essential idling of equipment and vehicles onsite.
- (2) Use the lowest carbon fuels possible (such as biodiesel or other alternative fuels).
- (3) Electrify operations to the extent possible. Where access to the power grid is possible, this should be established instead of using stationary or mobile power generators. All cranes, forklifts and equipment that can be electrified, should be.
- (4) All constructed buildings should meet the Leadership in Energy and Environmental Design (LEED) Green Building Rating System™ including the use of locally sourced materials, where possible.⁸

⁷ Notification shall include the name of the project, location, extent (acreage, number of pieces of equipment operating and duration), any special considerations (such as contaminated waste removal or other hazards), and contact information for a community liaison who can answer any questions.

⁸ For information on LEED standards, see the U.S. Green Building Council:
<http://www.usgbc.org/DisplayPage.aspx?CategoryID=19>

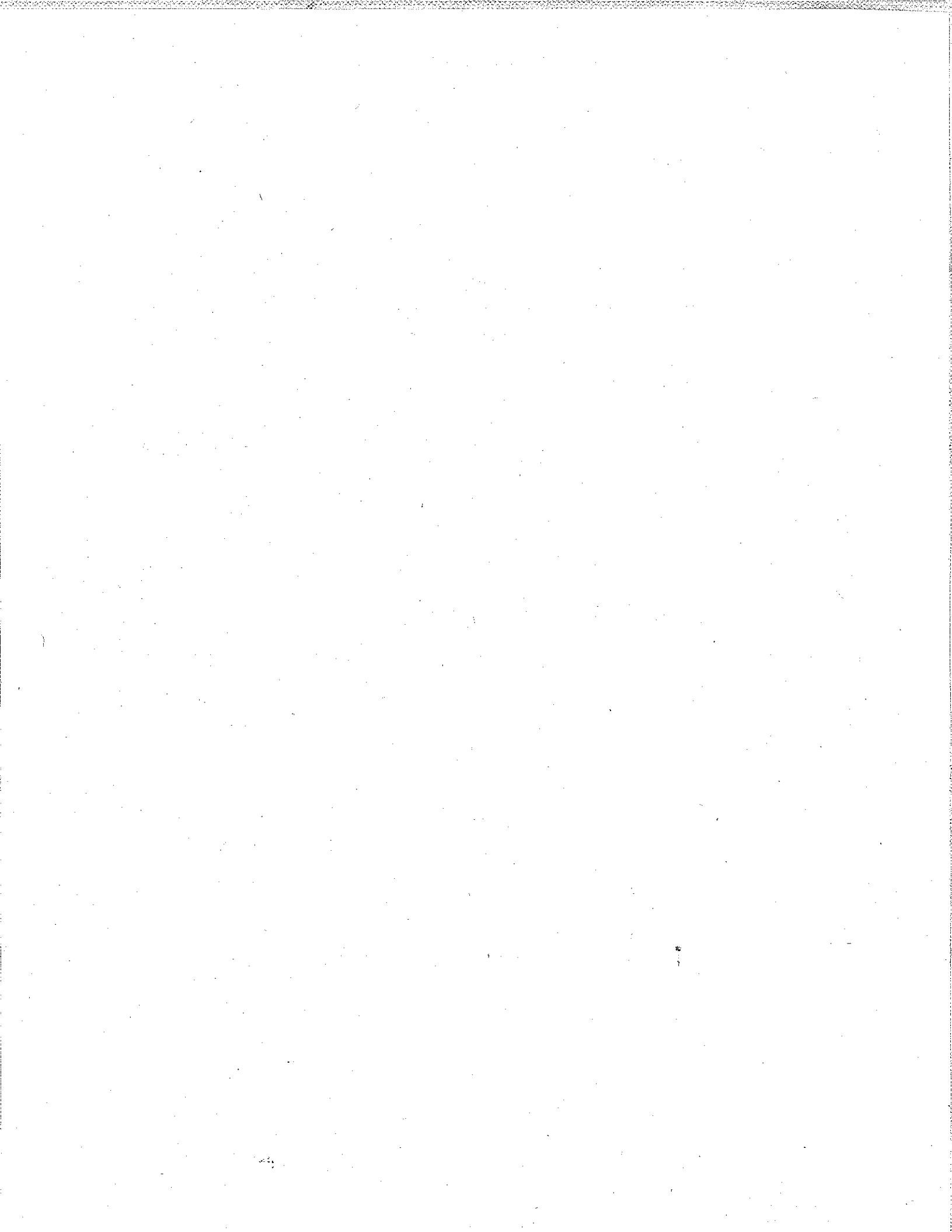
Comment Letter #: 16

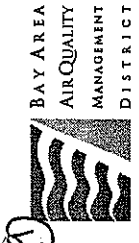
Date: September 8, 2009

From: Natural Resources Defense Council

Response to Comments:

- 16-1 The Air District will consider NRDC's CEQA Standards for Clean Construction in the CEQA Guidelines best management practices for construction activities. Most, if not all, suggested reduction measures have been included as recommended mitigation measures in the revised CEQA Guidelines.





CEQA Guidelines Update Comment Card

9/09

We need your input!

The Bay Area Air Quality Management District is updating its CEQA Guidelines and is seeking your input. The CEQA Guidelines Update will review, revise, and develop significance thresholds, assessment methodologies, and mitigation strategies for criteria pollutants, air toxics, odors, and greenhouse gas emissions.

CONTACT INFORMATION (Optional):

Name: F. Cohn
Affiliation: SFATF/BAEHC
Email: baren.cohn@sfsfph.org

① What is justification for 500 ft. overlay (rather than 1000 ft.) overlay on each side of freeway + high volume roadways

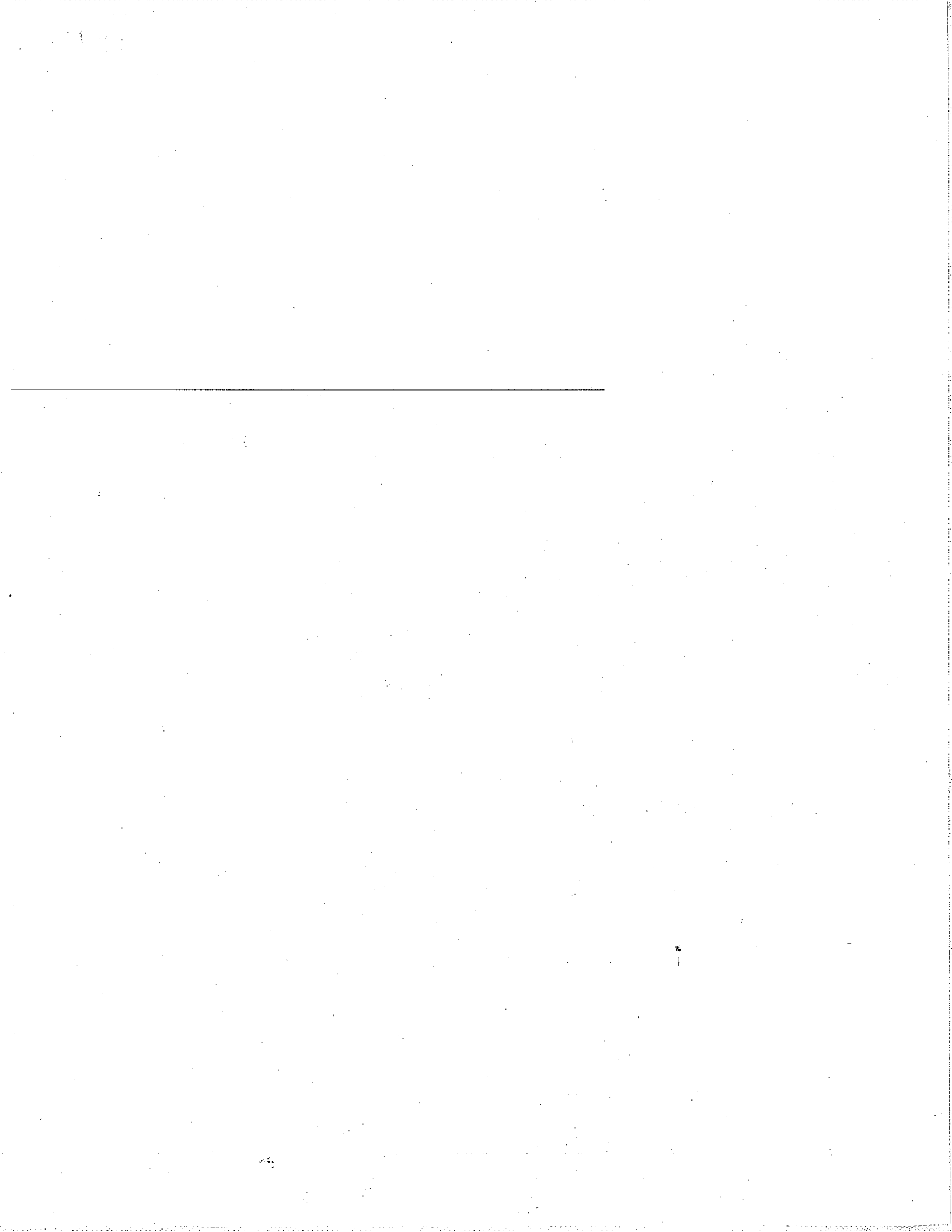
when you cite the studies supporting 1000 ft. radius in other parts of proposal?

② What types of odors are in complaint database and what data shows 500 ft. drop in odor perception for those specific odors (eg. sulfurous odors, combustion odors)

③ Keep pursuing cumulative impact guidance / Signif. Criteria,

④ Add screening table to slideshow + presentation →

#17



Place
Stamp
Here

Attn: Greg Tholen, Principal Planner
Bay Area Air Quality Management District
939 Ellis Street
San Francisco, CA 94109

- ⑤ What about occupancy ratio with parking spaces as a CEQA guidance → to reduce overall PM from vehicles
- ⑥ Reinforce reduced risks from construction equipment, partic. in high impact country

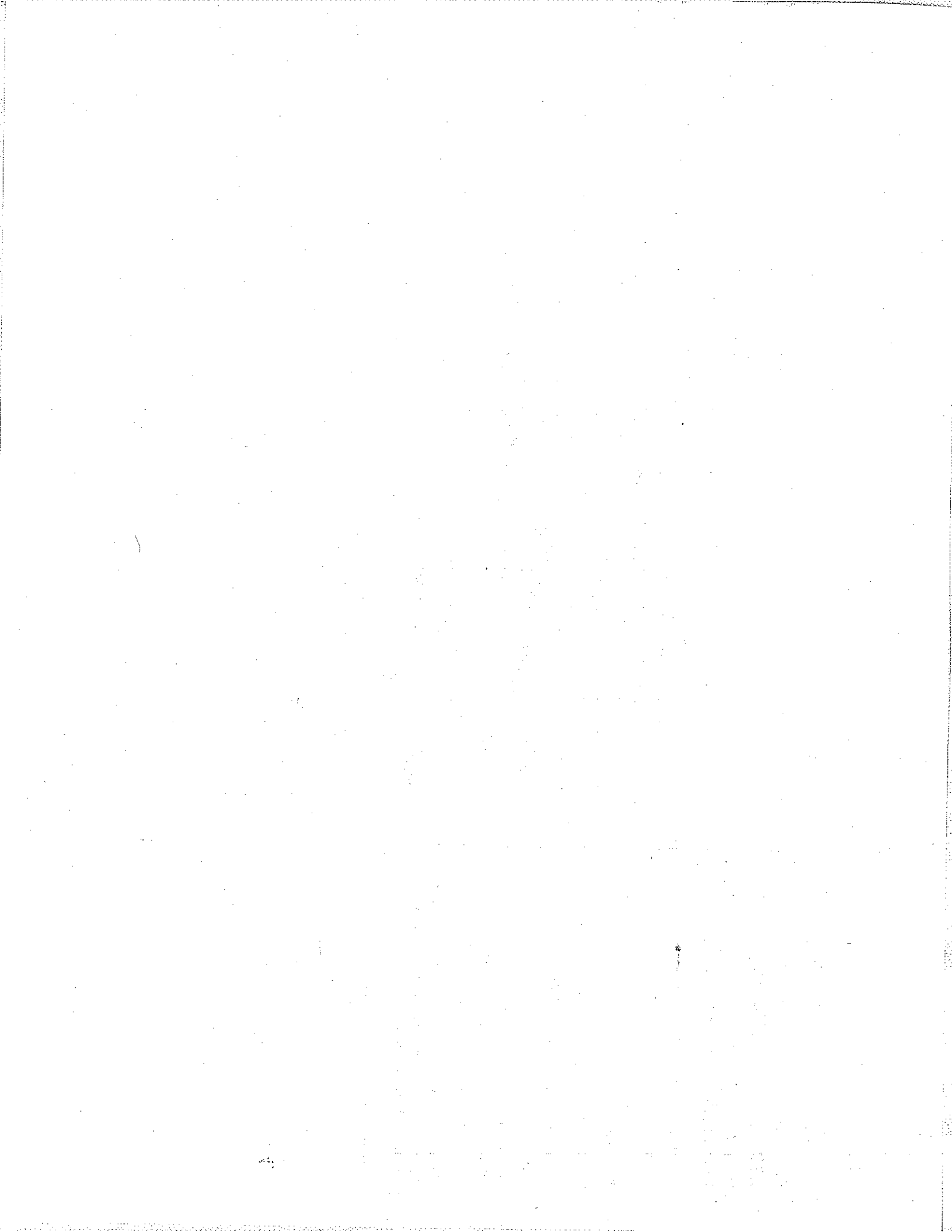


Comments on the CEQA Guidelines Update may be submitted in the following ways:

- Hand in comment card at a workshop
- Mail comment card
- Email comments to Greg Tholen at gtholen@baaqmd.gov

For more information visit:
<http://www.baaqmd.gov/pln/ceqa/index.htm>
or contact Greg Tholen at gtholen@baaqmd.gov

If you wish to be added to the CEQA Guidelines Update email list please contact Lilia Martinez at lmartinez@baaqmd.gov.



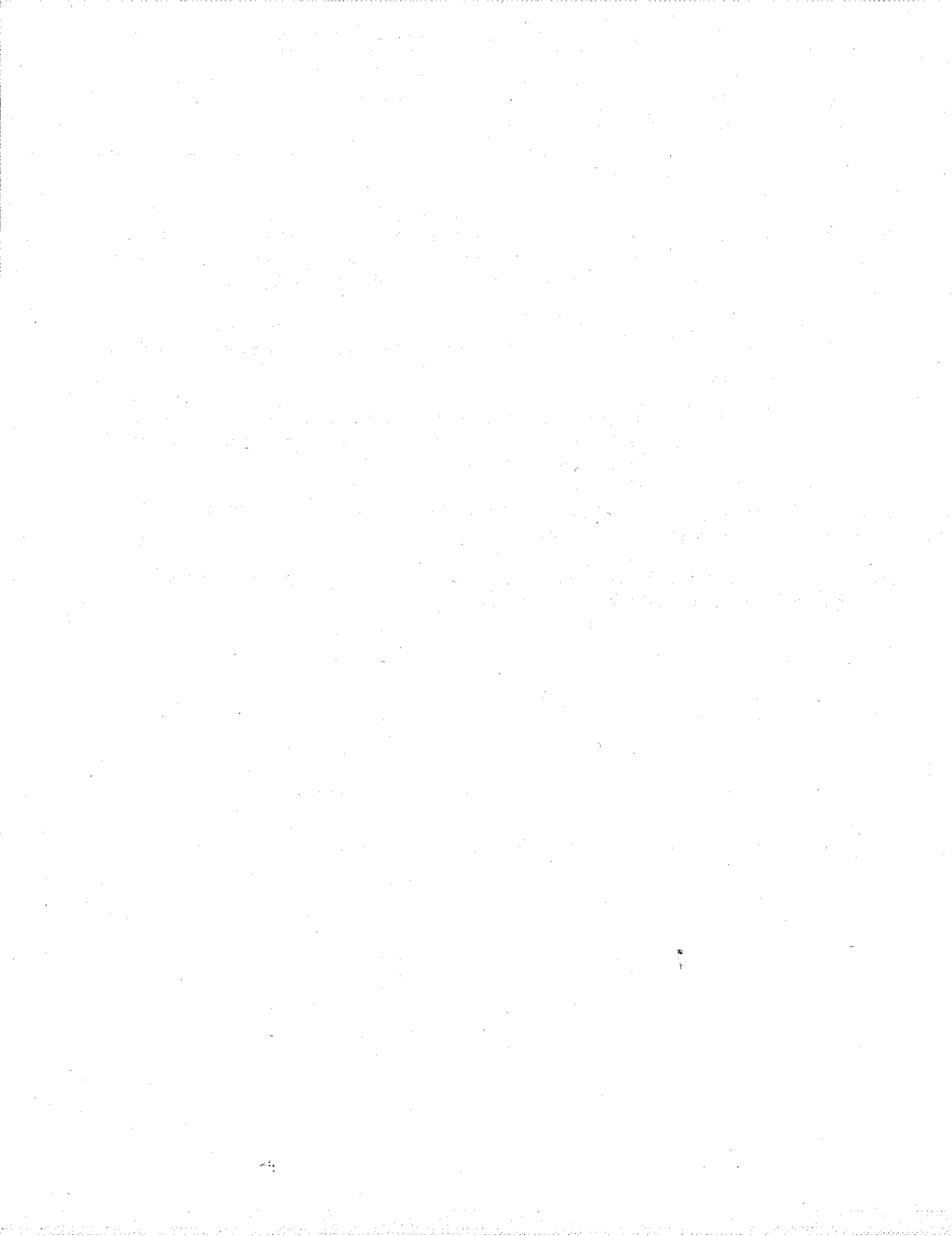
Comment Letter #: 17

Date: September 9, 2009

From: Karen Cohn, Bay Area Environmental Health Coalition

Response to Comments:

- 17-1 The proposed risk and hazard thresholds have been modified to allow overlay zone distances other than 500 feet along freeways and high-volume roadways. The modified distance must be based on district-approved modeling for the locations being considered for distances other than 500 feet.
- 17-2 The screening distances for odors are not intended to act as thresholds. The odor threshold is complaint-based. The screening distances are based on Air District rules and experience with enforcing odor complaints.
- 17-3 The *Proposed Thresholds of Significance* report contains individual project and cumulative thresholds for community risk and hazard. The cumulative approach considers all existing emission sources within a 1,000 foot radius from the fence-line of a source or receptor.
- 17-4 The CEQA Guidelines includes reduced parking policies as part of the recommended mitigation measures for proposed projects and plans.
- 17-5 The proposed risk and hazard construction threshold in the *Proposed Thresholds of Significance* report has been modified to be the same as the threshold for operations.





CEQA Guidelines Update Comment Card

9/09

#18

We need your input!

The Bay Area Air Quality Management District is updating its CEQA Guidelines and seeking your input. The CEQA Guidelines Update will review, revise, and develop significance thresholds, assessment methodologies, and mitigation strategies for criteria pollutants, air toxics, odors, and greenhouse gas emissions.

CONTACT INFORMATION (Optional):

Name: Michael Koinath
Affiliation: ENVIRON
Email: mkoinath@environment.org

pg 3-9 for indirect sources of GHGs, current phrasing seems to indicate that using state-wide electricity emission factors rather than utility-specific emission factors (for example Alameda Municipal Power has a much cleaner profile than the state-wide average) or project design features such as onsite renewable is mandatory. Perhaps a clarification that this ^{state} ^{wide} could be used in lieu of ^{retail} site-specific information when necessary would be helpful.

8/11/11

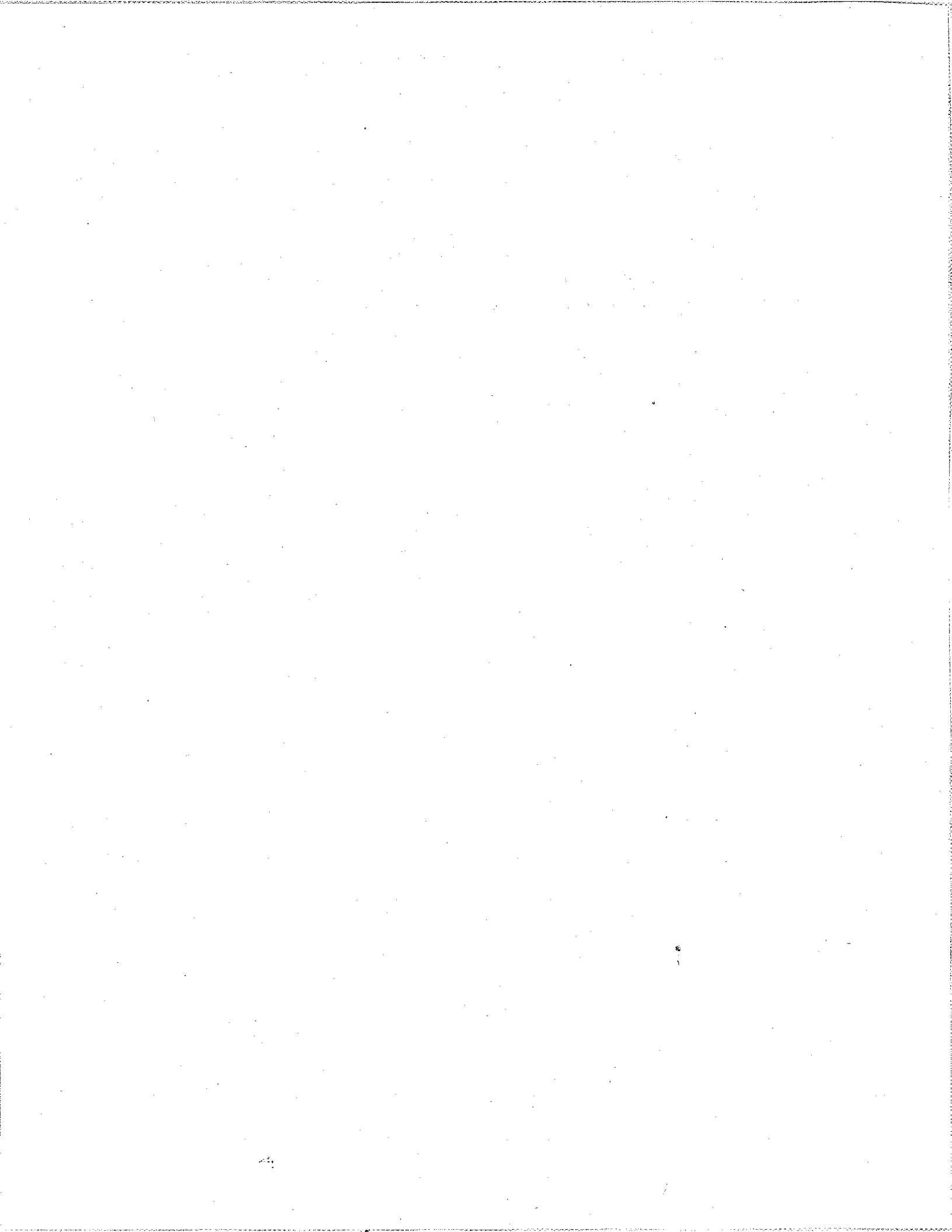
Comment Letter #: 18

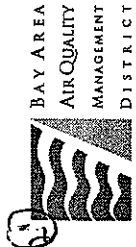
Date: September 9, 2009

From: Michael Koinath, Environ

Response to Comments:

- 18-1 The CEQA Guidelines will provide direction on the protocols to use for applying electricity generation emission factors in quantifying greenhouse gas emissions, including clarification for when to use site-specific versus statewide data. See also Master Response MR-3.





9/09

CEQA Guidelines Update Comment Card

We need your input!

The Bay Area Air Quality Management District is updating its CEQA Guidelines and seeking your input. The CEQA Guidelines Update will review, revise, and develop significance thresholds, assessment methodologies, and mitigation strategies for criteria pollutants, air toxics, odors, and greenhouse gas emissions.

CONTACT INFORMATION (Optional):

Name: Jennifer McDougall

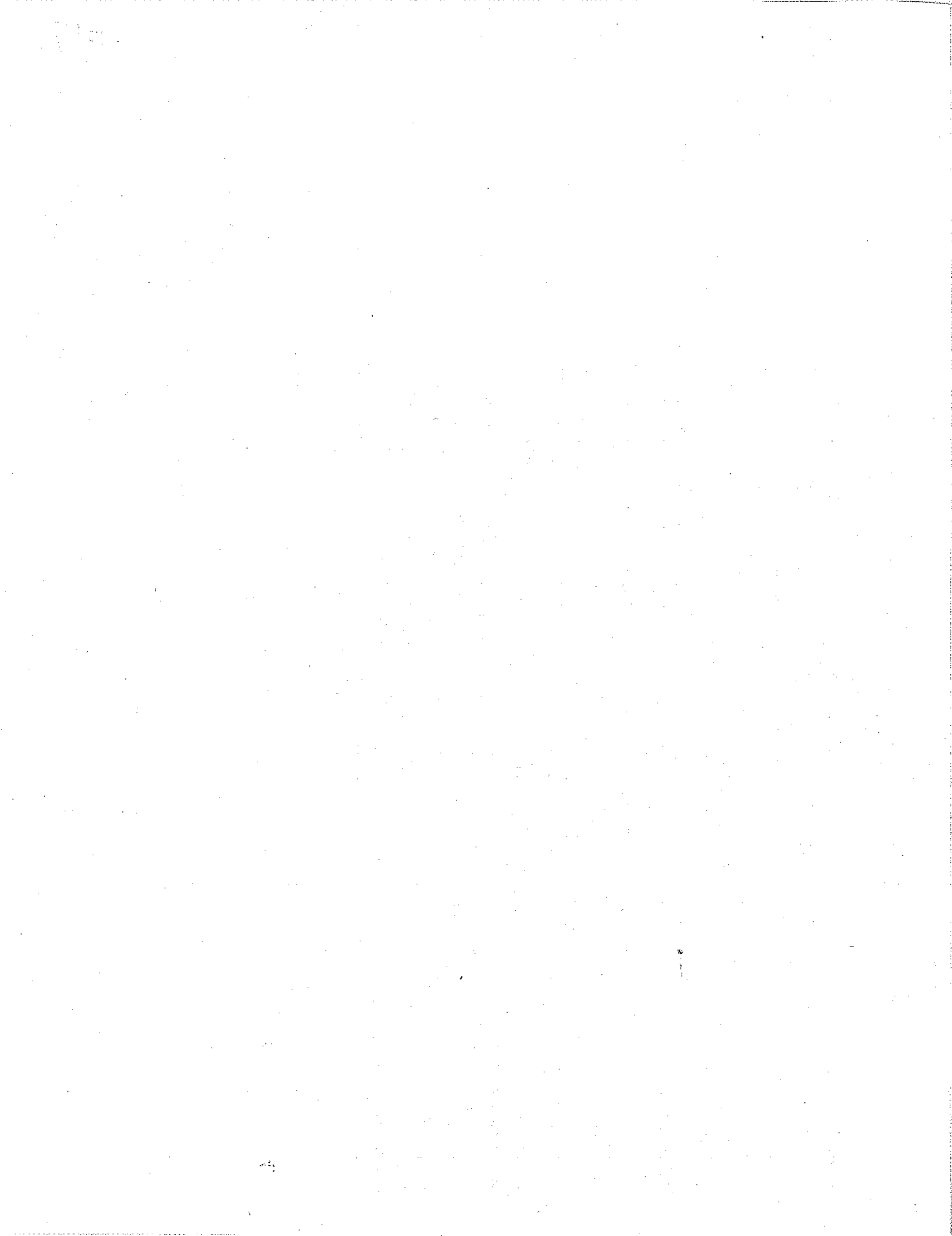
Affiliation: UC Berkeley

Email: jmcDougall@ep.berkeley.edu

You described gbg construction BMPs as pragmatic. But campus experience is that requiring a percentage alternative fuels for construction vehicles is not yet feasible. state and local agency projects can become infeasible if only some contractors qualify - reduces competition in public bidding process. Same can be true for materials sourcing within 100 miles.

Could BMPs quantify reductions sought in construction so lead agency can determine equivalent mitigation? Or include broader menu of best practices, and lead agency can choose three?

A Question too - The BAAQMD Guidelines are not so different from a ~~clean air~~ climate action plan - in fact the gbg thresholds seem to be the Districts Climate Action Plan. Will you conduct CEQA review on the guidelines? Alternatively the state idea that Climate Action Plans require CEQA review should be reconsidered.



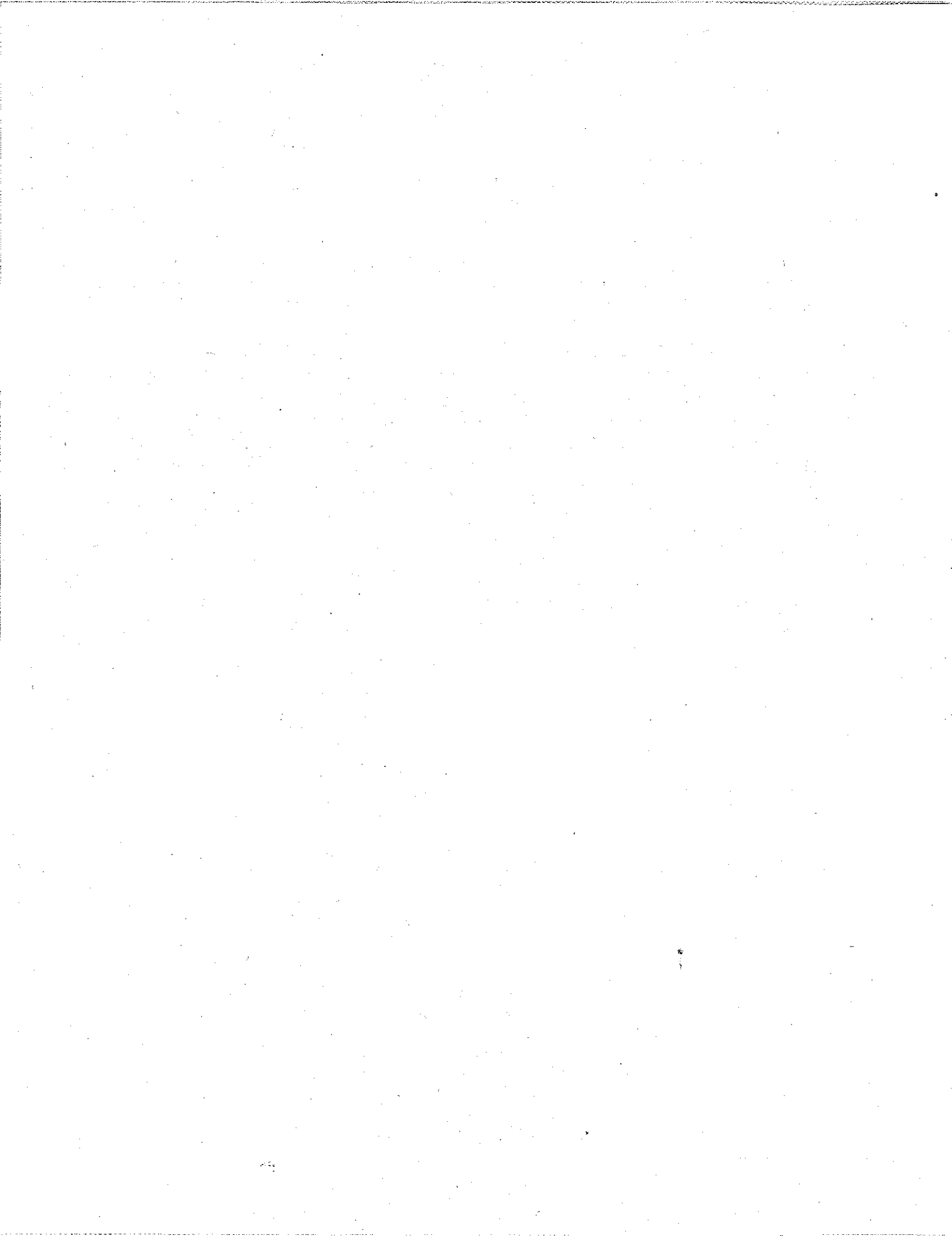
Comment Letter #: 19

Date: September 9, 2009

From: Jennifer McDougall, UC Berkeley

Response to Comments:

- 19-1 The GHG threshold for construction that recommended implementation of construction best management practices referred to in this comment has been omitted from the *Proposed Thresholds of Significance* report (November 2, 2009).
- 19-2 The Air District's CEQA Guidelines provide recommended thresholds of significance, analysis methodologies, and mitigation measures for assessing air quality impacts in proposed projects and plans. The CEQA Guidelines provide guidance to assist lead agencies in evaluating air quality impacts, and do not serve the same purpose or establish similar policies or mitigation measures as climate action plans do, as suggested by the commenter. Since the CEQA Guidelines do not act as Air District rules or regulations, and it is the Lead Agency's discretion to use BAAQMD's recommended Guidelines, they do not need to complete a CEQA review. See also Response 37-6.



#20

From: Jennifer Schulte [mailto:JSchulte@Environcorp.com]
Sent: Wednesday, September 23, 2009 11:34 AM
To: David Vintze
Cc: Shari Libicki
Subject: CEQA Guidelines update

David,

I have a few questions regarding the recent BAAQMD Draft CEQA Guidelines Report released in September.

1. From the website, it indicates an extension to the comment period to October 9, 2009. Do you know what the anticipated timing is for adoption of these Guidelines after the comment period? When do you expect to present to the Board?
2. Can you give more feedback on what is meant by "local building materials"? Is this referring to local raw materials or local processing or local manufacturing? This information will assist in planning for a project to be able to follow the Best Management Practices for Construction.

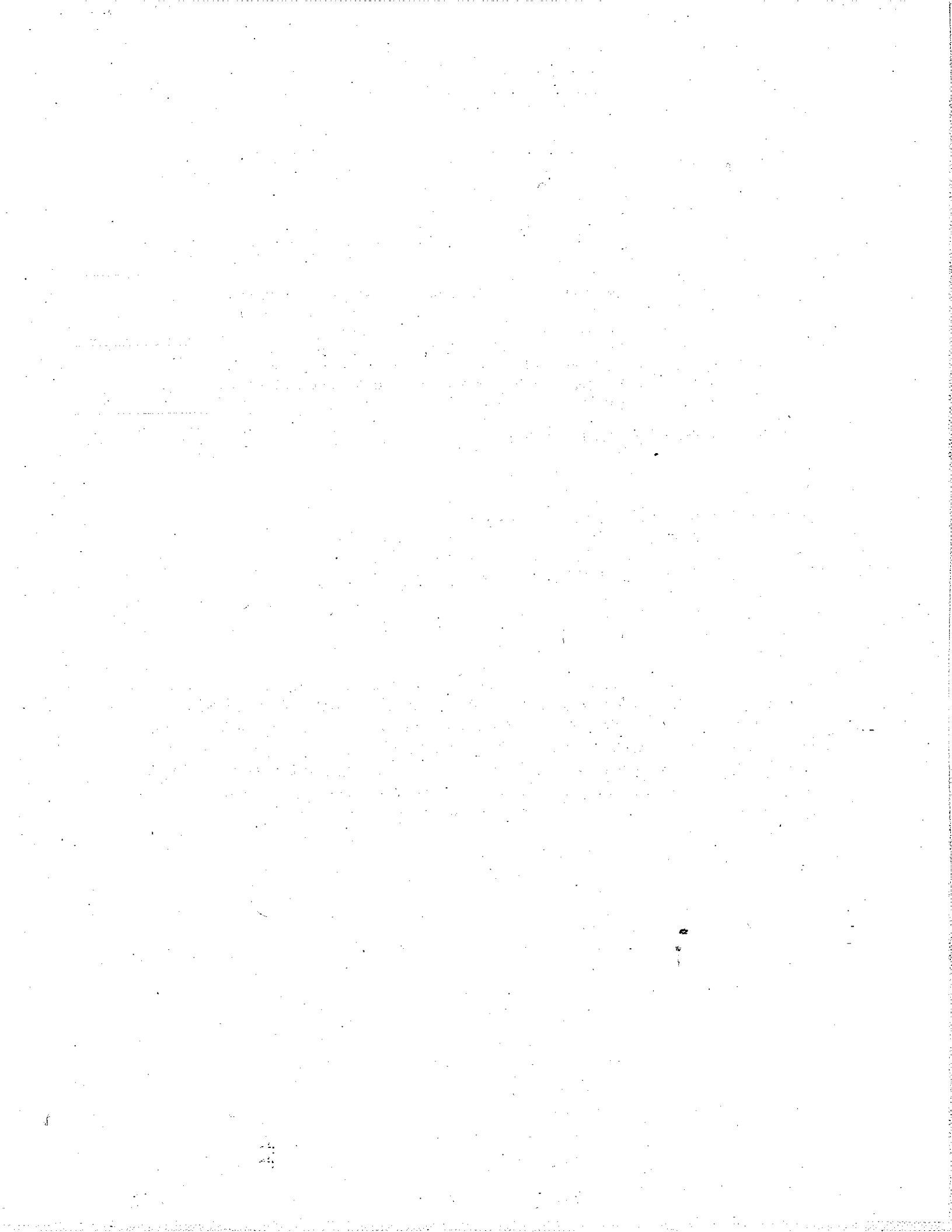
20-1
20-2

Thank you for taking the time to respond to these questions promptly.

Jen

Jennifer Schulte, Ph.D. | Senior Associate
ENVIRON | www.environcorp.com
6001 Shellmound St, Suite 700 | Emeryville, CA 94608
V: 510.420.2511 | F: 510.655.9517 | jschulte@environcorp.com

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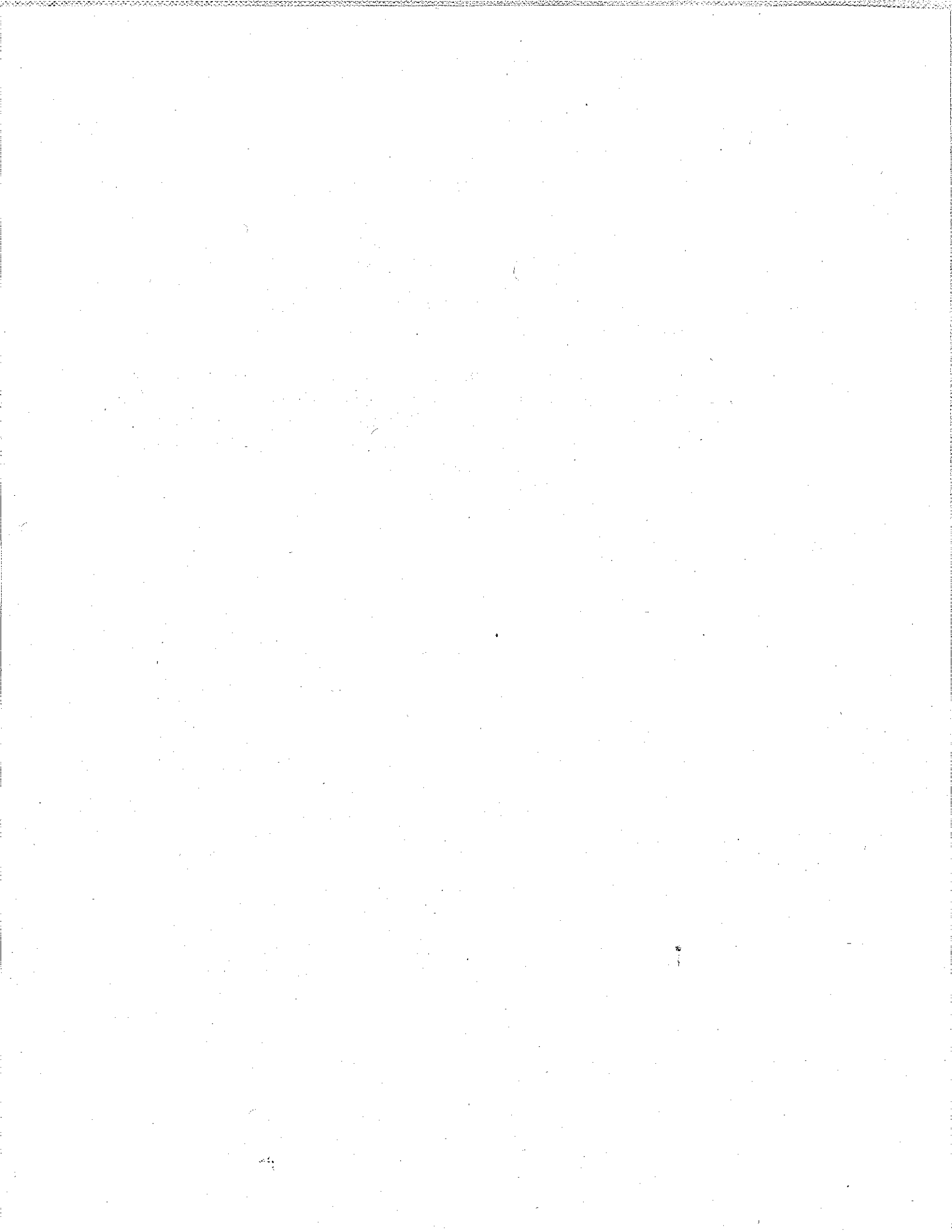
Comment Letter #: 20

Date: September 23, 2009

From: From: Jennifer Schulte, Senior Associate, Principal, Environ

Response to Comments:

- 20-1 The Air District will initiate a public hearing to consider testimony for the staff-recommended thresholds detailed in the report. The public hearing will start on Wednesday, November 18, 2009 and will be continued on Wednesday, December 2, 2009, at which time the Board of Directors will consider adoption of the proposed thresholds.
- 20-2 The GHG threshold for construction that recommended implementation of construction best management practices referred to in this comment has been omitted from the *Proposed Thresholds of Significance* report (November 2, 2009). However, the Air District encourages Lead Agencies to require best management practices for GHG construction emissions. The best management practice recommendation to use local building materials means to use materials that are produced or manufactured within approximately 100 miles, to the extent feasible.



September 24, 2009

Mr. Greg Tholen
Principal Environmental Planner
Bay Area Air Quality Management District
939 Ellis Street
San Francisco, CA 94109

Subject: Draft CEQA Air Quality Guidelines

Dear Mr. Tholen:

LSA Associates, Inc. (LSA) has received a copy of the Bay Area Air Quality Management District's (District's) CEQA Draft Air Quality Guidelines (September 2009). LSA is responsible for preparing numerous Air Quality Analyses throughout the Bay Area every year and relies on District guidance for the preparation of our reports. Our Air Quality experts have reviewed the Draft document and have several comments, two that are general and many others are more detailed in nature.

General Suggestions

Regarding the structure of Chapter 2, Thresholds of Significance and Screening Criteria, we'd like to suggest that the two topics be separated into two chapters. As it is currently presented, the process for an initial evaluation of a project is confused when a threshold is described first and then a screening process is described second. We believe that the presentation of these two steps should be organized to first include the screening criteria and then the thresholds of significance.

Throughout the report in its digital form, web links to referenced reports are indicated by blue/underlined typeface. Please include the full bibliographic citation of each referenced report, including the web address, as a footnote in the text. It would also be helpful if the District would dedicate one page on its website to include all of the documents referenced in this guidance for downloading, particularly any documentation related to the CARE program and the CAPCOA HRA Guidance document.

Detailed Comments

- Please include one table in the document that summarizes all of the BAAQMD CEQA thresholds.
- Tables 2-2, 2-3, 2-6. For ease of reference, these screening level tables could be condensed into one table with columns (in addition to Land Use Type and Unit Type) as follows: Operational-Related Criteria Pollutant Screening Level Size, Operational-Related Greenhouse Gas Screening Level Size, and Construction-Related Screening Level Size. The column of Pollutant to Trigger Threshold could be eliminated.
- Page 2-2. The proposed threshold of significance for GHG emissions of 1,100 metric tons is extremely low. Many projects would have a significant, if not significant and unavoidable, impact if the threshold is established at this level. Establishing a numeric threshold simplifies the process of determining significant impacts related to global climate change. However, such a low threshold may require detailed analysis of projects that would otherwise not have a significant

21-1
21-2
21-3
21-4
21-5

environmental impact in any other topical area. Please provide additional justification as to why this is the appropriate numeric threshold.

- Page 2-6. The term "Impacted Communities" seems to be used interchangeably with "Communities of High Concern" (See Figure 4-1). Please reconcile the terminology or clarify the difference. 21-5
- Page 2-6. Please provide any relevant data on the CARE program in the guidelines that would be required for making a significance determination. 21-6
- Page 2-6. Are the impacted communities identified in the CARE Program the same as the Communities of High Concern shown in Figure 4-1? 21-7
- Page 2-6. Also, under Siting a New Receptor for Impacted Communities, the second bullet reads "After installation of the TBACT/TBP, an excess cancer risk level of 10 in one million..." Is this meant to indicate that the TBACT/TBP measures should be modeled? If so, please provide the calculation/modeling methods to be used under the methodology section. 21-8
- Page 2-10. Regarding plan level analysis, we observe a decided lack of clarity and presence of generality related to the determination of local community risk and hazards. Does the District have a standard in mind, or would an agency really only have to map overlay zones to make a less than significant determination? This criterion seems to revert to a more general approach from the previous guidance on the establishment of buffer zones. 21-9
- Page 2-10, Thresholds of Significance for Construction Impacts. We notice this paragraph concludes "...the proposed project *would likely* result in a significant cumulative impact." Does the District mean to imply a lesser level of certainty in regard to this particular conclusion (as compared to others throughout the guidance) by saying "would likely" instead of "would"? 21-10
- Page 2-14, Screening Criteria for Carbon Monoxide. In addition to the first criterion (consistency with applicable CMP), the second criterion (cause an intersection to tip over 44,000 vph or 24,000 vph where vertical and/or horizontal mixing is limited) seems unusually high and likely to seldom ever be exceeded. In general one arterial travel lane can hold approximately 1,700 vehicles per hour. To reach 44,000 vehicles per hour the intersection would need to have 25 approach lanes and maximum capacity. 21-11
- Page 3-11, Mitigating Operational-Related Impacts. Please provide additional direction on the use of "unscaled" reductions. The corresponding table is titled "URBEMIS Measures" (and is missing a table number) but it is unclear if the suggested scaling calculation method is achieved by selecting the mitigation measures in URBEMIS, or if this is a suggested off-model calculation. 21-12
- Page 4-3, Figure 4-1 Communities of High Concern. Due to the low resolution of this graphic, it will be difficult to use this map to locate a specific project. Please provide a link to this map on the District's website that would allow a user to zoom-in to a particular location. Another option would be to provide one page maps for each of the six impacted areas within the guidance document. 21-13
- Pages 4-6 and 4-7, Mitigating Local Community Risk and Hazard Impacts. The District lists 11 recommended mitigation measures for reducing the exposure of sensitive receptors to TACs and hazards. The guidance does not indicate whether implementing these measures would reduce the risk to a less than significant level. Please provide clarification as to whether a less than significant determination could be made if these measures are implemented.

Thank you for the opportunity to comment on the Draft Air Quality Guidelines. We look forward to your response on these important issues.

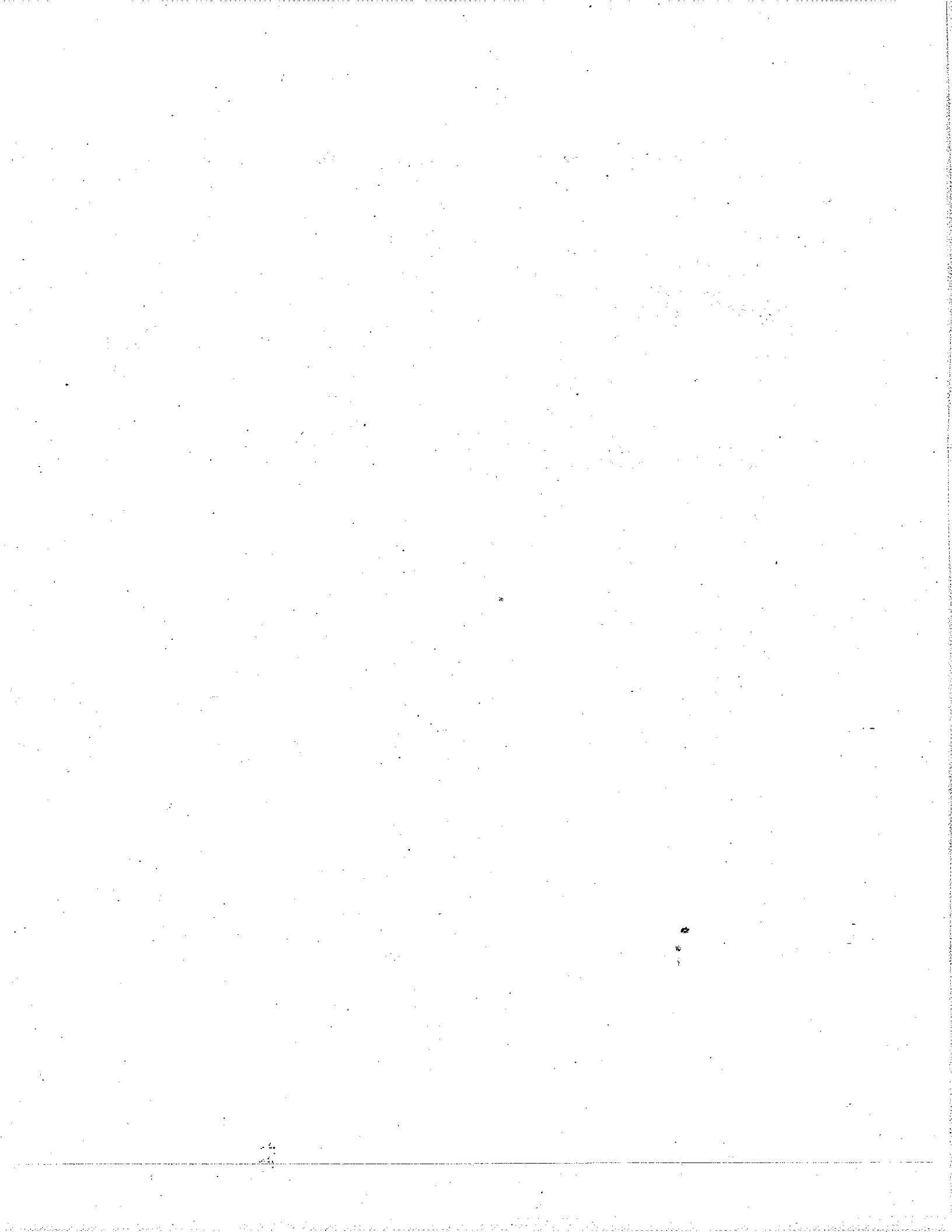
Sincerely,

LSA ASSOCIATES, INC.

A handwritten signature in black ink, appearing to read "David Clore". The signature is written in a cursive, somewhat stylized font.

David Clore
Principal

cc: Amy Fischer, Senior Planner
Jason Pankovits, Senior Air/Global Climate Change Specialist



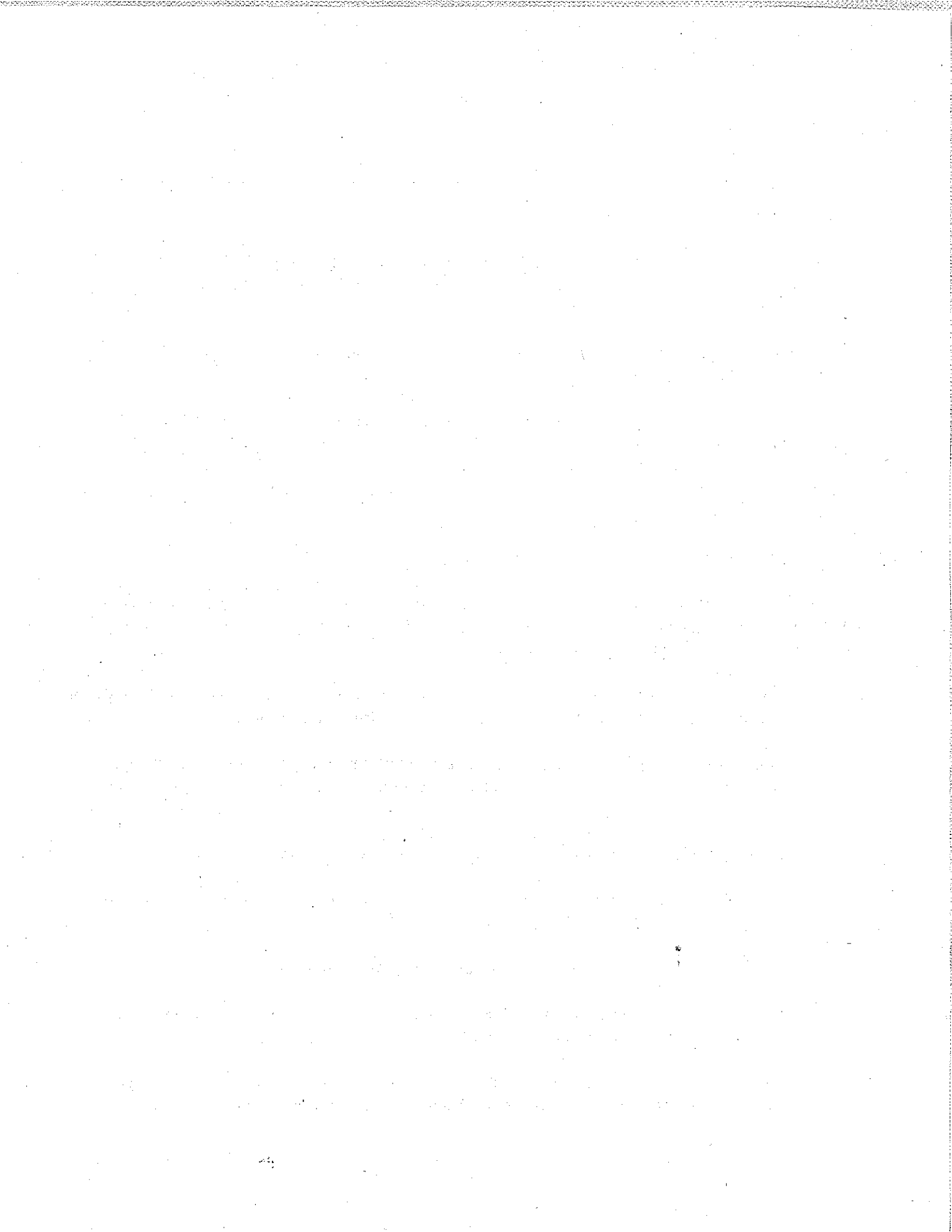
Comment Letter #: 21

Date: September 24, 2009

From: From: David Clore, Principal, LSA Associates

Response to Comments:

- 21-1 The Air District agrees with the commenter's suggestion to separate Chapter 2 of the CEQA Guidelines into two chapters, one chapter for the thresholds of significance and one for the screening criteria. This recommendation is reflected in the revised CEQA Guidelines.
- 21-2 Comment noted and will be considered. The Air District will include all related CEQA Guidelines materials on the CEQA Guidelines web page.
- 21-3 The *Proposed Thresholds of Significance* report (November 2, 2009) and the updated CEQA Guidelines will include a summary table of all the proposed thresholds.
- 21-4 The Air District is considering options for streamlining the screening level tables for the updated CEQA Guidelines. Comment noted.
- 21-5 See Master Response MR-3.
- 21-6 The updated CEQA Guidelines will define the term impacted communities and will use it solely in place of other interchangeable terms. The updated CEQA Guidelines will also provide more information defining and explaining the District's CARE program.
- 21-7 The community risk and hazard threshold has been modified in the *Proposed Thresholds of Significance* report and no longer recommends the use of toxic best practices as a threshold.
- 21-8 The proposed thresholds of significance for plans recommends including plan goals, objective, policies and implementation programs that provides guidance for development within the recommended overlay zones.
- 21-9 Comment noted. The revised CEQA Guidelines clarifies the Air District's intent.
- 21-10 Staff agrees with the commenter's note and will adjust the screening criteria for carbon monoxide to be less stringent in the updated CEQA Guidelines.
- 21-11 The updated CEQA Guidelines will better define and clarify unscaled reductions.
- 21-12 The CARE maps may be found on the Air District's website, however, Staff will consider providing more detailed CARE maps in the CEQA Guidelines appendix.
- 21-13 The community risk and hazard threshold has been modified in the *Proposed Thresholds of Significance* report and no longer recommends the use of toxic best practices as a threshold.





IMPACT SCIENCES

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www.impactsciences.com

September 24, 2009

Greg Tholen
Senior Planner
Bay Area Air Quality Management District
939 Ellis Street
San Francisco, CA 94109

Re: September 2009 Draft Air Quality Guidelines for CEQA

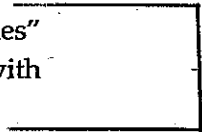
Dear Mr. Tholen:

Impact Sciences is a California CEQA and NEPA firm with offices in Oakland, southern California, and the Central Valley. Air quality impact analyses are an integral part of the services we provide our clients. We have been relying on the BAAQMD CEQA Guidelines for the analysis of air quality impacts of projects in the Bay Area and are therefore intimately familiar with the existing adopted guidelines.

We have reviewed the September 2009 Draft Air Quality Guidelines and appreciate the fact that the District has included proposed approaches and guidance for evaluating human health risk impacts and impacts related to climate change. We do have some concerns regarding some of the proposed thresholds of significance and approach to analyses. We are summarizing below our comments and suggestions for potential refinements to the document. Our comments are listed by chapter and page number.

Chapter 1. Introduction

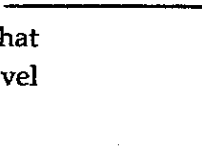
1. The text in this section uses the term "Guide" as opposed to "Guidelines" which is inconsistent with the cover. Suggest making the text consistent with the cover (incidentally the phone number on the cover for you is incorrect).



22-1

Chapter 2. Thresholds of Significance and Screening Criteria

1. On page 2-1, please consider adding a subheading that tells the reader that you are first presenting the thresholds of significance for "Project Level



22-2

Impacts" because later on page 2-7, you have a subheading titled "Plan Level Impacts. "

2. Page 2-2. A bright-line threshold of significance for land use projects is listed as 1,100 MT/yr of GHGs but for stationary sources, the same bright-line threshold is 10,000 MT/yr. No justification is provided in the document (including the appendix) as to why two widely differing numbers can be used to argue a less than significant impact on the same resource (global climate).

3. Page 2-2. Under the heading Stationary Source Projects, the second to last sentence reads that if a land use project includes a stationary source, then the emissions should be analyzed separately from the direct and indirect emissions of the land use project. That is contrary to CEQA which discourages piecemealing.

4. Page 2-2. Also under the heading Stationary Source Projects, the very last sentence states that the emissions from stationary sources are not included in direct and indirect land use project screening emissions and must be added in. Please note that the screening criteria (in Table 2-2) are based on project size and the table does not report emissions, so it is unclear what this sentence is directing a person to do.

5. Please check the footnotes in Tables 2-2 and 2-3 because they appear to also get into this issue of emissions from stationary sources and the relationship to the screening criteria (same point as our comment 4 above).

6. Some of the projects we prepare CEQA documents for involve classroom buildings, laboratories, and auditoriums. Is it possible to add these land use types to Tables 2-2 and 2-3?

7. Page 2-6. Under the heading Impacted Communities, the text mentions the BAAQMD's CARE program. It would be useful to add a sentence here that the map showing the areas in the program is provided in Chapter 4.

8. Page 2-6. According to the Cumulative Local Community Risk and Hazard Impacts, the threshold is 100 in one million or more than 2 ug/m³ PM_{2.5}. Under federal law, the BAAQMD is required to demonstrate attainment of PM_{2.5}. The EPA revised the PM_{2.5} standard in 2006 and made designations in 2008. Most of the BAAQMD is nonattainment (some Counties are partial nonattainment). Given that the BAAQMD will have to reduce PM_{2.5} concentrations, this would

22-2

22-3

22-4

22-5

22-6

22-7

22-8

seem that if a project is consistent with the 2009 Clean Air Plan, once it has been adopted, that the project would have a less than cumulative impact with respect to the PM_{2.5} cumulative threshold and site-specific modeling would not be required. Would it make sense to add such a provision to the guidelines?

22-8

9. Page 2-6. Under the heading Impacted Communities (second heading), second solid bullet, the text should read "an excess cancer risk level greater than 10 in one million" and not "an excess cancer risk level of 10 in one million."

22-9

10. Page 2-6. Under the heading Cumulative Local Community Risk and Hazard Impacts, a new threshold of significance (an excess cancer risk level of more than 100 in one million) for cumulative impacts is introduced. Our understanding is that the risk already exceeds that level near major freeways in the Bay Area. As you know, potential TAC sources include stationary sources, delivery trucks, construction equipment, and construction trucks. Would this standard apply to both operational and construction impacts or just the former? Secondly, if the project includes a new TAC source, as stated in the guidelines, any contribution no matter how small from the project will result in a significant cumulative impact. Some clarification of this issue is required. Also do confirm that a threshold of a 100 in a million is indeed proposed (later in Chapter 4, 10 in a million is cited for cumulative impacts).

22-10

11. Page 2-13. Thresholds of Significance for Construction GHGs. The draft guidelines list three measures explaining that if these are present (presumably as parts of the proposed project), that the impact would be less than significant. If not present, it would be significant. The feasibility of these measures for every construction project is questionable. If this is left in the guidelines as proposed, it could force lead agencies to prepare EIRs where previously they would have perhaps prepared a negative declaration for a project. We note that the guidelines use the phrase "as applicable." But it is unclear what that means – does it mean that these would apply only if the project can implement them, which does not work for a threshold of significance.

22-11

12. Page 2-13. Under the heading Screening Criteria (for CO), bullet 1 states that the "Project is consistent with an applicable CMP." Some guidance is needed as to how to determine a project's consistency with the CMP. Is the intent that if the traffic analysis does not show a significant impact at a CMP facility, then the project is consistent with the CMP?

22-12

13. Page 2-14. Under bullet 2, the text reads that CO analysis is not needed if "the project would not result in an affected intersection experiencing more than 44,000 vehicles per hour or 24,000 vehicles per hour where vertical and horizontal mixing is substantially limited." How will this screening criterion work? If the intersection is already at 44,000 vehicles per hour and the project adds one trip, does that mean that now a detailed CO analysis is required?

22-12

Chapter 3. Assessing and Mitigating Operational-Related Impacts

1. Page 3-9. Under the heading Indirect Emissions (for GHGs), the text states that indirect emissions from energy production and water consumption should be estimated. OPR has included other indirect sources in its draft guidance on climate change – these include wastewater generation and solid waste. To be consistent, the District may want to include those sources as well in its guidelines.

22-13

2. It would be useful to also mention that there might be some projects (although rare in the Bay Area) where it will be necessary to estimate and include loss of carbon sequestration from the clearing of forested lands.

22-14

3. Page 3-11. Under the heading Mitigating Operational Related Impacts, in the case of several measures, the table presents a range of unscaled reductions. It is not clear how to decide which end of the range should be picked. Any guidance on this would be helpful.

22-15

Chapter 4. Assessing and Mitigating Local Community Risk and Hazard

1. Page 4-2. Under the heading Siting a New Source, the last paragraph on this page reads that if the project obtains a permit from the BAAQMD, it would be considered compliant with CEQA. Is the District suggesting that no HRA be prepared or no analysis be done as part of the CEQA process for such a facility? The intent of the sentence is unclear.

22-16

2. Page 4-5. Second main bullet under Impacted Communities. Please reword to say an excess cancer risk level more than 10 in a million.

22-17

3. Pages 4-6 and 4-7. These pages list mitigation measures to reduce community risk. Does the District have any guidance on how to estimate the reduction in risk with the implementation of these measures?

22-18

Chapter 6. Assessing and Mitigating Construction-Related Impacts

1. Page 6-17. Please consider revising the last sentence on this page. The fact that the project is located in an area moderately likely to contain NOA should not be the only criterion to determine that the impact would be significant. Project attributes and features should also be considered.

22-19

2. Please consider adding text to help screen small construction projects. The reasoning could be that if a project is screened out based on its operational characteristics (based on Tables 2-2 and 2-3), then the project is too small also as a construction project and no additional analysis of construction impacts is required unless the project has some unique features (e.g., hill side location requiring substantial cut and fill).

22-20

Chapter 7. Assessing and Mitigating Odor Impacts

1. Page 8-2 and 8-3. Under the heading Odor Complaint History, the top of page 8-3 states that the distance at which the receptors were affected should be disclosed. We note that data on the distance where the complaints came from are not publically available as part of the BAAQMD odor complaint data.

2. Page 8-3. Second full paragraph states that 1 confirmed and 3 unconfirmed complaints averaged over the last 3 years are an indication of an odor impact. Please clarify here that this is for each odor source individually and that the numbers from multiple sources do not need to be added together when evaluating the impact of multiple odor sources on a given receptor.

22-21

Also the same paragraph states that the lead agency should compare the odor parameters (distance and wind direction) associated with the odor complaints filed with those of the proposed project. BAAQMD complaint data do not provide distances or the specifics of the locations (i.e., direction) from which the complaints were received so this cannot be done.

3. Pages 8-3 and 8-4. These pages list mitigation measures to control potential odors at the sources. Please include measures that can be implemented near potential future receptors to reduce exposure to potential odors from existing sources in the area. Planting of wind breaks, proper location of intakes (AC units), and minimization of openings (doors and windows) in the direction of potential odor sources are some potential measures.

General Comments


1. The document organization could be improved by deleting the chapter on thresholds of significance and included the thresholds in each topical chapter. As currently presented, the reader has to go back and forth in the document a lot to find all the information related to one topical issue.

2. Please consider reorganizing the guidelines into the following chapters which coincide with the main topics that need to be addressed under CEQA and involve different analytical methods for impact evaluation.

- Project Level Operational Criteria Pollutant Impacts
- Project Level Operational GHG Impacts
- Project Level Operational Odor Impacts
- Project Level Operational Local Community Risk and Hazard Impacts
- Project Level Operational Local CO Impacts
- Project Level Construction Impacts
- Plan Level Impacts

We appreciate the opportunity to provide these comments to the District. Please contact me at 510-267-0494 should you need to discuss any of our comments and suggestions. Thanks for putting these guidelines together.

Sincerely,



Shabnam Barati, Ph.D
Managing Principal
Impact Sciences, Inc.

Comment Letter #: 22

Date: September 24, 2009

From: Shabnam Barati, Managing Principal, Impact Sciences

Response to Comments:

- 22-1 Staff agrees with the commenter's suggestion and will ensure that the term "Guidelines" is used consistently in the updated CEQA Guidelines.
- 22-2 Comment noted and will be applied in the updated CEQA Guidelines.
- 22-3 See master response MR-3.
- 22-4 See master response MR-4.
- 22-5 Comment noted and language will be clarified as suggested.
- 22-6 See master response MR-7.
- 22-7 Staff agrees with the commenter's suggestion and will add a map of impacted communities in the updated CEQA Guidelines.
- 22-8 Demonstrating consistency with the Air District's Air Quality Plan is appropriate for the plan-level criteria pollutant threshold. However, for community risks and hazards, the Air District believes it is more health protective for a proposed project to estimate its emissions and risks and adhere to the recommended thresholds.
- 22-9 Comment noted.
- 22-10 The *Proposed Thresholds of Significance* report (November 2, 2009) recommends the same project-level cumulative threshold for construction and operations related community risk and hazard impacts. The Air District recommends a threshold of greater than 100 in a million cancer risk for all sources.
- 22-11 The GHG threshold for construction that recommended implementation of construction best management practices referred to in this comment has been omitted from the *Proposed Thresholds of Significance* report (November 2, 2009).
- 22-12 The updated CEQA Guidelines will clarify the screening criteria for the carbon monoxide threshold. The screening criteria will be made less stringent to reflect the fact that a CO analysis is rarely necessary in the Bay Area.
- 22-13 The updated CEQA Guidelines will provide direction on estimating indirect GHG emissions and will refer to existing protocols and OPR guidance as references.
- 22-14 The Air District will research methodologies for calculating loss of carbon sequestration from clearing of forests and will consider providing appropriate guidance in the updated CEQA Guidelines.

- 22-15 The updated CEQA Guidelines will better define and clarify the intention of unscaled mitigation measures.
- 22-16 District-permitted facilities that may emit TAC emissions will have a health risk assessment prepared. If the facility has obtained its land use entitlement prior to receiving an Air District permit, the Air District is likely the Lead Agency and will prepare the HRA. If the facility is involved in the land use entitlement process, and the Lead Agency is aware of the need for an Air District permit for the facility, the Lead Agency should consult with the Air District to ensure the environmental document prepared by the Lead Agency is adequate for use by the Air District in its Responsible Agency role under CEQA.
- 22-17 Comment noted.
- 22-18 Some mitigation measure reductions for risk and hazard impacts have not been quantified. Air District staff will assist Lead Agencies to quantify reductions when needed.
- 22-19 The intent of the revised CEQA Guidelines regarding naturally occurring asbestos is that projects that propose disturbing the NOA should mitigate potential impacts of causing asbestos to become airborne. The updated CEQA Guidelines will clarify recommendations made on naturally occurring asbestos and will consider the commenter's suggestions.
- 22-20 Comment noted and will be considered for the updated CEQA Guidelines.
- 22-21 Air District staff will clarify odor impact methodology. We are also working with our enforcement and information staff to make available complaint histories by complainant address block number to allow estimates of distance and direction from and odor source.
- 22-22 Staff intends to reorganize the chapters in the updated CEQA Guidelines with consideration to the commenter's suggestion.



SAN FRANCISCO PLANNING DEPARTMENT

#23

October 05, 2009

1650 Mission St.
Suite 400
San Francisco,
CA 94103-2479

Mr. Greg Tholen
Principal Environmental Planner
Bay Area Air Quality Management District
939 Ellis Street
San Francisco, CA 94109

Reception:
415.558.6378

Fax:
415.558.6409

Planning
Information:
415.558.6377

Re: Urgent request to postpone adoption of proposed greenhouse gas thresholds of significance.

Dear Mr. Greg Tholen,

The City and County of San Francisco's Planning Department supports the development of California Environmental Quality Act (CEQA) thresholds of significance pertaining to global climate change and commends the Bay Area Air Quality Management District (BAAQMD) for undertaking this difficult and complex task. We do, however, believe that the proposed CEQA thresholds developed in the Draft Air Quality Guidelines Update should not be adopted in their current form. If adopted, we believe that the proposed thresholds will have many unintended negative environmental consequences that will severely limit the ability of the Bay Area to meet its share of greenhouse gas (GHG) reduction targets, especially in regard to redirecting projected growth from less impactful transit-rich urban infill locations as encouraged under SB375 to GHG-intensive locations.

23-1

Further, our investigations indicate that the proposed GHG emissions thresholds conflict with and undermine the guiding principles of Senate Bill 375. SB 375 was enacted to reduce GHG emissions from the land use sector; specifically, SB 375 aligns local planning for transportation, jobs and housing on a regional scale to reduce GHG emissions. The proposed thresholds would severely hinder the region's ability to take advantage of the Sustainable Communities Strategy provisions in SB 375 that seek to redirect growth toward less GHG-intensive locations. Specifically, the proposed absolute Threshold of Significance for operational-related GHG emissions for land use projects and the draft Screening Criteria fail to distinguish the comparative GHG benefits of transit-intensive urban infill versus auto-intensive Greenfield development.

23-2

As you know, the City and County of San Francisco is currently undergoing a process to update our 2004 Climate Action Plan to further develop the City's climate policy within the framework of the City's General Plan. It is our belief that the criteria in the Draft Guidelines Update would inhibit these efforts.

23-3

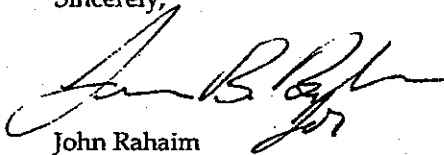
The San Francisco Planning Department strongly urges BAAQMD to postpone development of GHG thresholds of significance until convening with stakeholder groups and local planning

23-4

agencies versed in the CEQA process. We believe that through these stakeholder sessions, the District will be able to develop appropriate CEQA thresholds of significance that advance the State and the Region's efforts to reduce GHG emissions from the land use sector in a more context-sensitive way.

We look forward to working with you further.

Sincerely,



John Rahaim
Planning Director
San Francisco Planning Department

cc: Walter Cohen, Director, Oakland Planning Department
Joseph Horwedel, Director, San Jose Planning Department

Comment Letter #: 23

Date: October 5, 2009

From: John Rahaim, Planning Director, San Francisco Planning Department

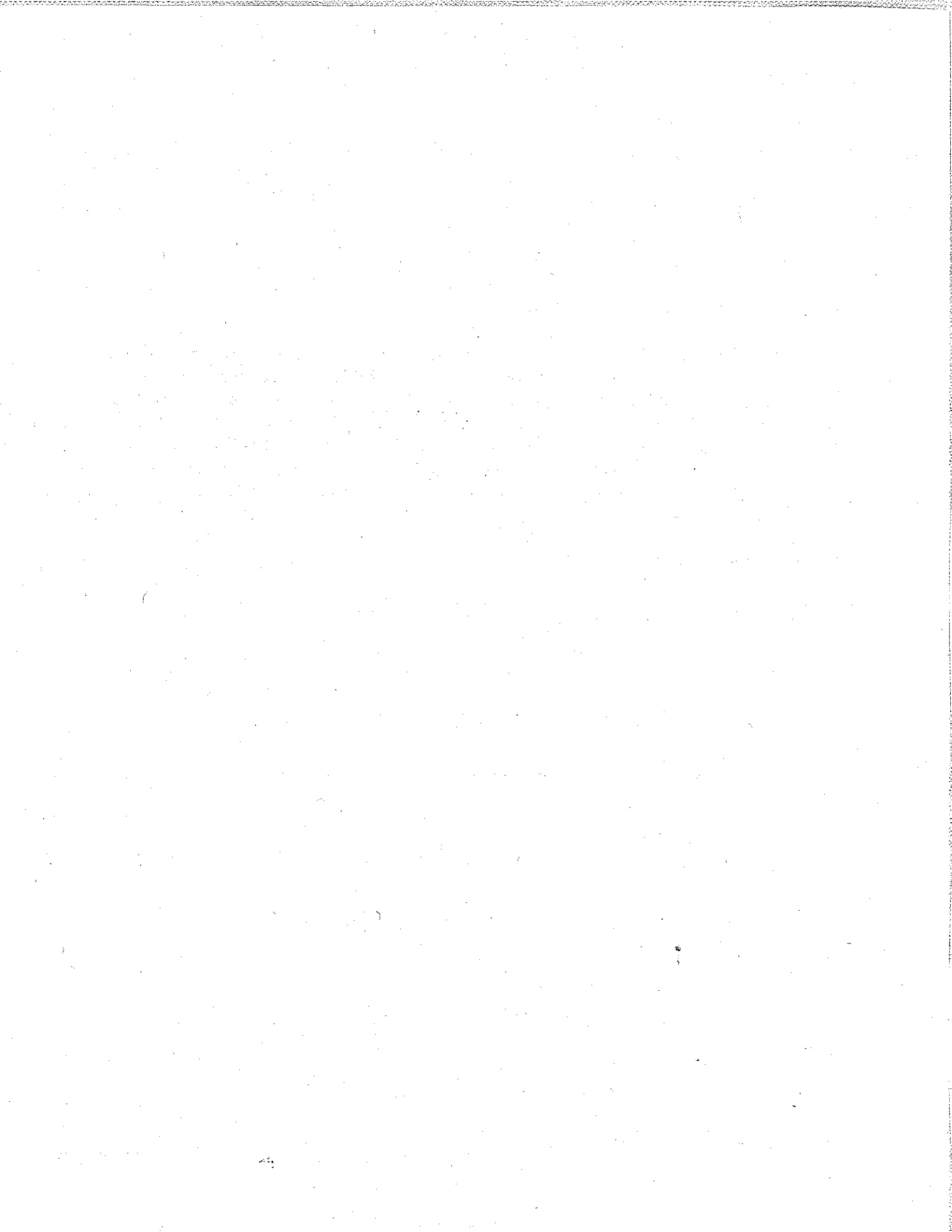
Response to Comments:

23-1 Please see master responses MR-1 and MR-5.

23-2 Please see master responses MR-1 and MR-5.

23-3 The plan-level GHG threshold in the *Proposed Thresholds of Significance* report recommends for local governments that have not yet adopted a stand alone qualified climate action plan as defined by the CEQA Guidelines, they have the option to demonstrate that their collective set of climate action policies, ordinances, and other programs are consistent with AB 32. Demonstration of AB 32 consistency should be considered equivalent to a qualified climate action plan. In the case of demonstrating that a collective set of climate action policies, ordinances, and programs are consistent with AB 32, this would not qualify as a project under CEQA and would not need to go through CEQA review.

23-4 Please see master response MR-8.



#24

James Reyff Comments_10_5_09

From: Gregory Tholen
Sent: Monday, October 05, 2009 12:57 PM
To: Sigalle Michael
Subject: FW: Comments on Draft CEQA Guidelines Update

Greg Tholen
(415) 749-4954

-----Original Message-----

From: James Reyff [mailto:jareyff@gmail.com]
Sent: Monday, October 05, 2009 12:53 PM
To: Gregory Tholen
Subject: Comments on Draft CEQA Guidelines Update

Hi Greg,
Below are my comments on the draft guidelines. I hope they are not confusing and apologize for the format, because I transferred from an email. Please let me know if you have any questions on these comments. Thanks for keeping me in the loop and Good luck with the update!

James Reyff
Illingworth & Rodkin, Inc.
707-766-7700 x24
jreyff@illingworthrodkin.com

1.) The presentation at the Santa Rosa workshop indicated different thresholds and study methodologies than included in the published draft guidelines. The staff recommended significance thresholds handout at the workshop includes thresholds that are not contained in the guidelines. These include:

-a) GHG thresholds for projects in published guidance are only emission based (1,100 MTPY), while the handout indicates they could be from a qualified CAP or meet performance thresholds,

-b) There are construction concentration- or HRA-based thresholds for construction in the handout but not in the published guidelines Note that a 24-hour threshold would be more appropriate for construction - similar to what is used by SCAQMD

-c) There is a PM2.5 annual threshold of 0.3 ug/m**3 for siting a new receptor in the workshop handout and presentation, but not the published guidance

24-1

2.) The GHG project thresholds are quite low and will trigger EIRs in many cases that did not previously require an EIR. I had made a comment in the past workshops that these thresholds should include a sliding scale, so more projects can be captured and the emphasis is on mitigation to lower overall emissions. For instance, a project with X but less than Y emissions is expected to include best management practices, a project with greater than Y emissions but less than Z emissions is expected to apply best management practices and reduce overall emissions by XX percent, a project with over Z emissions would have significant emissions - or something like that. A large project, whether it be mixed use near transit or single family homes in green fields is going to be so far above the threshold that any study of the emissions may be a somewhat worthless exercise. I understand that SJVAPCD is preparing to adopt a performance based threshold requiring that projects achieve a certain percentage reduction over unmitigated levels.

24-2

3.) The same approach to GHG should be considered for criteria air pollutant emissions. A project with 325 new homes is quite large (see Table 2-2) and would not require mitigation to reduce air pollutant emissions. However, I do recognize that GHG thresholds would now drive the mitigation.

24-3

4.) The GHG thresholds really need to be reevaluated with respect to Table 2-3. In this table, a local hardware store/paint store of 16 ksf would trigger a significant impact, while a home improvement store (which sells the same stuff but attracts more regional trips) would have the same emissions at 26 ksf. I realize that a 26 ksf super store is not a superstore, so that really questions the usefulness of the table. The limit for a drive through fast food restaurant is 1 ksf, but just about all fast food restaurants are all at least 2 ksf and no matter how small the In-N-Out building size is - they will attract lots of trips. So many of these uses would be significant regardless of their size.

24-4

5.) Local community risks and hazard impact thresholds have included a new threshold for PM2.5. This is a new threshold that needs to include an explanation for the basis. On EIR challenges, we are often found trying to describe the health effects that may occur as a result of the predicted air pollutant/contaminant exposure. I noticed that SF's public health dept attempted this with their guidance for setting an annual PM2.5 standard of 0.2 ug/m³ as a City threshold. However, that explanation was not clear and loosely related to SF's PM2.5 monitoring levels.

24-5

6.) BAAQMD would have to provide clear guidance for identifying and characterizing sources of TACs and PM2.5 when evaluating project and cumulative impacts from new sources or looking at cumulative impacts of TAC/PM2.5 exposure.

24-6

7.) Use of AERMOD to model stationary air pollutants. In the recent past, we have used the ICST3 dispersion model to model concentrations for CEQA projects, because of the meteorological requirements for AERMOD. BAAQMD has an extensive sets of meteorological data for ICST3, but not for AERMOD and the efforts to prepare AERMOD meteorological data is considerable. Would there be exceptions for use of ICST3 - at least for the short term? ICST3 is convenient for analyzing emission from generators that are identified in preliminary plans, where local meteorological data are needed.

24-7

8.) Siting new sensitive receptors in impacted communities will require T-BACT/TBP measures. BAAQMD should recognize that most modern dwelling units do not have air intakes. The centralized heating/air conditioning recirculates air that "seeps" into the unit. Adding HVAC units may be costly and should be proven to have some desired benefit. What reduction could the air quality assessments consider for planting and maintaining tree zones between the source and receptors. I have only seen one study that evaluated the reductions from trees - is that a study that we would rely upon?

24-8

9.) Construction Emissions - is there a minimum size that basic control measures would apply (e.g., 1 acre)? When using default values in URBEMIS for construction of 114 new homes in 2010, I get 54 pounds of NOx and over 250 lbs of ROG. So 114 new homes is right at the threshold for NOx, but way over the threshold for ROG unless the coatings are applied over a much longer period than the default model assumptions. I did not check the other land uses, but this may be indicative of problems using URBEMIS and quantified thresholds for construction - at least for ROG.

24-9

10.) I see ROG from construction triggering significant findings for construction of new homes, just like ROG from operation of new homes would make up a majority of future operational emissions (consumer product emissions). URBEMIS does not provide much documentation supporting the use of the consumer product emissions. Does BAAQMD feel confident in the ROG construction and area source emissions to use these thresholds?

24-10

11.) I have some concerns about using URBEMIS2007 to predict PM10 and PM2.5 emissions. I cannot find any basis for the silt loading factors that URBEMIS uses as a default. Most Bay Area travel falls under the category of arterials or freeways. CARB and SJVAPCD use silt loading factors of 0.02 to 0.03 grams per m² rather than the 0.100 that URBEMIS2007 defaults. A majority of PM10 vehicular emissions from URBEMIS are from

24-11

dust, so this issue should be addressed.

12.) Odors. The screening distances for odors (Table 2-8) have changed (or increased) greatly since the previous set of guidelines. What is the justification for this? Outside of Milpitas, have there been confirmed complaints from 2 miles regarding waste water treatment plants, landfills, asphalt batch plants? Painting/coating operations are regulated by BAAQMD regs. I would think that if you could smell these painting operations at 1 mile, then the regs are not working and the VOC emissions must be substantial. Painting operations could include small auto body shops - how do we screen these out?

24-12

13.) Some of the factors recommended for GHG analysis seem generic. For instance, CEC has many documents that report electricity consumption for various land uses types and different residential uses. Using one number for residences does not seem appropriate. Also, PG&E has a certified rate, so why would we use a West Coast value when PG&E is the provider for most of our electricity. I believe their rate is well below the state average, which is well below the national average.

24-13

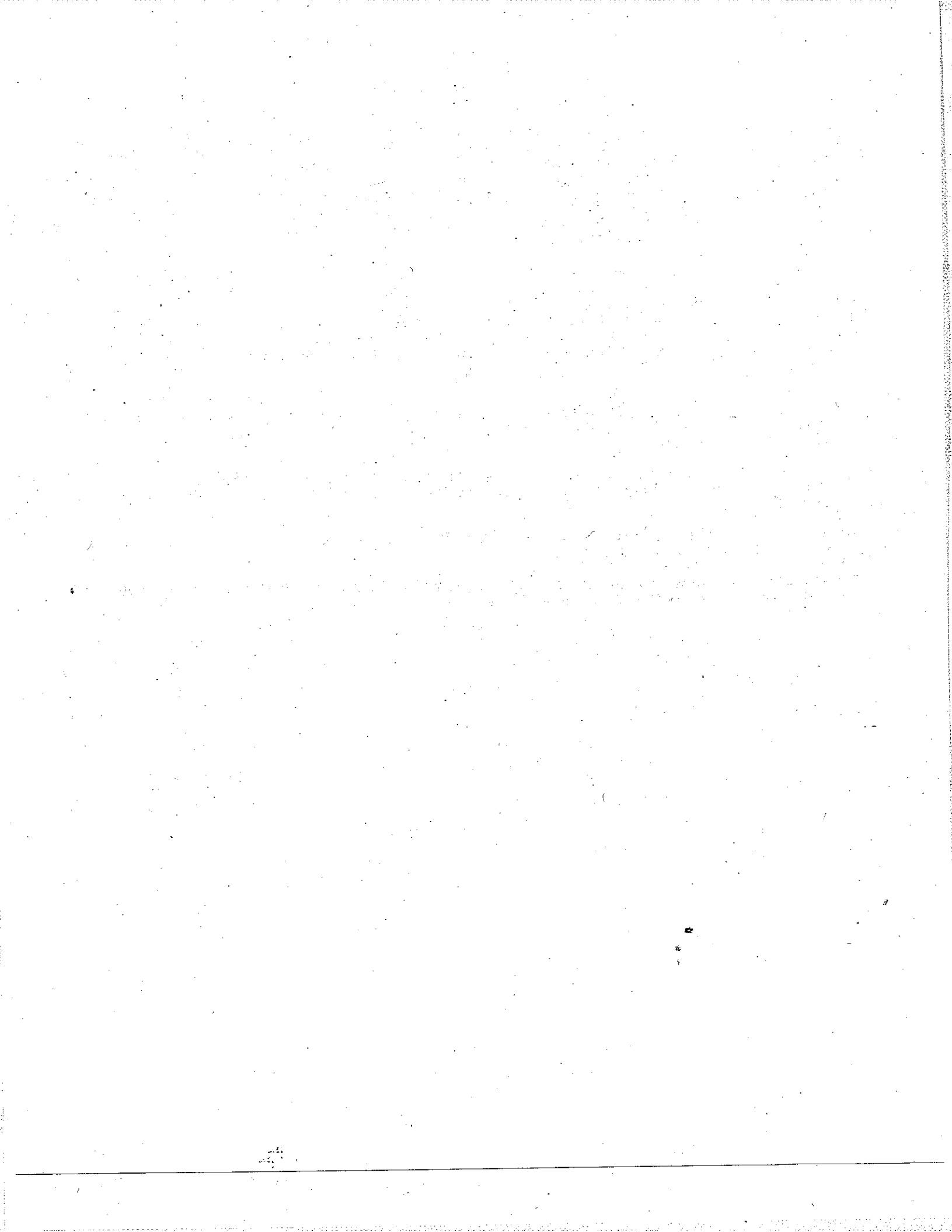
CEC documents:

---1) Itron Inc. 2006. California Commercial End-Use Survey. Reported prepared for the California Energy Commission - Report No. CEC-400-2006-005. March

---2.) KEMA-XENERGY, Itron RoperASW. 2004. California Statewide Residential Appliance Saturation Study - Volume 2, Study Results Final Report. CEC Consultant Report. June.

PG&E GHG rate on their website is 0.524 lbs CO2 per kwh and 13.446 lbs CO2 per therm natural gas

13.) Appendix C seems like a critical part of this document. It could answer many of the questions above. Will it be available soon?



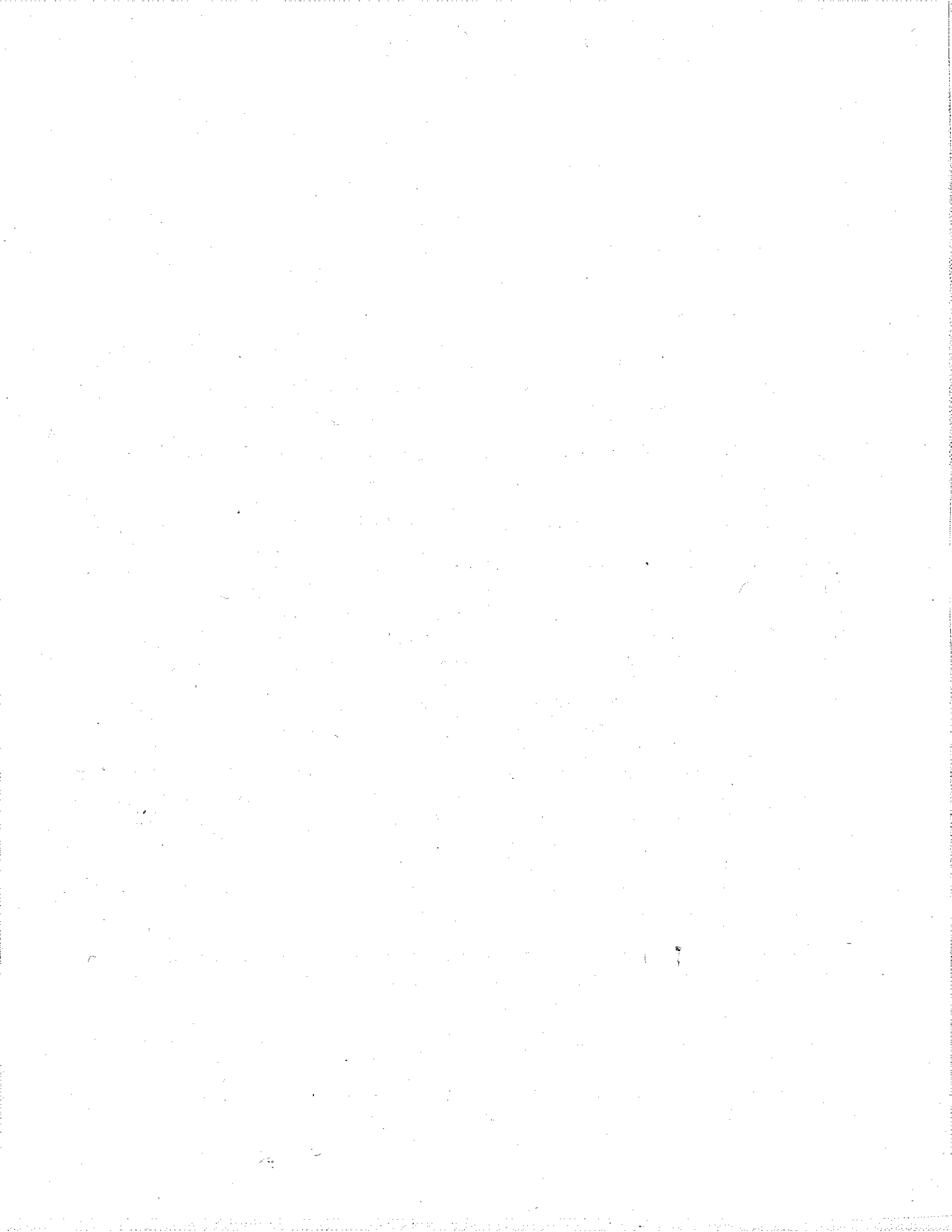
Comment Letter #: 24

Date: October 5, 2009

From: James Reyff, Illingworth & Rodkin

Response to Comments:

- 24-1 The updated CEQA Guidelines will be revised to include thresholds from the *Proposed Thresholds of Significance* report.
- 24-2 See Master Responses MR-1 and MR-3.
- 24-3 The *Proposed Thresholds of Significance* report (November 2, 2009) contains justification for the recommended criteria pollutant thresholds. The report provided substantial evidence and justification for all the District-recommended thresholds.
- 24-4 The screening tables in the CEQA Guidelines will be updated to reflect the GHG thresholds in the *Proposed Thresholds of Significance* report (November 2, 2009).
- 24-5 See comment response 24-3, which also applies to the updated community risk and hazard thresholds.
- 24-6 The Air District will be providing tables with estimated calculations of community risk and hazards from all permitted sources and major roadways in the Bay Area.
- 24-7 The use of Air District-recommended modeling is not a requirement. Consultation with Air District staff is recommended when deviating from recommended methodologies.
- 24-8 The community risk and hazard threshold recommending toxic best practices have been omitted from the *Proposed Thresholds of Significance* report (November 2, 2009).
- 24-9 There is no minimum project size for the recommended application of construction fugitive dust best management practices. The Air District notes that the most recent version of the URBEMIS model does not reflect BAAQMD's current VOC limits for architectural coatings. Air District staff is available to determine appropriate adjustments that should be made to URBEMIS results.
- 24-10 Air District staff will review the URBEMIS model emission factors for consumer products and request changes as appropriate. Also see comment response 24-9.
- 24-11 Air District staff will review the URBEMIS model emission factors for fugitive dust and roadway dust, and request changes as appropriate. URBEMIS users may also override default values, where permitted, if better data is available.
- 24-12 See comment response 24-3, which also applies to the odor thresholds.
- 24-13 The updated CEQA Guidelines provide direction on how lead agencies should calculate GHG emissions from indirect sources, including emission factors for electricity use.





October 6, 2009

Mayor Pamela Torliatt, Chair, and
Members of the Board of Directors
Bay Area Air Quality Management District
939 Ellis Street
San Francisco CA 94109

Re: The Need to Substantially Extend the Comment Period on the District's Proposed CEQA Guidelines, and to Rethink Fundamentally Flawed Provisions That Directly Conflict with State Legislation and Policy on Reducing Greenhouse Gas Emissions

Dear Mayor Torliatt and Members of the Board of Directors:

The California Building Industry Association and the Home Builders Association of Northern California respectfully submit that the District should substantially extend the time for comment on the District's proposed CEQA thresholds of significance, and substantially rethink those proposed thresholds to avoid discouraging the very type of development that can help to fulfill California's greenhouse gas emission reduction goals. The process to date has consisted of informal comment periods and incomplete and inconsistent documents. The current proposed document is inconsistent with the District's summary of its proposals, and does not even include the proposed factual justification for the thresholds that it recommends. We ask that the District Board direct its staff to provide a full public comment period based on a consistent and complete thresholds proposal, and we ask that the thresholds be revised consistent with our comments.

25-1

CBIA and HBANC commented extensively on the Draft Options Report circulated last spring. As reflected in those comments, we have serious concerns about a number of the District's proposals, including those governing GHG emissions. With respect to GHG emissions, no other air district in California is taking the approach proposed by the District and its consultant, and there needs to be a full and robust discussion of the possible alternative approaches.

25-2

October 6, 2009

1. The Comment Period Should Be Substantially Extended. As noted below, the District proposes to close the comment period on the new proposed CEQA Guidelines this Friday, October 9. The comment period should be substantially extended, and the District should provide a complete and consistent set of revised proposals so that the public and the regulated community have sufficient time to comment on those proposals. Proceeding any further at this time, based on incomplete and inconsistent proposals, calls into question the efficacy and legitimacy of the public comment process. The District should revise its proposals, provide the required backup justification for public review, and then renote the complete proposals and provide a full period for public review. We ask that the District Board provide direction to this effect.

2. The Public Presentations for the Proposed Guidelines for Non-Stationary Source GHG Emissions Are Inconsistent with the Guidelines as Actually Proposed. There is a fundamental inconsistency in what the District states it is proposing for project-level GHG thresholds, and what the proposal actually says. The District's powerpoint summary of the Guidelines Update, as presented to the September public workshops and posted on the District's website, sets forth on page 8 the District's proposal for non-stationary sources of GHG emissions. The summary states that there will be three possible thresholds (compliance with a qualified climate action plan, achievement of annual emissions of 1,100 metric tons of CO₂ equivalent per year, or a third threshold which is achievement of .6.7 metric tons of CO₂ equivalent emissions per person per year for residential projects, or 4.6 metric tons of CO₂ equivalent per person per year for mixed use projects). The text of the proposed Guidelines, however, only includes the 1,100 metric ton threshold (see p. 2-2). The public and the regulated community need to have a full comment period to review the actual text of what the District is proposing, not an inconsistent powerpoint summary.

3. There Has Been No Opportunity for Public Comment on the Justification for the Thresholds. One of the most critical steps in formulating the proposed thresholds is the District's justification for those thresholds. This is the all-important factual basis for these requirements, which the District suggests are to be minimum requirements that lead agencies must follow. Yet, as of Monday morning, October 5, less than five business days before the comment deadline, the entire sum total of justifying analysis on the District website is the statement "TBD." The public and the regulated community must be given an opportunity to review and comment on this justification, before the District uses it to adopt what it characterizes as binding CEQA Guidelines. The District must provide this justification, and allow a full period for public review.

4. The Proposed Thresholds Penalize the Very Types of Projects that Help to Achieve California's GHG Emission Reduction Goals. In addition to providing adequate time for public comment on a consistent and fully justified proposal, the District needs to rethink and revise the proposals to eliminate fundamental flaws. One of those flaws is self-evident. The State of California, in both Senate Bill 375 and in the AB 32 Scoping Plan, has chosen to emphasize mixed-use development as one means to achieve lower greenhouse gas emissions. Yet the District's proposed threshold penalizes mixed use projects with a threshold that is 31 per cent lower than the threshold for residential projects (4.6 metric tons per person per year, compared to the residential-only threshold of 6.7 metric tons per person per year).

5. The Hazard Thresholds Are Inconsistent with Senate Bill 375. In enacting Senate Bill 375, the Legislature adopted a number of policies and requirements governing land use development and greenhouse gas reductions. One of those policies and requirements is to locate new development close to existing major transportation corridors. In fact, the "transit priority projects" as defined in SB 375 must site most residential units within one half mile of a high quality transportation corridor. The

25-3

25-4

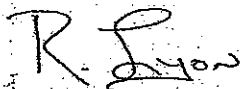
25-5

October 6, 2009

District's proposed hazard thresholds frustrate this directive by seeking to impose overlay zones and other restrictions on the very type of development that would fulfill SB 375 requirements.

CBIA and HBANC anticipate providing additional comments on the District's proposed thresholds, but as a first step, the District needs to provide additional time, and the District needs to release a proposal that is consistent with, and includes, the all-important justification for the proposed thresholds. We cannot comment on something that does not yet exist. Further, the District needs to substantially rethink proposals which fundamentally conflict with State directives on achieving greenhouse gas reductions.

25-6



Richard Lyon
Senior Legislative Advocate
California Building Industry Association



Paul Campos
Senior V.P. & General Counsel
Home Builders Association of Northern California

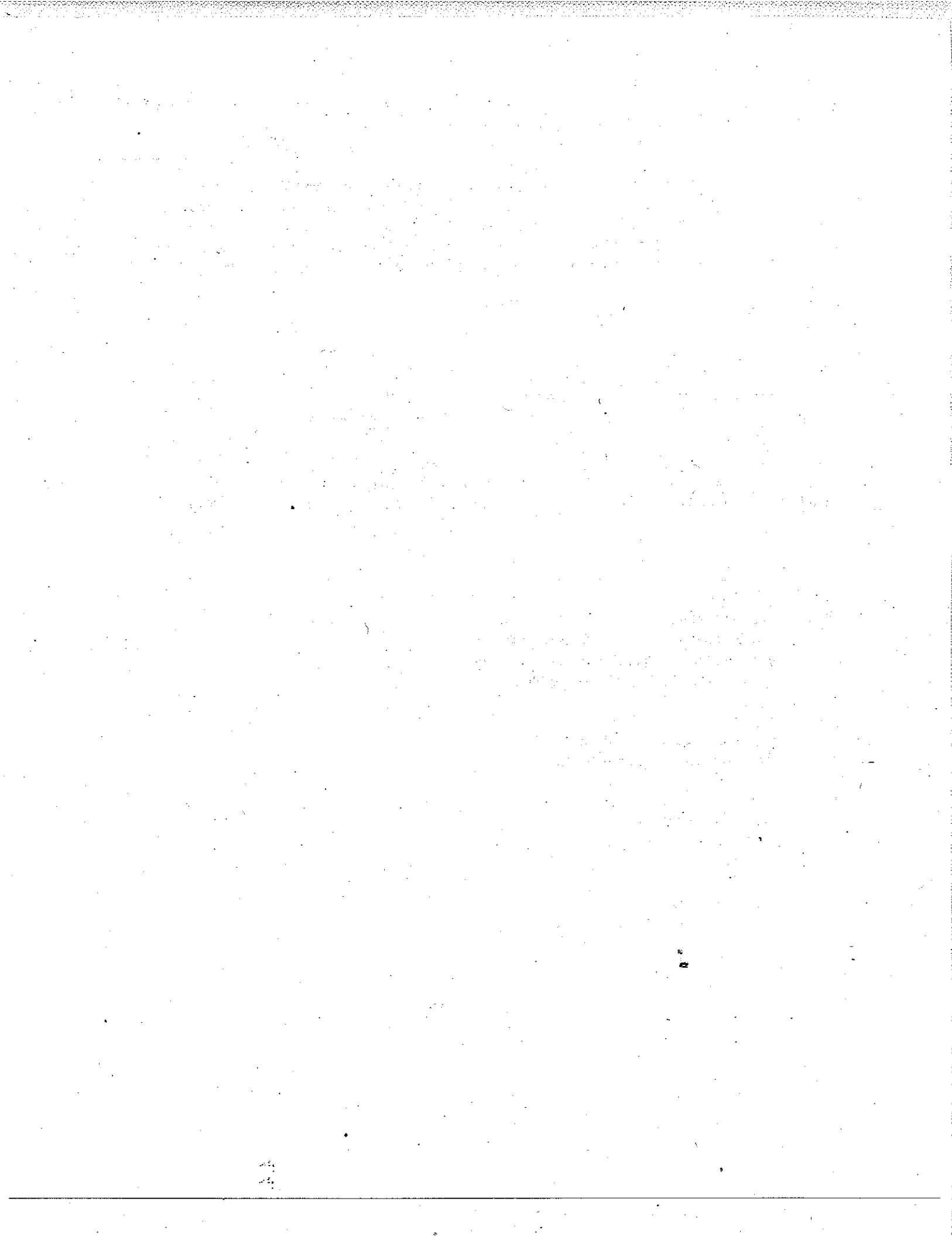
Cc: BAAQMD
Board Members
Jack Broadbent, Executive Officer/APCO
Greg Tholen, Principal Environmental Planner
David Vintze, Air Quality Planning Manager

ABAG
Rose Jacobs Gibson, President
Henry Gardner, Executive Director

BCDC
R. Sean Randolph, Chair
Will Travis, Executive Director

MTC
Scott Haggerty, Chair
Steve Heminger, Executive Director

Joint Policy Committee
Bill Dodd, Chair
Ted Droettboom, Regional Planning Program Director



Comment Letter #: 25

Date: October 6, 2009

From: Richard Lyon, Senior Legislative Advocate, California Building Industry Association and Paul Campos, Senior Vice President, Home Builders Association of Northern California

Response to Comments:

25-1 See Master Responses MR-1, MR-2 and MR-8.

25-2 The Air District released a *Revised Draft CEQA Thresholds Options and Justification Report* for public comment on October 8, 2009. The report contained revised thresholds based on stakeholder input received at the September/October workshops. The report provided substantial evidence and justification for the District-recommended thresholds. Also see Master Response MR-3.

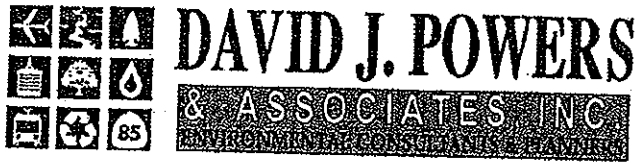
25-3 See Master Response MR-8.

25-4 See Master Response MR-1.

25-5 See Master Response MR-5.

25-6 See responses above.





October 7, 2009

Greg Tholen
 Principal Environmental Planner
 Bay Area Air Quality Management District
 939 Ellis Street
 San Francisco, CA 94109
 Email: gtholen@baaqmd.gov

RE: BAAQMD Draft Air Quality Guidelines

Dear Mr. Tholen:

We have attended several of the Bay Area Air Quality Management District (District) workshops on the CEQA Guidelines Update and reviewed the CEQA Draft Air Quality Guidelines released in September 2009. We would like to submit the following questions and comments on the guidelines.

Chapter 2—Thresholds of Significance and Screening Criteria

We see that while the thresholds for daily emissions of criteria pollutants have gone down for reactive organic gases (ROG) and nitrogen oxides (NOx), improved vehicle emissions have caused the screening levels in Table 2-2 to be generally higher than in the current guidelines. The screening levels for significant greenhouse gas (GHG) emissions are much lower (approximately 1/6) those of the criteria pollutants. The threshold for greenhouse gas emissions, considering indirect emissions from electricity use, could trigger completion of an EIR and the need to adopt overriding considerations for some projects that otherwise would have no significant unavoidable impacts. Our concern is that identifying significant unavoidable GHG impacts too frequently will cause the issue to lose its meaning and there will be less of a distinction between smart growth and urban sprawl. For example, in the case of infill projects and new industrial projects on brownfield sites, where a climate action plan has not been adopted (most of the Bay Area), this threshold could discourage redevelopment in areas that ultimately would reduce VMT per capita or VMT per Service Population (SP).

26-1

Section 2.1.2, for Land Use Projects, the thresholds of significance text does not mention tiering off of an adopted Climate Action Plan. Similar to assuming a general or area plan would have a less than significant GHG emissions if it is consistent with a Climate Action Plan (pg 5-2), a land use project should have a streamlined evaluation and less than significant GHG emissions, if

26-2

it is determined to be consistent with an adopted, CEQA-vetted Climate Action Plan. Would BAAQMD provide some guidance/mitigation measures that could be employed for a limited time (i.e., 18 to 24 months) by Lead Agencies for infill sites until jurisdictions have adopted Climate Action Plans?

Section 2.6 Odor Impacts

Would BAAQMD provide some justification for the odor screen distances in Table 2-8? Some of the screening distances seem large, compared to others (e.g., feed lot/dairy is the same one mile as coffee roaster and painting/coating operations). Also, a source like painting/coating operations is more likely in an urban, location than many of sources, and is already subject to regulations for emissions of VOCs, which may also reduce odors.

26-3

Chapter 3 – Mitigating Operational-Related Impacts

Page 3-13. Given that the Bay Area is home to Silicon Valley and is striving to attract "green" manufacturing businesses, would the District add measures/standards related to facilities with high electrical demand associated with electronics (i.e., data centers or office/R&D with on-site facilities) or manufacturing (i.e., solar manufacturers)?

26-4

Chapter 4 and Chapter 5—Assessing and Mitigating Local Community Risk and Hazard Impacts (Project Level and Plan-Level Impacts)

Project Level Impacts

Page 4-5. Will the District work with Caltrans on developing a program for additional planting trees adjacent to roadways as an alternative to planting trees on each site? Coast redwoods do not fare particularly well on the valley floor in the South Bay without additional water. Will the District consider it a significant unavoidable impact if redwood or deodar cedar trees are not planted between the source of risk and livable structures?

26-5

Page 5-4, Table 5-1 – the example plan-level GHG/SP threshold for mixed use plans is 4.59 MT CO₂e/SP/yr vs. Page 2-9 the threshold is 4.6 MT/SP/yr.

26-6

Plan-Level Impacts

Page 5-5: **Special Overlay Zones of 500 feet on each side of all freeways and high-volume roadways.** Would the District revise this guideline to include an option for a jurisdiction to base Special Overlay Zones on actual conditions and air quality impacts? For example, due to meteorological conditions, risks from diesel particulates near a highway are generally lower where the predominant wind conditions are across a roadway rather than parallel to it. Also, on some highways and high-volume roadways, truck traffic represents a lower proportion of total traffic than in some assumptions used to develop the 500 foot zone. As part of a General Plan Update, the City or County may want to refine the overlay zones to reflect actual conditions.

26-7

Would the District add a reference to an acceptable methodology or models for refining the 500 foot zone?

Chapter 6—Construction Related Impacts

Section 6.2 and Screening Criteria in Table 2-6 (page 2-11): The screening criteria used appears to penalize infill and mixed use development by requiring quantification of construction emissions for any demolition and for construction projects that include more than one land use type. Given a defined square footage of development and duration of construction, why would construction of more than one land use type generate more significant construction impacts than construction of one land use type?

Would the District add:

- screening criteria for demolition that incorporates BAAQMD rules and BMPs (based on the size/amount of demolition); and
- a methodology which allows weighting of land use types for mixed use projects?

Page 6-17. **Naturally Occurring Asbestos.** Please clarify the last sentence on the page. Should it say: "If a residential project would be located in an area moderately likely to contain NOA and earthmoving is involved, then the impact to future uses would be considered significant?"

Currently, BAAQMD has an established Asbestos Dust Mitigation Plan and Air Monitoring Plan that is considered sufficient to mitigate construction impacts to less-than-significant. Would the District add a list of possible mitigation measures that would reduce this post-construction impact to a less than significant level? Alternatively, are mitigation measures being left up to the Lead Agency? For infill projects, would removal of soil to a depth of one-two feet (in areas not covered by buildings or pavement) and replacement with non-serpentine derived soil be acceptable?

We appreciate the opportunity to provide comments on the draft guidelines and look forward to completion of the update of the District's CEQA Guidelines.

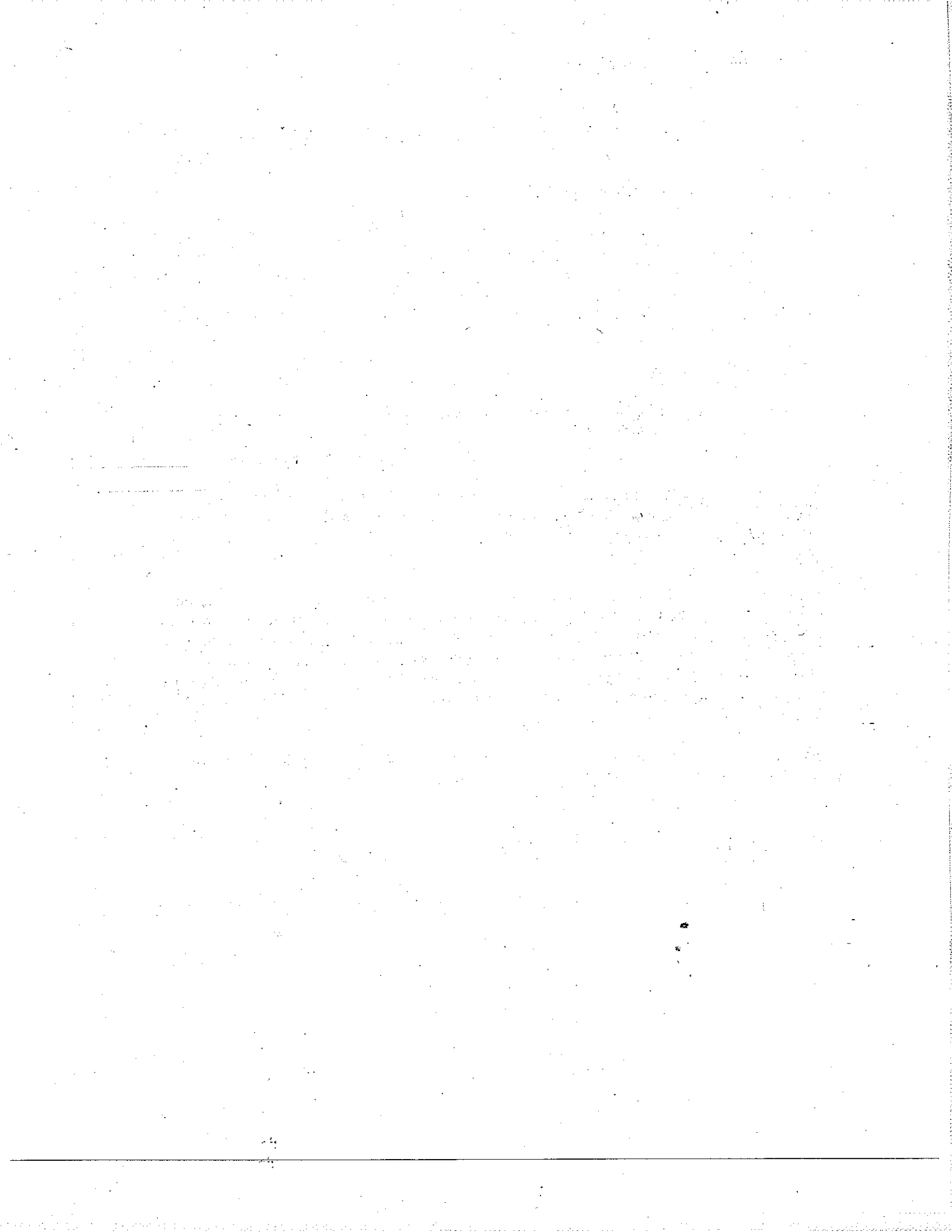
Sincerely,

Nora H. Monette

Nora H. Monette
Principal Project Manager

Will Burns

Will Burns
Project Manager



Comment Letter #: 26

Date: October 7, 2009

From: Nora Monette, Principal, and Will Burns, Project Manager, David J Powers

Response to Comments:

26-1 See Master Response MR-1.

26-2 The revised plan-level GHG threshold in the *Proposed Thresholds of Significance* report (November 2, 2009) reflects the commenter's suggestion. The revised plan-level GHG threshold recommends that if a proposed project is consistent with an adopted qualified climate action plan, or Sustainable Communities Strategy, it can be presumed that it will not have significant GHG emission impacts. In addition, for local governments that have not yet adopted a qualified climate action plan as defined by the CEQA Guidelines, they have the option to demonstrate that their collective set of climate action policies, ordinances, and other projects are consistent with AB 32.

26-3 The Air District released a *Revised Draft CEQA Thresholds Options and Justification Report* for public comment on October 8, 2009. The report provided substantial evidence and justification for the District-recommended thresholds, including the odor thresholds.

26-4 Air District Staff will consider adding specific measures that address facilities with high electrical demand.

26-5 Lead agencies should work with Caltrans on developing standards and alternatives to tree planting along roadways.

26-6 Comment noted. The updated CEQA Guidelines now include thresholds from the *Proposed Thresholds of Significance* report.

26-7 Lead agencies are encouraged to refine their overlay zones to reflect actual conditions based on Air District-approved modeling. See also Master Response MR-7.

26-8 Staff will revise and clarify the construction criteria. Staff will consider the commenter's suggestions for additional screening criteria and methodology recommendations.

26-9 The intent of the revised CEQA Guidelines regarding naturally occurring asbestos is that projects that propose disturbing the NOA should mitigate potential impacts of causing asbestos to become airborne. The updated CEQA Guidelines will clarify recommendations made on naturally occurring asbestos and will consider the commenter's suggestions.



#27



Delta Diablo Sanitation District

OFFICE AND TREATMENT PLANT: 2500 PITTSBURG-ANTIOCH HIGHWAY, ANTIOCH, CA 94509-1373
TEL.: (925) 756-1900 ADMIN. FAX: (925) 756-1961 MAINT. FAX: (925) 756-1963 OPER. FAX: (925) 756-1962 TECH. SVCS. FAX: (925) 756-1960
www.ddsd.org

October 8, 2009

Bay Area Air Quality Management District
939 Ellis Street
San Francisco, CA 94109

**SUBJECT: CALIFORNIA ENVIRONMENTAL QUALITY ACT GUIDELINES UPDATE
AND GREENHOUSE GAS EMISSIONS OF POWER PLANTS**

To Whom It May Concern:

As the Bay Area Air Quality Management District (BAAQMD) considers an update to its California Environmental Quality Act (CEQA) Guidelines, we would like to raise awareness of the potential for reducing Greenhouse Gas emissions associated with power plants through the use of recycled water for cooling in lieu of the often used "dry cooling" systems.

Delta Diablo Sanitation District (DDSD) is a regional wastewater agency serving the communities of Antioch, Bay Point and Pittsburg. In 2000, DDSD began operating a regional Recycled Water Facility designed to produce over 12 million gallons per day (MGD) of tertiary recycled water. DDSD currently provides recycled water for landscape irrigation to the city of Pittsburg, and approximately 7 MGD of recycled water to two local Calpine natural gas-fired power plants for cooling tower water.

DDSD has conducted research on power plant cooling systems using recycled water, including a literature review and project-specific analysis, which indicates that recycled water cooled systems can have significant greenhouse gas (GHG) benefits over air cooled systems. For example, a proposed 530 MW natural gas-fired power plant for base load electricity generation could generate increased GHG emissions of approximately 12,000 tons of CO₂ equivalents per year. This would be equivalent to the emissions of over 2000 cars.

While we understand that additional GHG emissions associated with air cooling are only a small fraction of a power plant's total GHG emissions, they are not insignificant, particularly since GHG impacts can be considered cumulative. For power plant siting cases where a reliable recycled water supply can be made available, these unnecessary emissions could easily be eliminated by use of the proven and reliable recycled water cooling technology.

We therefore respectfully request that the BAAQMD consider incorporating this finding into its approach to addressing GHG related issues under the CEQA. We believe analysis of cooling system alternatives should be included in CEQA documents for such projects, including a review of the availability of recycled water for cooling. In situations where a reliable supply of recycled water for cooling is available, plants choosing to instead use air cooling should be held

27-1

27-2

Bay Area Air Quality Management District

October 8, 2009

**CALIFORNIA ENVIRONMENTAL QUALITY ACT GUIDELINES UPDATE AND
GREENHOUSE GAS EMISSIONS OF POWER PLANTS**


Page 2

responsible under CEQA to mitigate the additional, unnecessary GHG emissions due to air cooling.

27-2

We would be happy to share the documentation of our findings and stand ready to assist as the BAAQMD considers development of related guidelines. Please feel free to contact me at (925) 756-1920.

Sincerely,



Gary W. Darling
General Manager

CQ/GWD:dj

cc: District File RW-CORRES
Chron File

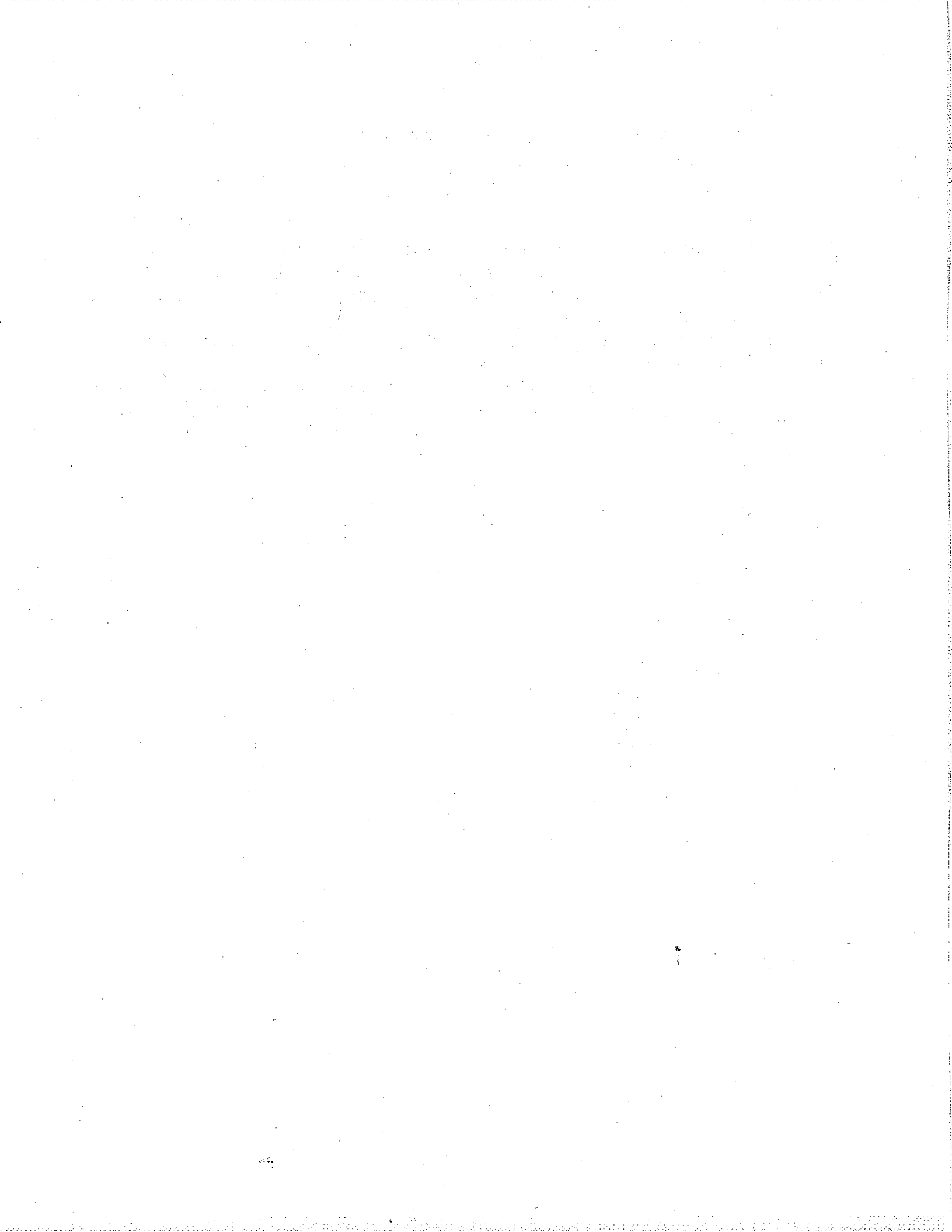
Comment Letter #: 27

Date: October 8, 2009

From: Gary W. Darling, General Manager, Delta Diablo Sanitation District

Response to Comments:

- 27-1 The Air District appreciates all recommendations for viable, feasible mitigation of significant air quality and GHG impacts. The revised CEQA Guidelines include mitigation measures, at both the project and plan levels, that encourage the use of recycled water for irrigation. Air District staff will further explore additional opportunities to include measures to mitigate impacts through water conservation, including mitigating GHG emissions in power plant cooling systems with the use of recycled water.
- 27-2 Air District staff will analyze the commenter's referenced literature and research and determine the feasibility of mitigating power plant emissions through the use of recycled water for power plant cooling systems.





SAN FRANCISCO PLANNING DEPARTMENT

#28

October 8, 2009

Mr. Greg Tholen
Principal Environmental Planner
Bay Area Air Quality Management District
939 Ellis Street
San Francisco, CA 94109

1650 Mission St.
Suite 400
San Francisco,
CA 94103-2479

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Dear Mr. Greg Tholen,

The City and County of San Francisco's Planning Department supports the Bay Area Air Quality Management District's (BAAQMD's) California Environmental Quality Act (CEQA) Draft Air Quality Guidelines Update (*BAAQMD Guidelines*) process. We commend the BAAQMD for undertaking its efforts to provide definitive guidance concerning these complex and interrelated air quality and Greenhouse Gas (GHG) issues and offer the following comments. The Planning Department looks forward to working with the District on further development of the proposed *BAAQMD Guidelines*.

GENERAL COMMENTS

- A. The Planning Department does not believe that the proposed *BAAQMD Guidelines*, with respect to greenhouse gas emissions, are consistent with the Office of Planning and Research's (OPR's) proposed amendments to the CEQA Guidelines. 28-1
- B. The *BAAQMD Guidelines* emphasize identifying air quality impacts based on vehicle miles traveled. The Department cautions against using this metric and would be supportive of a "vehicle trips" metric or other travel demand measure, consistent with OPR's proposed amendments to the CEQA Guidelines. 28-2
- C. San Francisco has established policies through ordinances, the General Plan, the Planning Code and resolutions of City commissions that incorporate most of BAAQMD's proposed mitigation measures and standards suggested by Senate Bill 375 (SB 375) and Assembly Bill 32 (AB 32) for compact, infill, mixed-use development projects. Nevertheless, our testing of the proposed thresholds for operational emissions and GHG for typical San Francisco projects indicates that smart growth development projects in San Francisco would incongruously trigger EIR requirements and have the deleterious effect of discouraging the types of projects that should be encouraged. 28-3
- D. The Planning Department respectfully requests that BAAQMD postpone further action on the *BAAQMD Guidelines*, as they pertain to GHG emissions, until convening a stakeholder

working group to address concerns regarding the region's ability to meet our GHG reduction targets, should these thresholds be established. It is our contention that the *BAAQMD Guidelines* would inhibit San Francisco's ability to meet its GHG reduction targets under SB 375 and may actually impede the region's practical ability to promote land use patterns consistent with SB 375's mandates.

28-4

Our perspective is informed by San Francisco's many existing policies and practices which effectively promote land use patterns and alternative modes of transportation consistent with achieving reductions in GHG and harmful emissions. In the case of toxic air contaminants (TACs), San Francisco has already addressed dust control and exposure to busy roadway emissions through local ordinances which essentially embody the protective measures suggested by the *BAAQMD Guidelines* for emissions from TACs. In addition, our environmental documents also routinely include comprehensive analyses of criteria contaminants, GHG, TACs, and appropriate health risk assessments.

San Francisco has developed and implemented numerous policies and programs that directly and indirectly limit the amount of GHGs which would otherwise be emitted into the atmosphere. The City's climate change related policies are embodied throughout the City's municipal codes, ordinances, and the General Plan. The following examples, although not exhaustive, highlight just some of the City's actions that reduce GHG emissions and other harmful emissions.¹

City Charter Section 16.102: Transit First Policy has been in effect since 1973 and gives priority to public transit investments. It adopts street capacity and parking policies to discourage increased automobile traffic and encourages the use of transit, bicycling and walking rather than use of single-occupant vehicles. San Francisco's Municipal Transportation Agency (SFMTA) is one of America's oldest public transit agencies, the largest in the Bay Area and seventh largest system in the United States. It currently carries more than 200 million riders annually.

Environment Code Section 421. Commuter Benefits Program requires all employers with at least 20 full-time employees to provide at least one of the following commuter benefits: (1) a pre-tax commuter benefit election program; (2) an employer paid benefit; or (3) employer provided transit. Numerous provisions in our Planning Code mandate limitations on, and management of, parking and require the provision of bicycle and carshare facilities.

Environment Code, Chapter 9: Greenhouse Gas Emissions Targets and Departmental Climate Action Plans established the following GHG emissions goals for the City: (i) By 2008, determine

¹ The San Francisco Department of the Environment maintains a list of environmental ordinances and regulations. Please see: http://www.sfenvironment.org/our_policies/overview.html?ssi=13#EnvironmentalOrdinances. Accessed October 7, 2009.

1990 City GHG emissions as provided in Section 902(c) below; (ii) By 2017, reduce GHG emissions by 25 percent below 1990 levels; (iii) By 2025, reduce GHG emissions by 40 percent below 1990 levels; and (iv) By 2050, reduce GHG emissions to 80 percent below 1990 levels. To meet these reduction goals, the Chapter 9 code requires: (1) Departmental Climate Action Plans; (2) a review of the City's General Plan to add greenhouse gas emissions limits and policies to achieve those targets; (3) consideration of a project's impact on the San Francisco GHG emissions limit under the California Environmental Quality Act; (4) review of City transit, pedestrian, bicycle, parking and transportation demand management programs; (5) improved energy efficiency in new construction and alterations to existing buildings, optimization of HVAC, lighting, and other building systems, and retrofitting of buildings at time of sale; (6) review of street and public lighting standards to enhance energy efficiency; (7) increased energy efficiency of City buildings; and (8) consideration of the impact of City procurement decisions on the environment.

Environment Code Section 906. Market-based Compliance Mechanisms authorizes the Department of the Environment to develop a carbon market for the City of San Francisco to reach the GHG goals.

Environment Code Section 907. Local Energy Generation requires the San Francisco Public Utilities Commission (SFPUC) to develop and implement a plan towards becoming fossil fuel free by 2030 and to develop policies within the Sewer Master Plan to reduce GHG emissions.

Environment Code, Chapter 14: Construction Demolition and Debris Recovery Ordinance requires that projects proposing full demolition of an existing structure to develop a waste diversion plan that diverts 65 percent of all non-hazardous construction and demolition debris from landfills.

Environment Code, Chapter 10: Mandatory Recycling and Composting Requirements mandate all persons located in San Francisco to separate recyclables, compostables, and landfill trash and to participate in recycling and composting programs. This ordinance contains enforcement mechanisms which has enabled San Francisco to exceed targets.

Building Code, Chapter 13: Green Building Requirements mandate that newly constructed residential and commercial buildings must meet a sliding scale of green building requirements based on the project's size in order to increase energy and water efficiency in new buildings and significant alterations to existing buildings.

Planning Code: San Francisco Planning Code incorporates numerous smart growth policies and includes electric vehicle refueling stations in city parking garages, bicycle storage and carshare facilities for commercial and office buildings, unbundled parking and parking maximums in new residential building, and zoning that is supportive of high density mixed-use infill development.

Zoning in San Francisco establishes residential densities that far exceed density limits in other cities, with housing densities reaching as high as 283 units per acre in the downtown areas and generally no lower than 14 units per acre in the west and southwest neighborhoods of the City. The City's recent area plan rezonings remove housing densities altogether in favor of height limits, unit mix, and open space requirements. Our 2009 Housing Element proposes policies that discourage single use developments, requiring new development to provide a mix of uses to reach a sustainable jobs/housing balance.

Within the framework of the General Plan and the City's Municipal Code, San Francisco has developed, and continues to develop, strong and multi-faceted policies designed to reduce GHG emissions citywide and regionally. In addition to the mandatory programs identified above, San Francisco has developed a variety of voluntary, incentive-based programs. For example, the SFPUC's "GoSolarSF" program offers San Francisco's businesses and residents incentives in the form of a rebate program that could pay for approximately half the cost of installation of a solar power system, and more to those qualifying as low-income residents.

SPECIFIC COMMENTS

Project Level Impacts: Criteria Air Pollutants

1. For criteria air pollutants (CAPs) and many other air quality analyses identified by the BAAQMD, the District offers screening levels by which they believe a project would generally not result in a significant air quality impact. These screening levels are largely dictated by inappropriate reliance on ITE trip generation rates which, while reliable for major land use categories such as residential, office and retail, many other land use categories often have wide variability in the ranges for data results with associated high error factors. Appropriate use of ITE's trip generation rates in urban areas is further limited because these reflect data primarily collected for non-urban areas with virtually exclusive reliance on auto travel. Very different modal and development patterns exist in urban areas, which need to be incorporated in any appropriate guidance from BAAQMD. In order to effectively deal with these important differences, which fundamentally affect how emissions are calculated, we recommend that the *BAAQMD Guidelines* allow local jurisdictions to develop screening levels and calculate impacts, based on vehicle trips rather than ITE Trip Generation Rates.
2. The mitigation measures identified for Criteria Air Pollutants and GHG are presented as a range of unscaled reductions. The *BAAQMD Guidelines* require the lead agency to provide justification for the reductions achieved from implementation of the mitigation measures.

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The mitigation measures themselves are highly subjective and subject to highly variable effectiveness, making it difficult for the lead agency to correctly determine whether an impact has been fully mitigated or not. Furthermore, the *BAAQMD Guidelines* do not offer any sources or references regarding the range of scaled reductions suggested. It is imperative that the District provide the source material for lead agencies to reference and understand where there is variability in the mitigation effectiveness, including the limitations of isolated measures not coupled with a comprehensive program.

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Project Level Impacts: Greenhouse Gas Emissions

3. The *BAAQMD Guidelines* fail to adequately provide substantial evidence required for determining how GHG emissions above the proposed BAAQMD thresholds would result in a significant impact to global climate change (CEQA Guidelines Section 15064.7).
4. The basis for the quantitative reduction needs additional supporting evidence. It appears that all electricity generation and on-road vehicle emissions are attributed to the land use sector, and the proposed analysis techniques do not consider the goods movement sector and other sectors that contribute to these emissions.
5. It is unclear how the state mandated reductions and programs have or have not been accounted for in the *BAAQMD Guidelines*.
6. The links between the statewide emissions and our regional emissions and reduction target are unclear. It would be more appropriate to base a reduction target on the regional allocations being developed under SB 375- a process that is taking a substantial amount of time in developing a sensible and defensible methodology.
7. The appropriateness of the GHG reduction targets is questionable. It appears that all new development is being tasked with taking on more than its fair share for meeting the GHG reduction targets. Under CEQA, a project is only legally responsible for its contribution to environmental effects.
8. The Planning Department does not recommend a quantitative threshold for GHG emissions. In our view, such a requirement will only result in the need for relatively small, infill projects to perform costly GHG analysis, only to demonstrate that there are no viable mitigation strategies for them to implement beyond the extensive strategies already mandated by the City and incorporated into the development. The Planning Department would prefer to see significant strides in the development of performance standards that produce real and accountable GHG reductions. In our experience, the quantitative analysis approach does not produce meaningful results to mitigate climate change. In fact, requiring a quantitative analysis would place an unfair burden on smaller projects, affordable housing projects, and other projects lacking the upfront financial resources to satisfy the extensive analyses which would become pervasive requirements under the

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BAAQMD Guidelines. The Planning Department has found that GHG analyses can be prohibitively expensive, particularly for non-profit and affordable housing projects, with costs ranging from \$10,000 to \$100,000.

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9. The Planning Department further believes that a quantitative threshold would promote piecemealing of a series of smaller projects to avoid the proposed thresholds. The result will be less optimal development in San Francisco and the region, i.e. less compact development that does not reach its full development capacity compared to allowed zoning coupled with greater dispersed sprawl. The Greenhouse Gas Emissions thresholds identified in the *BAAQMD Guidelines* should be a starting point for discussing appropriate thresholds. As recommended in the beginning of this letter, the Planning Department recommends working group sessions represented by cities and counties in the Bay Area, a similar process under taken by other air districts (San Joaquin and South Coast).

28-13

10. Should a quantitative GHG analysis remain the desired mechanism for determining a significant impact, the *BAAQMD Guidelines* should clarify how the screening levels should be used. As written, the screening levels appear to recommend undertaking a GHG analysis for projects even below the threshold. Further, the thresholds state that projects above the screening levels could have a significant climate change impact. This conclusion would have the practical effect of requiring a lead agency to prepare a focused Environmental Impact Report for all projects exceeding the screening levels and thereby delay and financially burden projects which would otherwise be subject to a more streamlined environmental review process. A focused EIR for an infill development project of modest size could potentially be cost prohibitive and effectively kill such projects.

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11. Should a quantitative approach be preferable, the screening levels should consider mixed-use projects. From a policy standpoint, San Francisco does not encourage single use projects and instead encourages and/or require that a project include mixed uses. Neither the screening criteria, nor the proposed thresholds, consider the benefits of mixed uses. In fact, our testings of methodologies in the *BAAQMD Guidelines* for projects of modest size with a mix of uses in San Francisco indicate that such projects would most likely be above the proposed screening levels in the *BAAQMD Guidelines*, and could require an EIR. This directly contradicts the goals and mitigation measures outlined in the *BAAQMD Guidelines* which are designed to reduce GHG emissions and call for encouragement of mixed-use infill development projects (See *BAAQMD Guidelines* pages 5-8 to 5-19, "Mitigating Plan Level Impacts"). Not only do the proposed thresholds conflict with regional efforts to reduce GHG emissions, but they also conflict with BAAQMD's own guidelines for reducing GHG emissions.

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12. The screening levels do not distinguish between infill development or transit oriented development compared to greenfield and/or suburban development. Considering that transportation emissions represent almost two-thirds of all project-level GHG emissions in the Bay Area, an analytical distinction between infill and transit oriented development projects versus greenfield and suburban development should be made. A one-size-fits-all

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numerical threshold would be a detriment to infill development and affordable housing projects.

- 28-17
13. The screening levels do not make practical sense. It is difficult to understand how a 24 hour convenience market with gas pumps (i.e. "gas station") would emit more GHGs than 120,000 square feet of general heavy industry. Presumably, the screening level for a gas station is this low because of the number of trips into and out of the gas station. Many of these trips should not be solely attributed to the gas station, as many of these trips are pass-by or linked trips. While a regional shopping center can appropriately be treated as a destination point, gas stations and other complimentary land use types have a much higher percentage of pass-by and linked trips than URBEMIS presumes.
- 28-18
14. A number of the methodological approaches to assessing and mitigating operational-related impacts are flawed. Because vehicle trips, not raw trip rates, are the primary determinant of operational-related impacts, vehicle trips should be used as the basic input rather than trip rates. Many of the input parameters identified in Table 3-1 are not well-adapted to reflect appropriate adjustments needed for use of URBEMIS in urban areas. The *BAAQMD Guidelines* direct that net calculations are permissible only if the existing emission sources "would continue if the proposed redevelopment project is not approved;" this guidance may be appropriate for stationary source emissions, but it would be impossible to know whether or not existing uses would continue in the absence of proposed land use projects proceeding. The URBEMIS default value of 0.5 FAR for all non-residential uses highlights the severe limitations of applications to San Francisco, where FAR ratios many multiples higher are common. The schematic simplicity of Tables 3-2 and 3-3 belie the actual practical flaws in how emissions are proposed to be calculated and mitigated under the *BAAQMD Guidelines*.
- 28-19
15. The URBEMIS program was not intended to calculate vehicle miles traveled. The GHG calculations that are based on ITE trips do not directly correlate into vehicle miles traveled and there are practical problems with applying ITE rates for analyzing VMTs. The *BAAQMD Guidelines* treat vehicle miles traveled and their subsequent GHG emissions as point sources, when, in fact, they are not. It is speculative to presume, as the *BAAQMD Guidelines* do, that all new developments are sources of additional VMTs. It can be just as easily argued that certain forms of development that incorporate green buildings and patterns that support alternative modes of transportation may reduce existing vehicular trips and could, in fact, produce fewer VMTs. The Planning Department recommends further research and analysis be conducted as to the usefulness of VMT as a metric for determining additional GHGs from new development. Approaches that consider the service area of a given land use (grocery store, etc.) may be preferable.
- 28-20
16. Should the BAAQMD prefer a quantitative approach, a per capita and/or per service population would be preferable over a "bright line" numeric threshold not sensitive to different settings. The Planning department does not support the development of a quantitative approach for the reasons discussed above but recognizes that a per capita and/or per service population threshold would appear to not discriminate based solely on

a project's size. The Planning Department does have concerns, however, that the per capita and per service population thresholds are unrealistically low and we question the reasonableness of these thresholds. If BAAQMD proceeds with a per capita or per service population threshold, the Planning department wishes to see additional documentation supporting the proposed thresholds and additional examination of the effects of such a threshold on infill development, transit-oriented development, and other development types designed to meet the state and regional GHG reduction targets.

17. Significant strides have been made by the Planning Department to streamline CEQA review for infill development projects using the Class 32 Categorical Infill Exemption and the Statutory Community Plan Exemption (CEQA Section 21083.3). It is unclear how the proposed thresholds relate to these exemptions, as well as the statutory exemption for affordable housing of 100 units or less (Residential Infill Exemption, CEQA Guidelines Sections 21059.20, 21059.23, 21059.24). Based on our investigations, the proposed thresholds would conflict with and undermine the policy objectives that the California legislature established in enacting these exemptions. A serious problem with the proposed screening levels is that they make no distinction between the types and densities of the residential categories. CEQA's infill exemption applies to residential projects with density of at least 20 units per acre. San Francisco has many developments approved and under consideration exceeding 100 units per acre. Rather than encouraging infill development, the *BAAQMD Guidelines* will make infill development more costly and difficult.

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Further, the screening levels proposed seem premature in light of the work currently underway to implement SB 375. Under SB 375, transit priority projects would be exempt from CEQA (CEQA Section 21151.1). These are projects that contain residential units at 20 units or more per acre and are within a half mile of a major transit corridor and accord with a sustainable community strategy accepted by the metropolitan planning organization. Although it will take time to implement the SB 375 planning process, SB 375 recognizes the importance of not just considering the land use type and square footage, but also the importance of taking into account the location, density, proximity to transit and other considerations integral to accurately determining a project's contribution to GHGs.

18. The *BAAQMD Guidelines* lack sufficient evidence to support how and why a stationary source that emits ten times more GHGs than many of the uses identified in BAAQMD's proposed thresholds would have less of an impact on global climate change. Effective mitigation measures to address adverse emissions from stationary sources can more realistically be defined and implemented than emissions from vehicle trips and should appropriately be held to a more restrictive standard.

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19. Based on the Workshop Options Report, the BAAQMD has identified a maximum feasibility of mitigation in the range of 25-35 percent. By our calculations, any project emitting more than 1,485 MT would have a significant and unavoidable impact. To the extent that proposed threshold encourages projects to downsize, this does not support infill development; it merely limits the size of a project and de facto encourages dispersal

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of smaller, less compact projects. Furthermore, it is preferable to have a larger project on an infill site from a regional GHG standpoint.

20. Another approach to consider is a mechanism to allow for large infill development projects to reduce their emissions in comparison to a business-as-usual model which would need to be clearly defined and use this comparison as the basis for not requiring preparation of an EIR solely based on inappropriate GHG thresholds. Much more research and refinement of this idea and other concepts for thresholds should be considered before determination of thresholds. A mechanism that actually encourages a project to be designed and sited to incorporate enhanced measures protective of the environment would be more appropriate. 28-24
21. The *BAAQMD Guidelines* are unclear concerning whether or not lead agencies can use their own methodologies for calculating GHG emissions. The project-level approach appears to dictate that the methodology in the *BAAQMD Guidelines* must be used, but, when addressing Plans, the *BAAQMD Guidelines* appear to allow for more flexibility. 28-25
22. It is unclear how the proposed mitigations are supposed to be addressed in a CEQA document. The proposed mitigations lack documentation regarding their effectiveness and seemingly encourage free rein for the lead agency to improvise in potentially random adoption of effectiveness measures. More research and emphasis should be placed on what is considered effective mitigation and to document realistic targets concerning percent reductions of GHGs. How do the *BAAQMD Guidelines* account for existing citywide policies and programs to reduce GHG emissions? Specifically, how are existing Green Building Ordinances and transit policies accounted for? 28-26
23. Should a quantitative approach for GHG thresholds be desirable, the Planning Department has many concerns over the methodology used to calculate project-level emissions because the tools available are still in the developmental stage. Specifically, how does the proposed methodology account for reasonable reductions from the transportation, energy, natural gas, and water sectors that are expected from AB 32 ? URBEMIS does not currently include AB 32 projected emissions reductions from these sectors.
24. When determining indirect emissions from energy required to convey, treat, and distribute water, does this also include the emissions from the electricity required to treat wastewater? When proposing a numerical threshold, the *BAAQMD Guidelines* should be very clear about what to calculate and how. 28-27
25. The methods for project-level impacts do not consider the embodied energy of existing buildings and as such makes no distinction between adaptive reuse and new development. The lack of distinction between these types of development conflicts with plan-level mitigating policies that advocate for adaptive reuse and reconditioning of 28-28

existing buildings and recognize that such practices may substantially offset impacts relative to demolitions (*BAAQMD Guidelines*, page 5-7).

Project-level Impacts: Local Community Risks and Hazards

26. For project-level impacts on local community risks and hazards, it is unclear whether a project proposing a new source of contaminants would need to analyze the excess cancer risk, acute HI, chronic HI and additional PM_{2.5} levels, or if the project need only analyze against one of these criteria. The *BAAQMD Guidelines* as written seem to indicate that a project would need to perform all four of these analyses irrespective of the characteristics of the setting.

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27. Is the air district planning to develop screening levels that would trigger these thresholds?

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Plan level impacts: Greenhouse Gas Emissions

28. The *BAAQMD Guidelines* propose two methods for determining the significance of a proposed plan's impact on greenhouse gas emissions. The first method is a quantitative threshold that the plan must meet and the second is a qualitative analysis based on the project's compliance with a qualified climate action plan. The Planning Department has concerns over the numeric threshold and we believe that it is unrealistically low. The Planning Department requests additional information to support the proposed thresholds and an analysis of the practicality of the thresholds.

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29. Furthermore, should a per capita or per service population threshold be desirable, the BAAQMD should clearly identify what a service population is and how it should be calculated. For example, are retail customers part of the service population, or just the number of jobs and residents? The BAAQMD should further identify what GHG emissions should be included in the per capita/per service population GHG limit. How would a per service population/ per capita threshold distinguish between new trips and diverted trips?

30. The Planning Department favors a program that analyses greenhouse gas impacts on a larger scale, preferably a regional scale. BAAQMD's proposal for determining a project's consistency with a qualified climate action plan is generally appropriate. The Planning Department does, however, believe that the *BAAQMD Guidelines* should make explicit what constitutes a "qualified" climate action plan. San Francisco has a climate action plan that did not undergo CEQA review because it largely functions to calculate an emissions inventory, define the problem, and establish a tool for departments in the City to use in developing further policies and programs. However, a vast majority of the recommended policies cited to in the *BAAQMD Guidelines* on pages 5-7 to 5-19 are already included in San Francisco's existing policies and ordinances which have undergone CEQA review at

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the time that these policies were adopted by the City. The Planning Department requests a process whereby the City could submit an evaluation to the BAAQMD of existing climate-related policies for a determination as to whether the City meets the definition of having a qualified climate action plan.

31. The plan-level approach encompassed by the *BAAQMD Guidelines* should not be limited to Climate Action Plans and should be broadened to include corresponding policies embedded in other types of Plans, such as a General Plan, Sustainable Communities Strategy, GHG reduction element of the General Plan, etc, to be consistent with OPR's proposed revised CEQA guidelines (specifically the revised checklist). The consistency with a Climate Action Plan threshold should be broad enough such that a lead agency can show, through whatever appropriate documents, that the jurisdiction meets the AB32 or Executive Order S-3-05 reduction targets. The only portions that should be required to undergo additional CEQA review should be limited to reduction measures to be implemented to meet a jurisdiction's GHG reduction targets. For example, a lead agency should have flexibility to prepare a Climate Action Plan that makes policy recommendations to the General Plan and those policies, measures, etc., should undergo CEQA review, but not necessarily the Climate Action Plan itself. This approach is consistent with guidance from the Attorney General's office and OPR.

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32. The plan-level approach should be very clear about what the Climate Action Plan should and should not include in its inventory. Climate Action Plans across the state and country are not directly comparable because jurisdictions choose which emissions they believe they are responsible for without consistent guidance from regional or state air districts. For example, Los Angeles and San Francisco use very different methodologies in accounting for inter-regional trips, such that when looked at on the surface, Los Angeles fares better than San Francisco on a per capita comparison.

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Plan level Impacts: Local Community Risk and Hazards

33. The threshold for determining significance of a plan on local community risk and hazards should be revised to include a process whereby a plan can show that the buffer, if not 500 feet, would result in PM_{2.5} levels below 0.2 micrograms per cubic meter at the closest sensitive receptor. If this were to be considered in the *BAAQMD Guidelines*, the plan should indicate, through its projections of future highway/roadway volumes, that receptors are sited in locations that are below the 0.2 microgram per cubic meter of PM_{2.5} levels in the cumulative setting.

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34. Figure 4-1 of *BAAQMD Guidelines* identifies much of San Francisco and other Bay Area urban core areas as Communities of High Concern. San Francisco has adopted local ordinances which require detailed risk assessments for its affected areas. Any proposed additional regulations for these areas should incorporate appropriate evaluations of

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potential exposures coupled with well-defined protective measures to avoid stifling economic revitalization of these areas and enable urban infill development.

Construction-related Impacts: Criteria Air Pollutants

35. The proposed mitigation measures for construction-related impacts of Criteria Air Pollutants (page 2-8) that limits idling times is not practically enforceable.

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36. Screening levels for construction-related criteria air pollutants and precursors are inappropriately triggered by reliance on ITE trip generation rates grounded in non-urban data with wide variability and high error factors for many of the land use types identified. Treating the construction impacts of similarly-sized land uses as identical irrespective of whether these activities are focused on high-density on a small, urban parcel or are spread over a wide swath of outlying land does not make sense.

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37. Please clarify what the Basic Construction Mitigation Measures are. Are these the same Best Management Practices (BMPs) identified for Plan-level construction thresholds, or are they the same Basic Control Measures from the 1999 BAAQMD Guidelines?

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38. Our reading of the BAAQMD Guidelines seems to indicate that if a project includes demolition, no matter the size of the project, that the project would be required to do an analysis of construction-related CAPs—is this a correct understanding? This would seem onerous for smaller projects, particularly infill development that often involves demolishing a less-intense land use and replacing it with denser development. Specification of an appropriate screening level might help to determine the size of demolition that would require analysis of construction emissions.

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39. Extensive site preparation and extensive material transport are vague terms and should be clarified. Is there a screening level for this (cubic yards of material, haul trips, etc.)?

40. Our understanding is that the District is no longer proposing BMPs for mitigating greenhouse gas emissions from construction on a project-by-project basis, but is requiring a case-by-case analysis of construction greenhouse gas emissions. The criteria for requiring this analysis is vague. The District should provide guidance and/or examples of projects for which they believe this analysis should be required.

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41. Although the District is apparently no longer proposing the GHG construction-related BMPs for every project, the Planning Department offers the following comments on these BMPs.

- 28-41
- a. The guidelines should clarify the relationship of these BMPs to CEQA categorical exemptions. It will be infeasible for certain types of projects to implement these BMPs (e.g., local materials for utility projects). If failure to employ construction BMPs undermines the use of a categorical exemption because of the link to cumulative impacts, then public agencies may lose an essential means for making minor repairs to existing facilities (Class 1 Cat Ex). BAAQMD needs to fully understand the implications for otherwise routine categorical exemptions if BAAQMD adopts potentially infeasible and inflexible mitigation requirements – particularly with regard to the implications for public infrastructure projects.
 - b. The first BMP is whether the project construction vehicles are alternative-fuel based for at least 15 percent of the fleet. Has the feasibility of this mitigation measure been considered for all projects under CEQA? While this may be a desirable goal, more information is needed as to feasibility. Do these thresholds only apply to projects that are above the screening level? How are projects that would normally be exempt being considered?
 - c. The second BMP is whether the project uses at least 10 percent of its building materials that are fabricated locally. Is this ten percent by weight, by cost, or by some other measure? What constitutes a "building material"? Again, more information is needed as to feasibility in relation to a broad range of projects – and especially public infrastructure.
 - d. Regarding the second BMP, due to the specific nature of some projects, local building materials may not be available within 100 miles. Generally projects try to procure materials locally, reducing the transportation costs. However, many materials are manufactured elsewhere and shipped to the San Francisco Bay Area. This measure may not be very applicable to some projects. For instance, how applicable is this to a pipeline project where the majority of the materials are the pipe itself? Does it make sense to have a project that replaces piping in the Central Valley to need to find materials within 100 miles, if such manufacturing is not readily available? Again, there is a problem with even application of this BMP because it results in a GHG determination that is weakly correlated to the level of emissions. For instance, a very small gas or water pipeline repair project that utilizes specially fabricated components from over 100 miles away would trigger an EIR, while a project utilizing large volumes of locally produced concrete could be less-than-significant despite resulting in orders of magnitude more GHG emissions. Pipeline and electricity infrastructure projects in rural areas, including solar energy generation projects, would almost automatically result in significant and unavoidable impacts, thereby increasing the cost and delay of critical infrastructure.
 - e. The third BMP should be revised to state: "Recycle at least 50 percent of non-hazardous construction waste or demolition materials."

Construction-related Impacts: Local Community Risks and Hazards

42. The District should circulate the screening levels that are to be developed under the construction-related TAC threshold prior to adoption of the proposed thresholds.

Carbon Monoxide Impacts

43. Please provide the empirical basis for the screening levels that the District believes would require a detailed carbon monoxide analysis. As BAAQMD is aware, many years have elapsed without violations of carbon monoxide standards in San Francisco. While we continue to conduct carbon monoxide evaluations in our environmental documents in accordance with the 1999 BAAQMD Guidelines, these analyses have also for many years not shown any potential for exceedances. Because these analyses are dependent upon completion of our comprehensive transportation impact studies, conducting carbon monoxide analyses commonly create unnecessary delays and increase the costs associated with the environmental review process without providing meaningful results. The Planning Department is requesting that the BAAQMD Guidelines be modified to allow local jurisdictions to not perform carbon monoxide impact analyses in environmental documents and establish that an affected jurisdiction's prolonged record of actual compliance with carbon monoxide standards constitutes substantial evidence for exercising this discretion.

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The City and County of San Francisco Planning Department thanks you for the opportunity to provide comments on the proposed BAAQMD Guidelines as well as your time to recently meet with us. Should our concerns as outlined above be addressed by the District, we believe that we can support the proposed BAAQMD Guidelines relating to significance thresholds for Criteria Air Pollutants, Carbon Monoxide, Local Community Risks and Hazards, and Odors. However, we urge BAAQMD to postpone development of thresholds of significance for GHG operational emissions and construction-related criteria air pollutants and precursors until convening with stakeholder groups and local planning agencies versed in the CEQA process. We believe that through these stakeholder sessions, the District will be able to develop appropriate CEQA thresholds of significance that advance the State and the Region's efforts to reduce these emissions from the land use sector.

Sincerely,



Bill Wycko
Environmental Review Officer
San Francisco Planning Department

Comment Letter #: 28

Date: October 8, 2009

From: Bill Wycko, Environmental Review Officer, San Francisco Planning Department

Response to Comments:

28-1 The Air District's proposed guidelines are highly consistent with OPR's proposed amendments to the CEQA guidelines. Specifically, OPR's proposed amendments to the CEQA Checklist, Appendix G, include the following questions. Would the project:

- a) Generate greenhouse gas emissions, either directly or indirectly, that may have a significant impact on the environment?
- b) Conflict with an applicable plan, policy or regulation adopted for the purpose of reducing the emissions of greenhouse gases?

The Air District's proposed thresholds of significance for GHGs would provide consistency for Lead Agencies when attempting to answer these questions. Most projects individually would not result in sufficient GHG emissions such that a noticeable incremental change in the global average temperature would occur. In fact, it would be impossible to downscale the global impact of climate change to the project level for land use development projects. AB 32, however, establishes a statewide context for California to reduce GHG emissions as a whole, and do its share toward preventing dangerous climate change. Since GHG emissions in the State need to decrease, not increase, any net increase in GHG emissions could potentially be considered to contribute to climate change. Because the legislature does not intend to meet its AB 32 mandates through limiting population or economic growth in California, it is acknowledged that some amount of GHG emissions must be allowed from new development. The Air District proposes that 1,100 MT CO₂e/year constitutes a substantial increase in GHG emissions in its jurisdiction such that a project would have a cumulatively considerable impact on climate change. In addition, the Air District proposes that if a project would accommodate development in a way that would result in GHG emissions less than 4.6 MT CO₂e/SP/year, the project would not conflict with a AB 32 (i.e., the plan, policy, or regulation adopted for the purpose of reducing GHG emissions) goals. Both of these quantitative were developed, based on substantial evidence, because they permit development in a manner which complies with the goals of AB 32. See also master responses MR-1, MR-3 and MR-4.

Appendix G is to be used as a guide for Lead Agencies to consider when analyzing environmental impacts, but in no way limits the Lead Agency to these considerations. The Lead Agency may use other criteria it believes are appropriate to ensure that environmental impacts are sufficiently analyzed and mitigated. In other words, just because a question is or is not asked in Appendix G, doesn't relieve the Lead Agency of the duty to adopt a threshold and evaluate an impact.

As always, "in preparing an EIR, the agency must consider and resolve every fair argument that can be made about the possible significant environmental effects of a project, irrespective of whether an established threshold of significance has been met with respect to any given effect." See *Protect the Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal.App.4th 1099.

- 28-2 In the *Proposed Thresholds of Significance* report (November 2, 2009) the Air District recommends that either the rate of increase in VMT of vehicle trips be used in comparison with the rate of population growth.
- 28-3 See master response MR-2.
- 28-4 See master response MR-3.
- 28-5 See master response MR-6. In addition, an Agency may use screening levels and thresholds that it feels are appropriate, as long as the rationale for deviation from BAAQMD-recommended guidance is substantiated based on evidence.
- 28-6 The updated CEQA Guidelines will provide direction on quantifying emissions from the list of mitigation measures. See master response MR-7.
- 28-7 See master response MR-3, and Appendix D of the Draft CEQA Guidelines.
- 28-8 See Appendix D of the Draft CEQA Guidelines. Emission sectors that were attributed to land use include: on-road mobile, commercial, residential, electric power generation, and domestic wastewater treatment. These are the sectors that OPR recommends be included in a CEQA analysis in its Technical Advisory, *CEQA and Climate Change* (June 2008).
- 28-9 See master response MR-3
- 28-10 Please see Appendix D of the Draft CEQA Guidelines. The statewide emissions inventory was used to derive the GHG/SP threshold metric, whereas the regional emissions inventory was used to derive the emissions reduction target for BAAQMD.
- 28-11 The proposed Draft CEQA Guidelines only apply to projects subject to CEQA, which would only apply to new development. Thus, the Draft CEQA Guidelines would only apply to new development. See also master response MR-3
- 28-12 The commenter recommends a performance standard approach to thresholds, rather than a quantitative metric. The Air District evaluated a performance standard approach in Appendix D of the draft CEQA Guidelines, and the evaluation showed that it did not achieve the desired emissions reduction target for BAAQMD's jurisdiction.
- 28-13 See master response MR-4.
- 28-14 The updated CEQA Guidelines will clarify this issue.
- 28-15 The updated CEQA Guidelines will clarify issue. See also master response MR-4.
- 28-16 The updated CEQA Guidelines will clarify this issue.
- 28-17 The proposed screening levels in the CEQA Guidelines are not intended as thresholds of significance. They are just screening levels to minimize the need for full analysis in situations where BAAQMD has determined no significant air quality impact would occur because Air District staff have modeled the

screening level projects under very conservative assumptions and have determined that such projects will not exceed the applicable thresholds of significance. The methodology for emissions quantification provides instructions on how the user can account for density and other project attributes that would reduce emissions relative to model defaults.

28-18 See master response MR-6.

28-19 See master response MR-3.

28-20 See master response MR-2.

28-21 See master response MR-2 and MR-5.

28-22 See master response MR-3.

28-23 See master response MR-2.

28-24 See master response MR-6 and MR-7.

28-25 The Air District recommends that the user perform manual calculations to account for jurisdiction-specific regulations that would affect emissions from the projects. These regulations, if appropriate, should be accounted for in the project design/attributes, and not as mitigation. The user should provide evidence in support of the emission reduction credited to the regulations (such as green building ordinance or TDM program). BAAQMD's proposed mitigation measures for operational emissions may be used to gather such evidence in support of emission reductions.

28-26 See master response MR-6.

28-27 The proposed GHG thresholds and methodology for calculating GHG emissions were developed considering emissions associated with domestic wastewater treatment.

28-28 The Air District's proposed emissions calculation methodology does not account for embodied emissions in building materials. Doing so would be speculative because the level of detail of lifecycle of building materials is typically unknowable at the time of preparation of the environmental document. Nonetheless, if a project would remodel an existing building rather than propose new construction, the construction emissions calculation methodology would reflect the reduced level of site preparation, utility installation, and construction activity involved with remodeling an existing building.

28-29 The updated CEQA Guidelines provides detailed instructions on local community risk and hazard impacts. See also master response MR-7.

28-30 The Air District will be developing screening tables for community risk and hazard impacts.

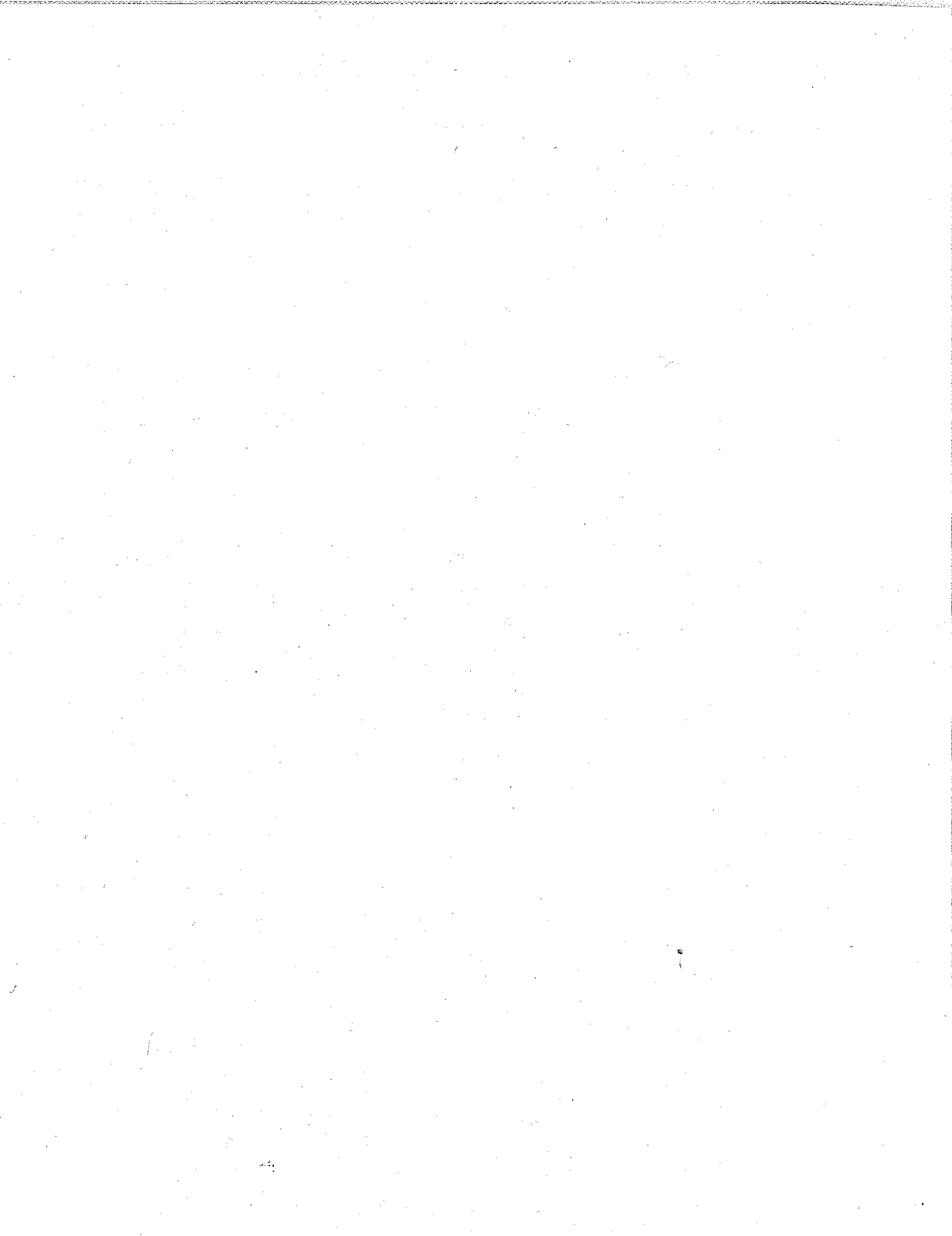
28-31 BAAQMD defines service population as the number of residents plus the number of jobs accommodated by a project or plan. Methodology to calculate GHG/SP is provided in Chapters 4 and 9 in the updated CEQA Guidelines. The GHG/SP calculation methodology purposely does not distinguish between diverted trips or new trips, because this analysis is concerned with accommodating

development in a method that is consistent with AB 32 mandates, rather than making a distinction between existing and new potential to emit. See also master response MR-3.

- 28-32 According to OPR, in order for a climate action plan to be used for the purpose of determining significance, a plan must contain specific requirements that result in reductions of GHG emissions to a less than significant level and must be adopted in a public review process. The City should consult with the Air District as to whether the City's CAP contains these specific requirements.
- 28-33 The plan-level GHG threshold in the *Proposed Thresholds of Significance* report recommends for local governments that have not yet adopted a stand alone qualified climate action plan as defined by the CEQA Guidelines, they have the option to demonstrate that their collective set of climate action policies, ordinances, and other programs are consistent with AB 32. Demonstration of AB 32 consistency should be considered equivalent to a qualified climate action plan. In the case of demonstrating that a collective set of climate action policies, ordinances, and programs are consistent with AB 32, this would not qualify as a project under CEQA and would not need to go through CEQA review.
- 28-34 The updated CEQA Guidelines is intentionally not prescriptive on how to perform a CAP emissions inventory because ARB is in the process of producing a protocol on how to conduct community-wide emissions inventories. ARB has already published its Local Government Operations Protocol for conducting municipal inventories, which BAAQMD also recommends be followed. BAAQMD recommends use of ARB's guidance. In the interim period between now and the publication of the community-wide emissions inventory protocol, BAAQMD recommends attributing GHG emissions that are within the jurisdiction (either geographical or operational) of the community/agency.
- 28-35 The updated CEQA Guidelines provides detailed instructions on local community risk and hazard impacts.
- 28-36 See master response MR-7.
- 28-37 Minimizing idling time for construction vehicles is a commonly implemented mitigation measure to reduce exhaust emissions. If there are specific circumstances wherein this measure would be considered infeasible, the Lead Agency should explain.
- 28-38 Screening levels for construction-related criteria air pollutants and precursors were not based on ITE trip generation rates. The commenter misunderstands the screening criteria for construction.
- 28-39 Basic construction mitigation measures will be identified in Chapter 8, Section 8.2 of the updated CEQA Guidelines. These are the same BMPs applicable to construction of plans, identified in Chapter 9, Section 9.4 of the November 2009 version of the *Draft Air Quality Guidelines*. The proposed Basic construction mitigation measures differ slightly from the 1999 Air Quality Guidelines.
- 28-40 Staff will revise and clarify the construction criteria in the updated CEQA Guidelines.
- 28-41 The GHG threshold for construction that recommended implementation of construction best management practices referred to in this comment has been omitted from the *Proposed Thresholds of Significance* report (November 2, 2009). The Lead Agency should use a threshold it believes is

appropriate for construction-generated GHG emissions, or consult with the Air District. The commenter's suggestions for the construction best practices will be considered for the construction mitigation measures in the updated CEQA Guidelines.

28-42 The updated CEQA Guidelines will clarify the screening criteria for the carbon monoxide threshold. The screening criteria will be made less stringent to reflect the fact that a CO analysis is rarely necessary in the Bay Area.





CITY OF DUBLIN

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Website: <http://www.ci.dublin.ca.us>

October 9, 2009

Greg Tholen
Principal Environmental Planner
Bay Area Air Quality Management District
939 Ellis Street
San Francisco, CA 94109

Subject: BAAQMD CEQA Guidelines Update

Dear Mr. Tholen,

Thank you for the opportunity to comment on the District's proposed CEQA Guidelines.

The City of Dublin respectfully submits the following comment:

1. It is our understanding that the District Board has the discretion to determine when the thresholds of significance proposed in the updated CEQA Guidelines would become effective, if adopted. The City of Dublin is concerned about projects for which CEQA review is already underway prior to the adoption of any new or revised standards. It is unclear to us if these projects would use the current standards or if the new standards and thresholds (proposed in the updated CEQA Guidelines) would apply.

29-1

The City of Dublin is requesting that the Bay Area Air Quality Management District provide guidance and clarification on the effective date of the new thresholds of significance in relation to both Environmental Impact Reports and Negative Declarations/Mitigated Negative Declarations that are already underway.

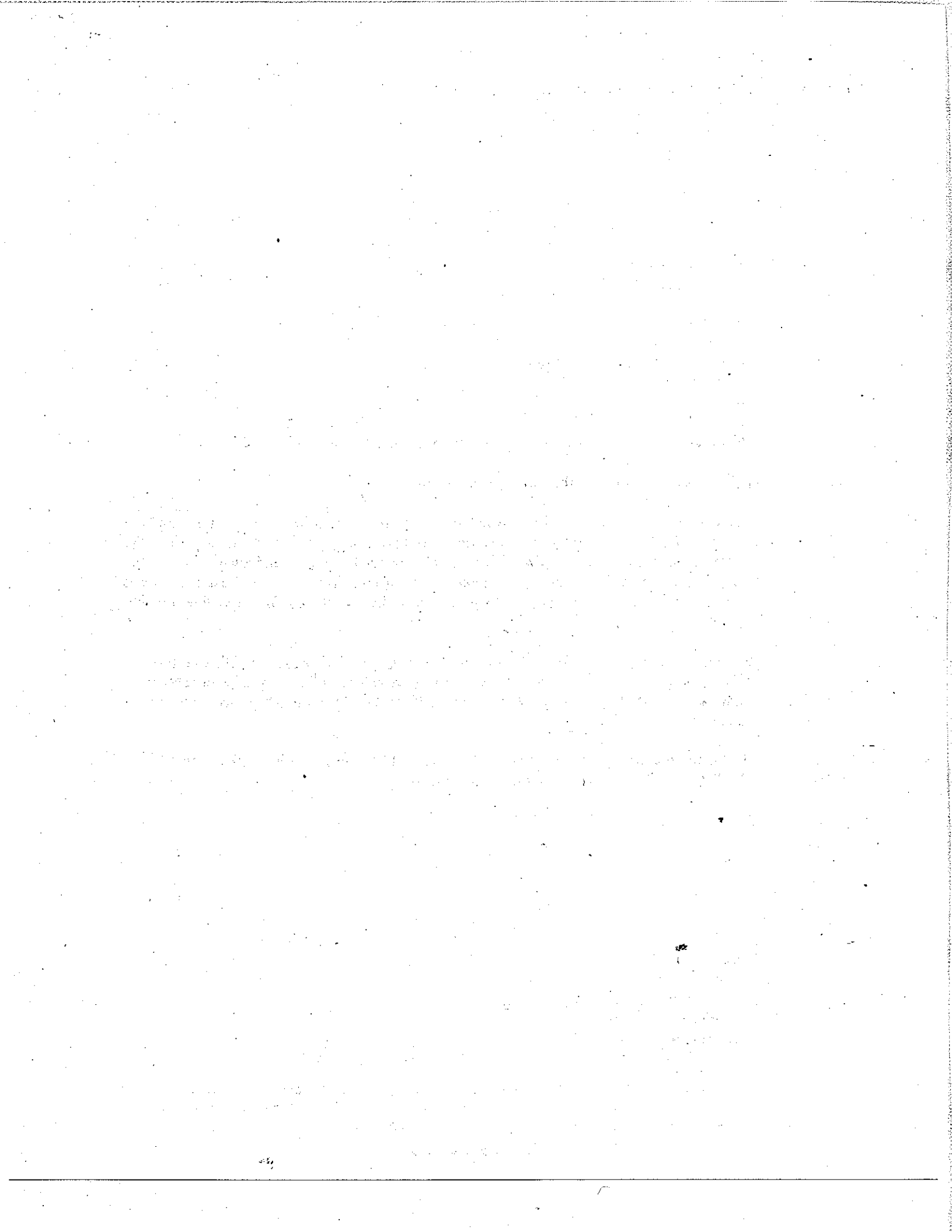
Thank you again for the opportunity to comment on the updated CEQA Guidelines. Please feel free to contact me at 925-833-6650 if you require additional information.

Best Regards,

Joni Pattillo
for Joni Pattillo
City Manager

- cc: Chris Foss, Assistant City Manager
 Roger Bradley, Administrative Analyst II
 Jeri Ram, Community Development Director
 Jeff Baker, Planning Manager
 Martha Aja, Environmental Specialist
 Kit Faubion, Meyers Nave, 555 12th Street, Ste. 1500, Oakland, CA 94607

Area Code (925) • City Manager 833-6650 • City Council 833-6650 • Personnel 833-6605 • Economic Development 833-6650
 Finance 833-6640 • Public Works/Engineering 833-6630 • Parks & Community Services 833-6645 • Police 833-6670
 Planning/Code Enforcement 833-6610 • Building Inspection 833-6620 • Fire Prevention Bureau 833-6606



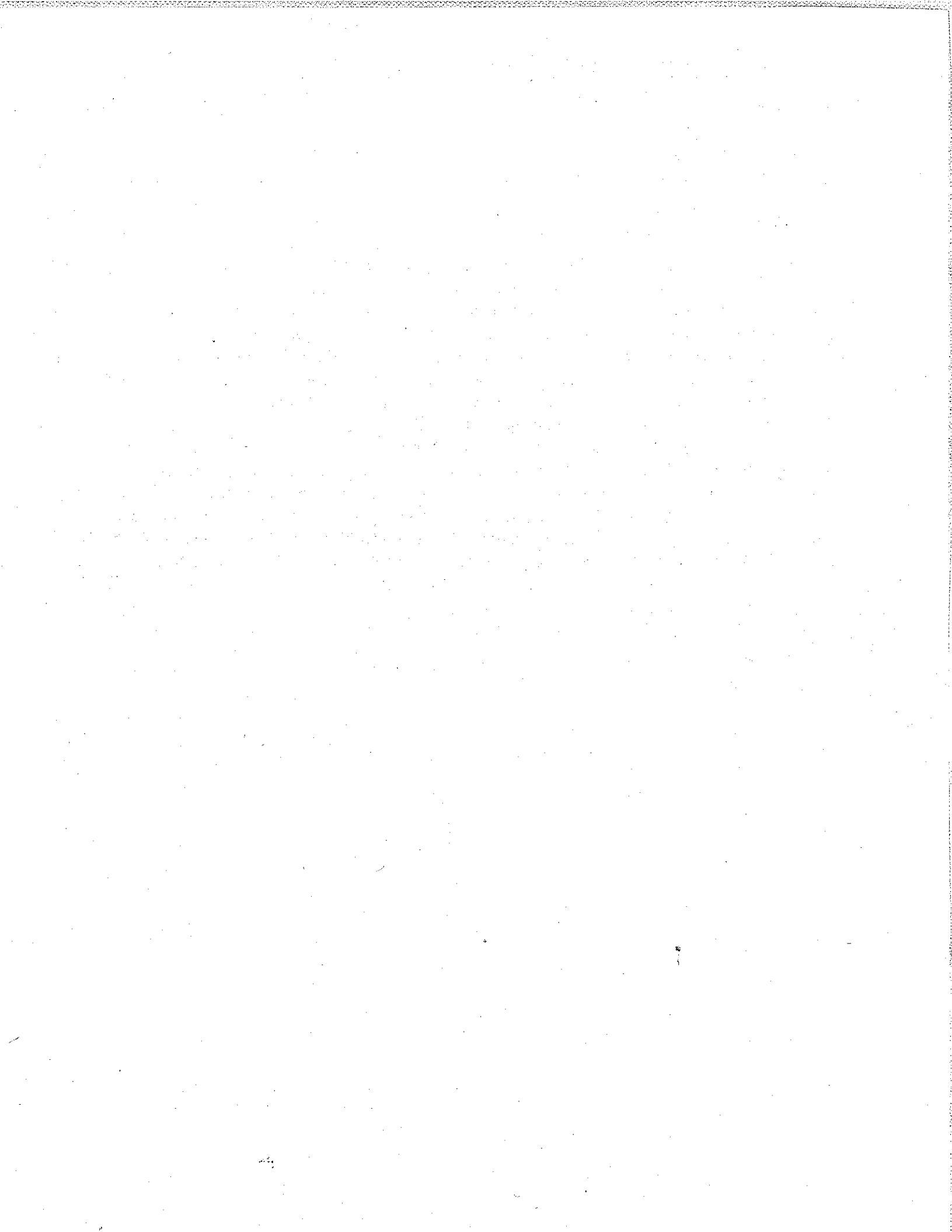
Comment Letter #: 29

Date: October 9, 2009

From: Joni Pattillo, City Manager, City of Dublin

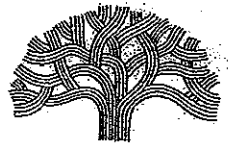
Response to Comments:

29-1 The District's proposed thresholds of significance will not be mandatory for use by other lead agencies in the Bay Area. Lead agencies may choose to apply the District's thresholds to determine the significance of projects before them, or they may determine that some other method of analysis would be more appropriate for their particular agency or for a particular project. The District cannot therefore adopt a specific "effective date" upon which the thresholds will become mandatory. For lead agencies with projects that are already under review when the proposed thresholds are adopted, it will be up to each individual agency to determine whether and when to apply the District's revised thresholds for those projects. If the lead agency finds it appropriate to apply the District's revised thresholds in its significance analysis for such projects, it may do so. If the lead agency finds that it would not be appropriate to apply the revised thresholds to projects already under review, it may use some other means to determine significance as long as the determination is supported by substantial evidence as required by CEQA. For these reasons, staff is not proposing an "effective date" for the proposed thresholds. For those jurisdictions choosing to use the District's recommended thresholds, the District will establish a date upon which we recommend the thresholds become effective.



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Community and Economic Development Agency
Planning & Zoning Services Division

(510) 238-3941
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VIA U.S. MAIL AND ELECTRONIC MAIL

October 9, 2009

Mr. Greg Tholen
Principal Environmental Planner
Bay Area Air Quality Management District
939 Ellis Street
San Francisco, CA 94109
gtholen@baaqmd.gov

RE: Oakland Comments on BAAQMD Draft CEQA Guidelines (September 2009)

Dear Mr. Tholen:

Thank you for the opportunity to review and comment on the Bay Area Air Quality Management District's Draft CEQA Guidelines. The City of Oakland respectfully submits the following comments and requests (a) that the District provide detailed responses to the City's comments, and other public comments, prior to the Board taking any action on the Guidelines, (b) an opportunity to review and comment on such responses and any revisions to the Draft Guidelines for at least 30 days before the Draft Guidelines are submitted to the Board for adoption (c) the District provide for review and comment its "Justification" for the thresholds of significance, which is currently missing from Appendix C in the Draft Guidelines, and (d) that the currently scheduled Board adoption date of October 2009 for the Guidelines be re-scheduled for a later date to accommodate the necessary public review/comment period.

30-1

General Comments

1. Guidelines Development: Due to the importance of the new Guidelines and the existence of a variety of stakeholders interested in the new Guidelines, the City believes that a collaborative process involving stakeholder representatives would be a more effective method for preparing the new Guidelines. The City requests that the District consider conducting such a stakeholder process before releasing a revised draft of the new Guidelines. If such a stakeholder process is to occur, the City would be interested in participating in the process.

30-2

2. Effective Date: To reduce potential confusion concerning the applicability of the new Guidelines to projects currently in the environmental review process, and to avoid additional (and more costly and time-consuming) environmental review for projects for

30-3

which some environmental review has already occurred, the City recommends that the District clarify when the new Guidelines will become effective and how the new Guidelines should apply to pending projects. The City recommends that the new Guidelines not apply to projects for which an application for a development permit has been deemed complete by the lead agency, or for which a Notice of Preparation for an EIR has been published by the lead agency, prior to the effective date of the Guidelines.

30-3

In order to allow lead agencies a reasonable amount of time following the adoption of the Guidelines to review the adopted Guidelines and prepare for implementation of the Guidelines, the City recommends that the Guidelines not become effective until at least ninety (90) days after the Guidelines are adopted.

3. Screening Criteria & Smart Growth: The City supports the proposal to use screening criteria to screen out projects that would result in a less-than-significant impact. Unfortunately none of the proposed screening criteria consider the location of the project. The District proposes that the same screening criteria be applied to projects in urban infill locations and to projects in suburban locations. Since projects in urban infill locations with access to transit tend to result in fewer vehicle miles traveled (VMT) than projects in suburban locations without access to transit, it is likely that many projects in urban infill locations that exceed the screening criteria, thereby signifying a potentially significant air quality impact, would not exceed the thresholds of significance after the anticipated emissions are quantified. This approach is inconsistent with the District's stated goal of promoting smart growth and infill development, as well as with SB 375.

30-4

Page 1-1 of the Draft Guidelines states that the District uses tools to support smart growth. The proposed screening criteria do not appear to support smart growth if an urban infill project that would otherwise be exempt from environmental review exceeds screening criteria that are applied to all projects in the region only to determine later that the project would not exceed the quantified threshold of significance after the completion of a lengthy and costly environmental review process. The City recommends that the screening criteria consider the location of the project so that the screening criteria are more accurate indicators of anticipated emissions. For example, for each topic in the Guidelines (criteria air pollutants, greenhouse gases, etc.) there could be two sets of screening criteria—one for urban infill locations and one for suburban/rural locations. One possible method for identifying urban infill locations would be to reference the Priority Development Areas (PDAs) designated through the Bay Area's FOCUS Program. The FOCUS Program is a regional development and conservation strategy for the Bay Area sponsored by the District, the Association of Bay Area Governments, the Metropolitan Transportation Commission, and the Bay Conservation and Development Commission that focuses future regional growth in infill development areas near transit. Development in PDAs supports the FOCUS Program, smart growth, and SB 375 because PDAs are infill locations in the region with convenient transit access and lower per capita VMT.

4. Mitigation Measures: In Oakland, many of the mitigation measures recommended in the Draft Guidelines for mitigating potentially significant impacts are already incorporated into projects when they are initially proposed by project sponsors or are regularly imposed on projects by the City as Uniformly Applied Development Standards (pursuant to State CEQA Guidelines section 15183(f)) through the use of Standard Conditions of Approval. As the City recommended previously in the e-mail sent to you on March 24, 2009 (see attached), the City recommends that the Guidelines state that if a project includes any of the mitigation measures as part of the project description, or if the mitigation measures would already be imposed on a project through the use of Best Management Practices, Performance Standards, Uniformly Applied Development Standards or Standard Conditions of Approval, then the benefits of the measures can be considered during the initial emissions screening/analysis/quantification and not necessarily during detailed CEQA review. Therefore, the initial emissions analysis/quantification would more accurately reflect the project's potential environmental impact and a Mitigated Negative Declaration or EIR would not be required assuming the project does not exceed the thresholds of significance (or other applicable thresholds). 30-5
5. Justification for Thresholds of Significance: The current version of the Draft Guidelines does not include the justification for the proposed thresholds of significance (Appendix C). The City can not fully comment on the proposed thresholds without seeing the justification. As stated previously, the City requests the opportunity to review and comment on the justification before the Draft Guidelines are submitted to the Board for adoption. 30-6

Operational-Related Impacts

6. Greenhouse Gases/Climate Action Plan (p. 2-2): At the District's September 10, 2009, workshop in Oakland on the Draft Guidelines, District staff stated that one of the thresholds of significance for operational-related greenhouse gas (GHG) emissions would be compliance with a qualified climate action plan. Compliance with a climate action plan is listed in the Draft Guidelines for plan-level GHG impacts but not for project-level operational-related GHG impacts. The City recommends that the climate action plan threshold for project-level operational-related GHG, as presented at the September workshop, be included in the Guidelines. The City recommends that the term "Qualified Climate Action Plan," which was used at the September 2009 workshop, be used in the Guidelines to refer to climate action plans that satisfy the criteria listed on page 2-9. The City also recommends that the Guidelines provide more detailed guidance on the level of rigor and detail that a climate action plan must include, in addition to the components listed on page 2-9, in order for the plan to be considered a Qualified Climate Action Plan. The City questions whether the components listed on page 2-9 are the most appropriate indicators of a climate action plan that would successfully reduce GHG emissions. It is likely that a wide range of climate action plans would include these components with some plans being more effective than others. The City believes that the collaborative 30-7

stakeholder process recommended in comment 1 (above) would be an effective process for identifying appropriate criteria for Qualified Climate Action Plans.

7. Greenhouse Gas Quantification (pp. 5-2 through 5-4): The Draft Guidelines recommend using the California Climate Action Registry (CCAR) General Reporting Protocol (GRP) for quantifying indirect GHG emissions from energy generation. The Guidelines should provide more guidance on which year the emission factors should be based on and whether the factors should be based on the local utility provider, a state average, or something else. To date, the CCAR has not projected emission factors for future years. The Guidelines should clarify whether the most recent set of certified CCAR emission factors should be used or if the lead agency should estimate project year emission factors. The City recommends the former approach (using the most recent certified emission factors) to ensure consistency among lead agencies.

30-8

The Draft Guidelines recommend that direct and indirect emissions be counted when quantifying GHG emissions, including emissions from vehicles, energy generation, and water conveyance. The City recommends that operational emissions associated with waste generation also be counted in order to provide a more accurate count. Existing models, such as the EPA's Waste Reduction Model (WARM), can estimate GHG emissions associated with waste generation and disposal.

8. Mitigation Measures (pp. 3-16 & 3-17): What is the purpose of the non-quantifiable non-URBEMIS mitigation measures in the Draft Guidelines? The City recommends that the Guidelines provide guidance on the use and value of these measures. Would the use of these measures reduce a project's potential operational impact from significant to less-than-significant? Also, see comment 4 (above) for general recommendations concerning Standard Conditions of Approval and mitigation measures.

30-9

Community Risk and Hazard Impacts

9. Definitions (pp. 2-6 & 4-2): The term "sensitive receptors" should be defined in the Guidelines. Also, the term "sensitive receptor" and the term "receptor" are both used. Please clarify if these terms have the same meaning.
10. Screening Criteria (New Sources) (p. 2-6): Similar to the screening criteria proposed for other topics in the Guidelines, the City recommends that screening criteria be included for siting a new source of toxic air contaminants (TACs) and/or PM_{2.5} so that projects that do not exceed the criteria would be considered to result in a less-than-significant impact and not be required to quantify the cancer risk or undergo a detailed CEQA evaluation. The benefits of providing screening criteria would be (a) project sponsors, lead agencies, and the public would know which types of projects are likely to emit TACs and/or PM_{2.5} and (b) smaller projects unlikely to result in a significant impact would not be required to undergo a detailed CEQA evaluation.

30-10

30-11

11. Types of New Receptors (pp. 4-4 & 4-5): The City recommends that the Guidelines clarify which projects involving receptors would be required to analyze the cancer risk when locating within 1,000 feet of a source of TAC. Would all discretionary projects under CEQA involving receptors proposed within 1,000 feet of a source of TAC, including, for example, a new single-family home proposed within 1,000 feet of a dry cleaner, be required to analyze the cancer risk? Would the risk analysis be required for projects that would otherwise be categorically exempt from environmental review under CEQA due to the presence of a TAC source located within 1,000 feet? 30-12
12. New Receptors and Smart Growth (pp. 4-4 & 4-5): Data from the Draft 2007-2014 Housing Element of the Oakland General Plan indicate that housing opportunity sites capable of accommodating approximately 4,500 dwelling units in Oakland are located within 1,000 feet of a freeway. "Opportunity sites" are vacant or underutilized sites which are currently zoned for high-density housing. The 4,500 dwelling units represent nearly half of all the potential housing that could be accommodated on opportunity sites in the city. This figure represents only a conservative estimate of potential new housing to be developed near existing TAC sources because the number only includes housing near freeways, it does not include housing near other sources of TAC. If other TAC sources are included, the amount of housing units would likely increase substantially. Requiring each of these housing developments to quantify the cancer risk would discourage development of needed infill housing due to the potential time, expense, and unfamiliarity associated with hiring the air quality consultants necessary to quantify the cancer risk. Given the large number of potential new housing units to be developed near freeways and other sources of TAC, and the goals of the District, SB 375, and the Bay Area FOCUS Program of promoting smart growth and infill development, the City believes it is important for the community risk and hazard impact methodologies and thresholds to carefully balance the goals of promoting smart growth and minimizing local health impacts. The City believes the best way to balance these goals is to prioritize which projects are required to quantify the cancer risk through the use of screening criteria (e.g., project size, project type) and to promote the use of standardized and feasible BMPs in a manner discussed in comments 3 and 4 (above) such that projects which meet the screening criteria or incorporate the required BMPs are not required to quantify the cancer risk and are considered to result in a less-than-significant impact under CEQA. 30-13
13. Identifying Sources When Siting New Receptors (p. 4-4): In order to facilitate the evaluation of potential cancer risks when siting new receptors, the City recommends that the District publish a database and map of existing TAC sources in the region. The City's experience is that the California Air Resources Board's online Facility Search Engine is not complete. 30-14
14. HRAs When Siting New Receptors (pp. 4-4 & 4-5): The Draft Guidelines recommend that in order to analyze the potential cancer risk of siting a new receptor within 1,000 feet of an existing source of TAC the lead agency should evaluate the Health Risk

Assessment (HRA) prepared for the source. Have HRAs been prepared for all existing sources with TAC emissions above the District's prioritization level, including freeways, high-volume roadways, and sources in operation prior to the requirement to prepare an HRA? In the event that a new receptor is proposed within 1,000 feet of a TAC source for which an HRA was not prepared, how would the potential cancer risk be evaluated?

30-14

15. TBACT/TBP Measures for Impacted Communities (p. 4-5): The Draft Guidelines state that all projects in impacted communities must implement the specified Toxic Best Available Control Technology (TBACT)/Toxic Best Practice (TBP) measures. Please clarify if the TBACT/TBP requirement applies to all projects located in impacted communities, including, for example, projects located more than 1,000 feet of a TAC source, or only to projects located within 1,000 feet of a TAC source. Also, please provide more detailed recommendations on the proposed tree-planting measure. Is there a minimum number of trees or planted area required? Is there a minimum tree size required at the time of planting?
16. Exterior Spaces of New Receptors (pp. 4-5 through 4-7): The TBACT/TBP measures and the mitigation measures in the Draft Guidelines focus on mitigating impacts to the interior of a building. It is not clear how or if exterior spaces, such as parks and private yards/courtyards, are to be evaluated. Please clarify whether or not impacts to exterior spaces are to be evaluated and, if they are to be evaluated, how they should be evaluated and mitigated. If a project would result in a significant impact but the impact can be mitigated to a less-than-significant level with measures that reduce impacts to the interior of the building, is the entire project mitigated to a less-than-significant level or is only the interior space mitigated to a less-than-significant level (and the impact remains significant because the exterior spaces are unmitigated)? If exterior spaces are to be evaluated and mitigated, it would be helpful if the Guidelines included mitigation measures specific to exterior spaces. Also, see comment 4 (above) for general recommendations concerning Standard Conditions of Approval and mitigation measures.
17. Mitigation Measures (New Receptors) (pp. 4-6 & 4-7): Please clarify if only one, some, or all of the recommended mitigation measures would be required to mitigate a significant impact to a less-than-significant level or if the lead agency should use its judgment to determine how many mitigation measures are necessary to mitigate the impact to a less-than-significant level. Also, see comment 4 (above) for general recommendations Standard Conditions of Approval and concerning mitigation measures.
18. Mitigation Measures (New Sources) (pp. 4-6 & 4-7): The Draft Guidelines do not contain recommended mitigation measures for siting new sources of TAC. The City recommends that the Guidelines recommend appropriate mitigation measures for new TAC sources, preferably by project type (similar to the mitigation measures recommended for mitigating odor impacts). Also, see comment 4 (above) for general recommendations concerning Standard Conditions of Approval and mitigation measures.

30-15

Plan-Level Impacts

19. Types of Plans (pp. 5-1 through 5-7): Please clarify if all of the proposed thresholds of significance for evaluating plan-level impacts under the various topics apply to all types of long-range plans and to each plan adopted by the lead agency. It does not seem appropriate to apply thresholds of significance for a topic unrelated to the plan. For example, applying the community risk and hazard impact thresholds to the Noise Element of the General Plan would not be appropriate because TACs are not related to noise. Also, it would be redundant and unnecessary to apply policy thresholds to a plan when the policies are contained within an existing plan that has already been adopted by the lead agency. For example, if the community risk and hazard policies regarding special overlay zones are already contained in the Land Use Element of the General Plan, it would be unnecessary to apply the community risk and hazard thresholds to a proposed Housing Element of the General Plan. The City recommends that each set of thresholds should only be applied to relevant long range plans and that the applicable thresholds would not be exceeded, and the potential plan impact would be less-than-significant, if the recommended policies already exist in another adopted plan.

30-16

Also, the Draft Guidelines state that the guidance offered in Chapter 5 should be applied to discretionary, program-level planning activities. However, not all discretionary, program-level plans are considered a "project" under CEQA that would be subject to environmental review. Long-range programmatic plans that do not contain regulatory policies, such as so-called "vision" plans that articulate a desired physical appearance for an area or certain climate action plans that merely express a vague commitment to a reduction of GHG emissions, may not be subject to CEQA review. The language in the Draft Guidelines may confuse readers to believe that all long-range plans, whether or not they are subject to CEQA, must conduct the analysis contained in Chapter 5. The City recommends that the Guidelines state that the methods in Chapter 5, as well as all of the guidance in the Guidelines, apply only to projects subject to CEQA. Since currently there is no uniform standard for the content of climate-change-related plans, there exists a wide range of types of climate-change-related plans, including plans containing only abstract visions and plans containing concrete regulatory policies. Therefore, the City recommends that the Guidelines provide guidance on which types of climate-change-related plans the District believes are subject to CEQA review.

20. Greenhouse Gas Thresholds (pp. 5-2 through 5-4): The Guidelines recommend that the same GHG thresholds of significance be applied to all types of plans. The City believes it is not appropriate to apply a community-wide numeric GHG threshold to all types of plans, particularly plans that concern a single topic or a limited geographic area. For example, applying the District's recommended service population GHG threshold to an economic development plan covering only a limited geographic area would only provide a limited assessment of the community's GHG impacts. It may be possible, for example, for such a plan to exceed the GHG threshold while the community as a whole does not exceed the threshold. The City recommends that community-wide thresholds, such as the

30-17

District's proposed GHG threshold, only apply to comprehensive, community-wide land use plans (e.g., General Plans).

21. Greenhouse Gas Quantification (pp. 5-2 through 5-4): Currently there is no uniform standard concerning which emission sources are to be considered when a community calculates GHG emissions. For example, GHG emission sources such as rail, air travel, upstream and downstream waste emissions, and pass-through highway emissions are traditionally counted by some communities and not others. The City recommends that the Guidelines provide guidance on which GHG emission sources should be included when quantifying GHG emissions. 30-17
22. Community Risk and Hazard Thresholds (p. 5-5): Please clarify what types of regulations or policies the required special overlay zones should contain. 30-18
23. Greenhouse Gas BMPs (pp. 5-6 & 6-14): Are the proposed BMPs for construction-related GHG emissions (plan-level and project-level) practicable? The City recommends that the District consult with the local construction industry to confirm that these BMPs can be realistically implemented and then present the results of these consultations during the CEQA Guidelines Update process prior to the Board's consideration of the proposed Guidelines. 30-19
24. Mitigation Measures (pp. 5-7 through 5-19): Please clarify if only one, some, or all of the recommended mitigation measures would be required to mitigate a significant impact to a less-than-significant level or if the lead agency should use its judgment to determine how many mitigation measures are necessary to mitigate the impact to a less-than-significant level. Also, see comment 4 (above) for general recommendations concerning Standard Conditions of Approval and mitigation measures.

Construction-Related Impacts

25. Basic Construction Mitigation Measures (p. 6-10): Since the District recommends that the Basic Construction Mitigation Measures be applied to all projects, whether or not a project would result in a significant impact, the City recommends that the measures be presented as required best management practices (BMPs) (and not labeled "mitigation measures") and moved from section 6.3 of the document to section 6.2 to avoid confusion. 30-20
26. Screening Criteria (Greenhouse Gases) (p. 6-14): Similar to the screening criteria proposed for construction-related criteria air pollutants, the City recommends that project-size-related screening criteria be included for construction-related GHG emissions so that projects that do not exceed the criteria would be considered to result in a less-than-significant impact and not be required to implement the proposed BMPs. In addition to project-size-related screening criteria, the City also recommends that projects that are consistent with a qualified climate action plan, similar to the District's proposal 30-21

for plan-level operational-related GHG emissions, be screened out and considered to result in a less-than-significant impact without the need for detailed CEQA review.

27. Greenhouse Gas Mitigation Measures (pp. 6-14 & 6-15): The District's proposal that the construction-related GHG mitigation measures be the same as the construction-related GHG thresholds of significance (i.e., the BMPs) is confusing. The City recommends that project-size-related and climate-action-plan-related screening criteria be developed for construction-related GHG emissions (see comment 26 above) and the proposed BMPs be considered mitigation measures. Also, see comment 4 (above) for general recommendations concerning Standard Conditions of Approval and mitigation measures.

30-21

28. Screening Criteria (Diesel Particulate Matter) (p. 6-15): Similar to the screening criteria proposed for construction-related criteria air pollutants, the City recommends that project-size-related screening criteria be included for construction-related diesel particulate matter (PM) so that projects that do not exceed the criteria would be considered to result in a less-than-significant impact. Screening criteria would be helpful for screening out projects that would result in a less-than-significant impact particularly since the Draft Guidelines recommend evaluating diesel PM impacts on a case-by-case basis. Determining an appropriate impact analysis on a case-by-case basis may not be practical if there are no screening criteria and all projects require an impact analysis.

30-22

Carbon Monoxide Impacts

29. Thresholds of Significance (p. 2-13): The Draft Guidelines state that the project would result in a significant impact to air quality if the project would *cause* local emissions of carbon monoxide to exceed any of the proposed thresholds of significance. Should these thresholds be interpreted to mean that the project would exceed the thresholds if the project (a) *causes* local emissions currently below the thresholds (under existing conditions) to exceed the thresholds in the post-project condition or (b) *results* in a situation where the post-project condition exceeds the thresholds (regardless of the existing (pre-project) condition)?

30-23

30. Screening Criteria (Congestion Management Program) (p. 2-13): Please clarify how "consistency" with an applicable congestion management program is defined.

30-24

31. Screening Criteria (Intersection Volume) (p. 2-14): Should this screening criterion be interpreted to mean that the project would exceed the screening criterion if the project (a) *causes* an intersection already (under existing conditions) experiencing less than the specified volume of vehicle trips to experience more than the specified volume of vehicle trips in the post-project condition or (b) *affects* an intersection already (under existing conditions) experiencing the specified volume by generating one or more vehicle trips at the intersection?

30-25

32. Emissions Quantification (pp. 7-1 through 7-4): Please clarify if the emissions to be quantified are the project's emissions, the existing emissions (without the project), and/or the existing emissions plus the project's emissions (existing-plus-project condition). The emissions to be quantified should relate with the way the carbon monoxide thresholds of significance are to be interpreted (see comment 29 above). Also, the emissions quantification procedures refer to both roadway intersections and roadway segments. Please clarify if the emissions to be quantified are emissions from roadway intersections or roadway segments and specify which roadway intersections or segments are to be quantified—all intersections/segments affected by the project (which could be dozens) or only those intersections/segments that do not meet the screening criteria.

30-26

Odor Impacts

33. Definitions (p. 8-2): The term "sensitive receptors" should be defined in the Guidelines. Also, the term "sensitive receptor" and the term "receptor" are both used. Please clarify if these terms have the same meaning.

30-27

34. Impact Determination (p. 8-3): The Draft Guidelines state that potential odor impacts should be qualitatively evaluated on a case-by-case basis. The City supports this approach but recommends that the Guidelines provide more guidance on determining, after the lead agency conducts the qualitative evaluation, whether a potential odor impact should be considered significant. For example, it would seem unreasonable to conclude that a potential odor impact would be significant if the complaint history shows one confirmed complaint for an isolated incident that does not represent normal operating conditions (e.g., if a sewer line breaks at a restaurant resulting in foul odors) or if the complaint history shows multiple confirmed complaints by one hypersensitive person in a densely populated area. In addition to considering the factors recommended on page 8-1 when evaluating a potential odor, the number of potentially affected receptors should also be considered.

30-28

Therefore, the City recommends that the Guidelines be revised to the following:

A potentially significant impact would occur when the project would frequently create substantial objectionable odors affecting a substantial number of sensitive receptors.

35. Mitigation Measures (pp. 8-3 through 8-6): The recommended mitigation measures apply to siting a new source of odors. It would be helpful if the Guidelines also included recommended mitigation measures for siting new receptors. Also, see comment 4 (above) for general recommendations concerning Standard Conditions of Approval and mitigation measures.
36. Food/Restaurants (pp. 8-5 & 8-6): It is unclear from the Draft Guidelines what level of odor impact analysis, if any, is recommended for restaurants. Recommended mitigation

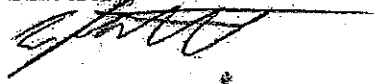
measures for restaurants are listed in the Draft Guidelines. However, restaurants are not listed as one of the types of odor-generating facilities on page 2-14. Unlike the other odor-generating facilities listed on page 2-14, restaurants are commonly located in close proximity to receptors. When siting a new receptor, is it recommended to research the odor complaint history of all restaurants within a certain distance? Such an exercise may involve dozens of restaurants. When siting a new restaurant, is it recommended to research the odor complaint history of similar types of restaurants? If fast food restaurants generate odor complaints, rather than consider the siting of a new fast food restaurant a potentially significant impact under CEQA that needs to be mitigated through the course of a Mitigated Negative Declaration or EIR, the City recommends that the Guidelines include BMPs for fast food restaurants such that the restaurant would result in a less-than-significant impact if one, all, or a specified number of BMPs are incorporated such that the project would not need to be mitigated.

Thank you for your consideration in this matter. The City looks forward to the District's detailed response to the above comments prior to the Board taking any action on the Guidelines. Given the importance and complexity of these issues, the City requests the opportunity to review and comment on the revised Draft Guidelines before they are submitted to the Board for adoption. The public review period should be at least 30 days in length in order to provide adequate time to review and comment on the revised Draft Guidelines. In addition, the City needs to review and comment on the District's "Justification" for the Guidelines, which has not yet been made publicly available. Therefore, the City recommends that the adoption of the Guidelines, currently scheduled for October 2009, be re-scheduled for a later date to accommodate the necessary public review period.

30-29

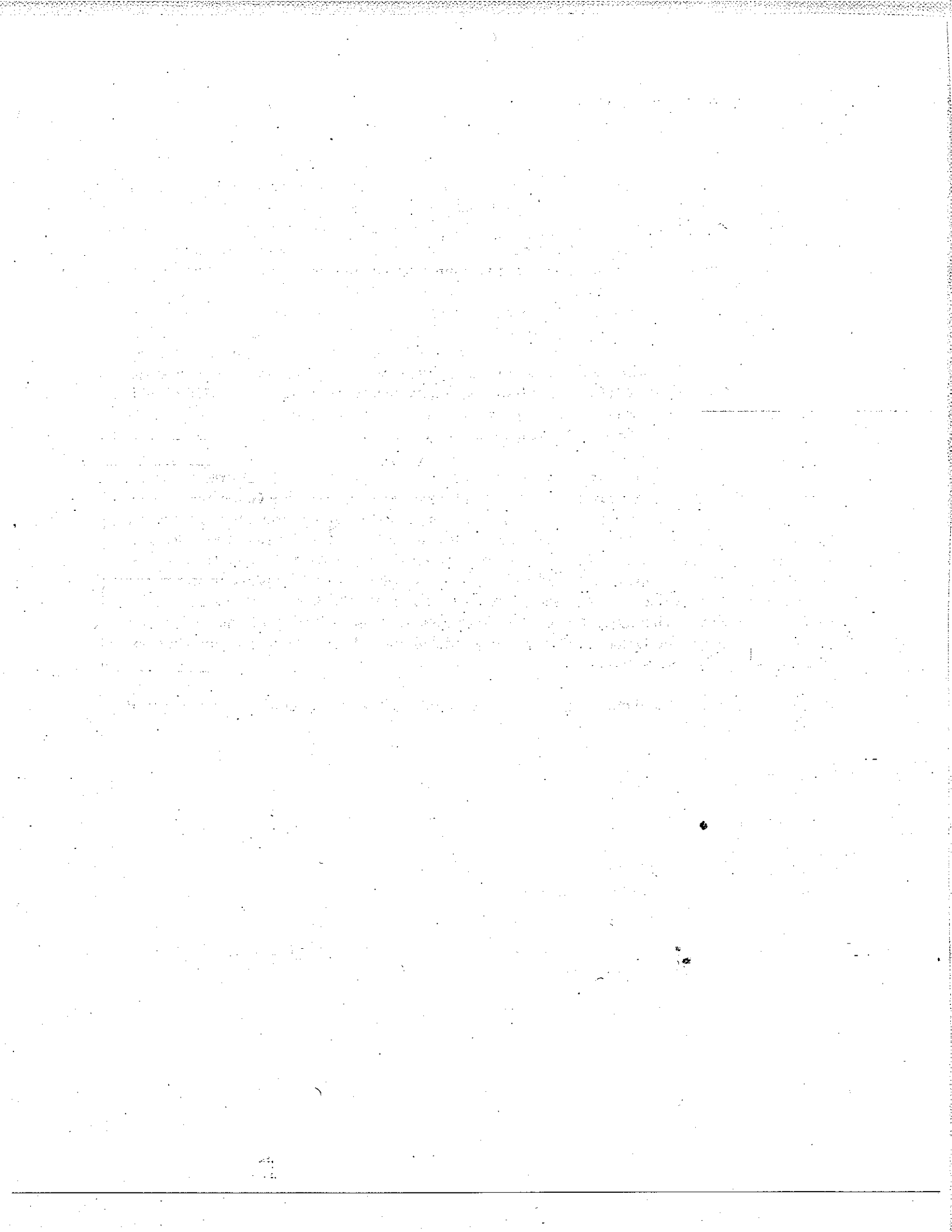
Please contact Darin Ranelletti, Planner III, at (510) 238-3663 or dranelletti@oaklandnet.com if you have any questions.

Sincerely,



Eric Angstadt
Deputy Director
Environmental Review Officer
Community and Economic Development Agency

Attachment: E-mail correspondence from Darin Ranelletti, City of Oakland, to Greg Tholen, BAAQMD (March 24, 2009)



Comment Letter #: 30

Date: October 9, 2009

From: Eric Angstadt, Environmental Review Officer, City of Oakland Community & Economic Dev. Agency

Response to Comments:

- 30-1 See master response MR-8.
- 30-2 See master response MR-8.
- 30-3 The District's proposed thresholds of significance will not be mandatory for use by other lead agencies in the Bay Area. Lead agencies may choose to apply the District's thresholds to determine the significance of projects before them, or they may determine that some other method of analysis would be more appropriate for their particular agency or for a particular project. The District cannot therefore adopt a specific "effective date" upon which the thresholds will become mandatory. For lead agencies with projects that are already under review when the proposed thresholds are adopted, it will be up to each individual agency to determine whether and when to apply the District's revised thresholds for those projects. If the lead agency finds it appropriate to apply the District's revised thresholds in its significance analysis for such projects, it may do so. If the lead agency finds that it would not be appropriate to apply the revised thresholds to projects already under review, it may use some other means to determine significance as long as the determination is supported by substantial evidence as required by CEQA. For these reasons, staff is not proposing an "effective date" for the proposed thresholds. For those jurisdictions choosing to use the District's recommended thresholds, the District will establish a date upon which we recommend the thresholds become effective.
- 30-4 The proposed screening levels in the CEQA Guidelines are not intended as thresholds of significance. They are just screening levels to minimize the need for full analysis in situations where BAAQMD has determined no significant air quality impact would occur because Air District staff have modeled the screening level projects under very conservative assumptions and have determined that such projects will not exceed the applicable thresholds of significance. The methodology for emissions quantification provides instructions on how the user can account for density and other project attributes that would reduce emissions relative to model defaults. Lead agencies may use screening levels and thresholds that it feels are appropriate, as long as the rationale for deviation from BAAQMD-recommended guidance is substantiated based on evidence. See master response MR-6 and MR-5.
- 30-5 The Air District recommends that the user perform manual calculations to account for jurisdiction-specific regulations that would affect emissions from the projects. These regulations, if appropriate, should be accounted for in the project design/attributes, and not as mitigation. The user should provide evidence in support of the emission reduction credited to the regulations (such as green building ordinance or TDM program). The Air District's proposed mitigation measures for operational emissions may be used to gather such evidence in support of emission reductions.
- 30-6 The substantial evidence and justification for adopting the Air District's proposed thresholds are included in the *Proposed Thresholds of Significance* report (November 2, 2009).

- 30-7 The plan-level GHG threshold in the *Proposed Thresholds of Significance* report recommends for local governments that have not yet adopted a stand alone qualified climate action plan as defined by the CEQA Guidelines, they have the option to demonstrate that their collective set of climate action policies, ordinances, and other programs are consistent with AB 32. Demonstration of AB 32 consistency should be considered equivalent to a qualified climate action plan. In the case of demonstrating that a collective set of climate action policies, ordinances, and programs are consistent with AB 32, this would not qualify as a project under CEQA and would not need to go through CEQA review.
- 30-8 The updated CEQA Guidelines will provide direction on how lead agencies should calculate GHG emissions from direct and indirect sources.
- 30-9 The updated CEQA Guidelines will provide direction and clarify the non-quantifiable non-URBEMIS mitigation measures listed.
- 30-10 The updated CEQA Guidelines will contain a glossary that will define key terms including sensitive receptors.
- 30-11 The Air District will be providing screening tables with estimated calculations of community risk and hazards from all permitted sources and major roadways in the Bay Area.
- 30-12 If a project is likely to be a place where people live, play, or convalesce, it should be considered a receptor. It should be also be considered a receptor if sensitive individuals are likely to spend a significant amount of time there. Sensitive individuals refer to those segments of the population most susceptible to poor air quality: children, the elderly, and those with pre-existing serious health problems affected by air quality. Examples of receptors include residences, schools and school yards, parks and play grounds, daycare centers, nursing homes, and medical facilities. Residences can include houses, apartments, and senior living complexes. Medical facilities can include hospitals, convalescent homes, and health clinics. Playgrounds could be play areas associated with parks or community centers.
- 30-13 The Air District encourages cities and counties to develop community risk reduction plans, especially in impacted communities. Such plans would be the appropriate place to implement the commenter's suggestions. See also master response MR-7.
- 30-14 See comment response 30-11.
- 30-15 The community risk and hazard threshold for toxic best practices referred to in this comment has been omitted from the *Proposed Thresholds of Significance* report (November 2, 2009). See also master response MR-7.
- 30-16 The updated CEQA Guidelines will provide direction on defining and evaluating plan-level impacts.
- 30-17 The Air District's update CEQA Guidelines will provide detailed guidance on how to use CCAR's General Reporting Protocol to calculate indirect GHG emissions from off-site energy generation (see Chapter 4 of the November 2009 version). OPR's technical advisory, CEQA and Climate Change (June 2008) specifies:

“Lead agencies should make a good-faith effort, based on available information, to calculate, model, or estimate the amount of CO₂ and other GHG emissions from a project, including the emissions associated with vehicular traffic, energy consumption, water usage and construction activities.”

Inclusion of GHG emissions associated with solid waste was not included in OPR’s recommendations. There are methodological challenges associated with estimating GHG emissions from solid waste at the project level because GHG emissions from landfills are largely a function of “waste in place” in the landfill, which would not be attributable to the project in question. EPA’s WARM emission factors are intended for facility-specific GHG emissions calculations and not intended for use in bottom-up GHG emissions calculations from solid waste disposal at the project level.

- 30-18 The Air District will provide guidance in the update CEQA Guidelines as to the methods used to establish overlay zones and buffers and what standards are to be applied for acceptable exposure levels.
- 30-19 The GHG threshold for construction that recommended implementation of construction best management practices referred to in this comment has been omitted from the *Proposed Thresholds of Significance* report (November 2, 2009).
- 30-20 The *Proposed Thresholds of Significance* report contains numerical threshold levels for project level construction impacts. The listed best management practices are intended to assist lead agencies in reducing construction emissions to the recommended threshold levels.
- 30-21 The *Proposed Thresholds of Significance* report does not contain a recommended GHG threshold for construction activities. See also comment 30-7.
- 30-22 The Air District will include construction screening criteria for community risk and hazards in the updated CEQA Guidelines.
- 30-23 The updated CEQA Guidelines will clarify the threshold and screening criteria for the carbon monoxide threshold. The screening criteria will be made less stringent to reflect the fact that a CO analysis is rarely necessary in the Bay Area.
- 30-24 Consistency with a congestion management program may include, but is not limited to: consistency with level of service standards, travel demand measures, or other standards established by the county congestion management agency for designated roads or highways.
- 30-25 The screening criteria for local CO should be interpreted to mean that the project would either cause an intersection experiencing fewer vehicles per hour than the screening level to exceed the screening level, or contribute vehicles to an intersection already over the screening level. For most intersections in BAAQMD’s jurisdiction, it is unlikely that the screening level would be exceeded under any circumstances.
- 30-26 If a full analysis of CO is undertaken by the Lead Agency, emissions concentrations should be quantified for intersections that would exceed the screening criteria with and without the project. Emissions

concentrations with and without the project should be compared to determine whether the project results in or contributes to a violation of the CAAQS. See also response to comment 30-31.

30-27 See comment response 30-10.

30-28 The updated CEQA Guidelines will provide direction on evaluating odor impacts. See also master response MR-7.

30-29 See master response MR-8.

October 9, 2009

Mr. Greg Tholen
Bay Area Air Quality Management District
939 Ellis St.
San Francisco, California 94109

RE: Draft CEQA Guidelines for the BAAQMD

Dear Mr. Tholen:

The California Wastewater Climate Change Group's (CWCCG) mission is to address climate change policies, initiatives, and challenges through a unified voice representing California wastewater community perspectives. Together, CWCCG's members provide an essential public service by treating over 90% of the municipal wastewater in California. Our comments focus on biogenic CO₂ emissions from wastewater treatment plants, which we believe should be excluded from threshold determinations in the draft CEQA guidelines.

31-1

In reading the proposed guidelines, it is not clear to us whether the proposed thresholds exclude carbon dioxide emissions from renewable fuels and biogenic sources. Neither the Draft CEQA Guidelines Report nor the Draft CEQA Thresholds Options Report state clearly that the thresholds should only apply to anthropogenic emissions of greenhouse gases.

We feel that any greenhouse gas proposal, CEQA or otherwise, should distinguish between anthropogenic emissions of CO₂ and CO₂ emissions from activities that mimic the natural short-term carbon cycle, i.e., biogenic emissions.

Unlike fossil-fuel emissions that release carbon from entombed petroleum deposits, biogenic carbon dioxide emissions do not change the atmospheric concentration of CO₂ because they are part of a natural cycle. The IPCC, U.S. EPA and the U.S. Climate Change Science Program all recognize the role of biogenic emissions from wastewater treatment plants in this natural cycle, and thus this CO₂ release is considered by these authorities to have no environmental impact¹. This conclusion was also reached by the BAAQMD in the staff report for the greenhouse gas fee rule that excludes such emissions².

Furthermore, if no distinction is made between CO₂ from fossil-fuels and other anthropogenic emissions versus CO₂ from renewable or biogenic emissions, the combustion of renewable fuels, for example, could falsely trigger a determination of significance, thus discouraging their use as a key strategy needed to combat climate change.

We respectfully request the BAAQMD to advise lead agencies that biogenic emissions exert no adverse impact on the environment. Consequently, these biogenic emissions should NOT be considered in any "bright-line" significance threshold nor any performance standard under CEQA.

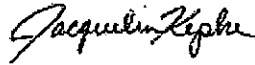
31-2

¹ Biogenic emissions have been excluded from regulation in all major GHG regulatory programs implemented to date around the world. For example, the US EPA's Mandatory Reporting Rule states, "The calculation of total emissions for the purposes of determining whether a facility exceeds the threshold should not include biogenic CO₂ emissions (e.g., those resulting from combustion of biofuels)." Moreover, Chapter 6, page 6.6 of the 2006 IPCC Guidelines for National Greenhouse Gas Inventories states, "Carbon dioxide emissions from wastewater are not considered in the IPCC Guidelines because these are of biogenic origin and should not be included in national total emissions." Lastly, The First State of the Carbon Cycle Report (SOCCR) from the U.S. Climate Change Science Program states, "Carbon dioxide, generated from aerobic metabolism in waste removal and storage processes, arises from biological material and is considered GHG neutral."

² See BAAQMD, Staff Report Proposed Amendments to BAAQMD Regulation 3: Fees, p. 15, May 12, 2008.

Thank you again for the opportunity to provide written comments on the Draft CEQA Guidelines. Please contact me if you have any questions at (510) 587-7709 or jkepke@ch2m.com.

Sincerely,



Jackie Kepke, P.E.

Program Manager

California Wastewater Climate Change Group

Comment Letter #: 31

Date: October 9, 2009

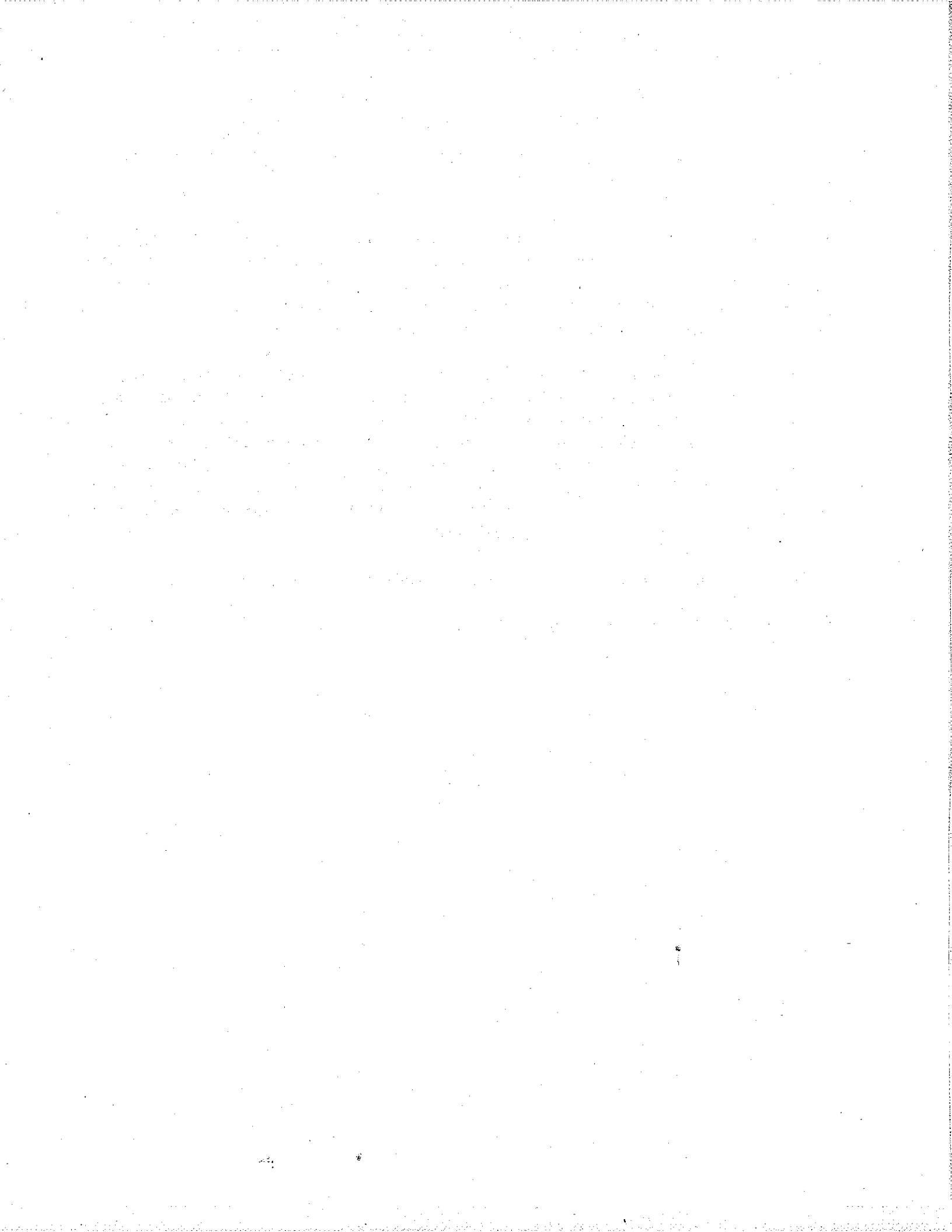
From: Jackie Kepke, Program Manager, California Wastewater Climate Change Group

Response to Comments:

- 31-1 The Air District regulates wastewater treatment plants in the Bay Area as permitted sources. The Air District's GHG Fee Schedule, Regulation 3, is applied to wastewater treatment plants as well. Due to emissions wastewater treatment plants emit from their engines, operations, and combustion of biofuels, the Air District disagrees with the recommendation that wastewater treatment plants should be excluded from threshold determinations in the CEQA Guidelines.
- 31-2 The Air District will recommend that lead agencies follow the California Climate Action Registry's (CCAR) General Reporting protocol on biogenic emissions. Biogenic emissions are produced from combusting biofuels such as wood, biodiesel, and landfill gas. CCAR's protocol provides limited guidance on calculating and reporting biogenic emissions because participants are only required to report anthropogenic emissions in their emissions inventory. However, the protocol does explain that methane (CH₄) and nitrous oxide (N₂O) emissions from combustion of biofuels are not considered biogenic and should be calculated. The protocol provides emission factors for calculating methane and nitrous oxide emissions from combustion of biofuels.

Staff will reflect CCAR's protocol guidance on biogenic emissions in the CEQA Guidelines.

Reference: CCAR General Reporting Protocol Version 3.1 January 2009



From: Rajeev Bhatia [rajeev@dyettandbhatia.com]
Sent: Friday, October 09, 2009 3:43 PM
To: Gregory Tholen
Subject: Comments on CEQA Thresholds of Significance

#32

Dear Mr. Tholen,

I am offering some comments on the version of the October 2009 version of the Revised Draft Options and Justifications Report.

As someone who has completed general plans and their related EIRs for 20 Bay Area communities, the threshold under Plan-level Criteria Air Pollutants and Precursors (Regional and Local) that states that "Rate of VMT increase or vehicle trips is less than the rate of increase in the Plan's population growth rate" (page 2 of the Summary Table and page 71 of the main document) is flawed as it is currently worded. This threshold is virtually impossible to attain for any plan, well meaning or otherwise, because there is an inherent increase in vehicle miles traveled in every part of the Bay Area over the long term that is related to regional trip-making, and often has nothing to do with a proposed plan.

Let me give you an example: We are currently working for the City of South San Francisco on General Plan amendments to promote mixed-use development and allow housing in a mile-long stretch along El Camino Real, in proximity to two BART stations and in keeping with the regional Grand Boulevards Initiative. Our transportation analysis shows that VMT increase in the city over the next 20 years without this plan would be 21.68% and with the plan 21.75% (that is, virtually no difference), while the population increase as a result of the plan is only about 3.5%. Unless we do something truly massive (like increase the population by more than 50% in the city--which is impossible), there is no land use plan possible that would reduce the VMT increase to less than the rate of population increase. This language, which is a carryover from the 1999 Guidelines and has been reviewed by lawyers on behalf of us, is so problematic, that this in itself has triggered a full-blown EIR for this plan when the entire goal of the plan has been to promote housing along transit corridors. In effect for every General Plan EIR we have done recently (ten Bay Area cities), we have had to making a finding of significance and a adopt a statement of overriding considerations, and face a skeptical public that questions why growth should be accommodated when it leads to violation of regional air quality guidelines.

The projected increase in VMT in the Bay Area is well documented, and is not a subject of controversy. For example the EIR on the 2035 Transportation Plan for the Bay Area adopted this year shows (Table 2.1-15) that VMT in the Bay Area will increase by 27% over the next 30 years.

I am actually not even sure why the VMT requirement is necessary as a threshold, as it penalizes communities who are trying to accommodate growth (regardless of where a development is located--even adjacent to a BART station--it is going to result in increase in VMT as an overwhelming proportion of trips are made by the automobile). Here are some alternative ways of structuring this threshold that would be helpful to planners engaged in local long-range land use planning, if for some reason this requirement is felt to be necessary:

- Use per capita VMT instead of just overall VMT. This is the approach increasingly favored by MTC as well (see page 2.1-22 in the aforementioned EIR). In addition, it should be clarified that similar time horizons need to be compared (for example, not current VMT per capita against VMT per capita 20 years down the road). 322
- Calibrate rate of increase of population and VMT to No Project rather than existing conditions (i.e., rate of increase in VMT exceeds the rate of increase in population compared to the No Project). This distinction is critical, because plans are typically long-range (20+ years) in nature, during which increased through-traffic along regional arterials and freeways is the cause of much of the increase in VMT.
- Calibrate increase in rate of VMT to that projected for the region by the MTC (that is, if a project does better than what the MTC says the region as a whole is going to do, then it should not be considered to have adverse impacts). However, this will create methodological problems, as the modeling processes for the Regional Transportation Plan and local plans may be different.

This stuff may sound arcane, but believe me that there are millions of dollars in consultant time spent as a result of this, and communities go through undue burdens and delays to implement project. Please do not hesitate to contact me if you have any questions.

Sincerely,

Rajeev Bhatia, AICP ASLA

DYETT & BHATIA
755 Sansome Street, Suite 400
San Francisco, CA 94111
415-956-4300 x15
www.dyettandbhatia.com

Comment Letter #: 32

Date: October 9, 2009

From: Rajeev Bhatia, Dyett & Bhatia

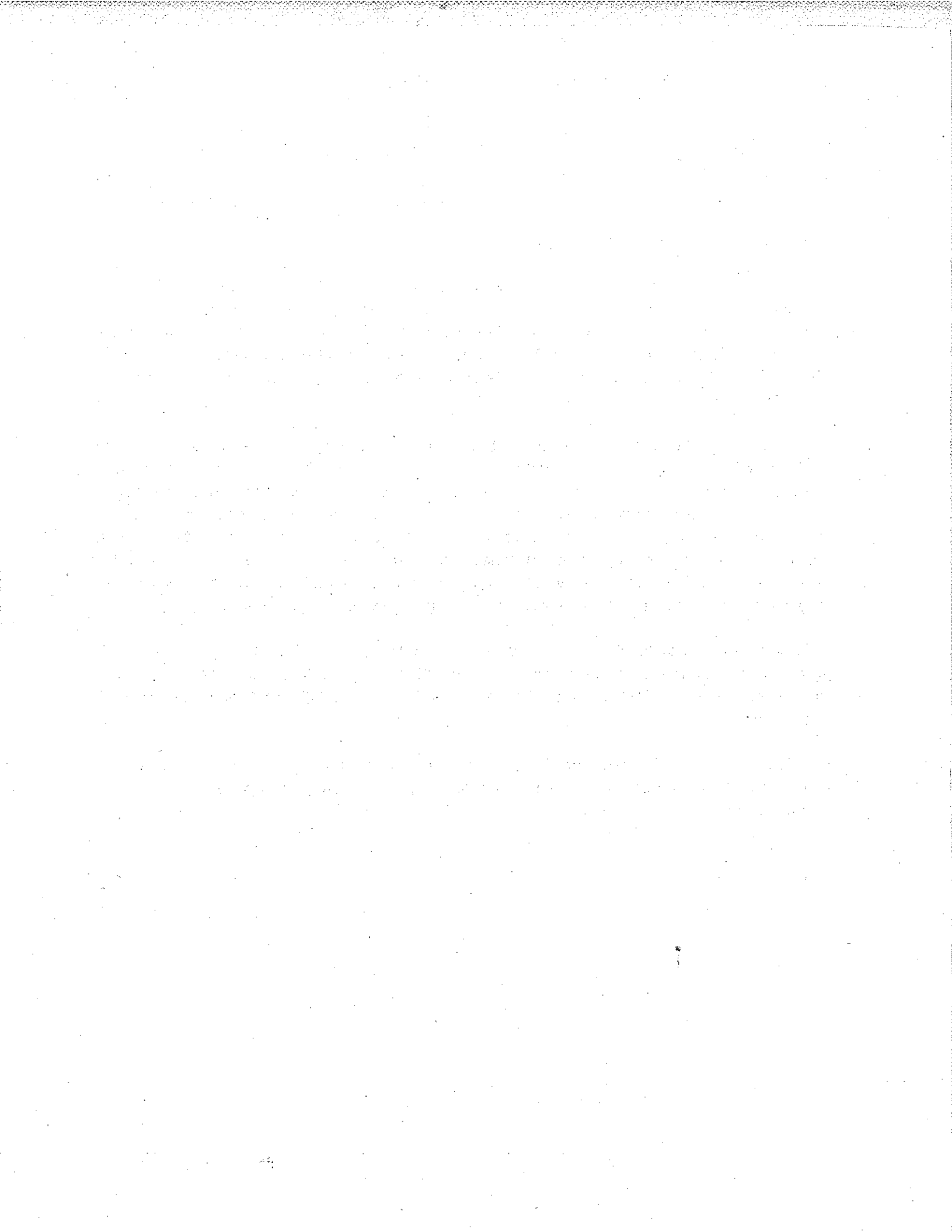
Response to Comments:

32-2 District Staff believes that examining the relationship between vehicle miles traveled (VMT) and population growth informs the public whether a plan is supporting smart growth versus sprawl-like future development. This threshold is intended to incentivize local governments to accommodate future growth through smart growth development patterns such as transit-oriented, mixed-use, and dense projects. A plan's analysis may evaluate VMT per capita in place of comparing VMT and population growth.

District Staff studied whether to allow a plan to evaluate their proposed project to a similar build-out time horizon of "no project" versus "existing conditions." We found that with comparing a proposed project to future no project conditions, the threshold becomes overly lenient and potentially allows for significant air quality impacts. For example, we analyzed a local government general plan with an extremely higher VMT growth rate than population growth (typical of many communities in the Bay Area) and with very few smart growth principles. When compared to no project in the build out year, the proposed plan's VMT per capita was less than the VMT per capita for no project, which would inappropriately indicate that this plan has less than significant air quality impacts.

Staff also considered calibrating a plan's VMT increase to that projected for the region by MTC, but agrees with the commenter's conclusion that this would create methodological problems, as the modeling processes for MTC's Regional Transportation Plan could be different than those for local governments.

The District recognizes that reducing VMT growth to the rate of population growth is a challenge, however, many local governments are making strides in reducing VMT per capita while accommodating population growth.



#33

Transportation Solutions Defense and Education Fund

P.O. Box 151439 San Rafael, CA 94915 415-331-1982

October 8, 2009
By E-Mail

Greg Tholen
Bay Area Air Quality Management District

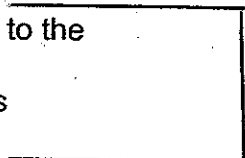
Re: Draft CEQA Guidelines

Dear Greg:

These draft Guidelines are a big step forward from the current set. Thank you for a good job. We are especially appreciative of the cumulative impacts section involving the local community risks. Our comments are divided up into policy comments, comments on the organization of the Guidelines, and some editorial suggestions. We hope they help you make an even better final set of Guidelines.

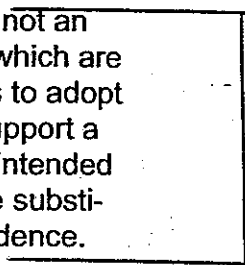
Policy

2-2: It would be helpful to add a footnote to Table 2-1 indicating that changes to the ozone NAAQS now under consideration by EPA are unlikely to change these thresholds, because they are based on the New Source rules and the region's classification as a marginal non-attainment area.



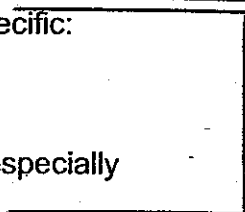
33-1

2-9: Incorporating "AQP control measures as appropriate to the plan area" is not an enforceable standard. The AQP contains a vast array of measures, some of which are not currently being implemented by the District. We believe the District needs to adopt a list of specific measures that then must be adopted into a plan in order to support a finding of plan consistency with the AQP. To enable the tailoring to plan area intended by the "as appropriate" language, we suggest that alternate measures may be substituted, whose emissions reduction equivalence is supported by substantial evidence.



33-2

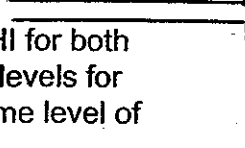
2-11: Is criterion 3a in here because of asbestos? If so, it should be more specific: "Demolition that could possibly release asbestos."



33-3

2-11: Criterion 3b seems disconnected from the world of actual construction.

2-11: Given our region's commitment to mixed use TOD, criterion 3c seems especially counter-productive.



33-4

4-5: It is not clear whether the use of the same excess cancer risk level and HI for both impacted and other areas is a mistake or an intentional choice. Logically, the levels for impacted areas should be the same as for siting a new source, to offer the same level of health protection.

5-5: We are troubled by the looseness created by the use of "as appropriate" in Section 5.4.1, and wonder whether it can be deleted. It would appear that the point at which such discretion is appropriately exercised is during the review of a project's conditions of approval, not during the development of a plan.

33-5

6-12: We would like to see something along the lines of Measure 9 be made part of the basic construction mitigation measures, so that it then became part of the construction impacts screening criteria. After all that has been learned about the harmful impacts of diesel PM, the District should be proposing that reducing diesel PM be a basic construction mitigation measure. While we don't have a specific percentage reduction recommendation, we suggest this measure be designed to protect public health while providing an incentive for PM reductions by allowing projects to pass the screening criteria and avoid having to go through the impact analysis.

33-6

6-15: We believe the statement that "the Basic Construction Mitigation Measures ... would also reduce diesel PM exhaust emissions" trivializes a very serious public health issue, in the absence of the change suggested immediately above.

6-15: The last two sentences of the paragraph fail to establish clear procedural steps for determining the significance of construction impacts, in effect passing that determination on to District staff. There is no justification for proposing this threshold as merely something "BAAQMD recommends." It would be the only such 'recommended' threshold in the Guidelines. Since the purpose of this section is to protect human health from TACs, we propose that, rather than "suggesting," the District set the threshold of significance as the following performance-based BMP: "The project sponsor shall commit to using diesel engines that meet the current CARB standards, or natural gas- or electric-powered equipment, for 95% of engine-hour time?"

33-7

Comments on Document Organization

TRANSDEF would like to propose a hierarchical rearrangement of the sections of the Guidelines that we believe would make these Guidelines much easier to use, and far more understandable. A proposed Table of Contents is attached. The structure starts with the recognition that the plan-level and project-level guidelines exist at a higher level of hierarchy than the operational and construction impact guidelines. A further refinement is to recognize that the Local Community Risk, Carbon Monoxide and Odor sections all belong inside a larger operational impacts section. The last element of this scheme is to place the appropriate threshold of significance for each emission category (e.g., criteria pollutant, GHG) with that emission for each section. This eliminates the repetition of the threshold, and places them adjacent to the rest of the text they relate to. We suggest that, to be consistent with Figure 1-2, it is logical to place the screening criteria before the threshold of significance (See 2.1.1 and 2.2.2, where the order is reversed).

33-8

Other structural things we'd like to see changed:

1. The vertical line that precedes the page numbers is an affectation that makes them hard to read.

33-9

2. The Guidelines needs more flow charts like Figure 1-2. Example: The GHG calculations starting on p. 3-9. 33-9
3. The compendium of measures starting on p. 3-11 is a perfect opportunity to use hypertext to make the table more readable. As currently structured, the bibliographic references and notes make for a confusing jumbled presentation. The measure name should contain an active hyperlink that enables the reader to jump to the source document online, or to a specific entry in a bibliography. Enable extended Notes that don't disrupt the table structure by linking to endnotes.
4. We are unconvinced that dividing mitigation measures between URBEMIS measures and non-URBEMIS measures (p. 3-11) is the most logical way to go. It would be more familiar to anyone with an air quality background to divide the measures between mobile source, area source and energy efficiency. A column could be added with a check box to indicate whether that measure is available in URBEMIS. 33-10
5. What is listed as Step 1 on p. 5-2 is not actually a step. It is an alternate path to compliance. Because no compliant plans currently exist, we find the inclusion of this "step" here to be unnecessarily confusing. We suggest it would be better to move the text associated with the current Step 1 to a new sub-section after Step 6, and title it "Climate Action Plan." Put in its place the following sentences: "The following steps will enable the Lead Agency to determine whether the plan has a significant impact from GHG emissions. If a Climate Action Plan has been adopted, go to Section 5.2.2.1." 33-11
6. We suggest that the document would read like a concise set of Guidelines if the instructions for running URBEMIS and RoadMod (p. 3-2 through 3-8, 3-9 through 3-10, 6-1 through 6-10 and 6-11 through 6-14) were separated off into an appendix, leaving behind the key instructions. 33-12
7. Please publish the basis for the GHG efficiency standards on p. 5-4, justifying the higher threshold for residential plans. In an era of SB 375, will there even be any more residential plans? 33-13

Thank you for the consideration of these comments. As always, we stand ready to assist the District in the development and implementation of these Guidelines.

Sincerely,

/s/ DAVID SCHONBRUNN

David Schonbrunn,
President

Attachments

Proposed Table of Contents
Editorial Suggestions

Here is a proposed Table of Contents, using section numbers from the current draft:

1 Introduction

1.1

1.2 (define operational impact here, please)

2.7 (Add more explanatory material here to contextualize this)

(new section) Project-Level Impacts

3 Operational Impacts

3.1 Introduction

2.1 Thresholds of Significance

3.2

3.3

4 Local Community Risk

4.1

2.2 Thresholds of Significance

4.2

4.3

4.4

7 Local Carbon Monoxide Impacts

7.1

2.5 Thresholds of Significance

7.2

7.3

8 Odor Impacts

8.1

2.6 Thresholds of Significance

8.2

8.3

6 Construction Impacts

6.1 Introduction

2.4 Thresholds of Significance

6.2

6.3

6.4

6.5

5 Plan-Level Impacts

5.1 Introduction

2.3 Thresholds of Significance

5.2

5.3

5.4

5.5

5.6

Editorial Suggestions

The cover page title doesn't reflect CEQA Guidelines.

It is tedious to begin each section with "Assessing and Mitigating." Because these functions are inherent to a document of this nature, there is no need to include this phrase in section titles. It is a statement of the obvious.

It is not at all clear that the phrase "and Hazard" adds anything to "Assessing and Mitigating Local Community Risk and Hazard Impacts." It appears to be redundant.

"Climate Action Plan" and "Clean Air Plan" have the same acronyms. This is going to create unnecessary confusion. Can you select another Plan name?

2-1: Define "operational." Use text found in Section 5.2.

2-1: The phrase "Operational-related impacts" is awkward. It would appear that "operational impacts" says the same thing.

2-15: Instead of the first 2 uses of "likely" on this page, it would be better to say "the project would result in a less-than-significant air quality impact, in the absence of substantial evidence to the contrary." This would provide the threshold with more certainty, while leaving open the possibility of rebuttal. This is in keeping with the language on p. 1-4: "If, after proper analysis, the project or plan's air quality impacts are found to be below the significance thresholds, then its air quality impacts may be considered less than significant."

2-9: Change 2 uses of "projects" to "plans" in the paragraph titled Greenhouse Gases.

2-11: "considerable" is undefined in criterion 3e. Can it be tied to URBEMIS?

3-11: The first set of measures needs a sub-heading, like all the rest of the measures.

4-1: Define HI. Each new term should be defined the first time it is used.

4-2: Define "permitted or non-permitted." Provide some background.

4-2: Add "is" after "new source" on the 6th line.

4-2: The portion of the first paragraph starting with "For sources that ..." should be moved to page 4-6 and combined with similar information in the paragraph starting with "BAAQMD recommends"

4-2: Add "Proposed" before "Revisions" in the last paragraph. Add "after adoption" after "Consequently."

4-4: Explain "prioritization level" and indicate where to find it.

4-4 & 4-5: In section 4.2.2, change "was" to "is."

4-5: Since section 4.2.2 is titled "Siting an New Receptor" the first bullet under Impacted Communities should read "New receptor projects in impacted communities ..."

4-5: Change "should" on the 6th line from the bottom to "shall."

4-5 & 4-6: Delete the phrase "A Lead Agency shall note, however, that." The sentence becomes intelligible if it starts with "For."

33-14

- 4-6: Change the 3 uses of "should" in the first full paragraph to "shall." Note the use of "shall" on p. 4-4 in reference to use of CAPCOA's Guidance Document.
- 4-6: Change the 2 uses of "should" in the paragraph starting with "Following ..." to "shall."
- 4-6: In the same paragraph, add "measures" after "mitigation" on the last line.
- 4-6: In the same paragraph, change "Section 4.3" to "Section 4.4"
- 5-1: Add "regional" to "transportation plans" to remind MTC that it is governed by these Guidelines. (Because the list of long range plans is only illustrative, the inclusion of county and other types of transportation plans would still be implied.)
- 5-1: The phrasing of the following sentence sends the wrong message about air quality planning: "Due to the SFBAAB's non-attainment status for ozone and PM, and the cumulative impacts of growth on air quality, these plans almost always have significant, unavoidable adverse air quality impacts." We are concerned that this sentence will encourage a dismissive attitude towards impact significance determinations. We suggest this reformulation: "Due to the SFBAAB's non-attainment status for ozone and PM, additional emissions from growth will necessarily produce pollutant levels that exceed air quality standards. As a result, these plans almost always have significant, unavoidable adverse air quality impacts. Nonetheless, with maximal implementation of feasible mitigations, those additional emissions can be minimized."
- 5-1: Define AQP.
- 5-3: Change "Step 2" to "Step 1" and renumber the rest of the steps.
- 5-5: The bullets in Section 5.3 are mis-numbered and out of logical sequence. It makes more sense to call for the creation of overlay zones before requiring them on a land use diagram. Delete "also."
- 5-7: These bullets are also out of logical sequence. See above.
- 5-7: See comments re: p. 5-1 for suggestions on how to make the first sentence of Section 5.6 less discouraging.
- 5-7: Change "of" on the 7th line from the bottom to "or."
- 5-7: Delete "Ideally." Because guidelines direct actual behavior, "ideally" does not belong in guidelines.
- 5-7: Change "should" to "shall" on the 3rd and 5th lines from the bottom.
- 5-7: Change "proposed project" to "proposed plan" on the last two lines from the bottom.
- 6-1: Change the title of Step 1 to "Screening."
- 6-14: Change "For proposed projects that wish to disclose" to "To analyze the."
- 7-1: Delete "nearby" in the first paragraph.
- 8-1: Add "Restaurants" to the list of land use examples.
- B-19: There is no 2009 Ozone Attainment Plan.

33-14

Comment Letter #: 33

Date: October 8, 2009

From: David Schonbrunn, President, TRANSDEF

Response to Comments:

- 33-1 Even though the Bay Area's designation as a non-attainment area for ozone may not change, the Air District does not know if its classification as marginal will continue or be changed as necessary. It is therefore too speculative to include the footnote suggested.
- 33-2 With consideration to this comment, the Air District's 2009 Clean Air Plan will define specific guidance for plans to demonstrate compliance with the Clean Air Plan including a list of control measures that should be adopted in a plan.
- 33-3 Staff will revise and clarify the construction criteria. We agree with the commenter that criterion 3c should not apply to mixed use infill projects.
- 33-4 The CEQA Guidelines will be updated to reflect the revised thresholds for risks and hazards in the *Proposed Thresholds of Significance* report (November 2, 2009). The same cancer risk and non-cancer risk levels will be applied to impacted communities and other areas.
- 33-5 The CEQA Guidelines will be updated to reflect the revised thresholds for construction in the *Proposed Thresholds of Significance* report (November 2, 2009). The construction threshold is no longer based on construction best practices, but is now based on the same numerical thresholds as the operations threshold. The threshold for particulate matter from fugitive dust relies on construction best management practices.
- 33-6 Comment noted. Staff will consider recommending Measure 9 as a basic, versus additional, construction mitigation measure.
- 33-7 See comment response 33-5.
- 33-8 The CEQA Guidelines have been reorganized with consideration to these restructuring recommendations.
- 33-9 Staff will do its best to ensure that the updated CEQA Guidelines are user-friendly, readable, and possibly offer more flow charts.
- 33-10 Comment noted. Staff will consider restructuring the mitigation measures as suggested by the commenter.
- 33-11 The updated CEQA Guidelines will clarify that the development of a climate action plan are not actually steps for compliance. We agree with the commenter that the language as is could be confusing.
- 33-12 We agree with the commenter's suggestion and will move the URBEMIS instructions to the appendix in the updated CEQA Guidelines.

- 33-13 The *Proposed Thresholds of Significance* report (November 2, 2009) provides justification for the GHG efficiency standards. Also see Master Response MR-3.
- 33-14 The editorial suggestions have been reviewed and will be incorporated where appropriate in the updated CEQA Guidelines.



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MANAGEMENT DISTRICT

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#34

October 12, 2009

Scott Huggerty, Chair
Alameda County

Adrienne J. Tiszler, Vice Chair
San Mateo County

Tom Azunbrando
U.S. Department of Housing
and Urban Development

Jan Bates
Cities of Alameda County

Dean J. Chu
Cities of Santa Clara County

Dave Cortese
Association of Bay Area Governments

Chris Daly
City and County of San Francisco

Bill Dodd
Napa County and Cities

Dorene M. Giacopini
U.S. Department of Transportation

Federat D. Glover
Contra Costa County

Anne W. Hulsted
San Francisco Bay Conservation
and Development Commission

Steve Kinsey
Marin County and Cities

Sue Lempert
Cities of San Mateo County

Jake Mackenzie
Sonoma County and Cities

Jon Rubin
San Francisco Mayor's Appointee

Bijan Sartipi
State Business, Transportation
and Housing Agency

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Amy Rein Worth
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Ken Yeager
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Steve Fleming
Executive Director

Aun Fleming
Deputy Executive Director, Operations

Andrew R. Fremier
Deputy Executive Director,
Bay Area Toll Authority

Theresa W. McMillan
Deputy Executive Director, Policy

Mr. Greg Tholen, Principal Planner
Bay Area Air Quality Management District
939 Ellis St.
San Francisco, CA 94109

RE: CEQA Thresholds of Significance Report

Dear Mr. ^{Greg}Tholen:

Thank you for updating the CEQA Thresholds of Significance. We believe the updated report will be helpful for lead agencies in identifying and mitigating significant air quality and climate change impacts, and we are largely supportive of the recommended thresholds. However, we wanted to provide a little more context on how MTC identifies air quality impacts as a part of environmental review of our regional transportation plan. We believe our analysis approach better discloses air quality impacts for regional transportation plans than the proposed plan-level air quality thresholds of significance in the draft report. We request that you clarify that the MTC approach to evaluating plan-level air quality impacts is an appropriate one.

34-1

In evaluating air quality impacts of regional transportation plans, MTC historically has used the following significance criterion, which is based on Appendix G of the CEQA Guidelines codified at Title 14 California Code of Regulations section 15000 et seq.:

"Implementation of the regional transportation plan would have a potentially significant adverse impact if RTP projects would result in a cumulatively considerable net increase of emissions of criteria pollutants ROG, NOX, CO, PM10 and PM2.5 from on-road mobile sources compared to existing conditions."

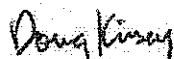
The method of analysis to evaluate this criterion uses regional travel demand model outputs including vehicle trips and vehicle miles travelled at different speeds with emission factors generated by ARB's latest emissions inventory model, EMFAC. This method allows us to quantify estimated changes in emissions of each criteria pollutant separately. For example, the EIR for the Transportation 2035 (T2035) Plan found beneficial impacts for ROG, NOx, and CO, and significant cumulative impacts for PM2.5 and PM10 (although the T2035 Plan's contribution to the impact was not cumulatively considerable). In striving to disclose environmental impacts, we believe our approach, which quantifies the impact of each criteria pollutant separately, fulfills the intention of CEQA.

We believe the Air District's proposed threshold, that the "rate of VMT increase or vehicle trips is less than rate of increase in population," can be a good proxy to identify air quality impacts for lead agencies unable to do an analysis using travel demand models and emissions factor models; however, we believe this threshold could erroneously lead to significant impacts, even when implementation of the proposed project would result in improved air quality. In particular, a project that encourages transition of vehicle fleets to electric vehicles could result in improved air quality, but also higher levels of vehicle travel relative to population increase.

Nevertheless, we believe analysis of the rate of VMT or vehicle trip increase relative to population increase is an important metric. In our T2035 Plan, we included a similar criterion in the EIR's analysis of transportation impacts of the Plan: "*A substantial increase in per capita VMT compared to existing conditions.*" We believe this criterion is an appropriate way to analyze a project's transportation impacts, such as congestion, and we will continue to analyze it in future EIRs for RTPs.

We do recognize the importance of reducing vehicle trips and vehicle travel in aiming to improve air quality and reduce greenhouse gas emissions. In particular, MTC expects the Sustainable Communities Strategies that is developed as a part of the 2013 RTP will include many strategies to reduce both vehicle trips and VMT. However, we believe the most effective way to analyze, disclose, and mitigate air quality impacts of a project is by examining the direct relationship between vehicle travel and emissions factors, rather than the indirect relationship between population growth and vehicle travel. We hope you will clarify that this approach is also an appropriate one for lead agencies to consider in evaluating plan-level impacts. If you have any questions, please contact Liz Brisson of my staff at 510-817-5794. Thank you for considering our input.

Sincerely,



Doug Kimsey
Planning Director

DK: LB

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34-2

Comment Letter #: 34

Date: October 12, 2009

From: Doug Kimsey, Planning Director, MTC

Response to Comments:

- 34-1 District Staff recognizes that MTC's approach to evaluating plan-level air quality impacts does a good job of quantifying emissions of criteria pollutants separately, but may not be the most appropriate or only metric to characterize transportation impacts under CEQA. The approach does not address the importance of reducing vehicle trips and miles traveled to improve air quality. Vehicles are continually becoming cleaner due to technology innovations and new regulations. Yet, the increased rate of growth of vehicle miles traveled in the region is offsetting the full air quality benefits from a cleaner vehicle fleet. With the transportation sector as the largest contributor to air pollution in the Bay Area and the state, it is critical that a plan's vehicle trips or miles traveled be evaluated to reduce future emissions from mobile sources.
- 34-2 District Staff believes that examining the relationship between vehicle miles traveled (VMT) and population growth informs the public whether a plan is supporting efficient growth versus auto dependent future development. This threshold is intended to incentivize local governments to accommodate future growth through efficient growth development patterns such as transit-oriented, mixed-use, and dense projects. Even through the region's vehicle fleet is getting cleaner, it is necessary to continue reducing vehicle miles traveled to prevent future air quality benefits from being canceled out by high VMT growth rates and to reduce GHG emissions. The District recognizes that reducing VMT growth to the rate of population growth is a challenge; however, many local governments are making strides in reducing VMT per capita while accommodating population growth. The RTP has enjoyed the benefits of on-road emissions budgets established in a 2001 state implementation plan (SIP) developed for an air quality standard that has since become stricter, a standard for which the Air District anticipates being designated nonattainment. Therefore the Air District recommends significance metrics that examine more than just the relationship between vehicle travel and emission factors. When vehicle travel declines in relation to increases in population, we are more assured that new investments in the RTP and local development is occurring where it is most beneficial to air quality.

October 13, 2009

Mr. Greg Tholen, Principal Environmental Planner
Planning and Research / Air Quality Planning
1220 N. N Street, Room 221
Sacramento, CA 95814

Re: Bay Area Air Quality Management District's Draft CEQA Thresholds of Significance and Draft CEQA Guidelines

Thank you for the opportunity to review your staff recommended Draft CEQA Thresholds of Significance and Draft CEQA Guidelines. We appreciate the ability to work with you on this project and provide feedback on the Draft Thresholds and Guidelines. This bold step ahead attempting to address Climate Change and air quality is admirable. We appreciate your efforts to provide local jurisdictions with guidance on the issue.

35-1

The City of Santa Rosa has reviewed the staff recommendations and has the following comments related to the proposal:

1. Commercial and Residential projects do not seem to be differentiated in the area of thresholds. Please clearly explain your reasoning behind combining them or provide separate use types and thresholds for each.
2. Components necessary to certify a Climate Action Plan (CAP) are clear. Once these components have been achieved, what is the process for certification and who is the entity that certifies the CAP?
3. We appreciate the ability to analyze at a project by project level until our CAP is certified. Please provide standardized measurement methods for evaluating criteria air pollutants and precursors, GHGs and cancer risk per million at the project level with a standard formula that is easily calculated.
4. CEQA exemptions in relation to Air Quality are unclear. Please identify which CEQA exemptions, if any, will apply. Please provide specifics on which exemptions are feasible and give guidance on when they would be appropriate. For example, the PM¹⁰ control measures clearly state that for projects less than 4 acres these control measures reduce construction impacts to less-than-significant. This type of guidance is extremely helpful.
5. Are the proposed thresholds created to trigger an air quality analysis or trigger a mandatory EIR for air quality impacts? (ie. 55 units, 15,000 square feet of commercial).

35-2

35-3

35-4

35-5

35-6

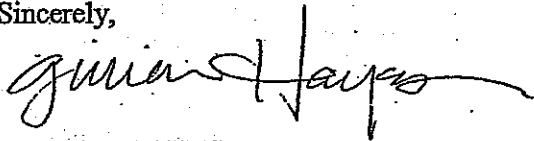
6. Please provide direction regarding projects already in the approval process. Which are affected by the CEQA Guidelines and at what point in the process are they affected? For example...what about a discretionary project approved for a 60 unit subdivision that has not yet received building permits? What about a project that has been approved at Planning Commission but not City Council? What about a project that has been submitted and CEQA review is in process but no approvals have been obtained?
7. Please create a single database for existing pollutant sources (gas stations, diesel generators, high emission streets, etc) that is easily accessible and updated accurately and often. Which specific sources should be evaluated? What are the ranges of cancer risk for each source? Which roadways are identified as high level emissions producers? Set up a process for local input and training on the procedures for the risk assessment.

35-7

35-8

Thank you again for the opportunity to provide questions and feedback. Please contact me at (707) 543-4348 if you have any questions regarding the above information. We look forward to continuing to work closely with the Bay Area Air Quality Management District in the future.

Sincerely,



GILLIAN HAYES

City Planner/Environmental Coordinator

Cc: Chuck Regalia, Director Community Development
Jeff Kolin, City Manager
City Council

Comment Letter #: 35

Date: October 13, 2009

From: Gillian Hayes, City Planner/Environmental Coordinator, City of Santa Rosa

Response to Comments:

- 35-1 Comment noted. Air District staff encourages an open, public process to revise the BAAQMD CEQA Guidelines and develop proposed thresholds of significance and values commenter input.
- 35-2 Air District staff believes emissions from all sources affect the level of pollutant concentrations similarly. Emissions from commercial or residential sources, with equivalent mass emissions, contribute to increased concentrations of criteria pollutants and GHG equally. The proposed GHG thresholds were developed based on AB 32 goals and the reductions that will occur from AB 32 Scoping Plan measures for both the land use emission inventory sectors and stationary source emission inventory sectors.
- 35-3 Climate actions plans must be consistent with State CEQA Guidelines Section 15064(h)(3) to allow a project to be considered less than significant under the Air District's proposed threshold. The process for certifying climate action plans have not yet been fully developed. Air District staff will work closely local agencies to ensure their adopted climate action plan qualify in meeting the intent of the proposed thresholds.
- 35-4 The Air District's revised CEQA Guidelines provide recommended methodologies and mitigation measures to evaluate and mitigate adverse impacts to air quality and climate change.
- 35-5 In relation to air quality, all exemptions identified in the State CEQA Guidelines are available to proposed projects that qualify for the exemption. Also see Master Responses MR-1, MR-2 and MR-7.
- 35-6 The screening tables provided in the revised CEQA Guidelines are not thresholds of significance and will not, based on the screening table alone, trigger a mandatory EIR. They are just screening levels to minimize the need for full analysis in situations where BAAQMD has determined no significant air quality impact would occur because Air District staff have modeled the screening level projects under very conservative assumptions and have determined that such projects will not exceed the applicable thresholds of significance. Most projects will have characteristics, such as nearby transit and services, which will reduce estimated emissions and allow a larger project than indicated in the screening table to be less than significant.
- 35-7 The District's proposed thresholds of significance will not be mandatory for use by other lead agencies in the Bay Area. Lead agencies may choose to apply the District's thresholds to determine the significance of projects before them, or they may determine that some other method of analysis would be more appropriate for their particular agency or for a particular project. The District cannot therefore adopt a specific "effective date" upon which the thresholds will become mandatory. For lead agencies with projects that are already under review when the proposed thresholds are adopted, it will be up to each individual agency to determine whether and when to apply the District's revised thresholds for those projects. If the lead agency finds it appropriate to apply the District's revised thresholds in its significance analysis for such projects, it may do so. If the lead agency finds that it

would not be appropriate to apply the revised thresholds to projects already under review, it may use some other means to determine significance as long as the determination is supported by substantial evidence as required by CEQA. For these reasons, staff is not proposing an "effective date" for the proposed thresholds. For those jurisdictions choosing to use the District's recommended thresholds, the District will establish a date upon which we recommend the thresholds become effective.

- 35-8 Air District staff is compiling a database of existing sources of risk and hazard emissions, including roadways that identify risks levels at various distances from the source. Air District staff will be available to assist with assessing and mitigating air quality impacts.

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STOPWASTE.ORG

Reducing the Waste Stream for Alameda County

October 14, 2009

David Vintze
Air Quality Planning Manager
Bay Area Air Quality Management District
939 Ellis St.
San Francisco, CA 94109

StopWaste.Org is the Alameda County Waste Management Authority and the Alameda County Source Reduction and Recycling Board operating as one public agency.

Member Agencies

- Alameda County
- Alameda
- Albany
- Berkeley
- Dublin
- Emeryville
- Fremont
- Hayward
- Livermore
- Newark
- Oakland
- Piedmont
- Pleasanton
- San Leandro
- Union City
- Castro Valley Sanitary District
- Oro Loma Sanitary District

Agency Programs

- Bay Friendly Gardening & Landscaping
- Green Building in Alameda County
- StopWaste Business Partnership
- iRecycle@School
- Environmentally Preferable Purchasing
- Food Scrap Recycling
- Grants to Non-Profits
- Household Hazardous Waste Recycling
- Multifamily Recycling
- Recycling Information Hotline

Re: BAAQMD California Environmental Quality Act Draft Air Quality Guidelines

Dear Dave:

Thank you for providing the opportunity to comment on the District's CEQA Draft Air Quality Guidelines (Guidelines). We would like to raise three issues relating specifically to odors from composting and recycling facility operations.

First, the District's Guidelines are inconsistent with the authority vested in the California Integrated Waste Management Board by the legislature for regulation of odors from composting facilities. Having two regulatory agencies with their own methods for determining significance is duplicative and confusing for an applicant. We support guidelines that will provide a clear path for an applicant to follow for determining significance.

Second, the significance analysis needs to be based on sound science and should utilize a methodology that follows standard techniques such as the ASTM methods E-253, E-544, E-679, E-1885 and E-1958. Analysis should be based on actual project parameters, rather than complaint history. Using complaint history is equivalent to comparing a proposed refinery with a H₂S recovery system to an existing one without.

Finally, at a minimum, the Guidelines should mimic/reference the Odor Impact Minimization Plan (OIMP) odor regulations promulgated by the CIWMB for impact mitigation. The OIMP odor regulations are used statewide and have a proven track record of addressing odor issues. We recommend the Guidelines be amended to accurately reflect the regulatory environment for odors as set forth in statute.

Unless amended, the Guidelines along with the 2009 Clean Air Plan Control Strategies could severely impact the region's ability to meet recently adopted statewide initiatives around climate change and organics waste reduction. We look forward to a revised version of the Guidelines. The attached provides additional background on the comments above.

Sincerely,

Brian Mathews, Senior Program Manager

cc: Greg Tholen, Principal Environmental Planner

Please find below documentation and detail in support of the above three comments.

Regulatory Setting: The California Health and Safety Code Division 26, Section 41700 outlines the standards for discharge of air contaminants and provides the basis for the District's regulatory authority. However, section 41705(a)(2) specifically exempts composting facilities from Air District regulation/oversight. The Legislature has specifically delegated to the CIWMB, under Public Resource Code 43209.1, the regulatory responsibility for odors from composting facilities, and the CIWMB has adopted comprehensive regulations that govern odor impacts from composting facilities which are implemented statewide.

36-1

Public Resource Code Div 13 section 21153 (c) states *A responsible agency or other public agency shall only make substantive comments regarding those activities involved in a project that are within an area of expertise of the agency or that are required to be carried out or approved by the agency.* Since the regulation of composting odors are not under the jurisdiction of the District, the Guidelines make it difficult for an applicant, and the reviewing public, to interpret which agency has jurisdictional preference in these matters. The Guidelines Regulatory Setting section of Appendix B.2 should be amended to reflect California regulation in this regard.

36-2

Clear Path: The Guidelines are incongruous with the Air Pollution Permit Streamlining Act of 1992, Health and Safety Code Section 42322 because they do not provide a clear path for an applicant to objectively evaluate potential odor impacts for a particular project.

36-3

The BAAQMD Significance Determination Flowchart presented in the first pages of the Guidelines omits important factors. The flowchart has the applicant first use screening criteria to determine significance. Section 2.6 – Thresholds of Significance and Screening Criteria - Odor Impacts, Table 2-8 Odor Screening Distances, lists screening distances for Compost Facilities, Green Waste and Recycling Operations, and Transfer Stations at one mile. The table further directs the readers to Appendix C for support documentation. Appendix C consists of the Summary of Emissions by Urbemis Category tables and provides URBEMIS output emissions in TPY and lb/day. The data there provide no reference to odors or distances, and there is no reference within the URBEMIS Summary to any of the types of facility listed above.

36-4

Considering the geography of the District's jurisdictional boundaries, the screening distances listed in Table 2-8, and the lack of supporting documentation to interpret the meaning of the distances in reference to a proposed project, a reasonable conclusion can be drawn that the distances are arbitrary, directing an applicant to the second tier of the Significance Determination Flowchart regardless of the type of composting/recycling technology proposed, or the setting of the facility.

An enclosed compost or recycling facility meeting all the CIWMB odor criteria would not pass the screening criterion set forth by the Districts Guidelines. Given the lack of data to support the screening distances, a more appropriate screening criteria based the actual project parameters and technology proposed should be considered and adopted.

The second tier of the Significance Determination Flowchart directs an applicant to "*perform analysis using acceptable methods*" and "*Compare project impacts with thresholds of significance*". However, the Guidelines fall short of providing objective criteria on which to base an analysis of impacts which could be compared to thresholds of significance.

Chapter 8 of the Guidelines Section 8.2 provides four steps for making a determination of significance. The four steps are Disclosure of Odor Parameters, Odor Screening Distances, Odor Complain History, and Significance Determination. The first step, Disclosure of Odor Parameters is subjective due to the lack of quantitative/qualitative data available on odor from the District. While there is substantial data in the literature, the District has not adopted any standards for the use of that data in relation to analyzing odor.

The second step is also subjective because the Guidelines do not provide documentation justifying the screening distances, and the definition of a receptor is ambiguous. The Guidelines do not define the term "sensitive receptor", and neither could we find a definition in District regulations. Without a definition for "sensitive receptor" it would be difficult for an applicant to forecast potential impacts. Since odor sensation is specific to the receptor, and it is widely accepted that odor is not a health concern, distance may not be the best sole determinant for screening.

The third step Odor Complaint History is also subjective because the conditions under which complaints are rendered (confirmed and unconfirmed) are unknown. Multiple factors must be taken into consideration for determining odor sensation including, hedonic tone, intensity, frequency, dosing, meteorological conditions, and all the variables at the source of odor generation. Without this information, complaint history is an inadequate determinant of a proposed projects potential impact.

The first three steps have no interdependent relation to each other to provide a basis for analysis. Each step must be interpreted independently of the others, resulting in an analysis that is arbitrary. Lacking a method for analysis, the fourth step, significance determination, is based solely on interpreting the applicability of confirmed and unconfirmed complaint history of similarly named facilities.

- The use of complaint history to make a significance determination does not meet the standard set forth in the California Code of Regulations, Title 14, Section 15064, under the Guidelines for the Implementation of CEQA. Section 15064 (b) states in part, *The determination of whether a project may have a significant effect on the environment calls for careful judgment on the part of the public agency involved, based to the extent possible on scientific and factual data* (emphasis added).
- Odor perception that results in a complaint unless thoroughly documented is not scientific evidence, and unconfirmed odor complaints are not factual data. For a confirmed complaint to be factual, all the specific conditions surrounding the odor occurrence must be accurately recorded and documented. Since the motives and bio-physiological aspects of the receptor cannot be objectively determined, use of complaint history does not meet the standard set by regulation.
- The use of complaint history does not meet the burden of determination for a Threshold of Significance under Section 15064.7 (a) of the CCR. *A threshold of significance is an identifiable quantitative, qualitative or performance level of a particular environmental effect, non-compliance with which means the effect will normally be determined to be significant by the agency and compliance with which means the effect normally will be determined to be less than significant*. Complaint history is not an identifiable quantitative or qualitative effect which can be determined prior to a projects implementation. Because complaint history cannot be determined ahead of a projects implementation, an applicant is left to make a determination that odor

36-5

36-6

impacts will be potentially significant and unavoidable by the Guidelines, requiring the applicant to adopt mitigation measures that may or may not address the issue of complaints.

Science and Mitigation: While the Guidelines appear to outline a step by step process for evaluating impacts, in practice these are not the steps BAAQMD staff has employed in the past for determining significance. In a letter to the Alameda County Waste Management Authority dated January 27, 2005, the District, commenting on a Draft Environmental Impact Report, outlined an expensive and time consuming quantitative approach which required the installation and collection of one year's worth of site specific meteorological data, air dispersion modeling of specific odorous compounds and a determination of odor detection thresholds for those compounds at potential receptor sites.

While this approach was science based, the methodology was not supported by District regulation. District regulation, procedures and guidelines do not provide the necessary structure/context to objectively interpret the results of such an analysis. The District has not established odor emission factors for composting/recycling facilities, protocols for modeling odor emissions, thresholds of detection for particular odorous compounds, and has not adopted Thresholds for Significance as they relate to the thresholds of detection.

The District should consider adopting proven methods for odor analysis and interpretation. ASTM methods E-253, E-544, E-679, E-1885 and E-1958 are well documented and have been used in many states to assess odor impacts from various types of facilities. These methods use the odor unit and dilutions to threshold method which aggregates all odorous compounds which can contribute to a sensory perception. While this method is not without some controversy, it does provide a standard process that would meet the intent of CEQA regulations.

36-7

Chapter 8.3 of the Guidelines outlines mitigation measures for Landfill, Recycling and Composting Facilities. Section 8.3.2 states, *Odors generated from landfills and composting facilities are typically associated with methane production from anaerobic decomposition of waste.* While methane is an odorless gas produced under anaerobic conditions and is an expected product of landfill operations, it is not typically associated with composting. Recent emission studies from around the state show few methane emissions from composting facilities. The Districts linkage of composting facilities to landfills is egregious, because in the eyes of the public, the District appears to have made a determination that the impacts from these two different types of facilities are similar and/or equivalent and this is not accurate.

36-8

The mitigation measures under chapter 8.3.2 for composting facilities do not meet the definition of Mitigation under Section 15370 of the CCR in that there is not a predictive cause/effect relationship between the mitigation measure and complaint history which is used to determine significance. A mitigation measure must avoid, minimize, rectify, reduce, or compensate for an impact. Since complaints are subjective and unique to a given individual, there is no assurance the mitigation measures proposed would have the desired effect. The mitigation measures should mimic/reference the Odor Impact Minimization Plan regulations as promulgated by the CIWMB.

36-9

The above suggestions, if adopted, would provide an applicant a clear path for determining thresholds of significance and a solid footing for informing the public about potential impacts.

Comment Letter #: 36

Date: October 14, 2009

From: Brian Mathews, Senior Program Manager, Stopwaste.org

Response to Comments:

- 36-1 The District is not aware of any generic exemption for composting facilities from the requirements of CEQA. The code provisions the commenter cites provide for a qualified exemption from the public nuisance prohibition in Health & Safety Code Section 41700 for composting facilities and for establishing procedures to handle public complaints regarding such facilities, but they do not purport to exempt composting operations from CEQA. Lead agencies approving projects involving composting facilities will therefore be required to determine the significance of such projects for all environmental impacts, including odors. Staff therefore continues to believe that providing thresholds of significance and analytical tools to help lead agencies address odor impacts is an appropriate exercise. The thresholds and guidelines the Air District is publishing are not regulations and will not intrude on any CIWMB authority to regulate these facilities; they are intended simply to help lead agencies in carrying out their responsibilities to assess environmental impacts under CEQA. Staff therefore disagrees that the adoption of odor thresholds will be inconsistent with the cited code provisions. Staff does agree, however, that lead agencies should be aware of CIWMB's regulatory efforts in this area. Staff is therefore adding a discussion of CIWMB's regulations to the Guidelines in response to this comment.
- 36-2 CEQA section 21153(c) applies to commenting on EIRs for specific projects, not to publishing guidelines on analyzing environmental impacts generally or to adopting thresholds of significance. Moreover, even if Section 21153(c) were to apply to publishing CEQA guidance or adopting CEQA thresholds of significance, the District is an agency that has expertise over odor-producing operations generally. Although other agencies may have additional expertise in the area of composting odors more specifically, that is not inconsistent with the District also having general expertise regarding odors. There is no reason why more than one agency cannot have expertise in a particular area, and in fact that situation is quite common among regulatory agencies. Indeed, CIWMB's own statements on this issue recognize that the requirement that a responsible agency's comments be limited to its own area of expertise "does not preclude that responsible agencies' comments will not overlap." (CIQMB CEQA webpage, available at: www.ciwmb.ca.gov/PermitToolBox/CEQA/TopTen.htm.) Staff therefore disagrees that anything in CEQA Section 21153(c) would prohibit the adoption of odor guidelines or thresholds. Staff are adding a discussion to the Guidelines, however, as discussed above, to address CIWMB's regulatory efforts in this area.
- 36-3 The Permit Streamlining Act does not exempt projects from the CEQA environmental review process, including the requirement to evaluate whether a project will have a significant impact on the environment. The proposed guidelines and thresholds of significance, which will help lead agencies evaluate such impacts in the area of air quality, are not inconsistent with anything in the Permit Streamlining Act. Furthermore, staff disagrees that the thresholds will not provide a "clear path" for an applicant to evaluate potential odors. CEQA provides the "clear path" in that a project must avoid "significant" odor impacts to the extent feasible. The District's thresholds only serve to clarify this requirement further by establishing presumptive indicators that will help determine whether odor issues will cause the project to be above or below a level of significance. Additionally, there is nothing in CEQA or in the Permit Streamlining Act that would prevent the District from adopting its proposed

odor significance thresholds for projects generally, even if CIWMB adopts its own methodology for assessing odor impacts from composting operations or other types of waste management operations. (And in any event, District staff is not aware of any CIWMB CEQA thresholds of significance and did not find any mention of thresholds on the CIWMB website.)

- 36-4 The *Proposed Thresholds of Significance* report (November 2, 2009) contains justification for the recommended criteria pollutant thresholds. The report provided substantial evidence and justification for all the District-recommended thresholds.
- 36-5 The updated CEQA Guidelines will provide a definition for sensitive receptors. See also comment responses 36-4 and 36-6.
- 36-6 The complaint history in a particular location is a factual record of the frequency with which people at the location have been affected by objectionable odors and registered a complaint about them. The complaint history is therefore factual data about past odor impacts, which can be used to draw inferences about future odor impacts associated with projects at that location. Staff therefore disagrees that complaint history is not factual data upon which a CEQA significance determination can be based. Staff agrees that a complaint history showing more than one confirmed complaint per year or three unconfirmed complaints per year over a three-year period may not necessarily be determinative of whether an odor impact will be significant or not if there is other evidence in the record to the contrary. But the thresholds of significance are not levels that are absolutely determinative as a measure of significance. They are merely a presumption that establishes a starting place for the analysis, as levels above which an impact will *normally* be considered significant and below which an impact will *normally* be considered insignificant. (See CEQA Guidelines Section 15064.7.) The District's proposed thresholds will therefore allow for the lead agency to base its significance determination on all of the information in the record as required by CEQA, including complaint history and any other relevant scientific and factual data.

Furthermore, complaint history is a quantitative, qualitative or performance level regarding odor impacts within the meaning of CEQA Guidelines Section 15064.7. Offensive odor, as reflected in a history of complaints, is a qualitative and performance level in that it establishes a level at which people in the location of the project have found the impact to have risen to an objectionable level. Odors at such a level are an important indicator of significance. Moreover, the proposed thresholds are also quantitative as they would establish a specific numerical level – one confirmed complaint per year averaged over a three-year period or three unconfirmed complaints per year averaged over a three-year period – as the level at which the impact will normally be considered significant. The proposed thresholds therefore fall squarely within the definition of “threshold of significance” in Section 15064.7.

Finally, with respect to projects that will involve new sources of odors, as opposed to locating people (e.g., residents in a new residential development) in an area with problematic odor levels, the revised CEQA Guidelines recommend using the complaint history of a similar existing facility as the basis for analysis and determination of significance.

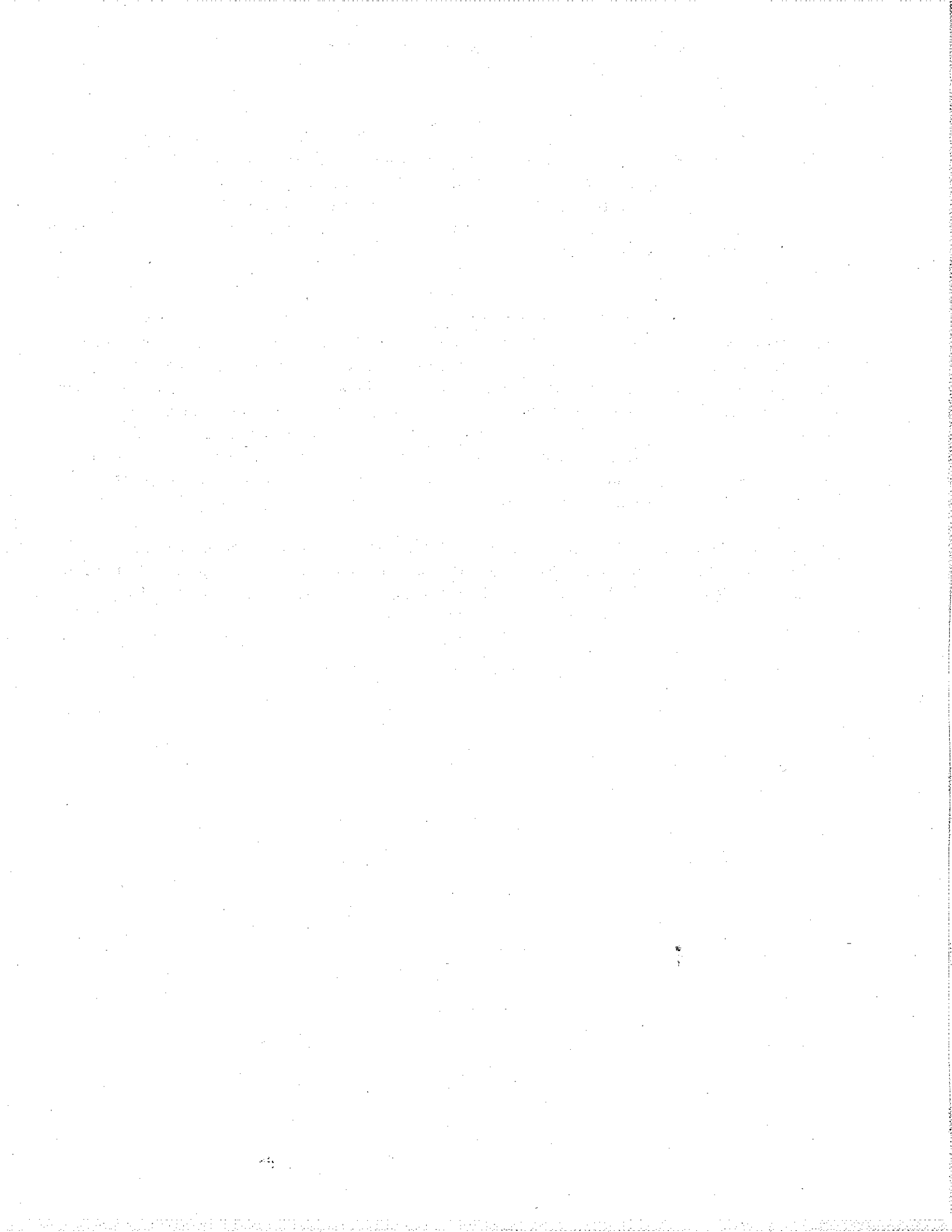
- 36-7 Staff will study the ASTM methods noted by the commenter and consider adding a discussion on the methods in the updated CEQA guidelines.

36-8 See master response MR-7.

36-9 Although odor complaints contain an element of subjectivity, to the extent that there have been complaints from the public about odors in a particular area and that history of complaints is used as an indicator that there may be significant odor concerns there, the identified mitigation measures are effective at reduce the severity of the odor impacts and thus the frequency of the odor complaints. The mitigation measures identified, such as scrubbers, filters, and treatment systems, are clearly effective in addressing the source of odors from the various types of facilities identified, and as such will be effective in mitigating any significant odor impacts.

But in any event, the identified mitigation measures in the District's CEQA guidelines are offered as an aid to lead agencies for use in their CEQA analysis. The list is not intended to be definitive or exhaustive. The District's list would not preclude a lead agency from imposing additional or different mitigation measures in an appropriate situation, and it would not require a lead agency to impose any mitigation measure on the list where the measure would not be effective at reducing odors in the context of a particular project. Mitigation will be imposed by individual lead agencies on a case-by-case basis, and any concern that a particular mitigation measure or measures included in the District Guidelines will not be appropriate for a particular project will necessarily be addressed at the CEQA approval stage for that project.

Finally, Staff agrees with the comment that it would be worthwhile to refer lead agencies to the CIWMB Odor Impact Minimization Plan regulations as an additional source of potential mitigation measures for significant odor impacts. Staff will add an appropriate reference in the Guidelines.



#37

UNIVERSITY OF CALIFORNIA, BERKELEY

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BERKELEY, CALIFORNIA 94720-1380

October 16, 2009

Greg Tholen
Senior Planner
Bay Area Air Quality Management District

Re: September 2009 Draft Air Quality Guidelines for CEQA with regard to GHGs

On behalf of staff at the University of California, Berkeley involved in sustainability, planning, project management, and construction oversight, I write to express concerns with the September 2009 draft CEQA Guidelines with regard to greenhouse gas emissions.

In general, the draft BAAQMD guidelines adopt a prescriptive approach, which may create an unreasonable and undue burden on regional development and on individual industries in the region. Because increased (or decreased) emissions of greenhouse gases in a particular region result in no detectable change in the risk or impacts of climate change in that region, there seems to be no rationale for differing regulations or "thresholds of significance" in one region versus another. In fact, prescriptive regional regulations may undermine or impede the success of AB 32, SB 375, or the pending federal legislation.

37-1

The spirit of AB 32 has been to discover the least cost method of reducing emissions, encouraging entities to accept an absolute cap on emissions with flexibility about how to achieve the needed reductions, limiting or completely avoiding regulations on what specific policies and measures should be taken by individual firms, agencies, or industries. Harnessing the power of the market has, in fact, often yielded superior results, by providing incentives for individual actors to exceed requirements or find ways to meet those requirements at a lower cost. To use an example at hand, the implementation of AB 32 may result in higher fuel costs to construction firms, who will respond to these price signals by changing practices to eliminate waste and reduce emissions without those steps being separately regulated or described.

The campus has embraced this approach, which is also enshrined in international treaties on climate change. We have voluntarily adopted a target and are in the process of implementing steps to achieve that target. These steps may be similar to what is being done by other universities or institutions, but are being determined by our particular opportunities and financial incentives. As a result, we expect to reduce our emissions, at a net benefit to the mission of the university.

Our specific comments on the CEQA Guidelines as circulated in September are these:

1. Thresholds of significance land use projects -- GHG (p. 2-2; and related to calculations for greenhouse gas emissions discussion at p. 3-8 et seq.):

Because each of these would be effectively intended to mitigate GHG emissions of land use projects we suggest that BAAQMD:

- Establish a first tier threshold that requires no additional action if a proposed project is committed to achieving LEED certification. 37-2
- Establish a first tier threshold that requires no additional action if a proposed project complies with an adopted land use plan for which a climate action plan has been established. We suggest this because lead agencies, including municipalities, counties, and universities, have adopted climate action plans in an effort to meet state mandated greenhouse gas reduction targets through comprehensive efforts. Where the focus of CEQA is commonly on the immediate, local impact of a single new development proposal, on-going pre-existing operations are often the greatest contributors of greenhouse gas emissions; the land use thresholds and screening levels should not be counterproductive to the goal of reducing land-use related GHG emissions. 37-3

2. Thresholds of significance for GHG construction (p. 2-8):

As noted at the Oakland workshop, BAAQMD is suggesting construction best management practices it believes to be "pragmatic." However we have not found these measures to be common practice or readily implemented.

- Since 2004, all University building projects are built in accordance with LEED requirements and as of 2009, will be built to achieve LEED silver at a minimum. However, each project meets green building requirements through a matrix of credits, and uses the LEED prerequisites. Our projects and our procurement practices require a variety of issues to be considered when procuring materials; we believe mandatory distance requirements must remain a project-specific decision. We believe appropriate material selection can have its own GHG benefit, reducing operational emissions from buildings or expanding the lifespan of new buildings. 37-4
- Existing University mitigation measures and contract language encourage the use of alternatives to diesel fuel in construction vehicles. Our LRDP Mitigation Measure Air-4-b states "To the extent that equipment is available and cost effective, UC Berkeley shall require contractors to use alternatives to diesel fuel, retrofit existing engines in construction equipment and employ diesel particulate matter exhaust filtration". However, we note that alternative fuel use is seldom practical, and according to a May 2009 EPA study, may not generate the greenhouse gas savings anticipated by BAAQMD (see *EPA Lifecycle Analysis of Greenhouse Gas Emissions from Renewable Fuels*, May 2009, <http://www.epa.gov/otaq/renewablefuels/420f09024.htm>). Campus researchers are looking to develop fuels that truly are carbon neutral, but current commercially available alternative fuels may not meet that test. Further, the use of alternatives to diesel fuel voids the warranty on equipment; the generators required to power electric equipment are an unlikely source of GHG benefit.

October 16, 2009

We draw your attention to a February 2009 report from the federal Environmental Protection Agency¹, *Potential for Reducing Greenhouse Gas Emissions in the Construction Sector*, which notes that construction contractors influence fuel selection and equipment selection (see page 11). We object to the inclusion of the alternate fuel threshold for construction because:

37-4

1. Contractors are often not selected at the time entitlement proceeds
2. Contractors have responsibility for fuel selection and requiring this standard influences the public bidding process for public lead agencies
3. Alternative fuel use and alternative fuel construction vehicles are not yet standard among construction contractors and further, may not actually achieve significant GHG savings.

We suggest that BAAQMD could be more effective at addressing emissions from the construction sector by supporting development of statewide standards for construction, rather than burdening Bay Area development with mitigations/thresholds that are not pragmatic nor universally adopted. We might also suggest:

- Establishing a first tier threshold that requires no additional mitigation if a proposed project is committed to achieving LEED certification.
- Establishing a first tier threshold that requires no additional mitigation if a proposed project complies with an adopted land use plan for which a climate action plan has been established. We suggest this because lead agencies, including municipalities, counties, and universities, have adopted climate action plans in an effort to meet state mandated greenhouse gas reduction targets through comprehensive efforts. Where the focus of CEQA is commonly on the immediate impact of a single new development proposal, on-going pre-existing operations are often the greatest contributors of greenhouse gas emissions; the construction standard should not be counterproductive to the goal of reducing land use related GHG emissions.
- Instituting a construction certification program, that trains and certifies construction personnel in: GHG impacts of idling vehicles; choices to consider in machinery selection; construction commute planning; other areas as appropriate. The University and other public lead agencies could look to hire certified contractors.

37-5

3. Thresholds of significance – Climate Action Plan option:

At page 2-9, the draft Guidelines suggest that a Climate Action Plan "have an adopted or certified CEQA-compliant document that analyzes its environmental impacts". Yet typically a climate action plan establishes strategies implemented by means of other entitlement approvals – the climate action plan itself does not entitle projects to proceed, and its approval does not result in a direct or indirect physical change in the environment. Indeed, we suggest that if BAAQMD believes CEQA is warranted on a climate action plan, then the BAAQMD should complete CEQA review of its CEQA Guidelines, which establish policies and mitigations/thresholds for projects to implement, just as a typical Climate Action Plan would do.

37-6

We reference the CEQA document prepared by the City of Berkeley for its Climate Action Plan as illustrative. See tinyurl.com/COBclimateCEQA. There are typically not environmental impacts of a climate action plan, which in itself is intended to reduce environmental impacts.

¹ <http://www.epa.gov/sectors/pdf/construction-sector-report.pdf>

October 16, 2009

The City of Sacramento suggests it may amend its Master Plan EIR to incorporate its Climate Action Plan (see <http://www.sacgp.org/documents/CCRpt8-18-09CAP.pdf>). The following might be a more appropriate alteration of the language at page 2-9:

The Climate Action Plan must:

....

~~2. Have an adopted or certified CEQA-compliant document that analyzes its environmental impacts;~~

2. Be incorporated into the operative land use planning document (general plan, area plan, long range development plan) and subject to CEQA review if the climate action plan meets the CEQA definition of a "project".

37-6

The suggestion that the Climate Action Plan requires its own standalone CEQA review becomes more onerous still when considered with item 6 on the list of items a Climate Action Plan must include:

"6. Establish a mechanism to monitor the plans' progress toward achieving the GHG reduction target and require amendment if the plan does not meet the specified level."

The plans should be revised to meet the goals, but the suggestion that additional CEQA review is required as a matter of course for plans or their amendments simply increases actionable legal risks to this process, without adding environmental benefit. In most instances, climate action plans and their amendments will not meet the CEQA test of a project. Please consider the proposed revisions to item 2, above.

Sincerely,



Jennifer McDougall
Principal Planner, Environmental Planning
Capital Projects/Facilities Services

Cc: Assistant Director Judy Chess, Capital Projects/Facilities Services, UC Berkeley
Associate Director Greg Haet, Office of Environment, Health & Safety, UC Berkeley
Environmental Projects Manager Tom Klatt, Capital Projects/Facilities Services, UC Berkeley
Director Lisa McNeilly, Office of Sustainability, UC Berkeley

Comment Letter #: 37

Date: October 16, 2009

From: Jennifer McDougall, Principal Planner, UC Berkeley

Response to Comments:

37-1 Staff disagrees that the proposed thresholds are prescriptive regional regulations. The thresholds, once adopted by the District's Board, will be the Air District's recommendations regarding what level of GHG emissions constitutes a cumulatively considerable and thus significant air quality impact, based on substantial evidence developed with the Air District's subject matter expertise. Lead agencies may choose to follow the Air District's recommendations when considering air quality impacts of projects under their consideration, but the thresholds will not be binding on lead agencies other than the Air District.

AB 32 identifies local governments as essential partners in achieving California's goal to reduce GHG emissions. Staff does not believe that there is one "correct" threshold of significance for GHG emissions. Staff believes it is reasonable that air districts and other local and regional agencies across the state may derive differing GHG thresholds of significance that are all based on substantial evidence. Indeed, Staff is recommending that several different, alternative GHG thresholds be adopted by the Air District's Board to provide lead agencies with alternative methods of reviewing of a project. Lead agencies are free to choose any threshold that is based on substantial evidence and is best suited to its jurisdiction in general, or under the circumstances of their review of a particular project.

Staff's recommended GHG thresholds were developed in order to achieve the goals of AB 32. Staff does not believe implementation of the thresholds it is recommending will impede AB 32's success, but rather ensure that local development is carried out in a manner that is consistent with achieving AB 32 goals.

37-2 Land use projects contribute to GHG emissions mostly through their lifetime operations, including building energy use and vehicle emissions. Projects committed to achieving LEED certification may significantly reduce a building's energy use; however, LEED certification does not adequately address a project's GHG emissions from vehicle use. Vehicle emissions are the largest contributor of GHG emissions in the Bay Area and the state. Therefore, the District recommends that land use projects mitigate their operation emissions from all emission inventory sectors and that LEED certification alone does not achieve sufficient GHG reductions.

37-3 The revised threshold for GHG emissions for a project recommend that if a proposed project is consisted with a qualified climate action plan, than the proposed project's GHG emissions would be considered less than significant. This threshold is in line with the commenter's recommendations.

37-4 The GHG threshold for construction that recommended implementation of construction best management practices referred to in this comment has been omitted from the *Proposed Thresholds of Significance* report (November 2, 2009).

37-5 The revised thresholds published in November 2009 do not contain a recommended GHG threshold for construction activities. The commenter suggests three approaches to replace the previous GHG

threshold for construction recommending implementation of construction best management practices. The commenter suggests establishing a first tier approach that requires no additional construction mitigation if a project is committed to achieving LEED certification or is consistent with a land use plan that contains a climate action plan. Neither of these approaches directly mitigates emissions from construction activities and would therefore not constitute an appropriate threshold. Regarding the third suggestion to institute a construction certification program, the CEQA Guidelines contains a list of strongly recommended construction best management practices for lead agencies to implement. The California Air Resources Board would be the appropriate agency to institute a construction certification program; however, Staff will consider enhancing its outreach in educating local contractors on instituting construction best practices into their work place.

37-6 Staff believes that local agencies should conduct CEQA review of climate action plans where those plans constitute "projects" under CEQA. Staff notes that while this commenter states that most climate action plans will not meet the CEQA test of a project, the City of Berkeley did undergo CEQA review for its climate action plan and certified a Negative Declaration. A Negative Declaration would qualify as an adopted or certified CEQA-compliant document that analyzes the environmental impacts of the climate action plan.

Second, in response to comments and upon further review, Staff has amended the recommended Qualified Climate Action Plan threshold to include the alternative that, if a local jurisdiction can demonstrate that its collective set of climate action policies, ordinances and other programs are consistent with AB 32, include requirements or feasible measures to reduce GHG emissions and achieve quantifiable GHG emission reduction goals, such AB 32 consistency demonstration would be considered equivalent to a Qualified Climate Action Plan. Staff notes that lead agencies using consistency with their jurisdiction's climate action policies, ordinances and programs as a measure of significance under CEQA Guidelines section 15064(h)(3) should check to make sure that the policies, ordinances and programs satisfy all of the requirements of that subsection before relying on them in a CEQA analysis.

Staff disagrees that CEQA review is required for the District's adoption of CEQA thresholds of significance. The adoption of thresholds of significance does not constitute the "approval" of a "project" subject to CEQA review because the thresholds do not commit the Air District or any other agency to any definite course of action which may have an impact on the environment. *See, e.g., Muzzy Ranch Co. v. Solano County Airport Land Use Comm.* (2007) 41 Cal. 4th 372; *Stand Tall on Principles v. Shasta Union High Sch. Dist.* (1991) 235 Cal. App. 3d 772. The thresholds are not mandatory regulations, but rather are the District's recommendations of what constitutes a significant air quality impact, based on substantial evidence developed with the District's subject matter expertise, that lead agencies may choose to follow when considering air quality impacts of projects under their consideration. Furthermore, when the thresholds of significance are applied to individual projects in the future, they only afford a presumption of insignificance. *See* CEQA Guidelines §15064.7. For any project under consideration, should the lead agency have a fair argument based on substantial evidence before it that the project may have a significant effect on the environment even though it complies with a threshold of significance, the lead agency must prepare an EIR. *See Meija v. City of Los Angeles* (2005) 130 Cal. App. 4th 322, 332.

Staff does note that CEQA Guidelines section 15064.7 requires thresholds of significance to be adopted by ordinance, resolution, rule, or regulation, and to be developed through a public review process and

be supported by substantial evidence. The Air District has gone through an extensive public review process for the proposed thresholds here, and has published the substantial evidence upon which the recommended thresholds were developed for review and comment by the public. There is no requirement for a full CEQA environmental review for adoption of thresholds.



ENVIRON

October 19, 2009

Mr. Greg Tholen
Bay Area Air Quality Management District
939 Ellis Street
San Francisco, CA 94109

Re: California Environmental Quality Act Draft Air Quality Guidelines September 2009

Dear Mr. Tholen:

We reviewed the Bay Area Air Quality management District's (BAAQMD) September 2009 California Environmental Quality Act Draft Air Quality Guidelines (Report). In particular, ENVIRON reviewed the Greenhouse Gas (GHG) related emissions analyses, thresholds of significance, and mitigation measures. In this letter, we briefly highlight one area where the GHG thresholds of significance might be reconsidered since they are deeply flawed in their intent to promote sustainable developments that will reduce GHG emissions.

The section addressing GHG thresholds of significance for project-level impacts presents three options for projects with emissions in excess of 1,100 metric tons per year. One option sets the threshold for mix of land use types for operational emissions at 4.6 metric tons per service population per year (MT/SP/yr) of CO₂e. The service population is defined as the population plus the number of jobs created by the land uses. The second option sets the threshold for predominately residential uses at 6.7 metric tons per capita per year (MT/capita/yr) of CO₂e from operational emissions. The third option is based on consistency with a Climate Action Plan that meets several criteria.

First, it is unclear when the 4.6 MT CO₂e /SP/yr should be used instead of the 6.7 MT/capita/yr due to the lack of definition of what is meant by "where residential uses predominate." Is there a ratio of residential versus non-residential land uses that exists before the 4.6 MT/SP/yr should be used? Where does local-serving retail fit into these definitions when associated with residential land use projects?

38-1

Second, as we illustrate below, the inclusion of local serving retail in nearly any mixed-use development makes it very difficult to reach the 4.6 MT CO₂e /SP/yr. This is due to the large number of trips associated with these land uses combined with a low employment rate. This serves to discourage the incorporation of local serving retail in mixed use projects, and goes against the notion that local serving retail is key to reducing the transportation related GHG emissions. Indeed, other parts of the BAAQMD guidelines encourage local serving retail and allow a percentage reduction in mobile source emissions estimates for increasing the diversity of land use mix. Furthermore, as shown below, the mixed-use significance threshold will drive the types of land use that a developer may include instead of encouraging land use planning to be driven by smart growth principles for the community. For example it would encourage large employment centers and housing, but discourage the necessary local retail and restaurants to service these land uses.

38-2

Analysis

To illustrate the point on how difficult it would be for a mixed-use land use project to reach the 4.6 MT/SP/yr threshold, we will start with a well-designed residential community and add in non-residential land uses. Assume we have a 1,000 person residential community that has annual operational emissions of 5,500 metric tons CO₂e per year or 5.5 MT CO₂e /capita/yr. This residential only development would be less than significant according to the current draft of the BAAQMD guidelines since its GHG emissions are below 6.7 MT CO₂e /capita/yr. We will now explore adding in different non-residential land uses to the development and show the impact of adding non-residential uses on the significance determination.

In the scenarios we will explore adding different land use types following the methodology outlined in section 3.2.2 of the Report. The following assumptions were used in URBEMIS:

- Bay Area Air Basin was selected.
- Analysis year was 2020.
- Pass-By and Double-Counting Correction was not used as is consistent with section 3.2.2 which recommends not using unless there is data from a detailed transportation study to support the values.
- Default vehicle fleet, trip characteristics, temperature, and variable starts was used.
- 100% of land use types use natural gas.¹

The default electricity usage factor for commercial uses of 16,750 kWhr/year per thousand square feet was used. The default carbon intensity emission factor for electricity use for California, 0.72724 lb/kWhr was used. Since default water usage rates were not provided in the Report and as commercial uses will represent a small percentage of the total, they were not considered in the scenarios. Inclusion of water usage related emissions would only increase the amount of GHG emissions estimated.

Baseline Scenario

Table 1 below illustrates the GHG emissions associated with the following non-residential land uses:

- 50,000 square foot supermarket
- 50,000 square foot office
- 400,000 square foot hospital (a large employment center)
- 50,000 square foot strip mall

This scenario does not take into account any mitigation measures.

As shown in the table below none of the non-residential land uses are below the 4.6 MT CO₂e/SP/yr threshold.

¹ This is assumed for ease of calculations and does not impact the results significantly.

**Table 1
GHG Emissions: Baseline**

Source Category	GHG Emissions (metric tonnes CO ₂ e/yr)			
	Supermarket	Office	Hospital	Strip Mall
Electricity Use	276	276	2,210	276
Natural Gas Use	96	66	530	96
Mobile Sources	5,729	680	8,441	2,406
Total (Commercial)	6,101	1,023	11,181	2,778
Total (Commercial + Residential)	11,601	6,523	16,681	8,278
Service Population				
Service Population Commercial ¹	143	181	1,449	143
Service Population ¹ + Residential	1,163	1,201	2,469	1,163
GHG Emissions Intensity (metric tonnes CO₂e/SP/yr)				
Commercial Only	43	5.6	7.7	19
Commercial + Residential	10	5.4	6.8	7.1

Notes:

1. Supermarket and strip mall are assumed to have 1 employee per 350 square feet, while office and hospital are assumed to have 1 employee per 276 square feet, according to the San Francisco Transportation Impact Analysis Guidelines Table C-1.

Mitigated Scenario

Table 2 below illustrates the GHG emissions associated with the same non-residential land uses assuming the following mitigation measures:

- Meet green building code (page 3-14 of Report)
 - Natural gas usage is 17% below baseline.
 - Electricity usage is 7% less
- Mobile source reductions equivalent to 20%

This shows that an office building considered separately would come close to meeting the 4.6 MT CO₂e/SP/yr. However, as shown in Table 2, once considered with the new, lower threshold required for the residential area once it is deemed mixed use, the development would emit GHGs in excess of the draft BAAQMD thresholds.

Table 2
GHG Emissions: Green Building Code and Traffic Improvements

Source Category	GHG Emissions (metric tonnes CO ₂ e/yr)			
	Supermarket	Office	Hospital	Strip Mall
Electricity Use	257	257	2,055	257
Natural Gas Use	80	55	440	80
Mobile Sources	4,583	544	6,753	1,925
Total (Commercial)	4,920	856	9,248	2,261
Total (Commercial + Residential)	10,420	6,356	14,748	7,761
Service Population				
Service Population Commercial ¹	143	181	1,449	143
Service Population ¹ + Residential	1,163	1,201	2,469	1,163
GHG Emissions Intensity (metric tonnes CO₂e/SP/yr)				
Commercial Only	34	4.7	6.4	16
Commercial + Residential	9.0	5.3	6.0	6.7

Notes:

1. Supermarket and strip mall are assumed to have 1 employee per 350 square feet, while office and hospital are assumed to have 1 employee per 276 square feet, according to the San Francisco Transportation Impact Analysis Guidelines Table C-1.

"New" Traffic Scenario

Tables 3 and 4 below illustrate the operational GHG emissions associated with the same non-residential land uses considering the "new" traffic emissions associated with growth. From a GHG emission perspective the location of release is not important, but rather if the emission is new in the global sense and responsible for generating new GHG emissions that weren't previously released anywhere else. Thus adding residential land uses is considered growth, while adding commercial land uses which serve existing and new residents will only displace where people make trips. Therefore, the only "new" trips for commercial land uses are associated with the delivery trips. Table 3 shows the GHG emissions assuming the baseline building characteristics. Table 4 shows the GHG emissions assuming the implementation of green building codes, but not any additional transportation mitigation.

The "new" traffic estimates are taken as the commercial non-work percentages from URBEMIS. We used emission factors from a 2020 EMFAC run for San Francisco County, weighted all vehicle categories at 30 miles per hour for running emissions (428 g/mile), and conservatively assumed a twelve hour period between starts for the starting emission factor (223 g/start). Tables 3 and 4 indicate that all of the non-residential land uses, when considered on their own and with only the "new" portion of GHG emissions considered from buildings and delivery vehicles, are below the 4.6 MT CO₂e/SP/yr threshold. This allows one to consider using this type of analysis for the commercial portion of mixed use developments. Since both the baseline and mitigated land uses are below the 4.6 MT CO₂e per year, this threshold value may want to be reconsidered if this type of analysis is used. When residential development is added, the values are equal to or exceed the proposed significance threshold of 4.6 MT CO₂e. This further highlights the concept that the ratio and type of mixed-use will influence the result.

Table 3
GHG Emissions: Baseline Energy Use and Commercial Non-work Traffic

Source Category	GHG Emissions (metric tonnes/yr)			
	Supermarket	Office	Hospital	Strip Mall
Electricity Use	276	276	2,210	276
Natural Gas Use	96	66	530	96
Mobile Sources (Commercial Non-work Traffic) ²	182	104	3,135	77
Total (Commercial)	555	446	5,875	449
Total (Commercial + Residential)	6,055	5,946	11,375	5,949
Service Population				
Service Population Commercial ¹	143	181	1,449	143
Service Population ¹ + Residential	1,163	1,201	2,469	1,163
GHG Emissions Intensity (metric tonnes CO₂e/SP/yr)				
Commercial Only	3.9	2.5	4.1	3.1
Commercial + Residential	5.2	5.0	4.6	5.1

Notes:

1. Supermarket and strip mall are assumed to have 1 employee per 350 square feet, while office and hospital are assumed to have 1 employee per 276 square feet, according to the San Francisco Transportation Impact Analysis Guidelines Table C-1.

2. The mobile sources include only the commercial non-work trips associated with each land use. These have been quantified according to the URBEMIS default methodology. The emission factor used was 428 g/mile for running and 223 g/start based on all vehicles in San Francisco County driving at 30mph and 12 hours between starts.

Table 4
GHG Emissions: Green Building Code and Commercial Non-work Traffic

Source Category	GHG Emissions (metric tonnes/yr)			
	Supermarket	Office	Hospital	Strip Mall
Electricity Use	257	257	2,055	257
Natural Gas Use	80	55	440	80
Mobile Sources (Commercial Non-work Traffic) ²	182	104	3,135	77
Total (Commercial)	519	416	5,630	413
Total (Commercial + Residential)	6,019	5,916	11,130	5,913
Service Population				
Service Population Commercial ¹	143	181	1,449	143
Service Population ¹ + Residential	1,163	1,201	2,469	1,163
GHG Emissions Intensity (metric tonnes CO₂e/SP/yr)				
Commercial Only	3.6	2.3	3.9	2.9
Commercial + Residential	5.2	4.9	4.5	5.1

Notes:

1. Supermarket and strip mall are assumed to have 1 employee per 350 square feet, while office and hospital are assumed to have 1 employee per 276 square feet, according to the San Francisco Transportation Impact Analysis Guidelines Table C-1.

2. The mobile sources include only the commercial non-work trips associated with each land use. These have been quantified according to the URBEMIS default methodology. The emission factor used was 428 g/mile for running and 223 g/start based on all vehicles in San Francisco County driving at 30mph and 12 hours between starts.

Alternative Methodology

ENVIRON evaluated the same land use types using a refined estimate for building energy use. ENVIRON used the California Commercial End-Use Survey (CEUS) database which is a survey of the energy used in various California commercial buildings in 2002.² ENVIRON used climate zone 5, which covers the majority of the BAAQMD region. ENVIRON adjusted the end-uses to

² California Energy Commission. 2006. California Commercial End-Use Survey. Prepared by Iron Inc. Available at: <http://www.energy.ca.gov/ceus/>

reflect improvements in Title 24 building codes since 2002, based on CEC reports.³ This gives the baseline estimate of building electricity and natural gas usage. Table 5 presents the results of the non-residential land use GHG emissions. When compared to the methodology presented in the Report, the values are different especially for the office building and hospital. Not only is the difference seen in the total GHG emissions from energy use, but also the ratio between electricity and natural gas is quite different. It might be useful for the District to define more specific electricity usage numbers by land use type to more accurately reflect those land uses that are more energy intensive, such as restaurants, supermarkets, and hospitals.

38-3

Table 5
GHG Emissions: Alternative Methodology

Source Category	GHG Emissions (metric tonnes/yr)			
	Supermarket	Office	Hospital	Strip Mall
Electricity Use	641	229	2,216	192
Natural Gas Use	102	54	2,147	13
Mobile Sources	5,729	680	8,441	2,406
Total (Commercial)	6,472	964	12,804	2,611
Total (Commercial + Residential)	11,972	6,464	18,304	8,111
Service Population				
Service Population Commercial ¹	143	181	1,449	143
Service Population ¹ + Residential	1,163	1,201	2,469	1,163
GHG Emissions Intensity (metric tonnes CO₂e/SP/yr)				
Commercial Only	45	5.3	8.8	18
Commercial + Residential Commercial Only	10	5.4	7.4	7.0

Notes:

1. Supermarket and strip mall are assumed to have 1 employee per 350 square feet, while office and hospital are assumed to have 1 employee per 276 square feet, according to the San Francisco Transportation Impact Analysis Guidelines Table C-1.

³ California Energy Commission. 2003. Impact Analysis: 2005 Update to the California Energy Efficiency Standards for Residential and Nonresidential Buildings. Available at: http://www.energy.ca.gov/title24/2005standards/archive/rulemaking/documents/2003-07-11_400-03-014.PDF
California Energy Commission. 2007. Impact Analysis: 2008 Update to the California Energy Efficiency Standards for Residential and Nonresidential Buildings. Available at: http://www.energy.ca.gov/title24/2008standards/rulemaking/documents/2007-11-07_IMPACT_ANALYSIS.PDF

ENVIRON assumed the same improvements as before (meet green building code and mobile source reductions). Table 6 presents the results of the non-residential land use using the alternative energy use estimates.

Table 6
GHG Emissions with Mitigation: Alternative Methodology

Source Category	GHG Emissions (metric tonnes/yr)			
	Supermarket	Office	Hospital	Strip Mall
Electricity Use	597	213	2,061	178
Natural Gas Use	85	45	1,782	11
Mobile Sources	4,583	544	6,753	1,925
Total (Commercial)	5,264	802	10,596	2,114
Total (Commercial + Residential)	10,764	6,302	16,096	7,614
Service Population				
Service Population Commercial ¹	143	181	1,449	143
Service Population ¹ + Residential	1,163	1,201	2,469	1,163
GHG Emissions Intensity (metric tonnes CO₂e/SP/yr)				
Commercial Only	37	4.4	7.3	15
Commercial + Residential Commercial Only	9.3	5.2	6.5	6.5

Notes:

1. Supermarket and strip mall are assumed to have 1 employee per 350 square feet, while office and hospital are assumed to have 1 employee per 276 square feet, according to the San Francisco Transportation Impact Analysis Guidelines Table C-1.

Recommendations

ENVIRON recommends that BAAQMD to revisit their recommendations for significance thresholds for mixed-use developments. At a minimum, it may be worthwhile to segregate the analysis for the residential and non-residential portions of a mixed use development. In addition, it would be useful to address the issue of ratios land uses so that they will not drive results. With respect to the non-residential portions, it may also make sense to have different thresholds for different types of non-residential uses. As shown above, non-residential uses have far more variability in GHG emissions per service population than do residential uses per resident, even if traffic isn't considered. Along that line, it may also be useful to consider alternative methodologies for determining energy use for different land uses since this can vary considerably. Finally, it may also be worthwhile to consider only the "new" portion of non-residential mobile source GHG emissions as another alternative methodology to consider in your revisions.

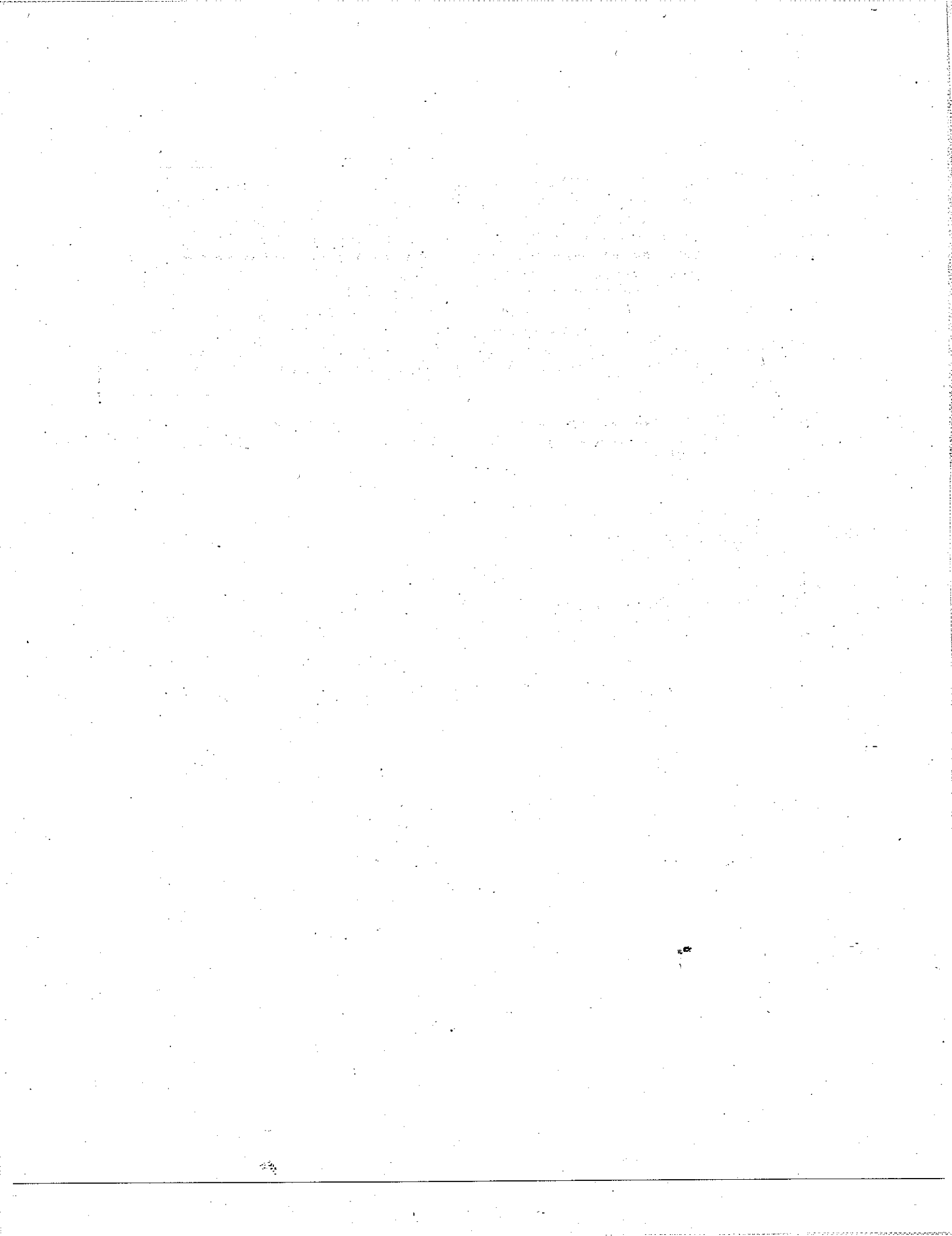
38-4

We appreciate the time that you have taken with us. If you have any questions or comments regarding the information presented in this letter, please feel free to contact Shari Libicki or Jen Schulte at ENVIRON.

Sincerely,



Shari Libicki, Ph.D.
Principal and Air Quality Practice Leader



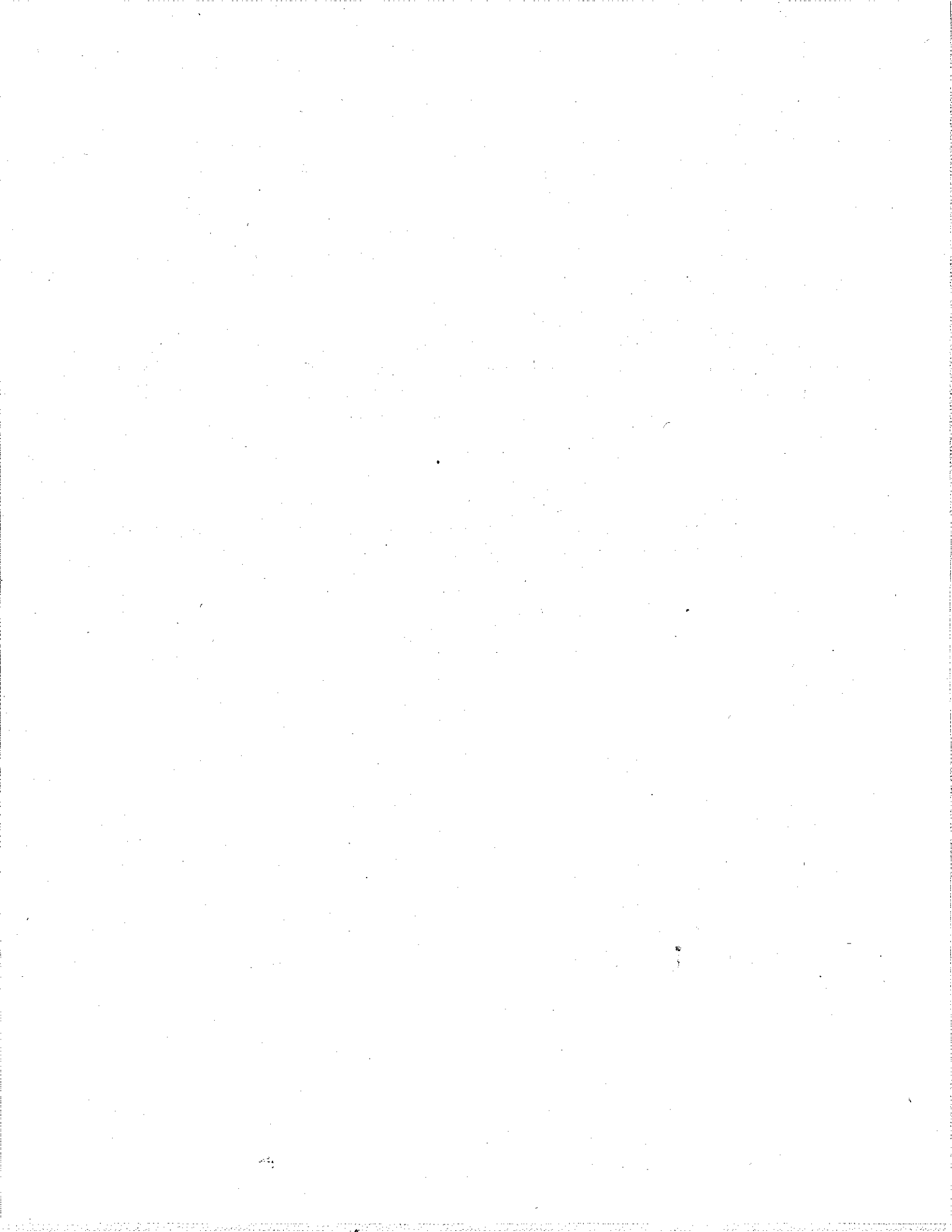
Comment Letter #: 38

Date: October 19, 2009

From: Shari Libicki, Ph.D., Principal, Environ

Response to Comments:

- 38-1 The proposed GHG thresholds in the *Proposed Thresholds of Significance* report (November 2, 2009) have been modified to recommend a GHG efficiency metric of 4.6 MT/CO₂E/SP/yr for land use projects.
- 38-2 Air District staff will provide methodology for calculating mobile emissions for mixed use projects in the updated CEQA Guidelines that account for vehicle trip reduction benefits. The modified methodology will recommend lead agencies to reduce the trip rate for mixed uses up to fifty percent, a substantial decrease in mobile emissions. See also Master Response M-2.
- 38-3 See Master Response MR-7.
- 38-4 The modified GHG efficiency metric of 4.6 MT/CO₂E/SP/yr for land use projects and the new recommended methodology that will be in the updated CEQA Guidelines addresses some of the commenter's concerns and suggestions. See responses above.





October 20, 2009

Mayor Pamela Torliatt, Chair, and
Members of the Board of Directors
Bay Area Air Quality Management District
939 Ellis Street
San Francisco CA 94109

Re: Extension of Comment Period and Delay in Board's Consideration of the
District's Revised Draft CEQA Thresholds Options and Justification Report
Dated October 7, 2009

Dear Mayor Torliatt and Members of the Board of Directors:

The California Building Industry Association (CBIA) and the Home Builders Association of Northern California (HBANC) respectfully request that the District substantially extend the time for public comment on the District's Revised Draft CEQA Thresholds Options and Justification Report dated October 7, 2009. The current deadline of October 26, 2009, is insufficient to allow the public adequate time to review and develop comments on the recent substantial revisions made by District staff. We also respectfully request that consideration of these District proposals by the Board be postponed beyond the November 18th meeting to allow District staff and Board Members sufficient time for meaningful review of public comments and revision of the report, as appropriate.

1. The Public Comment Period Should Be Substantially Extended. The October 7th District report both contains several significant revisions to the District-recommended thresholds of significance and provides, for the first time, backup information and analysis relied upon by Staff for all of the District-recommended thresholds. This was the first time the public and regulated community had seen the newly revised thresholds and the scientific and factual information that provides the basis for the entire policy proposal, so the public has not yet had any opportunity to comment on any of this important new information. The District is nonetheless proposing to provide the public and regulated community barely two weeks to review and draft comments on this significant new data and revised proposals. This time period is insufficient to allow for meaningful public input and should be extended.

39-1

October 20, 2009

CBIA and HBANC anticipate providing additional comments on the District's Revised Draft CEQA Thresholds Options and Justification Report, but as a first step, the District should provide additional time. As we stated in our previous comments, one of the most critical elements in formulating the proposed thresholds of significance is the District's justification for those thresholds. This is the all-important factual basis for these requirements, which the District suggests are to be minimum requirements that lead agencies must follow. The public and the regulated community must be given a sincere and legitimate opportunity to review and comment on this justification before the District uses it to adopt what it characterizes as binding CEQA Guidelines.

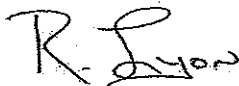
39-1

Therefore we strongly urge you to extend the public comment period on this new information to allow a full period for public review.

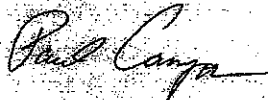
2. Consideration of the Proposed CEQA Threshold Proposals by the Board should be postponed beyond the November 18th meeting. The District proposes to close the comment period on the Revised Draft CEQA Thresholds Options and Justification Report on Monday, October 26th. District staff then intends to evaluate comments received, make appropriate revisions, and propose CEQA thresholds of significance to the Board of Directors at the November 18, 2009 meeting. This schedule assumes that District staff will be able to review all public comments received and make necessary and appropriate changes to the staff proposal in less than one month—and, that Board Members will be able to review and deliberate on these highly technical and complex issues within that truncated period. Such a schedule may be reasonable when receiving comments on a previously circulated draft with minor revisions. But as noted above, this will be the first time the District has received comments on the evidence and information justifying its threshold proposals. To proceed along this accelerated timetable calls into question the legitimacy of the public comment process itself.

39-2

We request that the District Board direct staff to thoroughly evaluate the comments received on their revised draft thresholds and justification report and postpone consideration of a final report until staff has adequate time to review and revise the report accordingly.



Richard Lyon
Senior Legislative Advocate
California Building Industry Association



Paul Campos
Senior V.P. & General Counsel
Home Builders Association of Northern California

Cc: BAAQMD
Board Members
Jack Broadbent, Executive Officer/APCO
Greg Tholen, Principal Environmental Planner
David Vintze, Air Quality Planning Manager

ABAG
Rose Jacobs Gibson, President

October 20, 2009

Henry Gardner, Executive Director

BCDC

R. Sean Randolph, Chair

Will Travis, Executive Director

MTC

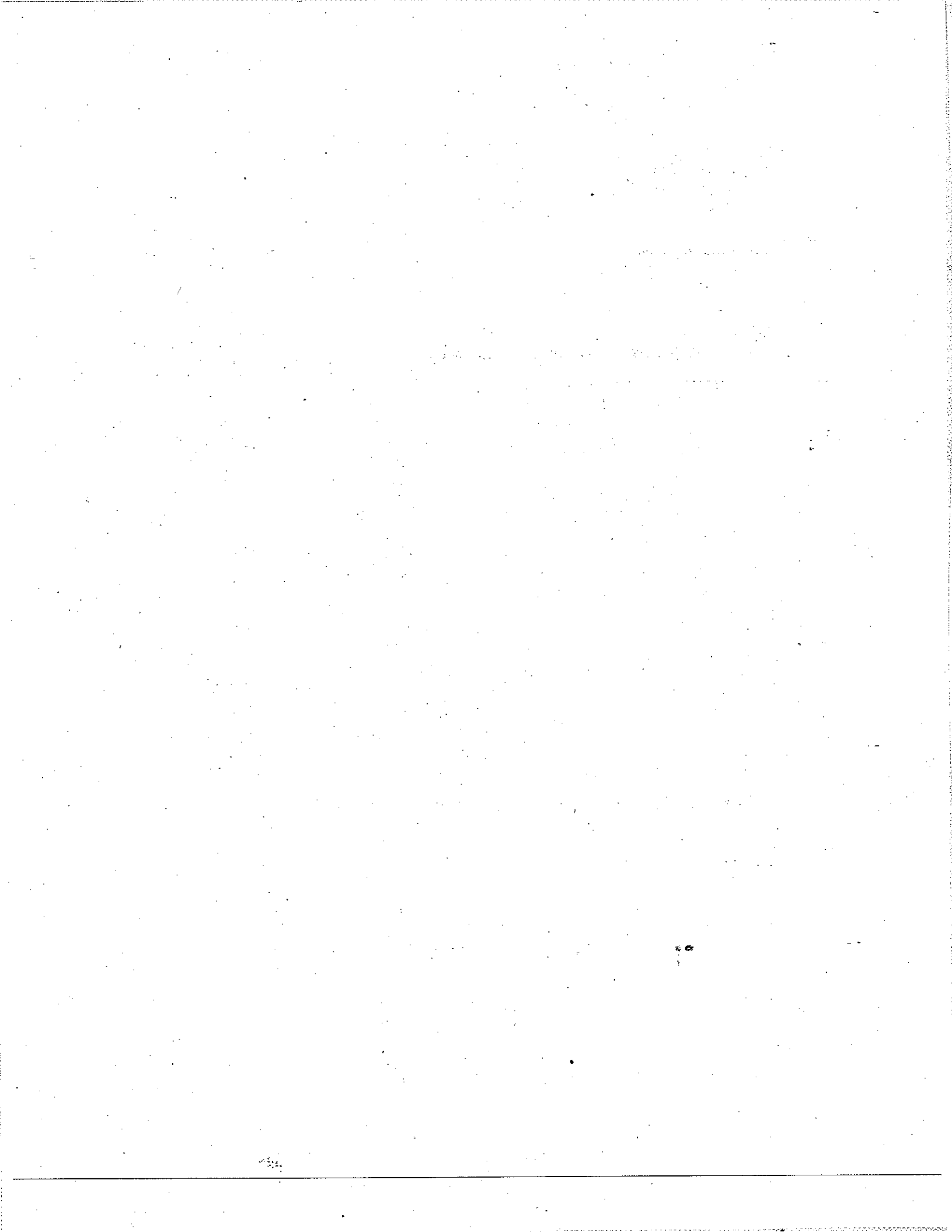
Scott Haggerty, Chair

Steve Heminger, Executive Director

Joint Planning Committee

Bill Dodd, Chair

Ted Droettboom, Regional Planning Program Director



Comment Letter #: 39

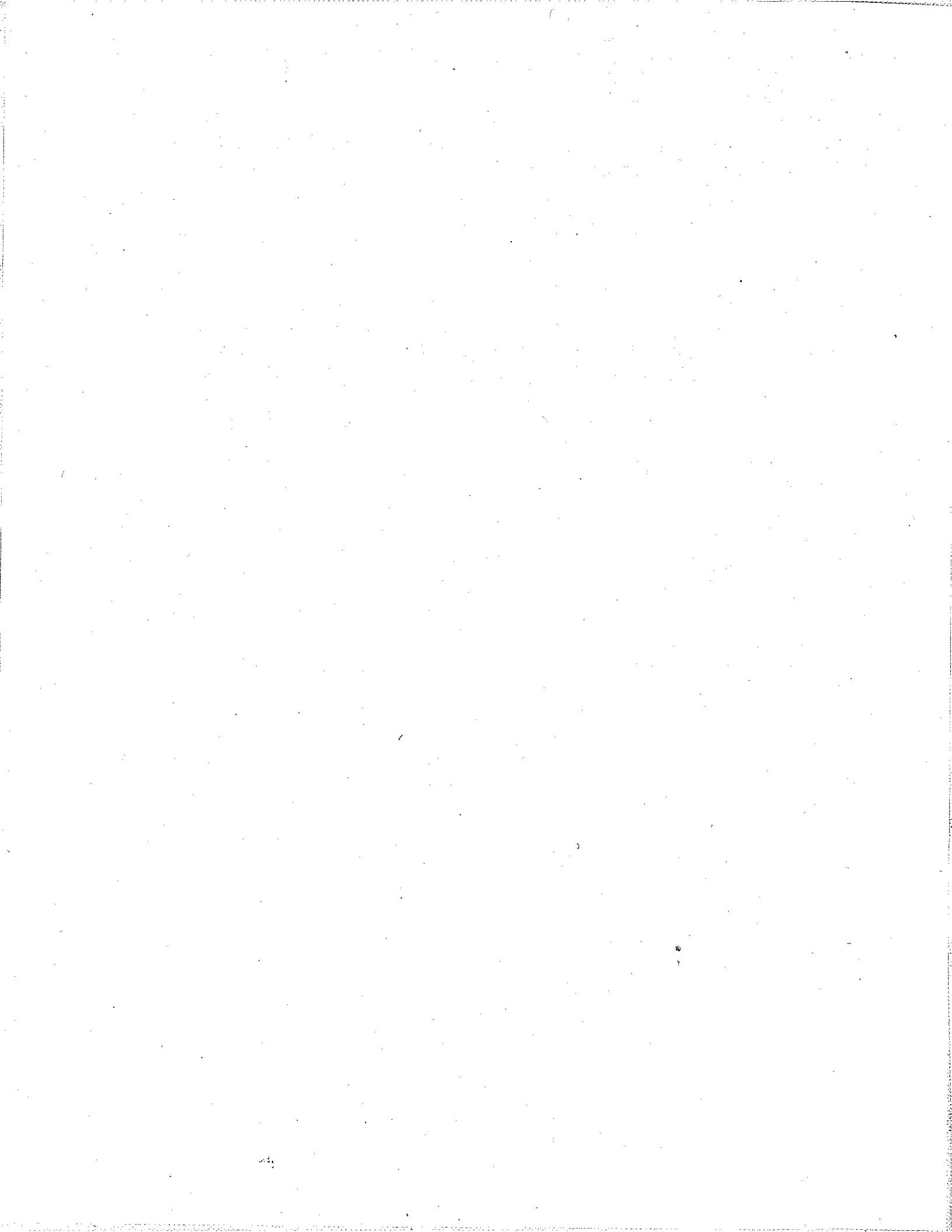
Date: October 20, 2009

From: Richard Lyon, Senior Legislative Advocate, California Building Industry Association and
Paul Campos, Senior Vice President, Home Builders Association of Northern California

Response to Comments:

39-1 See Master Response MR-8.

39-2 The public hearing for the Proposed CEQA Thresholds of Significance will start on Wednesday November 18th and will be continued on Wednesday, December 2nd at which time the Board of Directors will consider adoption of the proposed amendments to the Air District's CEQA Guidelines.



#40

40_Annette walton_10_22_09

From: Gregory Tholen
Sent: Thursday, October 22, 2009 3:54 PM
To: Sigalle Michael
Cc: David Vintze
Subject: FW: BAAQMD CEQA Guideline

Importance: High

Greg Tholen
(415) 749-4954

From: Annette walton [mailto:nettie@stanford.edu]
Sent: Thursday, October 22, 2009 3:40 PM
To: Gregory Tholen
Cc: Annette walton; Jim Inglis
Subject: BAAQMD CEQA Guideline
Importance: High

Mr. Tholen,

Below is a list of questions related to the CEQA Thresholds of Significance based upon my review of the Draft Air Quality Guidelines, prepared by EDAW, September 2009. We would appreciate it if you could provide written responses to the questions below to help assist us in evaluating and understanding the guidance document.

Communities of High Concerns:

1.. Please confirm that BAAQMD will be the sole entity to calculate the human health risks within a CARE community when a permit to operate is applied for, for any new source(s). If this agency will not be doing the risk calculations, is their a list of recommended consultants that are qualified to perform the risk assessment?

40-1

2.. How long will it take for the agency to calculate the human health risk and report their findings? Within a CARE Community? Within any community? 30, 60, 90 days?

40-2

3.. Other Areas: For areas outside of CARE city or boundary, will BAAQMD calculate the human health risks and particulate matter contributions for the "cumulative effects" for installing any single source and evaluate impacts on that community as a whole?

40-3

4.. If threshold values are exceeded "in other areas" or outside of CARE boundary,

40-4

will T-BACT and/or TBPs be required?

40-4

5.. In citing a new receptor within a CARE community, if the human health risk or hazard index are exceeded, when will the agency grant the permit for a source or provide a recommendation on how to address human health? To clarify, will it be after mitigations are in place for a Project or Plan or will the agency provide a conditional permit with a schedule to install T-BACT or TBPs?

40-5

Plan-Level Impacts:

1.. Mitigation measures identified through the environmental review process must be made into binding and enforceable policies and implementation programs within the long range plan. Please clarify what is meant by the underlined "Binding" in this sentence. Is the BAAQMD suggesting using deed restrictions or covenants be placed on a development to ensure/enforce compliance with a mitigation measure?

40-6

Project Impacts:

1.. Is the URBEMIS model/database a public tool for permit applicants, consultants or Lead Agencies to use? Or, will these individuals/entities need to supply the input parameters for the database to BAAQMD to calculate?

40-7

2.. Is there or will there be a fee or permit required to use the URBEMIS model?

General comment:

1.. Does BAAQMD plan to impose or require any permits for construction related projects similar to the Regional Water Quality Control Board fees and plans for storm water construction permits?

40-8

2.. Will the agency put out a simple fact sheet that is clear and easy to use for the screening criteria for each individual impact: operational, construction, local community risks and hazard impacts, plan level, odor and local carbon monoxide?

40-9

Thank you in advance for your cooperation. We may have additional questions to follow. Respectfully,

Annette Walton
Environmental Manager
Stanford Real Estate Office
2755 Sand Hill Road, Suite 100
Menlo Park, CA 94025

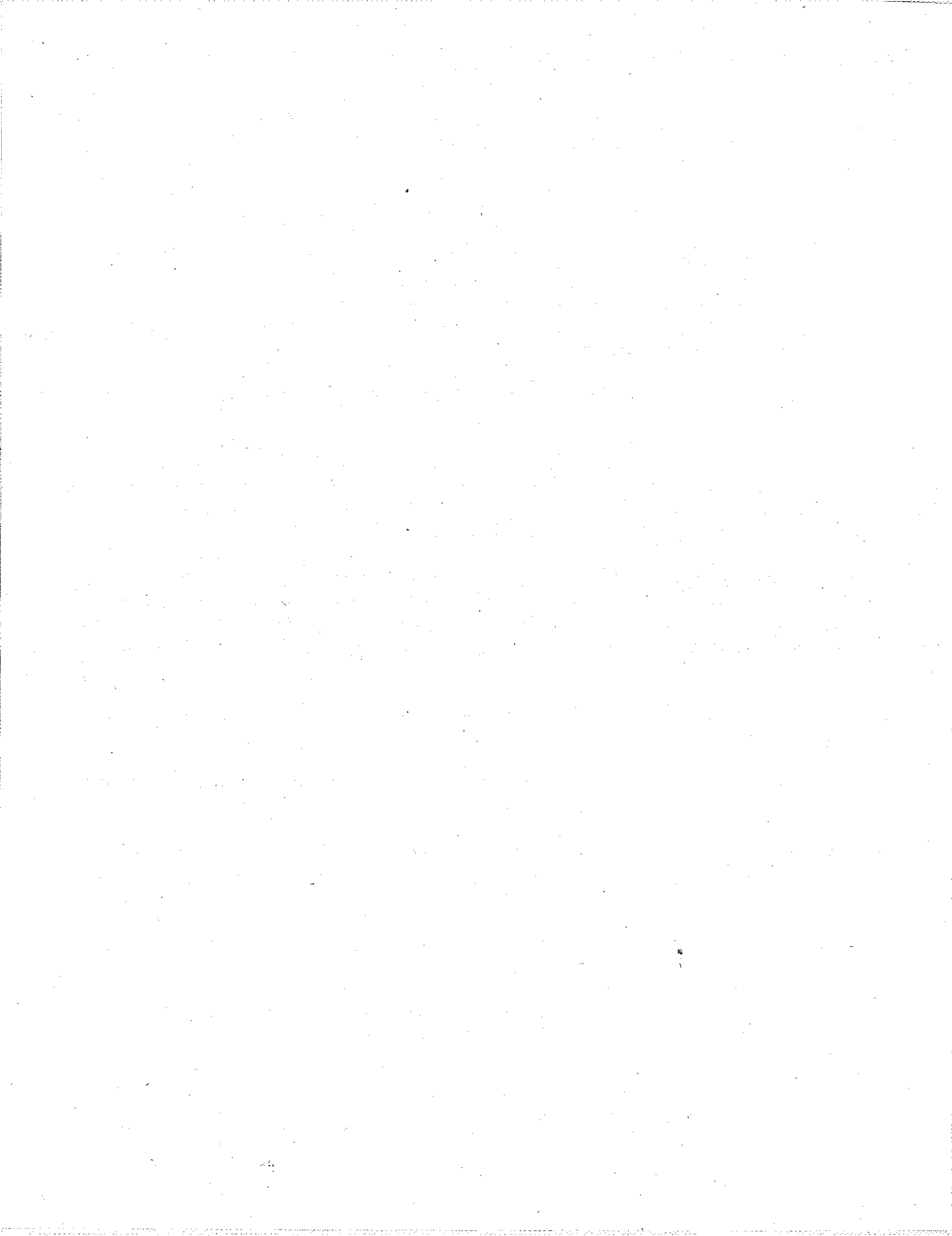
Comment Letter #: 40

Date: October 22, 2009

From: Annette Walton, Environmental Manager, Stanford Real Estate Office

Response to Comments:

- 40-1 The Air District will be providing screening tables containing estimated calculations of community risk and hazards (cancer risk, non-cancer risk, and PM_{2.5} risk) from permitted sources and roadways. However, a lead agency may choose to use a consultant to calculate human health risks from new sources. The Air District does not endorse particular consultants and therefore does not have a list of recommended consultants to offer.
- 40-2 Staff does not understand that intent of this question. The Air District endeavors to review and or prepare health risk assessments in a timely manner.
- 40-3 The Air District will be providing tables with estimated calculations of community risk and hazards from all permitted sources and major roadways in the Bay Area. It will be the lead agencies responsibility to calculate the cumulative impact of sources within a 1,000 foot radius from the fence line of the new source or receptor.
- 40-4 The community risk and hazard thresholds have been modified in the *Proposed Thresholds of Significance* report (November 2, 2009) to recommend the same thresholds for projects in all areas, including impacted communities. Toxic best practices have been omitted from the threshold, however the updated CEQA Guidelines will strongly recommend that Lead Agencies consider TBPs as conditions of project approval.
- 40-5 It is in the purview of the lead agency to decide on whether mitigation measure will be a condition of permit approval.
- 40-6 Mitigation measures could be made binding as development agreements and conditions of approval for permit or project approval by the lead agency.
- 40-7 URBEMIS is a free modeling tool available to any interested users. URBEMIS contains geographic specific data and input defaults. Users may also change the input defaults to reflect specific project conditions.
- 40-8 No, the Air District does not plan to impose permits for construction projects through the CEQA process.
- 40-9 The updated CEQA Guidelines will contain a summary threshold table for quick reference. The CEQA Guidelines will also include screening criteria for thresholds.



#413

WILLIAM B. WALKER, M.D.
HEALTH SERVICES DIRECTOR

WENDEL BRUNNER, M.D.
DIRECTOR OF PUBLIC HEALTH



CONTRA COSTA PUBLIC HEALTH
597 CENTER AVENUE, SUITE 200
MARTINEZ, CALIFORNIA 94553
PH (925) 313-6712
FAX (925) 313-6721
WBRUNNER@HSD.CCCOUNTY.US

October 23, 2009

Greg Tholen, Principal Planner
Bay Area Air Quality Management District
939 Ellis Street
San Francisco, CA 94109

RE: Proposed Changes to CEQA Guidelines

Dear Mr. Tholen:

I am writing to offer my partial support for the approach the Bay Area Air Quality Management District is proposing to update its guidelines for determining air quality impacts as part of environmental reviews done under the California Environmental Quality Act (CEQA). Air pollutants such as particulate matter, ozone, oxides of nitrogen and oxides of sulfur are a significant portion of the environmental threats to public health. Most of the proposed updates will enable local decision makers to focus their mitigation efforts more effectively to protect public health, balance the competing public health interests of infilling new development and providing safety buffers, and address Environmental Justice concerns in disproportionately impacted communities.

41-1

In particular, I am supportive of:

- 1) The proposed new concentration-based PM2.5 guidelines for construction, operations and plans that acknowledge that Diesel Particulate Matter (DPM) and other fine particulates can have a significant impact on human health beyond just their cancer risk, such as triggering asthma attacks.

41-2

And

- 2) The proposed new cumulative impact guidelines that take into account the already existing burden of pollution in communities where new sources of pollution are being considered.

Identifying proposed projects that are sources of pollution that meet these new significance thresholds will enable local decision makers to identify mitigation measures that may have otherwise been overlooked, and will more effectively reduce the public health impacts of these new projects.

- 3) The proposed new thresholds for siting new receptors, from impacts from single sources and cumulative sources, that strike a reasonable balance between the need to limit exposure to harmful pollutants and the need to encourage infill in urban settings.

41-3

New concepts for building healthy communities recognize the health benefits from building housing, schools, transportation hubs, amenities and workplaces near to each other. This allows for less reliance

41-4



41-4

on the automobile, encourages the use of alternative forms of transportation, promotes more exercise, enhances community cohesiveness, and improves community safety. However, new concepts for building healthy communities also recognize that infilling homes, schools, and other places where people spend significant time near transportation hubs, commercial centers and industrial facilities can also expose some people to more pollution. This is especially true for exposure to diesel particulate matter associated with transportation and goods movement because of the localized health impacts caused by this type of pollution. The proposed thresholds of significance for receptors reasonably differentiates the most at-risk projects from all others by limiting the calculated impacts to those from nearby sources and by not establishing a "no net increase" threshold. This provides the most useful methodology for identifying the healthiest projects and alternatives.

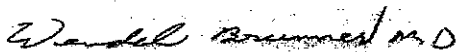
41-5

However, I disagree with your decision to withdraw your earlier proposal to establish more stringent CEQA significance thresholds for sources in high priority areas to fairly address Environmental Justice concerns. Disproportionate exposure to environmental pollution contributes to disproportionate health disparities. The Air District's CARE Program has made excellent strides in identifying high priority areas within its jurisdiction where the highest levels of toxic emissions overlap with sensitive populations. In Contra Costa County, parts of Richmond and Concord are two of the six high priority areas identified by the Air District. These disproportionate impacts are an Environmental Injustice, and in accordance with State and County Environmental Justice policies, must be fairly accounted for with respect to the development, adoption, implementation, and enforcement of environmental laws and policies. To develop a CEQA policy that would acknowledge these disproportionate impacts, but that would not take affirmative steps to reduce these impacts, would have to be considered an unfair policy.

Establishing more stringent CEQA significance thresholds for sources in these priority areas is a fair and reasonable approach to addressing this Environmental Injustice. Requiring more stringent CEQA thresholds in the high priority areas allows for additional mitigation measures that will reduce the disproportionate exposure between people living in these areas and people living in the rest of the Bay Area. Therefore, I encourage you to reinstate your earlier proposed thresholds for siting new sources in high priority areas.

Thank you for the opportunity to comment on these proposed CEQA guidelines.

Sincerely,



Wendel Brunner, PhD, MD, MPH
Director of Public Health
Contra Costa Health Services

WB:jds



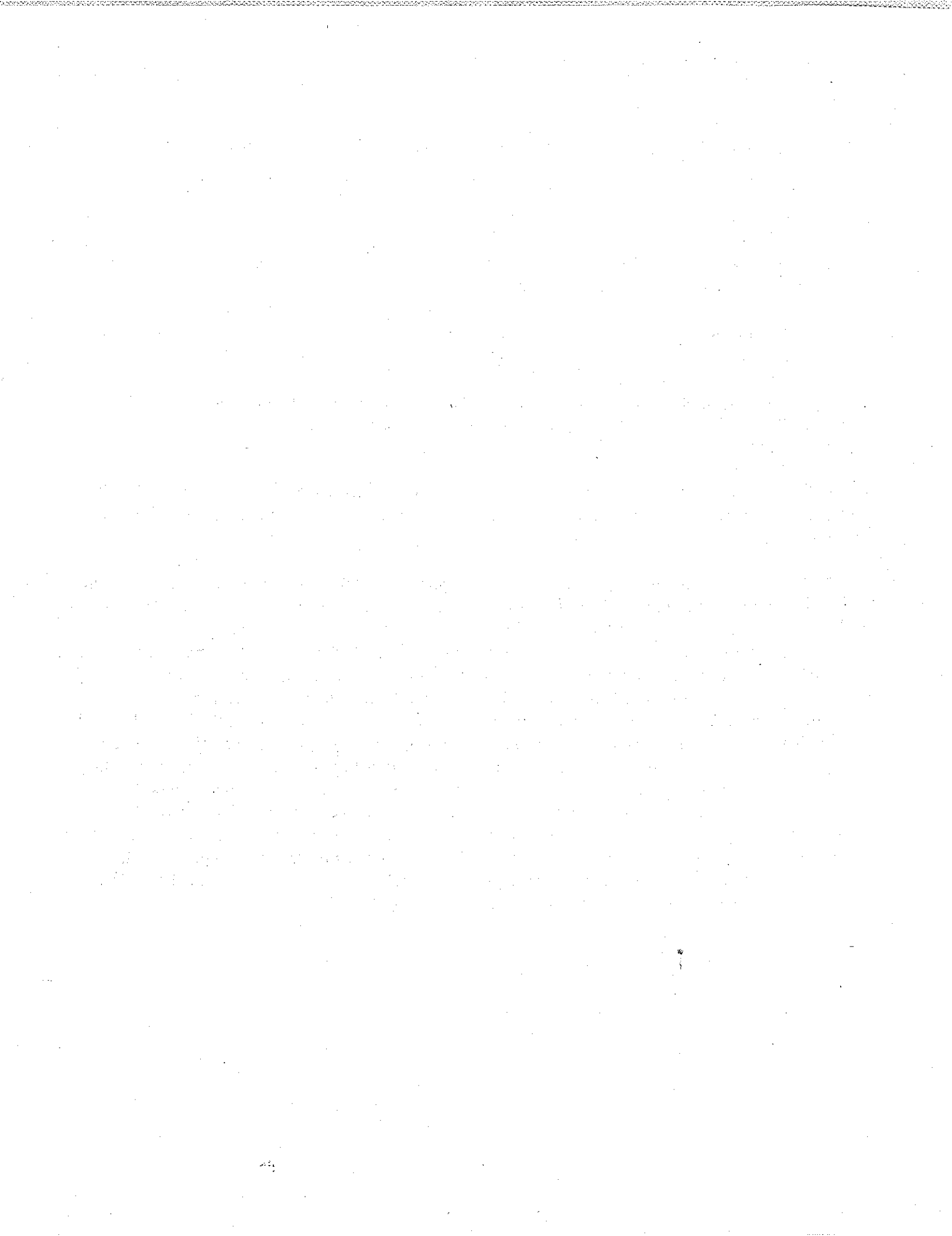
Comment Letter #: 41

Date: October 23, 2009

From: Wendel Brunner, PhD, MD, MPH, Director of Public Health, Contra Costa Health Services

Response to Comments:

- 41-1 Comment noted. The Air District strives to balance public health concerns with the competing interests of infill development, which is often beneficial to air quality.
- 41-2 The Air District appreciates the commenter's support for proposing additional risk and hazard thresholds for PM_{2.5} and the new cumulative thresholds for risks and hazards.
- 41-3 The Air District appreciates the commenter's support for proposing additional risk and hazard thresholds for siting new receptors that allow decision makers to identify mitigation measures to reduce exposure.
- 41-4 The Air district agrees with the commenter that the proposed thresholds of significance provide the most useful methodology for identifying the healthiest projects and alternatives while encouraging infill.
- 41-5 The Proposed Thresholds of Significance report (November 2, 2009), recommends a single community risk and hazards threshold for all areas in the Bay Area, including impacted communities. Staff agrees with several commenters that the problem of certain areas being disproportionately adversely impacted should be addressed as a cumulative impacts problem. Staff has revised the proposed thresholds to do so. Under staff's current proposal, areas that are disproportionately burdened with TAC emissions sources in the local vicinity will benefit from a cumulative analysis threshold that will require projects to evaluate the cumulative impact of all such sources within a 1,000 foot radius of the proposed project. This revised approach will provide a tool for lead agencies to carefully consider whether to site new sources or receptors in disproportionately burdened areas, without establishing different health risk standards for different segments of the population. In addition, the Air District believes that withdrawing the earlier, more stringent threshold, is also appropriate in light of using OEHHA's more conservative risk factors (substantially increasing estimated risk levels) and the addition of community risk reduction plans. Risk reduction plans provide a programmatic approach to the overall problem and can also address existing sources of risks and hazards and can require design standards of new development not always available through the CEQA process.



#42

42_Belinda Smith Comments_10_26_09

From: Gregory Tholen
Sent: Monday, October 26, 2009 12:32 PM
To: Sigalle Michael
Subject: FW: Comments on CEQA Guidelines with contact information

Greg Tholen
(415) 749-4954

From: Belinda Smith [mailto:bsmitgo@hotmail.com]
Sent: Monday, October 26, 2009 11:35 AM
To: Gregory Tholen
Subject: FW: Comments on CEQA Guidelines with contact information

From: bsmitgo@hotmail.com
To: gtholen@baaqmd.gov
Subject: Comments on CEQA Guidelines
Date: Mon, 26 Oct 2009 04:41:51 -0700

These comments address Toxic Air Contaminants (TACs).

The guidelines have the most stringent requirements for "Impacted Communities" identified in the CARE program. There are other neighborhoods that would be impacted by TACs that should be treated as "Impacted Communities." Such neighborhoods already have heavy industry adjacent to sensitive receptors and have meteorology that may be as significant as an "Impacted Community." The guidelines should advise that, in addition to Impacted Communities, health risk assessments may be warranted for other neighborhoods that have existing conditions that create the potential to expose sensitive receptors to TACs.

42-1

The guidelines flag the need to evaluate sensitive receptors that may be in an overlay zone within 500 feet of a freeway or high volume road. What is a high volume road? What if the sensitive receptor is within two roads that individually are not high volume, but combined are high volume?

42-2

State law requires health risk assessments for potential school sites that are within a certain distance of high volume roads. The guidelines should address a circumstance where existing sensitive receptors become exposed to TACs from roads that may become high volume from potential traffic generated by nearby development projects.

42-3

The guidelines should help determine affected intersections where CO analysis should be performed. Should a CO analysis select the highest volumes intersections or the intersections closest to sensitive receptors?

42-4

The guidelines identify certain measures that, if implemented, would fully mitigate the impacts of emissions from construction equipment. The guidelines should require consideration of project alternatives that minimize the use of construction equipment as a means of reducing exposure to TACs (e.g. a project alternative may minimize grading and therefore result in a reduction of emissions from grading equipment).

42-5

Sincerely,

Belinda Smith
347 Goldenslopes Court
Benicia, CA 94510

Windows 7: It works the way you want. Learn more.

New Windows 7: Find the right PC for you. Learn more.

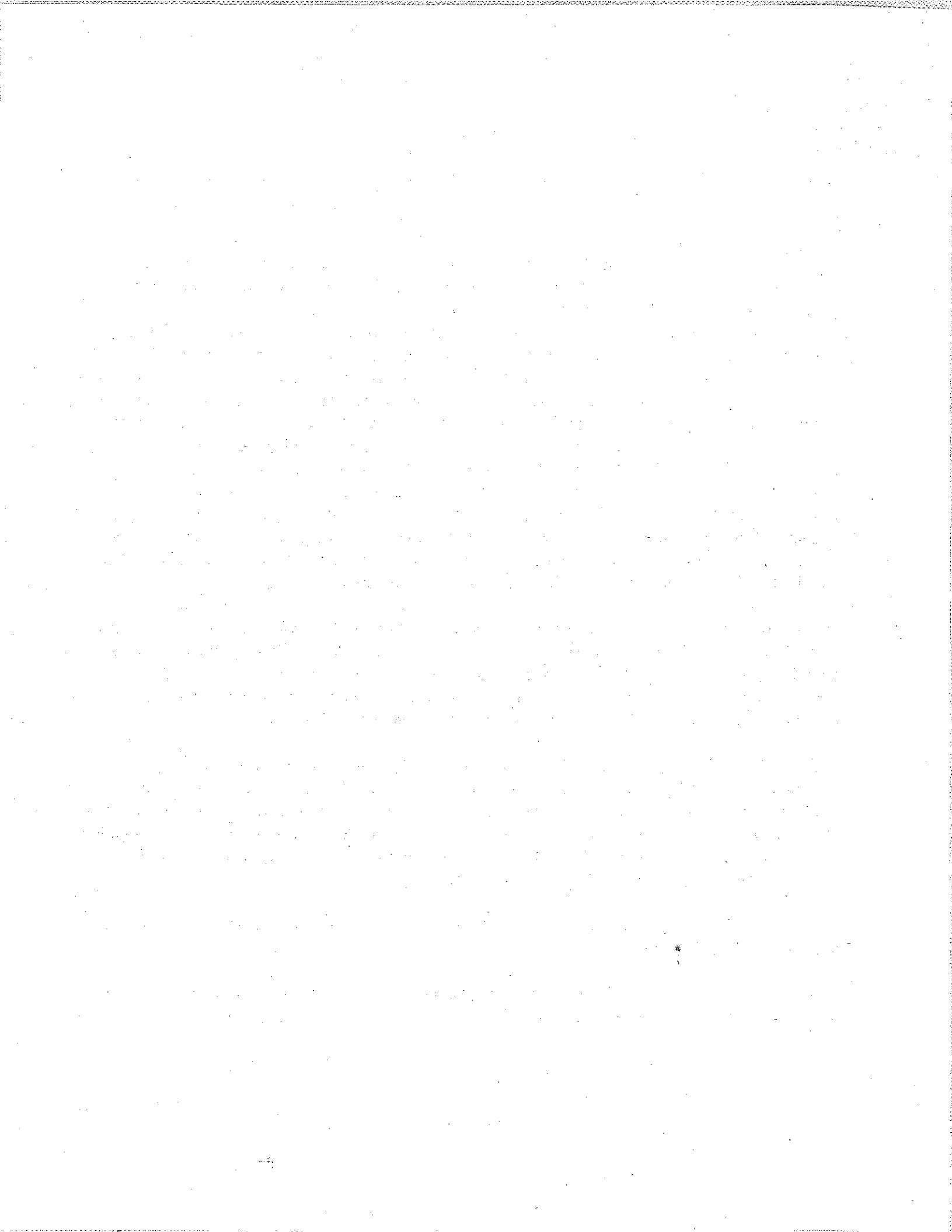
Comment Letter #: 42

Date: October 26, 2009

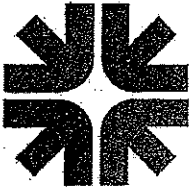
From: Belinda Smith

Response to Comments:

- 42-1 The Proposed Thresholds of Significance report (November 2, 2009), recommends a single community risk and hazards threshold for all areas in the Bay Area, including impacted communities. Staff agrees with several commenters that the problem of certain areas being disproportionately adversely impacted should be addressed as a cumulative impacts problem. Staff has revised the proposed thresholds to do so. Under staff's current proposal, areas that are disproportionately burdened with TAC emissions sources in the local vicinity will benefit from a cumulative analysis threshold that will require projects to evaluate the cumulative impact of all such sources within a 1,000 foot radius of the proposed project. This revised approach will provide a tool for lead agencies to carefully consider whether to site new sources or receptors in disproportionately burdened areas, without establishing different health risk standards for different segments of the population. In addition, the Air District believes that withdrawing the earlier, more stringent threshold, is also appropriate in light of using OEHHA's more conservative risk factors (substantially increasing estimated risk levels) and the addition of community risk reduction plans. Risk reduction plans provide a programmatic approach to the overall problem and can also address existing sources of risks and hazards and can require design standards of new development not always available through the CEQA process.
- 42-2 The proposed risk and hazard thresholds have been modified to allow overlay zone distances other than 500 feet along freeways and high-volume roadways. The modified distance must be based on district-approved modeling for the locations being considered for distances other than 500 feet. In addition, the Air District will provide screening tables with estimated calculations of risks from major roadways. The updated CEQA Guidelines will define high volume roads.
- 42-3 The cumulative threshold for community risks and hazards in the *Proposed Thresholds of Significance* recommends that lead agencies consider all sources within a 1,000 foot radius from the fence line of a receptor, including roadways. Local governments are encouraged to develop risk reduction plans for areas that experience high levels of toxic air contaminants and PM_{2.5} concentrations. Risk reduction plans could be used to protect existing sensitive receptors from becoming exposed to risks due to increased traffic from future development projects.
- 42-4 The updated CEQA Guidelines will provide screening criteria to help identify roadway intersections that could warrant a CO analysis.
- 42-5 Air District staff will consider the including the commenter's recommendation as a recommended mitigation measure to reduce construction emissions.



#43



CITY OF EMERYVILLE

INCORPORATED 1896

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October 26, 2009

Greg Tholen, Principal Environmental Planner
Bay Area Air Quality Management District
939 Ellis Street
San Francisco, CA 94109
gtholen@baaqmd.gov

RE: COMMENTS ON PROPOSED CEQA GUIDELINES

Dear Mr. Tholen:

Thank you for the opportunity to comment on the September Draft CEQA Guidelines. The City of Emeryville understands the difficulty in meeting the new greenhouse gas emission standards. We agree with the City of Berkeley that the way to encourage the kind and location of development that will meet these standards is to make it easy for them to develop dense, - and we would add mixed-use - projects with transit demand management features near transit and services. Use of the infill exemption is an important way to do that. The CEQA guidelines need to include location, density, use mix, and TDM factors in the screening criteria, so that projects meeting those criteria can use the infill exemption. We need project screening criteria that bring the screening levels to the number of dwelling units and square feet for dense, well located, TDM-rich projects close to the numbers set for all projects for criteria pollutants. That will enable us to approve those projects without requiring their developers to hire traffic consultants to override the URBEMIS model to fit their projects and then use the TDM features as mitigation measures in a Mitigated Negative Declaration.

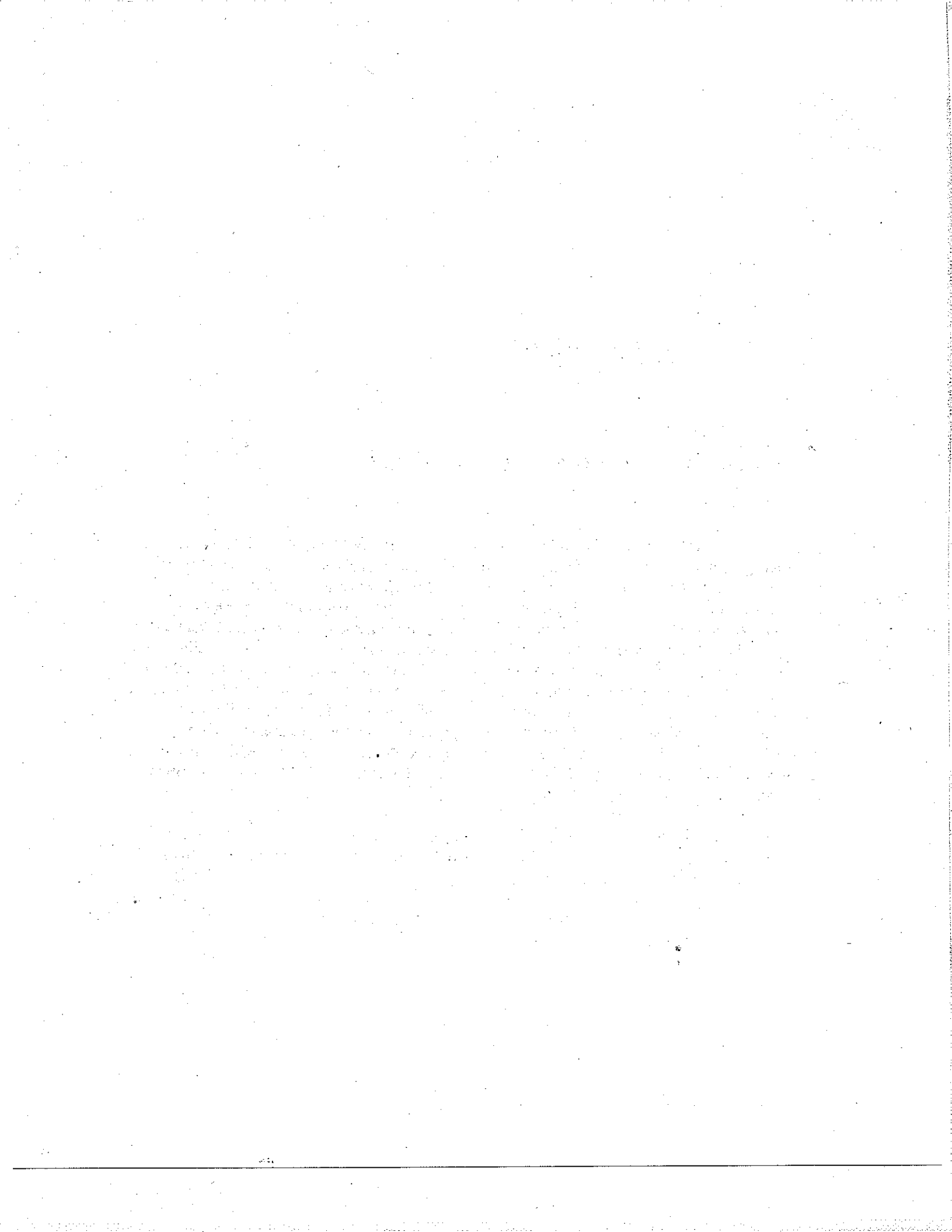
43-1

As the City of Berkeley has said, the state of the art on Climate Action Plans is not to the point where we can adopt CAPs with measurable, enforceable measures that meet the GHG goals. We are also a few years away from a regional Sustainable Communities Strategy. So we need project screening criteria that encourage developers to do the right thing. The mortgage crisis is disproportionately affecting developers of the kind of dense housing projects we need to meet the greenhouse gas emission standards. Let's not make it even harder for developers to build these projects.

43-2

Sincerely,

Charles S. Bryant, AICP
Director of Planning and Building



Comment Letter #: 43

Date: October 26, 2009

From: Charles S. Bryant, AICP, Director of Planning and Building, City of Emeryville

Response to Comments:

43-1 See Master Responses MR-1 and MR-2.

43-2 The revised CEQA Guidelines provide several mitigation measures to reduce GHG emissions that can be included in local climate action plans and required of projects consistent with the plan. See comment response 35-6 and Master Response MR-5.





SAN FRANCISCO PLANNING DEPARTMENT

#44

October 26, 2009

Mr. Greg Tholen
Principal Environmental Planner
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Dear Mr. Greg Tholen,

The City and County of San Francisco's Planning Department is submitting additional comments regarding the proposed *BAAQMD Guidelines* that supplement our previous comment letters dated October 2, 2009, and October 8, 2009. We are specifically focusing our comments on the additional voluminous materials, *Thresholds of Significance* and *Appendices A-G*, that BAAQMD released on October 9, 2009, after we submitted our earlier comments.

At the outset, we want to reiterate two key points:

- The scheduled hearing to consider adoption of the proposed *BAAQMD Guidelines* should be postponed, and BAAQMD needs to immediately establish a technical working group comprised of environmental practitioners from Bay Area cities and counties to develop revisions to correct the methodological flaws and unintended consequences that we and other commentors have identified.
- We strongly support BAAQMD's leadership in advancing updates to its outdated 1999 *BAAQMD Guidelines* and look forward to working closely with you to incorporate substantial revisions. Unfortunately, as proposed, the *BAAQMD Guidelines* in many respects represent a step backward rather than forward in terms of changing land use patterns and affecting mobile sources so that greenhouse gas (GHG) and other harmful emissions can be reduced.

44-1

Climate Action Plans

With respect to BAAQMD's *Thresholds of Significance* supplemental materials, our comments primarily concern how GHG thresholds and emissions are calculated. We recognize BAAQMD's efforts to fashion an alternative in Section 1.2.3 whereby a qualified Climate Action Plan could be used. In the protracted vacuum that will exist as the regional framework defined by SB 375 is developed, BAAQMD's Climate Action Plan approach has little practical value as proposed. We continue to recommend provisions whereby local jurisdictions could satisfy qualified Climate Action Plan requirements based on documentation of ordinances and established practices which effectively advance SB 375 objectives.

44-2

Incomplete and Distorted Land Use Database

In Sections 2.4 and 2.5 of the *Thresholds of Significance* document, BAAQMD outlines assumptions whereby it believes that a project capture ratio sufficient to achieve GHG reduction targets would be achieved. Unfortunately, the empirical basis for these assumptions is fundamentally flawed and undermines the validity of the approaches advocated throughout the *BAAQMD Guidelines*. A serious flaw in the methodology used to determine GHG thresholds, as well as the Criteria Air Pollutant thresholds, is the use of BAAQMD's database of projects that passed through the CEQA process from 2001-2008. There are serious empirical gaps in this database as well as in BAAQMD's interpretation and modeling of emissions based on this database.

Based on the documentation provided, this database includes only projects filed with the State Clearinghouse (SCH). We believe this methodology significantly underestimates the number of projects that went through the CEQA process during this period, but without access to the referenced database, we cannot confirm this. However, based on the assumption that the database only considers projects filed with the SCH, this method substantially underestimates the number of projects that went through CEQA review during this time period. Pursuant to *CEQA Guidelines* Sections 15206, 15072 and 15094, projects that do not meet the definition of a project of "statewide, regional or area wide significance" do not need to submit their negative declaration or mitigated negative declaration to the SCH and only a Notice of Intent to Adopt a Negative Declaration or Mitigated Negative Declaration needs to be submitted to the local county clerk. Given these parameters, unless the database includes information from local County Clerk's offices, it is very likely that this database is largely incomplete. It is very common for development projects that would be affected by the size limitations proposed in the GHG screening levels to never have been submitted to the SCH.

44-3

The BAAQMD acknowledges that its database is incomplete but solely because it lacks information on projects that proceeded with a Notice of Exemption (NOE). Nevertheless, BAAQMD continues to presume that development from NOE's would not be considerable. However, BAAQMD's conclusions about project capture ratios and the methodology layered on this error are seriously flawed because the aforementioned omission of a vast majority of negative declarations and mitigated negative declarations are also not included in BAAQMD's database. BAAQMD's presumption that NOEs would have at some point been captured, through a previously prepared EIR, is also faulty.

Another likely distortion in BAAQMD's database that is also not considered is the circumstance under which a specific project may have been required to prepare an EIR or a negative declaration. Often, an EIR is not required based solely on project size, but instead because of the project's specific proximity and impact to/on other resources (for example, historic resources, archeological resources, biological resources and hazardous materials). These factors could considerably affect how representative the project size distributions that were used to forecast anticipated GHG reductions from new development over the next 10 years are. Considering the information provided, we conclude that the database of CEQA projects is a very poor foundation on which to base subsequent analysis.

Construction Emissions

BAAQMD recommends that a carbon monoxide (CO) analysis only be prepared for the "largest of construction projects." Please provide examples concerning what BAAQMD would consider a large construction project and include those examples in the *BAAQMD Guidelines Update*. Contrary to what's stated on page 14, supporting *Appendix A* does not include supporting documentation for non-New Source Review derived thresholds developed by SMAQMD and VCAPCD. BAAQMD's *Revised Draft Options and Justification Report* also states that TAC indices are based on behavior of stationary sources, yet these indices are applied to mobile sources without any evidence having been presented to support that this is appropriate.

44-4

Local Carbon Monoxide Operational Emissions

The guidance in the *BAAQMD Guidelines* and its supporting *Thresholds of Significance* document is ambiguous. The *BAAQMD Guidelines* propose reliance on traffic volumes instead of the existing congestion-based proxy thresholds, but no documentation for the proposed new proxies is provided in the *Thresholds of Significance*. Instead, BAAQMD's *Thresholds of Significance* document suggests use of health-based ambient standards. These ambient standards are clear, but BAAQMD's guidance is vague and confusing concerning the basis for the circumstances that would trigger project-specific analysis. As we have previously indicated, our experience has been that these analyses represent substantial sources of cost and delay without tangible value in San Francisco. Our recommendation remains that the *BAAQMD Guidelines* should allow local jurisdictions to use documentation of a sustained record showing a lack of CO violations as the basis for exercising discretion about the circumstances under which project-specific CO analyses should be undertaken.

44-5

GHG Operational Emissions

We have previously commented extensively concerning the need for substantial revisions to BAAQMD's proposed approaches to reducing GHG emissions. As summarized above, the land use database that underlies BAAQMD's approach is seriously incomplete and distorted. Furthermore, as summarized in our comments below on BAAQMD's *Appendices A-G*, many aspects of BAAQMD's proposed methodologies for calculating emissions are also flawed. Clearly, substantial progress is needed in reducing regional emissions from mobile sources, but BAAQMD's analytical approach is not grounded in an understanding of practical means by which to encourage compact, transit-oriented infill development that can achieve meaningful reductions in GHG emissions.

44-6

In particular, we are not convinced that many of San Francisco's land uses are adequately represented using the URBEMIS categories. A common dilemma is how retail uses should be categorized. For mixed use projects in established neighborhoods, URBEMIS typically defaults to categorize ground floor retail as "strip mall," which generates results that grossly misrepresent the character and types of trip-making associated with our many neighborhood commercial districts. Similar issues arise in the use the URBEMIS residential land use categories. The Planning Department further believes that the mitigation measures that are incorporated into the URBEMIS program calculate inaccurate reductions. For example, it is possible to yield negative vehicle trip emissions, for projects located in high density areas, along transit corridors, with reduced (or sometimes no) parking and with pedestrian and bicycle amenities. It is unclear how BAAQMD's proposed thresholds, based on the regional SFBAAB, includes, if at all, regional land

use choices. To what extent do the proposed thresholds take into consideration the Association of Bay Area Government's FOCUS process, and subsequent decisions in allocating the Regional Housing Need to reduce regional Greenhouse Gas Emissions (and overall regional VMTs)?

44-6

The Planning Department believes that the URBEMIS model does not accurately model natural gas emissions. URBEMIS consistently underestimates a project's natural gas emissions by between 30 to 50 percent. We urge the BAAQMD to look into this issue further.

BAAQMD's proposed approach to reducing GHG emissions from stationary sources is also flawed. We do not agree that a stationary source should be allowed to emit ten times more GHG emissions than a land use project. We urge the BAAQMD to develop a much more aggressive approach for reducing stationary source emissions.

Cumulative Toxic Air Contaminates Impacts

BAAQMD is proposing that the siting of projects that constitute new receptors or sources should assess the cumulative impacts to those receptors within 1,000 feet of the receptor, taking into account the proposed project plus existing or foreseeable projects. The Planning Department is concerned about how BAAQMD proposes that local governments would identify these existing sources. A variety of uses would emit TACs, and it is not clear that all of these uses have a permit on file with the BAAQMD, either because they are not required to, or because they are operating illegally without a permit. Therefore, comprehensive information concerning existing emissions may not be available to local jurisdictions to model the cumulative setting. Furthermore, it would be extremely onerous to model all potential sources of TACs within 1,000 feet of a proposed receptor for which complete information for existing emissions is lacking. BAAQMD needs to provide detailed clarification about how cumulative TAC modeling would be conducted (recommended methodologies, tools, etc.) as well as access to relevant inventories for existing emission sources and receptors.

44-7

The BAAQMD is proposing a cumulative threshold for toxic air contaminants of $0.8 \mu\text{g}/\text{m}^3$ for $\text{PM}_{2.5}$, citing to EPA's proposed rule for prevention of significant deterioration. Because this threshold is being introduced now for the first time and is not consistent with the approach proposed in BAAQMD's prior iterations, the Planning Department is requesting additional time to review the background material and adequacy of applying this threshold to the *BAAQMD Guidelines Update*. We specifically have not had appropriate time to review EPA's supporting documentation regarding the Southern California Particle Center study.

Overlay Zones for Local Plan Impacts Associated with Risks and Hazards

As you are aware, San Francisco already has adopted a local ordinance that requires evaluations of health risks for sensitive receptors located within 500 feet of busy roadways. This approach was developed by the San Francisco Department of Public Health (SFDPH) and corresponds to BAAQMD's recommended approach for siting projects that would be sensitive new receptors. SFDPH has mapped broad zones of potential exposure, analytical protocols have been developed, and feasible measures to alleviate risks are mandated. For local plans, however, BAAQMD's *Thresholds of Significance* proposes buffer zones wherein particular types of land uses apparently would not be allowed. This approach would be counterproductive because many opportunities in San Francisco and other cities with infrastructure that can support infill development are situated in these zones. Instead of mandating wasteland buffers, we strongly

44-8

recommend that BAAQMD's proposal for local plans be modified to parallel its recommended approach for projects so that mapping, risk assessments within affected zones, and appropriate protective measures are required.

Methodologies for Calculating Emissions in Appendices A-G

BAAQMD Appendices A-G include a myriad of spreadsheets that supposedly justify BAAQMD's technical approaches. BAAQMD's appendices, however, do not include basic assumptions underlying the results shown. Pages and pages of spreadsheet outputs do not establish the validity of BAAQMD's methodological approach. For example, BAAQMD moves from a table that identifies its projected totals for different types of land use development to its detailed itemizations for various pollutants, including GHG effects, without providing explanations about what assumptions are embedded in the linkages between these tables.

44-9
Closer examination of some of BAAQMD's calculations for pollutant levels associated with specific types of land use development show results that don't make sense. For example, is it credible that calculations in Appendix A show that future development of sit-down restaurants will generate ten times as many pollutants as the combined effects for light and heavy industry? Is it credible that other retail uses will quadruple industrial pollutant loads or that comparable amounts of mid-rise vs. high-rise residential apartments will produce twice the pollutant loads for the former? BAAQMD fails to clearly show how its calculations were derived, but it appears that its multiple incongruous findings originate in inappropriate use of ITE trip rates without any sensitivity to different settings. For most land use types, BAAQMD appears to mandate calculations that treat small and mid-size projects as relatively more impactful than larger projects. This may be a reasonable finding for sprawling, low-density development but is not sensitive to locational differences and is not a reasonable finding for dense, infill development on small urban parcels.

Sensitivity Analyses in Appendices C and E

44-10
BAAQMD's "sensitivity" analyses in Appendices C and E focus on different combinations of land use development without coming to terms with the serious limitations embedded in its unexplained methodology. The linear, one-size-fits-all metrics utilized by BAAQMD do not appear to be capable of illustrating important differences within land use types based on location, density, access to transit, viability of walking and bicycling, incorporation of Green Building requirements, and other characteristics of urban-centered, infill development. Further, it is unclear how mixed use projects were treated in BAAQMD's database. For example, were mixed-use projects disaggregated into respective land uses? As stated in BAAQMD's *Revised Draft Options and Justification Report*, this database was required to evaluate the sensitivity of the threshold for each pollutant. Proceeding based on flawed database and a methodology that is insensitive to smart growth development practices, BAAQMD presents random exercises in number-crunching in the guise of sensitivity analysis. Genuinely useful sensitivity analysis would show how locational and density choices linked to practices that make alternative ways of travelling viable can affect results such that emissions would actually be significantly reduced.

Documentation for Emission Inventories

BAAQMD's inventories of existing and forecasted emissions in *Appendix D* are similarly flawed in that the embedded assumptions are not detailed. As we noted in our previous broader comments dated October 8, 2009, there are many inconsistencies in how different jurisdictions have compiled these inventories. BAAQMD needs to provide clear guidance so that these inconsistencies can be resolved and everyone can understand how BAAQMD wants baseline conditions and progress to be measured.

One striking characteristic in its inventories and throughout BAAQMD's appendices is the virtual invisibility of emissions associated with light and heavy industry and an almost exclusive reliance on reduction of mobile source emissions. BAAQMD has a considerably better understanding of and regulatory control over stationary source emissions than for mobile source emissions. Obviously, emissions from mobile sources need to be substantially reduced but integrated and comprehensive approaches implemented at thousands of work and non-work sites will be much more challenging than increased emphasis on reducing emissions at facilities that BAAQMD can more readily regulate. As we have previously commented, BAAQMD's litany of potential mobile source mitigations reflect a lack of understanding about what is required to make these effective.

BAAQMD's *Appendix C* examples of emission reductions highlight its misplaced emphasis on using assumptions that rely on arbitrary numerical exercises to show "mitigation" but are insensitive to a project's contextual setting. Instead, we recommend a focus on setting thresholds that recognize and reward projects that are placed in settings and designed to include features that curtail avoidable emissions. Moreover, our testing of BAAQMD's proposed approaches indicate that real-world projects that incorporate higher densities with green building techniques as well as mixed uses in infill settings favorable to non-auto travel routinely exceed BAAQMD's proposed thresholds. Thresholds and methodologies that penalize development that incorporates measures that BAAQMD advocates as mitigation further demonstrate that there are fundamental flaws in BAAQMD's proposed approach.

Conclusion

Among the likely practical effects of the *BAAQMD Guidelines* and its belatedly released, supporting *Thresholds of Significance* and *Appendices A-G* documents is that project sponsors will not propose projects that integrate multiple uses (i.e. retail, restaurants, cafés, etc) into one development, as this integration would almost always push a project's GHG calculations over the proposed numerical thresholds. What is not considered in these *Guidelines* are the effects of not integrating such land uses. What are the effects of not incorporating retail, restaurants and other commercial uses along the ground floor of a residential project, and what behaviors from residents would result in terms of increased auto use and GHG emissions? Would residents be more apt to drive to various activities or walk, bicycle or take transit, if development occurred with mixed uses with appropriate densities in urban infill locations? Integration of ground floor uses is not only desirable for project residents, but for the region as a whole. A standard single use development, as is modeled in BAAQMD's *Appendices C and E* and specifically in its sensitivity analyses, would otherwise be discouraged in San Francisco because this would not activate the ground floor to the extent that retail, restaurants and other commercial uses do. But single use development would become attractive everywhere to developers who would have unintended,

new incentives to design projects that would avoid the regulatory straightjacket that the BAAQMD Guidelines would impose.

The *Revised Draft Options and Justification Report*, released for public review on October 9, states that the reason for updates to the BAAQMD Guidelines is to "further the goals of other District programs, such as transit-oriented and infill development." BAAQMD'S proposed mitigation measures are supposed to reduce GHG emissions, increase neighborhood vitality and overall safety in the community. Our review of the proposed thresholds, as concluded in this letter and in a previous letter sent to BAAQMD on October 8, 2009, shows that the proposed thresholds would not further transit-oriented and infill development. The Guidelines do not consider adaptive reuse, nor do they adequately account for different settings throughout the Bay Area. 44-12

BAAQMD prescribes inflexible and reactive analytical approaches that would likely have the effect of penalizing rather than crediting proactive smart development. There are fundamental disconnects in the application of BAAQMD's proposed procedures to exactly the types of dense, mixed-use, green, infill development projects that its mitigation measures set forth as aspirations. For mobile source impacts associated with land use development, BAAQMD presents a menagerie of mitigation measures that fail to provide practical guidance about the combinations of measures that can be effective. We strongly recommend that the BAAQMD Guidelines be modified so that projects that are situated and designed to incorporate features that reduce GHGs are not unnecessarily subjected to inappropriate thresholds and burdensome analytical techniques that presume impacts based on flawed assumptions.

Because of the breadth of revisions that are needed, the most effective way to modify the proposed BAAQMD Guidelines would be for BAAQMD staff to immediately establish a technical working group with local environmental practitioners. We again strongly urge BAAQMD to engage in a collaborative effort that would be more constructive than proceeding with contentious hearings and further critiques of hurriedly released documents. Please do not hesitate to contact me at 415-575-9048 or Jessica Range at 415-575-9018 to discuss these matters further. 44-13

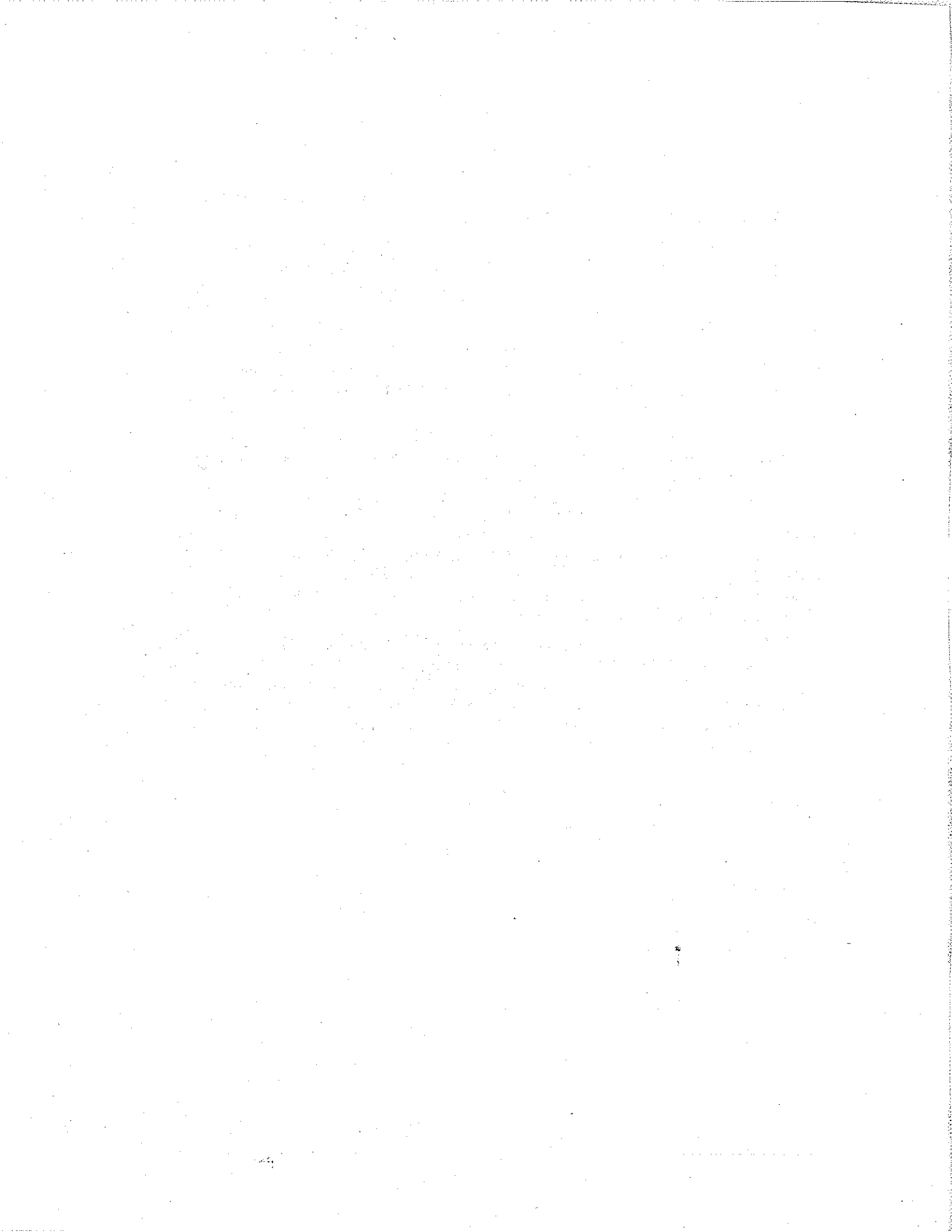
Sincerely,



Bill Wycko

Environmental Review Officer

San Francisco Planning Department



44_Billy wycko Email_10_26_09

From: Gregory Tholen
Sent: Monday, October 26, 2009 4:04 PM
To: Sigalle Michael
Subject: FW: Supplemental Letter on BAAQMD Technical Documents

Attachments: BAAQMD Guidelines Supplemental Technical Comments.PDF

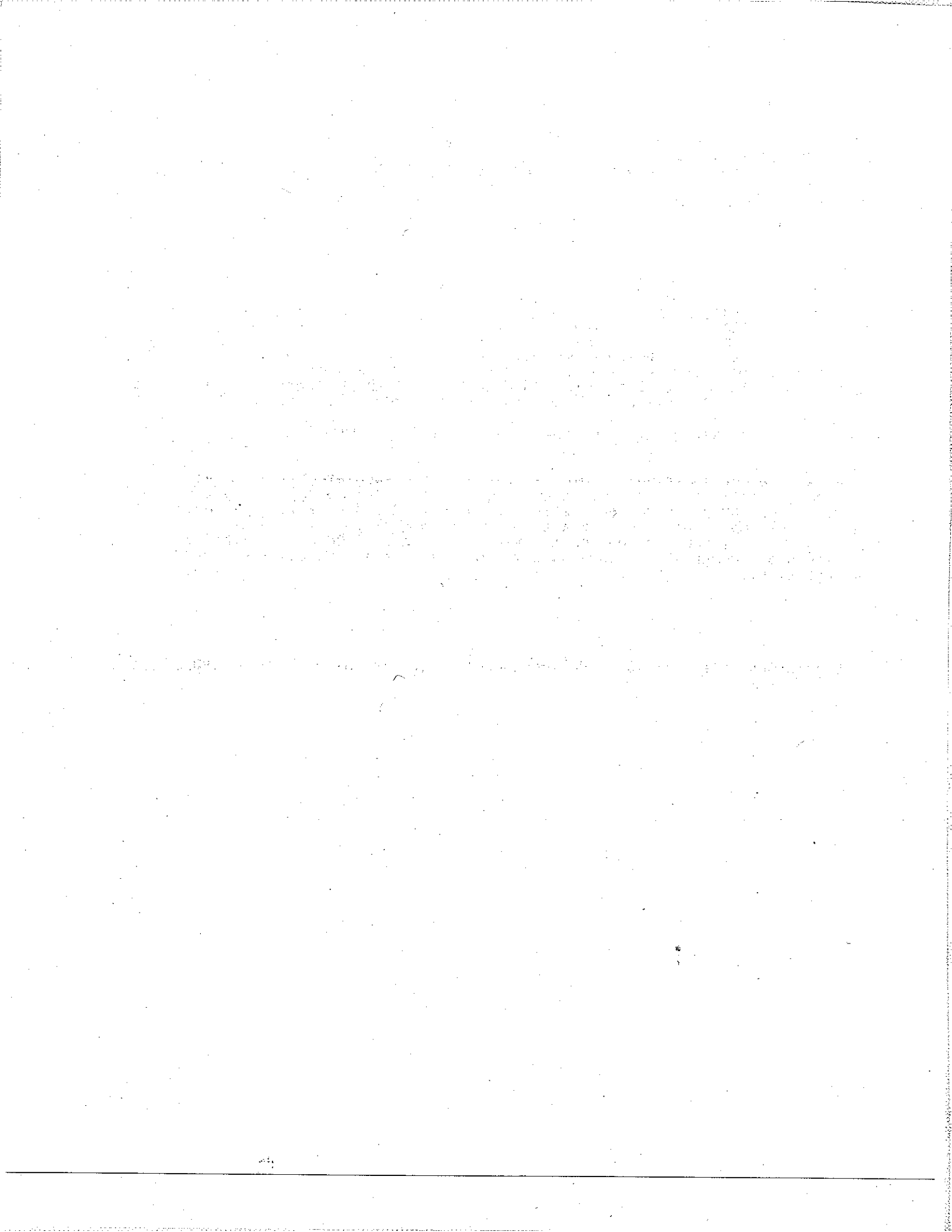
Greg Tholen
(415) 749-4954

-----Original Message-----

From: Bill wycko [mailto:Bill.wycko@sfgov.org]
Sent: Monday, October 26, 2009 12:51 PM
To: Gregory Tholen; dvintos@baaqmd.gov
Cc: John Rahaim; Larry Badiner; Jessica Range; Elaine Warren;
eangstadt@oaklandnet.com; susanwalsh@sanjose.gov; Michael Cohen; Michael Yarne;
Calla Ostrander; Johanna Partin; dranelletti@oaklandnet.com; Nancy
Kirshner-Rodriguez
Subject: Supplemental Letter on BAAQMD Technical Documents

Attached are our additional comments regarding the supplemental materials, Thresholds of Significance and Appendices A-G, that BAAQMD released after we submitted our prior comment letters on October 2 and 8, 2009. We would welcome the opportunity to work with BAAQMD to modify your proposals to more effectively achieve your objectives through a collaborative technical working group comprised of environmental practitioners from Bay Area cities and counties.

(See attached file: BAAQMD Guidelines Supplemental Technical Comments.PDF)



Comment Letter #: 44

Date: October 26, 2009

From: Bill Wycko, Environmental Review Officer, San Francisco Planning Department

Response to Comments:

44-1 See master response MR-8.

44-2 See master response MR-3 and MR-5.

44-3 The Air District acknowledges that the CEQA projects database is incomplete. The CEQA projects database was used to develop a representative distribution of the types and sizes of land use development projects in the Air District's jurisdiction that are accompanied by preparation of an EIR or a IS/MND. It is acknowledged that a large number of small projects in the Air District's jurisdiction would be accompanied by an initial study or NOE and would not be accompanied by environmental documents that would be filed at the State Clearinghouse. The Air District determined in its research of a sample of such projects, that these projects would represent a small subset of total emissions compared to projects that would have environmental documents filed with the State Clearinghouse. Thus, it was determined that the CEQA projects database (which contained over 1,600 records) would provide a meaningful sample of the types of projects that would be subject to CEQA and the Air District's proposed Draft Air Quality Guidelines in order to develop a distribution of project types and sizes in the Air District's jurisdiction.

44-4 The substantial evidence and justification for adopting the Air District's proposed thresholds are included in the *Proposed Thresholds of Significance* report (November 2, 2009). Air District will assist Lead Agencies in developing CO analyses for construction projects.

44-5 The updated CEQA Guidelines will clarify the screening criteria for the carbon monoxide threshold. The screening criteria will be made less stringent to reflect the fact that a CO analysis is rarely necessary in the Bay Area.

44-6 See master response MR-3 and MR-7.

44-7 The updated CEQA Guidelines provides detailed instructions on local community risk and hazard impacts. See also master response MR-7.

44-8 See comment response 44-7.

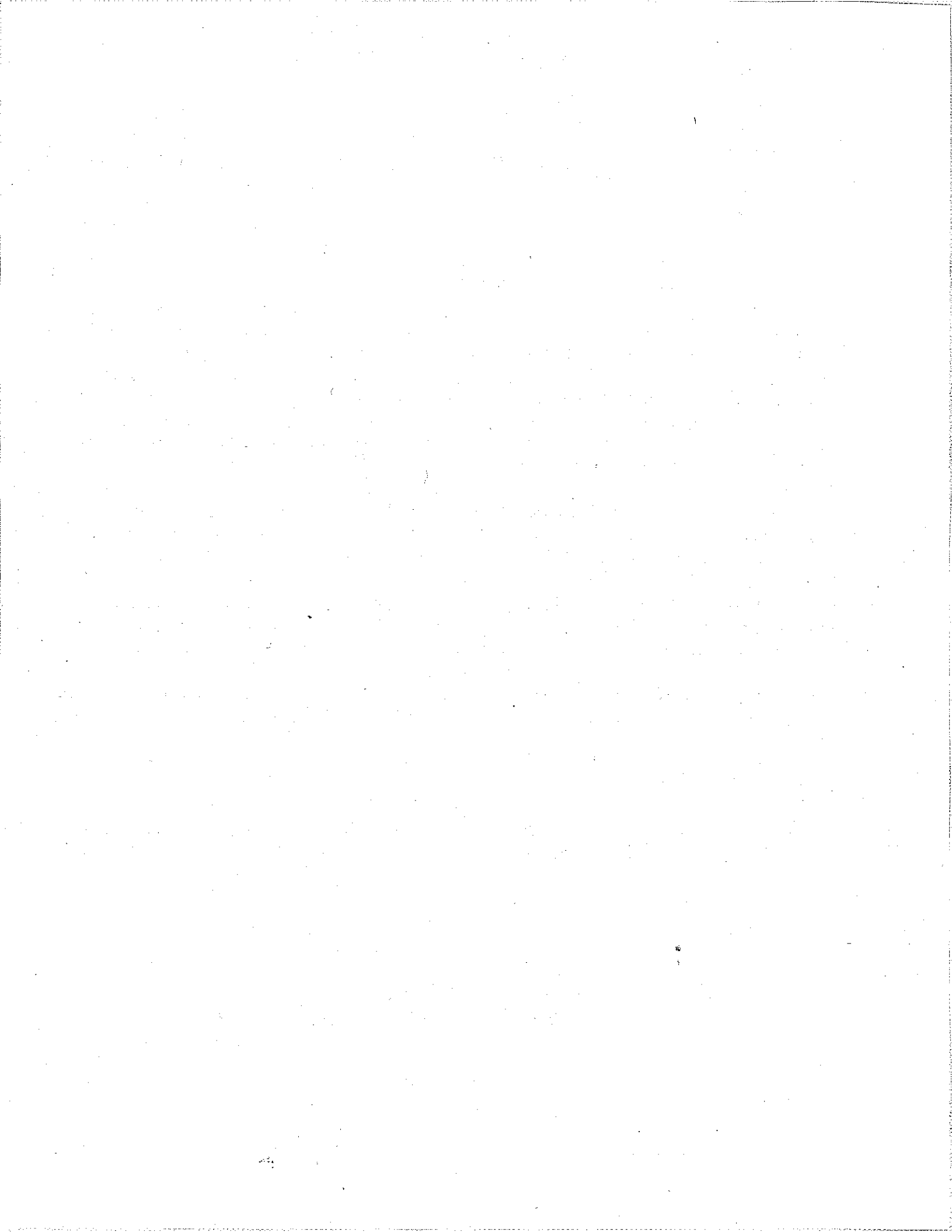
44-9 See Master Response MR-3.

44-10 The *Proposed Thresholds of Significance* report (November 2, 2009) provides an explanation of the sensitivity analysis used to develop the proposed thresholds. See also master response MR-7.

44-11 See master response MR-6.

44-12 See master response MR-2 and MR-5.

44-13 See master response MR-8.





Planning and Development
Office of the Director

October 26, 2009

Greg Tholen, Principal Environmental Planner
Bay Area Air Quality Management District
939 Ellis Street
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gtholen@baaqmd.gov

RE: COMMENTS ON CEQA GUIDELINES

Dear Mr. Tholen:

Thank you for the opportunity to comment on the September Draft CEQA Guidelines. As a city that has taken a leadership role in its Climate Action Planning and in its commitment to reducing its greenhouse gas (GHG) emissions, we applaud BAAQMD's efforts to place the Bay Area in the forefront of California regions and the nation in addressing the climate crisis. It is therefore with surprise and concern that we find the proposed Guidelines to fall far short of achieving that goal. Moreover, if adopted without significant modification, the Guidelines would have unintended consequences that would set the region back from the goal we are all trying to achieve. In summary, our most significant concerns include:

1. The Guidelines would not promote regional smart growth which is fundamental to achieving GHG reduction goals related to land use and transportation.
2. The Guidelines would essentially eliminate the "infill-exemption" for many multi-family infill projects (projects over roughly 80 – 90 units). This exemption is one valuable way to encourage appropriate regional development patterns.
3. The Guidelines place too much and too narrow reliance on jurisdictions adopting enforceable Climate Action Plans for promoting overall policies to reduce GHG at a time when there are no clear metrics or standards for developing and measuring/modeling the efficacy of such plans.

Each of these issues is addressed below, with additional comments following.

Promotion of Regional Smart Growth

Clearly, regional development patterns are the critical issue we must address if we are to accommodate the Bay Area's projected growth in a way that is consistent with achieving GHG reduction goals. The draft BAAQMD guidelines take a myopic approach to the issue of how CEQA should be applied in regard to GHG emissions for land use and transportation.

Planning a Safe and Sustainable Future for Berkeley
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E-mail: planning@ci.berkeley.ca.us

#45

45-1

45-2

Instead of recognizing at the beginning of the process the importance a project's location has on VMT and associated emissions, the draft Guidelines treat all projects as if they had the same impact and then seek to mitigate it. This is backwards and, as discussed below in regard to the Infill CEQA exemption, may set the region back. Rather than treat all projects the same, the Guidelines should begin with the premise that the CEQA process should be minimized for projects consistent with achieving the region's smart growth goals. Under this approach, the Guidelines would define the locational and development criteria that would limit or eliminate any need for air quality impact assessment, especially for GHG emissions. At minimum, applying such criteria would allow for much higher thresholds of significance for a project compliant with smart growth standards than one that is not.

45-2

A similar policy should apply to Climate Action Plans and General Plans meeting criteria for promoting smart growth. Regional Sustainability Plans under SB 375 will not be available for several years. Until the Regional Sustainability plan is prepared, local governments will have no way to account for the regional air quality benefits of a local smart growth strategy when undertaking local plans and development. The draft Guidelines have no measures for how a plan promoting appropriate smart growth infill development can "take credit" for the location of that growth in the region. Meanwhile, each project and each plan, no matter how transit friendly and no matter how "green," will have localized impacts. Those localized impacts may be significant on a local level, while providing significant regional benefits by efficiently accommodating growth with minimum air quality impacts. The Guidelines do not yet account for such regional benefit. While the Guidelines indicate how each project and plan can reduce its impacts with specific measures, the most important benefit of smart growth is not localized or even limited to a few jurisdictions - it is regional. The BAAQMD Guidelines should provide new metrics for determining the regional air quality benefits of specific smart growth strategies. As is discussed below, it will otherwise be several years before Climate Action Plans or the Regional Sustainability Plan will have the data necessary to provide such information for local plans and projects.

45-3

We recommend that BAAQMD establish appropriate GHG metrics and thresholds for projects and plans based on regional location and other smart-growth criteria. As an incentive to appropriate development patterns, BAAQMD should evaluate how its Guidelines can minimize the necessity of undertaking air quality assessments for projects and plans that further appropriate development patterns, and perhaps even provide "GHG Credits" for certain types of projects.

45-4

Elimination of the Infill Exemption for Larger Infill Projects

The thresholds established for when a project may have a significant impact on GHG emissions are the same whether a project is in some residential suburb distant from transit, or Downtown Berkeley. Because locational benefits are only applied as "mitigations" to impacts, the thresholds in the Guidelines becomes the *de facto* standard for determining whether the infill exemption permitted under Section 15332 of the CEQA Guidelines can be used. That exemption is an important incentive for encouraging appropriate development patterns.

45-5

Under the proposed BAAQMD Guidelines, the infill exemption could not be used for a mid-rise project with more than 90 units. For this project under the Draft Guidelines, at least a Negative Declaration would have to be prepared, with higher costs and added time for project review, and more risk for the developer. This is one of the ways in which the Guidelines not only fail to actively encourage development patterns essential to meeting GHG goals, but would make things worse.

45-5

The proposed methodology for determining the level of significance for project-level operational impacts excludes VMT reduction measures included in the project from being considered in the threshold determination. As noted above, the methodology also does not allow for adjustments for project location or local attribute, except as mitigation measures. For example, a large mixed use project on a major transit artery in Berkeley with 100 dwelling units, no parking, free transit passes, and an on-site car sharing pod would generate the same volume of GHG as the same 100-unit building with 100k parking spaces, no transit subsidies, proposed for a low-density spacious suburban subdivision. Both of these projects would have the same threshold level of significance. Given the proposed screening thresholds, neither project could use the infill categorical exemption. The approach in the Draft BAAQMD Guidelines (1) runs counter to the standard CEQA approach used for other types of environmental impacts, (2) will reduce local government's ability to use categorical exemptions, (3) will thereby increase costs of sustainable development, (4) will make future project modifications more costly and time-consuming, and (5) will increase the public's ability to stop high-density projects. BAAQMD could avoid this outcome simply by including the benefits of a project's emission reduction measures and locational benefits in the analysis before deriving a level of significance for GHG emissions.

45-6

We recommend that BAAQMD set forth specific measures for how thresholds should be modified based on smart growth location criteria, and for projects that incorporate specific GHG reduction measures in the project description.

45-7

In addition to allowing the use of location and various project-based measures as part of the thresholds analysis, BAAQMD could provide much clearer guidance on the metrics that should be applied when evaluating specific measures. As presented in the Operational Mitigations table for Section 3.3, the vast majority of potential mitigations have a range of potential benefit; and in some instances, the range is itself very large (e.g., 0 – 100 percent, in at least one instance). The Guidelines leave it up to the jurisdiction to figure out and justify the use of any particular factor. Unfortunately, in our experience, the very large range shown for many benefits in this table reflects the state-of-the-art of our understanding of GHG reduction measures. The science of determining quantifiable GHG benefits of specific measures is, in many ways, still in its infancy. Firm metrics are very hard to find, and even harder to justify.

45-8

We recommend that BAAQMD take a leadership role in better defining GHG reduction metrics and do so prior to adopting revised Guidelines.

The Guidelines also assume that to apply many of these reduction factors, the UREBMIS model will first need to be run. This assumes that an exemption is not available (see previous comments). However, the use of the model itself can significantly raise the cost of a project and increase the amount of time it takes to process it. Few local jurisdictions, if any, have the ability to run this model on their own. That means jurisdictions will be required to establish contracts with consultants and be dependent on their work, timing and costs. This is another instance where rather than require local jurisdictions to raise the costs of appropriate smart growth development, BAAQMD could provide jurisdictions with metrics that can be applied without running a model for each project.

45-8

Over-Reliance on Climate Action Plans

The Guidelines' solution to the high cost and increased risk to development of project-by-project CEQA assessment of GHG impacts is for cities to prepare detailed Climate Actions Plans with clear, enforceable mitigations that can achieve specific measurable reductions. This is a laudable goal, but not a realistic one.

First, the Guidelines make assumptions about the state of local government's ability to produce community inventories and measurable (and enforceable) benefits of specific reduction measures that, based on our work on our CAP, are not achievable at this time, or at least not achievable without a level of time and at a cost that is unrealistic for virtually any local government. Models do exist for quantifying some emissions and emissions reductions, but they are not yet widespread, often expensive, not standardized, and the validity of such models is not fully established.

45-9

Second, there is no standardized protocol for community-level climate planning and emissions accounting. Section 5.2.2.: Guidelines recommend using ARB protocols for community-wide GHG emissions inventories; such protocols do not exist. Jurisdictions employ different methodologies in accounting for the emissions that result from things such as inter-regional trips and solid-waste related emissions. In the absence of a protocol for measuring community-wide emissions and for quantifying emissions reductions, it will be difficult for lead agencies to adhere to the criteria BAAQMD proposes for a Climate Action Plan. Local governments' ability to demonstrate future reductions from specific mitigation efforts is hampered by the lack of a standardized methodology and tools for doing so. This is not reflected in BAAQMD's assumptions.

45-10

Third, CEQA review is generally not possible on municipal or county Climate Action Plans since these plans rarely contain prescriptive policies, but rather have acted as a guidance document or a visionary policy statement. Berkeley has prepared what is considered to be one of the most specific and far reaching Climate Action Plans in the country, and yet that plan would not meet the standards set forth in the BAAQMD document – not only because we did

45-11

not prepare an EIR (as the Guidelines would require), but because we found that enforceable strategies for reducing GHG emissions are difficult to define, and measures for determining each strategy's effectiveness, are lacking. In preparing the City of Berkeley's CAP, we reviewed CAPs from all over the country and did not find one that would meet BAAQMD's proposed requirements. The City is working very hard to develop and implement specific GHG reduction strategies and to find and develop better measures of effectiveness for those strategies. Those measures are under development, but are generally not readily available and not standardized.

45-11

We recommend that prior to setting forth standards to be achieved by Climate Action Plans, that the District work directly with a few Bay Area cities to prepare a model CAP, showing how the various inventories and mitigations would fit together to achieve AB 32 goals. We believe the District would thereby become more familiar with the limits of current Climate Action Planning, and help focus it on establishing appropriate metrics for mitigations. Once a model Plan is developed, it would provide invaluable assistance to local jurisdictions and help standardize the approach to Climate Action Planning so that there can be greater accountability. The City of Berkeley would be happy to share with the District our experience in developing a CAP and in developing GHG strategies and measures.

45-12

Metrics are also essential in establishing specific requirements. If we wish to impose a new requirement on development (or on an existing homeowner), it is essential (both politically and legally) to establish a clear nexus between the impact and the requirements imposed to reduce that impact. Until there are clear metrics, new requirements are difficult to justify.

Finally, it would be inefficient for jurisdictions to prepare a climate action plan in the near future, in advance of preparation of the regional Sustainability Plans required by SB 375. Those plans will hopefully provide the regional context for land use and transportation decisions that is currently missing. Since Sustainability Plans are at least 3 – 4 years away, Climate Action Plans meeting the standards set by the draft BAAQMD Guidelines are likely to be unavailable for at least 5 – 7 years. In the interim, cities will be forced to use project-by-project Guidelines. It is therefore critical that those project-by-project guidelines be structured in a way that promotes the regional development goals outlined earlier in these comments.

45-13

Process of CEQA Guidelines Review

We appreciate that the District has done considerable outreach on the Guidelines. However, the recent release of the "Revised Draft Options and Justifications Report, California Environmental Quality Act Thresholds of Significance" has led to considerable confusion. The relationship of this new document to the Guidelines is difficult to easily determine, although the two are clearly related and your website indicates that the "Justifications" report modifies the "Guidelines". Perhaps we have failed to find it, but a clear statement as to exactly how these two relate, and how the "Options" report "modified" the Guidelines report would have been most appreciated. After speaking to BAAQMD staff, the relationship of the two is still not entirely clear to us, and having these two documents released at different times has led to the

45-14

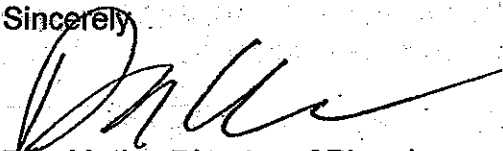
feeling that there is a "moving target" for our comments. It is difficult to absorb and address significant and complex new information late in the process and having only a little over two weeks to do so (the "Justifications" report was only made available on October 8) is impractical.

We know that many other jurisdictions have been voicing significant concerns over the Guidelines. We respectfully request that BAAQMD not adopt new Guidelines without first responding to comments, revising the Guidelines, and then allowing for another round of review.

In developing revised Guidelines, perhaps a more focused technical advisory group directly involving staff from local jurisdictions might be an effective means of addressing the issues raised. Staff from the City of Berkeley would be happy to participate in such a process.

In conclusion, while we applaud the District's efforts to be a leader on the issue of GHG reduction, we believe that the Draft Guidelines are fundamentally flawed. We urge the district to carefully consider its underlying goals, and devise Guidelines that can better meet those goals. We look forward to being a partner with BAAQMD in moving forward toward achieving our mutual climate action goals.

Sincerely,



Dan Marks, Director of Planning and Development

cc: City Manager
Neal DeSnoo
Timothy Burroughs
Debra Sanderson

45-14

Sigalle Michael

From: Gregory Tholen
Sent: Monday, October 26, 2009 5:15 PM
To: Sigalle Michael
Cc: David Vintze
Subject: FW: Additoinal comments on the Guidelines

Greg Tholen
(415) 749-4954

From: Marks, Daniel S. [mailto:DMarks@ci.berkeley.ca.us]
Sent: Monday, October 26, 2009 5:12 PM
To: Gregory Tholen
Cc: Sanderson, Debra
Subject: Additoinal comments on the Guidelines

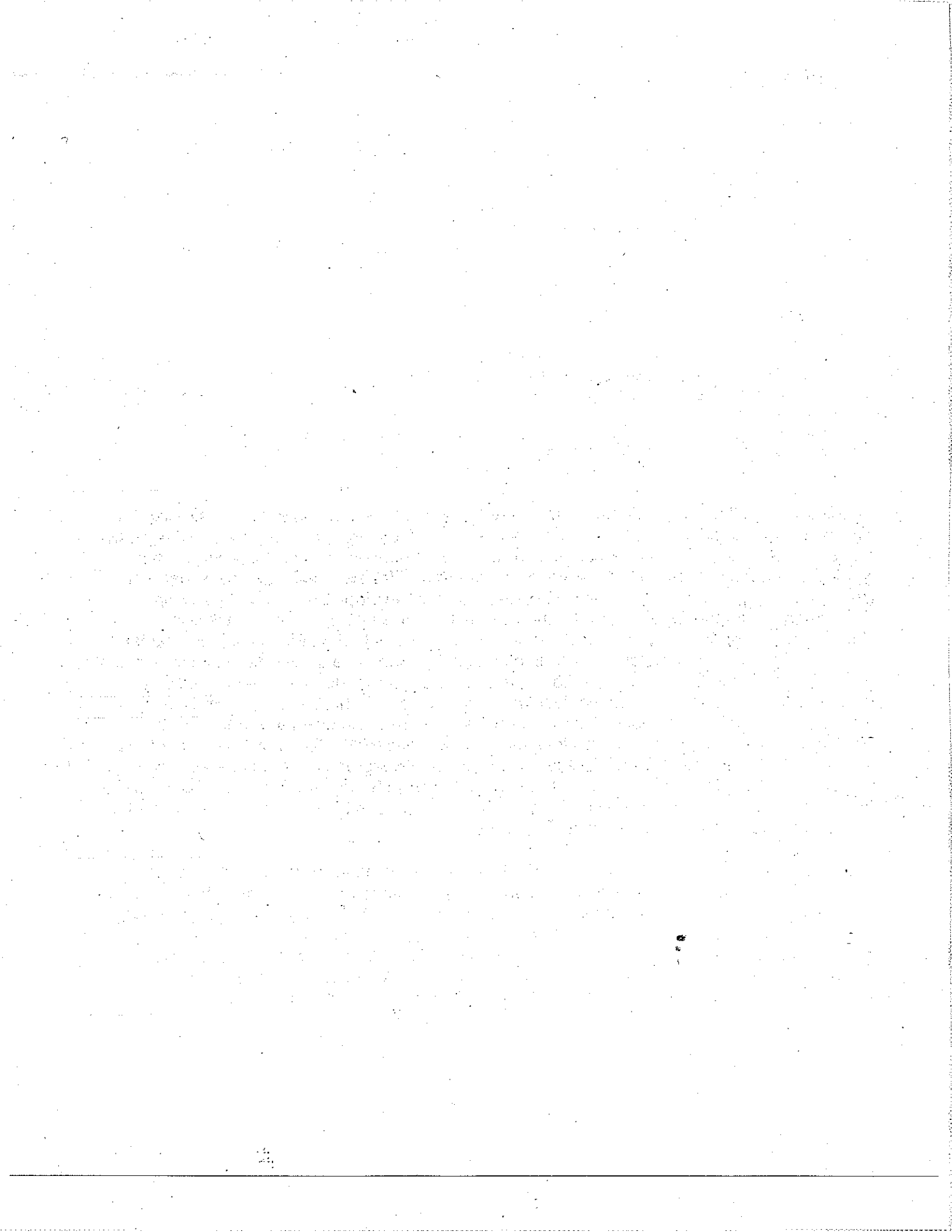
Greg: as you will note, our formal comment letter focused almost entirely on GHG emissions. We have not had much time to focus on the other Guidelines, but have had issues with the old Guidelines and hope that these issues have been addressed in the new Guidelines. In particular, when we prepared our Downtown Area Plan EIR, we found two issues that may prevent cities from promoting appropriate smart growth development: odor impacts and conformance with the Clean Air Plan. In mixed-use environments, odor impacts from restaurants are often going to occur, and according to the old BAAQMD guidelines, the only mitigation is providing a buffer – which, in high density mixed use transit-oriented environments is clearly counter to the overall intention. We hope that you've identified other means of addressing the odor issue. Second, lack of conformance with the Clean Air Plan is also considered a significant impact. This is a serious problem when cities are proposing to accommodate more growth in smart locations than the Clean Air Plan may have previously anticipated. Because the Clean Air Plan can occasionally lag behind, required conformance with the growth set forth in the plan can prevent cities from "doing the right thing," or require an EIR on a plan that would otherwise be beneficial. Again, I don't know if these two issues have been addressed in the proposed new Guidelines.

45-15

45-16

We also have other questions and concerns with some definitions in the proposed Guidelines, and in regard to other issues (e.g., how to address particulates near freeways), but do not have time to lay them out coherently at this time. As noted in our letter, in our view these Guidelines need additional work and especially more engagement with local government CEQA practitioners who may have struggled with the old Guidelines. Establishing a technical advisory committee including local government CEQA planners, along with some of the stronger regional air quality consultants, might lead to some insights and improvements.

45-17



Comment Letter #: 45

Date: October 26, 2009

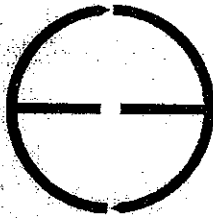
From: Dan Marks, Director of Planning and Development, City of Berkeley

Response to Comments:

- 45-1 Comment noted. Air District staff believes the proposed thresholds of significance for GHG are appropriate given the serious consequences of climate change if left unchecked. The proposed thresholds encourage the type of land use development needed to help reduce the significant adverse effects we now experience from existing sources of GHG.
- 45-2 The screening tables provided in the revised CEQA Guidelines are not thresholds of significance and will not, based on the screening table alone, trigger a mandatory EIR. They are just screening levels to minimize the need for full analysis in situations where BAAQMD has determined no significant air quality impact would occur because Air District staff have modeled the screening level projects under very conservative assumptions and have determined that such projects will not exceed the applicable thresholds of significance. Most projects will have characteristics, such as nearby transit and services, which will reduce estimated emissions and allow a larger project than indicated in the screening table to be less than significant. Also see Master Response MR-2.
- 45-3 See Master Response MR-5. The revised CEQA Guidelines provide recommended methodologies that allow well-designed, efficient projects to "take credit" for reducing emissions compared to less efficient projects. In addition, projects located near transit and support services may be able to achieve even lower emission levels and possibly an impact finding of less than significant impacts to air quality.
- 45-4 See Master Response MR-2.
- 45-5 See Master Response MR-2.
- 45-6 See Comment Response 45-2. Well designed projects that incorporate recommended measures in the project proposal are not considered mitigated projects and may still be found less than significant and qualify for a categorical exemption. Also see Master Response MR-1.
- 45-7 The revised CEQA Guidelines include specific measures that serve to reduce project-related emissions. Project emission estimates consider design and location characteristics in the baseline analysis.
- 45-8 In response to this and similar comments, Air District staff has worked to improve guidance on applying estimates of mitigation effectiveness. Air District staff will continue to refine the guidance. Air District staff is available to assist with estimating emissions and mitigation efficiency. Air District staff are also developing off-model tools to use in conjunction with the URBEMIS model.
- 45-9 The Air District acknowledges that many communities will not be able to develop climate action plans in the near future. Many communities have adopted climate-friendly ordinances, such as green building codes, that can be included in climate action plans. Development of climate action should demonstrate consistency with AB 32 at a minimum, and use the best available data.

- 45-10 The reference to ARB's community-wide protocol has been removed from the Draft Guidelines. The new draft recognizes the absence of protocols/standardized methodologies for GHG quantification, and provides some guidance for quantifying community emissions. The new draft emphasizes the Air District's leadership position in working with ARB to develop a protocol or standard methodology for measuring community-wide GHG emissions as quickly as possible. In the absence of such a protocol/methodology, the Draft Guidelines recommend a variety of models that local governments can use that provide estimates of future GHG reductions from mitigation measures that satisfy the Air District's criteria for qualified climate action plans. Some of these models are inexpensive, well-established, and in wide use by consulting firms and local governments (EPA WARM, ICLEI Clean Air Climate Protection Software). In the interim period between release of these Guidelines and ARB's development of a community-wide GHG protocol, the Air District considers use of established models recommended in the Guidelines as credible sources for GHG estimations in local climate action plans.
- 45-11 The proposed Air District recommendation does not include climate action plans being analyzed in an EIR, only that a CEQA document and environmental review take place. A negative declaration is a sufficient level of environmental review. In fact, some communities in the Bay Area have proposed adoption of a negative declaration in the review of a climate action plan.
- 45-12 The Air District is continually working to enhance existing metrics to quantify community GHG emissions and climate action plan recommendations. Air District staff are prepared to assist local agencies prepare climate action plans.
- 45-13 See Master Response MR-5.
- 45-14 See Master Response MR-8.
- 45-15 The revised CEQA Guidelines do not address assessing odor impacts from restaurants. Air District staff will consider this comment when revising odor methodologies in the future.
- 45-16 Based on this and similar comments, the proposed thresholds of significance for plan consistency with air quality plans have been revised.
- 45-17 Comment noted. Air District staff believes the revised CEQA Guidelines are much improved over the existing Guidelines.

#46



California Council for Environmental and Economic Balance

100 Spear Street, Suite 805, San Francisco, California 94105
415-512-7890 phone, 415-512-7897 fax, www.cceeb.org

October 26, 2009

Mr. Greg Tholen
Bay Area Air Quality Management District
939 Ellis Street
San Francisco, CA 94109

Dear Mr. Tholen:

RE: Proposed California Environmental Quality Act (CEQA) Draft Air Quality Guidelines¹

The California Council for Environmental and Economic Balance (CCEEB) is a coalition of business, labor and public leaders, which strives to advance collaborative strategies for a strong economy and a healthy environment.

We have numerous members who operate many different kinds of facilities under the jurisdiction of the Bay Area Air Quality Management District. We wish to take this opportunity to convey some of our interests regarding the District's CEQA Draft Air Quality Guidelines ("Draft" or "CEQA Guide").

CCEEB has four overarching interests in the CEQA Guide:

1. The CEQA Guide should harmonize with the SB 375 RTAC Report and soon-to-be-adopted State CEQA Guidelines;
2. The CEQA Guide should support a clear path for the review and approval of projects necessary to achieving the goals of AB 32;
3. The GHG threshold of significance should be considered interim in anticipation of action by the state Air Resources Board to recommend a statewide and consistent threshold of significance; and
4. Given the importance of the recently introduced "Community Risk Reduction Plans," we believe the concept should be further defined and developed.

	46-1
	46-2
	46-3
	46-4

Harmonizing the CEQA Guide with SB 375 and the State CEQA Guidelines

A principle interest of ours is to ensure that the District's guidance to local lead agencies and project applicants in evaluating air quality impacts under CEQA harmonize with the State's CEQA Guidelines and the recommendations of the SB 375 Regional Targets

¹ We subsume under this title the companion paper titled "Revised Draft Options and Justification Report California Environmental Quality Act Thresholds of Significance."

Advisory Committee. The final SB 375 RTAC recommendations are scheduled for consideration by the California Air Resources Board on November 19, 2009. The Secretary for Natural Resources is expected to certify and publish by December 31, 2009 a final set of amendments to the State CEQA Guidelines. Considering the potential benefits of harmonizing the District's work with these two important and related state efforts, CCEEB respectfully requests that the District allow additional time for public to review the BAAQMD CEQA Guide in the context of the Air Resources Board's directions with respect to the RTAC report and the Secretary's approval of the State CEQA Guidelines amendments.

- The SB 375 RTAC report lays out a planning process that brings together regional and local interests in reducing greenhouse gas emissions through "Sustainable Communities Strategies" that align planning efforts for regional and local transportation, land use and housing needs. The District's CEQA Guide misses the opportunity to offer lead agencies and project applicants guidance with respect to air quality and Sustainable Communities Strategies.
- The State Guidelines introduce some very important changes to the administration of CEQA with respect to GHG emissions, especially with regard to "overriding considerations," mitigation (including off-site mitigation), "tiering" and CEQA review "streamlining." The District's CEQA Guide could provide valuable assistance to lead agencies and project applicants with respect to the application of these important changes to projects and plans in the Bay Area.

A Clear Path for GHG Emissions Impact Analysis

One area of considerable interest to CCEEB is how to improve the CEQA review process for projects with GHG impacts and, in particular, projects necessary to the implementation of AB 32 ("AB 32 projects").

CCEEB appreciates the District's approach to developing thresholds of significance for GHG emissions that will effectively eliminate unnecessary analysis of GHG impacts from countless small projects subject to CEQA. CCEEB urges the District to expand this concept beyond the current Draft by including:

- Appropriate screening information to identify large projects for which GHG analysis may be unnecessary due to the project's compliance with regulations implementing the Air Resources Board's AB 32 Scoping Plan; 46-5
- Guidance concerning the means for mitigating significant GHG emissions impacts to less-than-significant, including off-site measures; and 46-6
- Directives necessary to expedite the CEQA review of AB 32 projects under existing law. 46-7

CCEEB believes that large projects resulting in net societal GHG emissions reduction benefits (e.g., refinery retrofit to produce low carbon fuels) deserve assurances that the 46-8

contributions of such projects to AB 32 goals will be realized in an expeditious manner. In order to accomplish this goal, the District's Guide should be carefully aligned with provisions of the proposed State CEQA Guidelines addressing "overriding considerations," "tiering" and "streamlining" for GHG impacts analysis.

46-8

Work towards a Statewide Threshold of Significance for Greenhouse Gases

CCEEB believes that the state Air Resources Board (ARB) has the authority under AB 32, as the state agency responsible for regulating GHG emissions, and authority under the CEQA statute to provide statewide guidance on the application of CEQA to projects. We encourage the District to adopt an interim threshold as part of its own CEQA Guide and to work with CCEEB and other stakeholders to urge the ARB to act and develop statewide guidance.

46-9

Better Define and Develop the "Community Risk Reduction Plan" (CRRP)

An earlier draft of the CEQA Guide was predicated on CEQA thresholds of significance differentiated between "impacted communities" and non-impacted communities. In the current Draft, district staff proposes to replace the use of differential thresholds of significance with the application of CRRPs. As we understand it, a qualified CRRP adopted by a local jurisdiction that includes enforceable measures to reduce community risks to acceptable levels would serve as a platform for the CEQA review of proposed development projects. This proposal appears to be a step in the right direction.

46-10

CCEEB is nevertheless concerned that the CRRP concept as presented is untested. CCEEB believes that a more thorough development of the concept should be available to the public before the Board is asked to adopt it. Among other things, the CRRP concept:

- Blurs the distinction between who adopts a plan (e.g., a city) and who enforces it (the city through land use controls or the District through emission controls?).
- How is "acceptable risk" determined? And by which entity or agency?
- How would the boundaries of a CRRP be determined?
- What happens if a community at risk spans more than one political subdivision?
- What happens when the emission sources that contribute to a community's health risk are located in a different political jurisdiction?
- What is the relationship between a CRRP and a local General Plan?
- How might a CRRP be funded?
- How might proposed development projects be evaluated before a CRRP is CEQA-certified? etc.

CCEEB wishes to offer its support in further developing this concept. The potential for such plans to encompass a broad range of factors contributing to public health risks holds the promise of being better suited to addressing cumulative impacts from multiple emission sources. As such, we encourage the District to engage Cal/EPA and U.S. EPA to determine whether the CRRPs might be able to leverage existing and future work on

cross-media and cumulative impacts by these agencies. Furthermore, Cal/EPA and U.S. EPA might be able to provide partial funding and other resources for any pilot. For example, Cal/EPA administers a small grant program that could help underwrite community organizations' participation in developing a CRRP. Likewise, U.S. EPA provides grants through its Community Action for Renewed Environment program for community-based partnerships to develop local environmental priorities.

One clear advantage of the CRRP approach is that, depending on how it is designed and its scope, it could begin to address *existing* problems in impacted communities. This has been a major hurdle for other approaches that place the regulatory burden on "last one in," i.e., new sources and new development projects, which tend to be more efficient and "greener" than existing facilities. The CRRP approach could also be designed to address both environmental impacts *and* factors that influence individual susceptibility, a much more comprehensive and integrative approach to improving public health.

Beyond the substantive issues noted above, CCEEB respectfully suggests that the CEQA Guide should be organized and presented in a manner that supports the implementation of not only CEQA but also the State's CEQA Guidelines. State CEQA Guidelines are very closely tied to current statute and case law and each section of the State CEQA Guidelines is supported by explicit statutory and case law references. CCEEB urges the District to consider formatting its CEQA Guide consistent with the State CEQA Guidelines by providing:

- An explanation of how provisions of the Guide and the State CEQA Guidelines work together;
- Appropriate citations of statutory authority and case law for each interpretation or application of CEQA in the Guide; and
- A discussion of the necessity for changes proposed in the District's CEQA Guide.

Clearly, we have many questions about the proposal. We would sincerely like the opportunity to meet with you and your colleagues to review these concerns.

Thank you.

Sincerely,



William J. Quinn
Vice President and Chief Operating Officer

cc: Mr. Henry Hilken
Members, CCEEB's Bay Area Partnership

46-10

46-11

Comment Letter #: 46

Date: October 26, 2009

From: William Quinn, Vice President, California Council for Environmental and Economic Balance

Response to Comments:

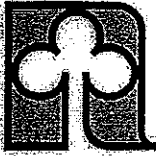
- 46-1 See Master Response MR-5.
- 46-2 The proposed GHG thresholds in the *Proposed Thresholds of Significance* report (November 2, 2009) are based on achieving the goals of AB 32 and actions included in ARB's Scoping Plan. See Master Response MR-3
- 46-3 Early on the Air District worked closely with the California Air Resources Board (CARB) to develop a statewide GHG threshold. However, it is our understanding that CARB's work on developing a statewide GHG threshold has been delayed or suspended. Given the increasing urgency to address the impacts of climate change, repeated calls for assistance from local Bay Area agencies on how to address climate change in CEQA analyses and the absence of direction from state agencies, the Air District feels it is appropriate and necessary to move forward with an interim CEQA threshold for GHG emissions. As stated in the *Proposed Thresholds of Significance* report (November 2, 2009), the proposed GHG thresholds are interim thresholds and will be revisited when CARB develops a statewide GHG threshold.
- 46-4 The updated CEQA Guidelines will provide a broad view of what Staff anticipates will be required in a Community Risk Reduction Plan (CRRP). Understanding that no such plans yet exist in the Bay Area, the Air District will initiate a public process to engage stakeholders in identifying steps and defining criteria for a CRRP. The public engagement process will work to answer the CCRP questions raised by the commenter. Staff will consider the commenter's suggestion to include Cal/EPA and US EPA in the engagement process.
- 46-5 The updated CEQA Guidelines will provide screening criteria for the GHG threshold. However, it is likely that very large projects would surpass the screening criteria, and without any implemented mitigation measures, may be found to have a significant impact on air quality. Compliance with existing regulations would not be considered mitigation for a project.
- 46-6 The updated CEQA Guidelines will contain numerous recommended mitigation measures to assist lead agencies in mitigating their project emissions to be less than significant.
- 46-7 The plan-level GHG threshold in the *Proposed Thresholds of Significance* report recommends that proposed projects be assumed to have a less than significant impact if they are consistent with: a an agency's qualified climate action plan; or consistent with similar criteria in an agency's general plans; or are consistent with a collective set of climate action policies, ordinances, and other projects that are consistent with AB 32. If a proposed project is consistent with any of the terms noted above, than its CEQA review would be expedited. This threshold is in line with the commenter's suggestion.
- 46-8 See Master Response MR-5.

46-9 See comment response 46-3.

46-10 See comment response 46-4.

46-11 The State CEQA Guidelines are California administrative law. The Air District endeavors to make the BAAQMD CEQA Guidelines consistent with the State CEQA Guidelines. In instances where BAAQMD CEQA Guidelines conflict with the State CEQA Guidelines, the State CEQA Guidelines prevail. The CEQA Guidelines and its appendices will provide citations of statutory authority and case law applications as appropriate. The *Proposed Thresholds of Significance* report (November 2, 2009), to be included as Appendix C in the updated CEQA Guidelines, contains a discussion of the necessity for the changes proposed in the CEQA Guidelines.

#47



CITY OF NEWARK, CALIFORNIA

37101 Newark Boulevard • Newark, California 94560-3796 • (510) 578-4000 • FAX (510) 578-4306

October 26, 2009

Greg Tholen, Principal Environmental Planner
Bay Area Air Quality Management District
939 Ellis Street
San Francisco, CA 94109
gtholen@baaqmd.gov

RE: COMMENTS ON DRAFT CEQA GUIDELINES

Dear Mr. Tholen:

We appreciate the opportunity to comment on the September Draft CEQA Guidelines. The City of Newark has serious concerns that these proposed guidelines would have the unintended consequences of undermining the regions efforts to develop in a more sustainable way. The location and density of development is critical in reducing not only green house gas emissions but other environmental and social impacts. The location of housing near job centers, in areas with developed public transit networks, at a density that promotes alternative transportation, is THE key factor in reducing greenhouse gas emissions. The proposed guidelines unfortunately do not effectively incorporate this important fact, and actually undermine the City of Newark's and the Region's efforts to address this important issue.

47-1

The proposed Guidelines:

- would not promote regional smart growth which is critical to achieving GHG reduction goals related to land use and transportation.
- would curtail the "infill-exemption" for many multi-family infill projects. This exemption is an important way to encourage regional development patterns that will lead to reduced per capita green house gas emissions.
- rely far too much on jurisdictions adopting enforceable Climate Action Plans for promoting overall policies to reduce GHG at a time when there are no resources available or clear metrics or standards for developing and measuring/modeling the efficacy of such plans.

Each of these issues is addressed below.

Regional Smart Growth

Regional development patterns are THE critical issue we must address if we are to accommodate the Bay Area's projected growth in a way that is consistent with achieving

47-2

GHG reduction goals. The draft BAAQMD guidelines, instead of recognizing at the beginning of the process the importance a project's location has on VMT and associated emissions, the draft guidelines treat all projects as if they had the same impact and then seek to mitigate it. The guidelines should define the location and development criteria that would limit or eliminate any need for air quality impact assessment, especially for GHG emissions. The guidelines should support and encourage, not undermine the efforts to locate development in the "right" places.

47-2

Each project and each plan, no matter how "green", will have local impacts. Those impacts may be significant on a local level, while at the same time providing significant regional benefits by efficiently accommodating growth with minimum air quality impacts. The proposed guidelines ignore such regional benefit. While the proposed guidelines indicate how each project and plan can reduce its impacts with specific measures, the most important benefit of smart growth is not localized or even limited to a few jurisdictions - it is regional.

Elimination of the Infill Exemption

In the proposed guidelines, the thresholds established for when a project may have a significant impact on green house gas emissions are identical whether a project is in a suburb distant from jobs and transit or next to thousands of jobs and well served by transit. Because, in the proposed guidelines, benefits derived from the location of projects are only applied as "mitigations", the thresholds in the guidelines become the standard for determining whether the infill exemption permitted under Section 15332 of the CEQA Guidelines can be used. That exemption is an important incentive for encouraging appropriate development patterns and this tool to reduce green house gas emissions should be should be utilized, not gutted.

47-3

Reliance on Climate Action Plans

The preparation of detailed Climate Actions Plans with clear, enforceable mitigations that can achieve specific measurable reductions is a laudable goal, but not a realistic one in the short to medium term. Thus the reliance of the guidelines on Climate Actions Plans to reduce the high cost of CEQA assessments of greenhouse gas emissions is an hollow promise. The proposed guidelines make assumptions about the state of local government's ability to produce community inventories and measurable (and enforceable) benefits of specific reduction measures that are not achievable without an unrealistic level of time and at a cost.

47-4

In addition local governments' ability to demonstrate future reductions from specific mitigation efforts is hampered by the lack of a standardized methodology and tools for doing so.

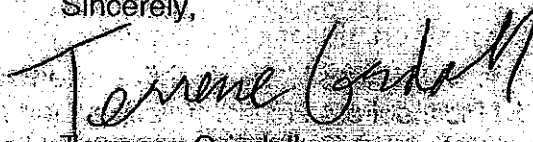
Conclusion

We respectfully request that BAAQMD not adopt new guidelines without first responding to comments, revising the guidelines, and then allowing for another round of review.

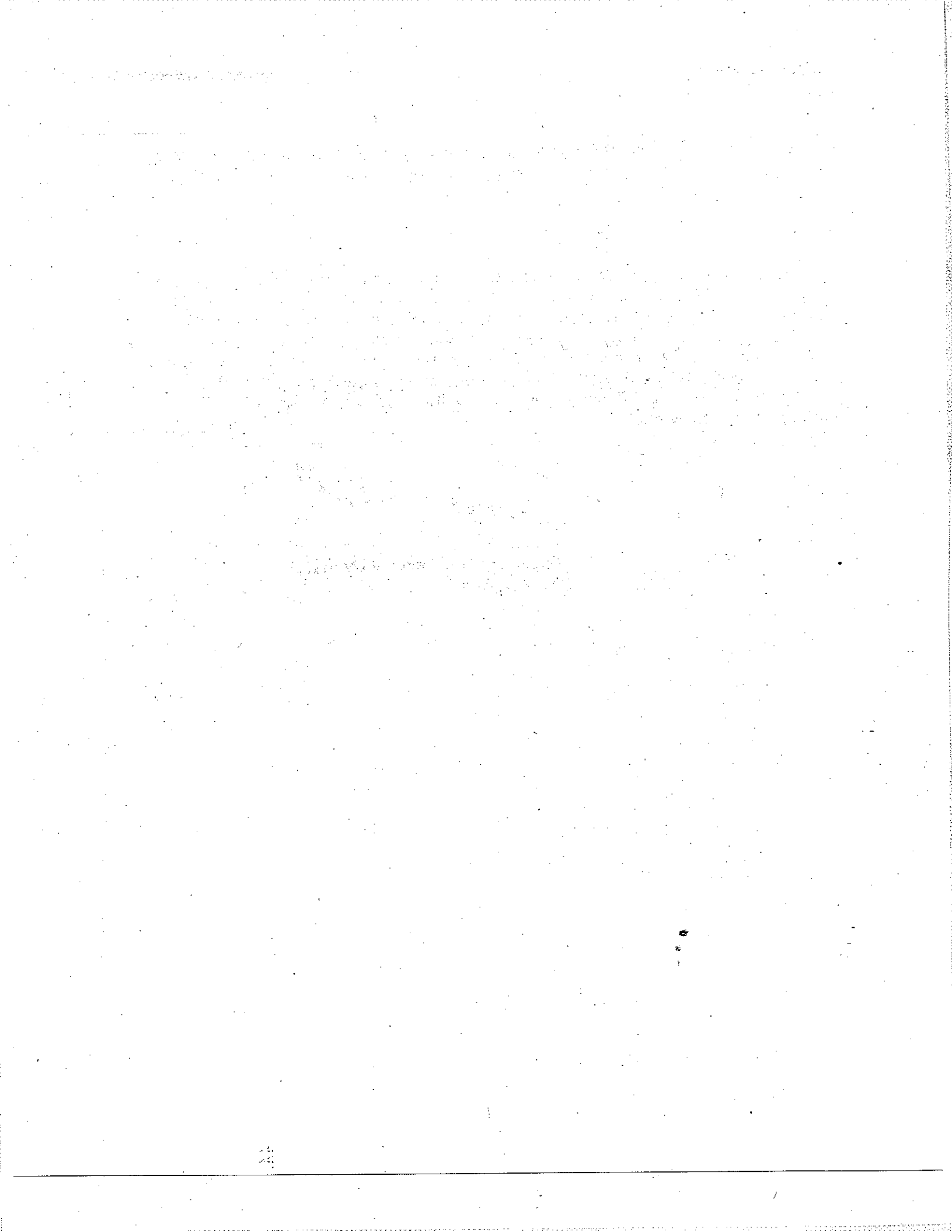
47-5

We applaud the District's efforts to be a leader on the issue of GHG reduction; however we believe that the draft guidelines are an unfortunate step backwards. We urge the district to carefully consider its underlying goals, and devise guidelines that can better meet those goals. In revising the guidelines, a focused technical advisory group directly involving staff from local jurisdictions might be an effective means of addressing the issues raised. City of Newark staff would be pleased to participate in such a process. We look forward to working with BAAQMD in revising the guidelines to address our mutual goals.

Sincerely,



Terrence Grindall
Community Development Director
City of Newark



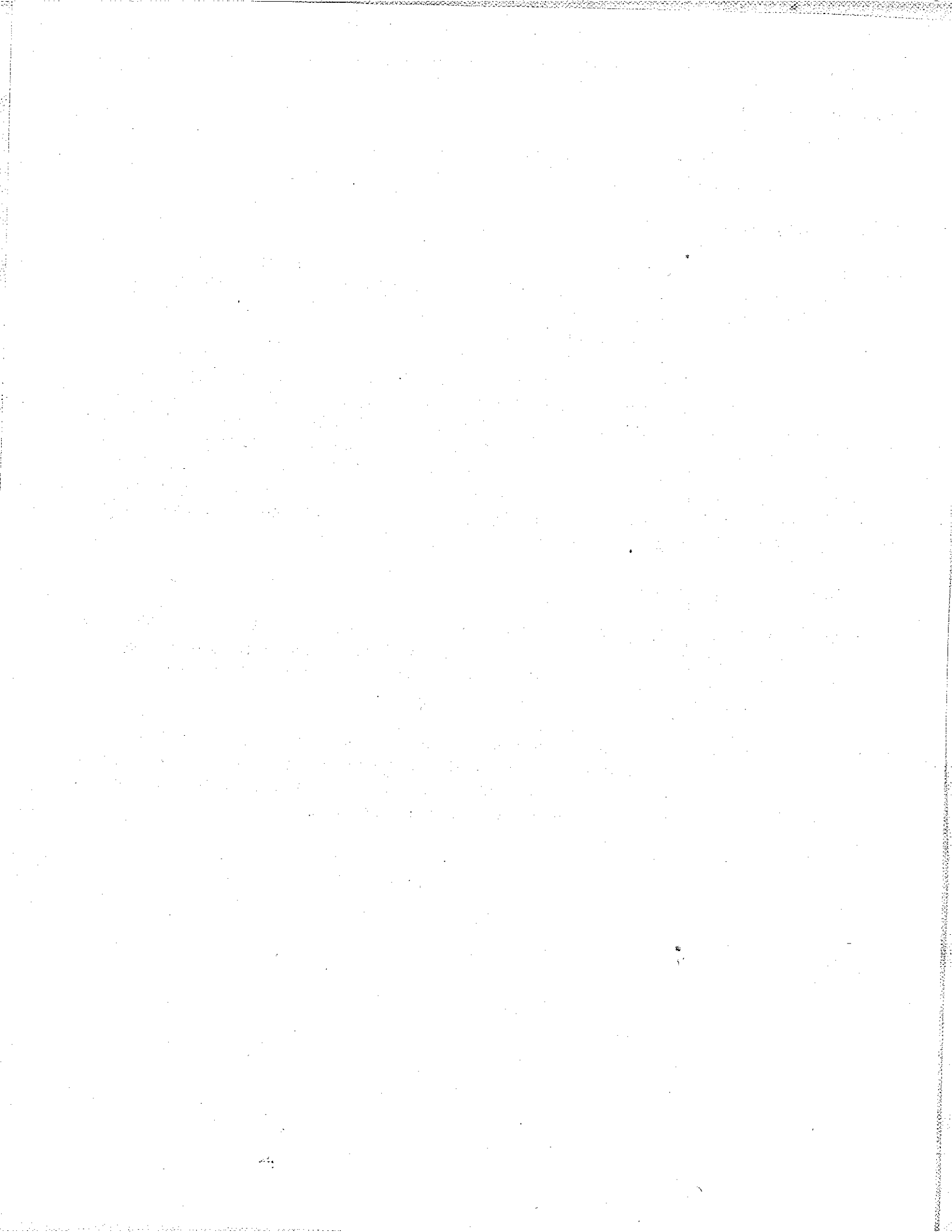
Comment Letter #: 47

Date: October 26, 2009

From: Terrence Grindall, Community Development Director, City of Newark

Response to Comments:

- 47-1 Comment noted. Air District staff believes the proposed thresholds of significance for GHG are appropriate given the serious consequences of climate change if left unchecked. The proposed thresholds encourage the type of land use development needed to help reduce the significant adverse effects we now experience from existing sources of GHG.
- 47-2 The screening tables provided in the revised CEQA Guidelines are not thresholds of significance and will not, based on the screening table alone, trigger a mandatory EIR. Rather, they are just screening levels to minimize the need for full analysis in situations where BAAQMD has determined no significant air quality impact would occur because Air District staff have modeled the screening level projects under very conservative assumptions and have determined that such projects will not exceed the applicable thresholds of significance. Most projects will have characteristics, such as nearby transit and services, which will reduce estimated emissions and allow a larger project than indicated in the screening table to be less than significant. Also see Master Response MR-2.
- 47-3 See Master Response MR-2.
- 47-4 The Air District acknowledges that many communities will not be able to develop climate action plans in the near future. Many communities have adopted climate-friendly ordinances, such as green building codes, that can be included in climate action plans. Development of climate action should demonstrate consistency with AB 32 at a minimum, and use the best available data.
- 47-5 Comment noted. Air District staff believes the proposed thresholds of significance effectively identify levels of development that should be considered significant for each impact area. The Air District has developed the proposed threshold and revised CEQA Guidelines through a long public review process. We encourage and welcome input from local agencies and the public.





October 26, 2009

Via Electronic Mail

Greg Tholen
Principal Environmental Planner
Bay Area Air Quality Management District
gtholen@baaqmd.gov

Re: Comments on October 2009 Revised Draft Options and Justification Report, California Environmental Quality Act Thresholds of Significance

Thank you for the opportunity to comment on the Bay Area Air Quality Management District's ("BAAQMD") Revised Draft Options and Justification Report on California Environmental Quality Act Thresholds of Significance ("Thresholds Report"). The Center for Biological Diversity ("Center") is a non-profit conservation organization dedicated to the protection of native species and their habitats through science, policy, and environmental law. The Center's Climate Law Institute works to reduce greenhouse gas emissions to protect biological diversity, our environment, and public health. The Center has over 42,000 members, many of whom reside in the Bay Area.

The Center appreciates BAAQMD's work in developing thresholds of significance for greenhouse gas impacts. As noted by the Air Resources Board in its Draft Proposal for a greenhouse gas threshold, any non-zero threshold "must be sufficiently stringent to make substantial contributions to reducing the State's GHG emissions peak, to causing that peak to occur sooner, and to putting California on track to meet its interim (2020) and long-term (2050) emissions reduction targets." (ARB, Recommended Approaches for Setting Interim Significance Thresholds for Greenhouse Gases under CEQA at 4 (Oct. 24, 2008).) As recognized by ARB, achieving the deep emission reductions necessary to avert the worst impacts of global warming will be all the more difficult if new projects continue to release additional greenhouse gas pollution into an already oversaturated atmosphere.

A stringent significance threshold for greenhouse gases is not only called for by the scientific and factual data on global warming,¹ but also serves to minimize litigation

¹ Attached are comments submitted by the Center to SCAQMD as part of its threshold development process detailing some of the scientific and factual data on global warming. In addition to the scientific studies referred to in these comments, the IPCC has estimated that to stabilize atmospheric greenhouse gas concentrations at 450 ppm CO₂eq, a level that is increasingly viewed as posing unacceptable risks of catastrophic climate impacts, developed countries would need to reduce greenhouse gas emissions to 25-40% below 1990 levels by 2020 and to 80 to 95% below 1990 levels by 2050. S. Gupta et al., *Policies, Instruments and Co-operative Arrangements, in CLIMATE CHANGE 2007: MITIGATION, CONTRIBUTION OF Arizona • California • Nevada • New Mexico • Alaska • Oregon • Montana • Illinois • Minnesota • Vermont • Washington, DC*

risk for lead agencies. CEQA requires that a lead agency must “still consider any fair argument that a certain environmental effect may be significant” even where a project complies with a regulatory threshold. *Protect the Historic Amador Waterways v. Amador Water Agency*, 116 Cal. App. 4th 1099, 1109 (2004). Because application of a threshold with limited effectiveness at reducing emissions would still result in significant environmental effects, reliance on a threshold that is not highly effective at reducing greenhouse gas emissions or is inconsistent with an emission reduction trajectory necessary to minimize the risk of dangerous climate change leaves projects open to legal challenge.

The Threshold Report appears to be a thoughtful effort to develop an appropriately stringent greenhouse gas threshold that would also provide additional certainty to lead agencies. We support the use of a stringent quantitative threshold of significance for greenhouse gases. We do, however, have serious concerns with the currently proposed use of a per capita metric to determine significance at the project level.

1. Application of a per capita standard at the general plan or climate action plan level

With regard to a plan level GHG Threshold option, the Threshold Report proposes a per capita metric for residential and mixed use development that is a tailored to a per capita target under AB 32 for 2020 from the land use sector.² Use of a per capita approach makes sense in the context of a climate action plan or general plan, which looks at the emissions collectively resulting from existing and planned development. As recognized in the Threshold Report, a per capita approach to determining significance at the plan level may be more appropriate than measuring emissions against 1990 levels, which may improperly relieve cities that have not grown since 1990 from their obligation to reduce emissions and unduly burden cities that have experienced rapid growth since that time. Were a general plan or climate action plan to demonstrate it meets this per capita level (with additional reductions occurring after 2020) and complies with the other requirements set forth in proposed CEQA Guideline § 15183.5, projects complying with the general plan or climate action plan could take advantage of CEQA’s streamlining provisions with regard to the analysis of greenhouse gas impacts.

48-1

2. Application of a per capita standard at the project level

The per capita metric used for general plans reflects average per capita emissions when both existing and new development is taken into account. Because older development tends to be less efficient per capita due to less stringent regulations and available technologies at the time of construction and siting that may not have prioritized proximity to jobs and public transit, new development must be more efficient and better

WORKING GROUP III TO THE FOURTH ASSESSMENT REPORT OF THE INTERNATIONAL PANEL ON CLIMATE CHANGE 776 (2007).

² The scaled-down per capita number appears to be derived from land use driven emissions discussed in Step 2 on page 41 of the Threshold Report. It would be helpful if the method by which this number was derived was more clearly articulated in Section 4.3.2.1 of the Threshold Report.

located than the community average in order for the community as a whole to achieve its overall per capita objectives. *Therefore, in the project-level context, there is no legitimate basis to apply the same per capita standard used to determine significance for a general plan as currently proposed in the Threshold Report.* If a per capita metric is to be used to determine significance at the project-level, it must be more stringent than that used to determine significance for a general plan or climate action plan.

48-2

The basis for a per capita project-level threshold seems to be to avoid additional barriers to highly efficient, well designed, and well located projects that are consistent with a low-carbon future. As described in the Threshold Report:

[A] large high-density infill project located in an urban core nearby to public transit and other alternative transportation options, and built using state-of-the-art energy efficiency methods and improvements such as solar panels, as well as all other feasible mitigation measures, would not become significant for greenhouse gas purposes (and thus require a statement of overriding considerations in order to be approved) simply because it happened to be a large project. Projects such as this hypothetical development with low greenhouse-gas emissions per capita are what California will need in the future in order to do its part in achieving a solution to the problem of global climate change.

(Threshold Report at 53.) Per capita emissions from the type of project described above would be much less than the per capita average for the community. For example, the EIR for the Sonoma Mountain Village Project, a proposed 200-acre mixed use, LEED-ND, solar powered, zero waste community, estimates per capita emissions at 2.7 tons (with total emissions under 10,000 tons). (DEIR, Sonoma Mountain Village, SCH # 2007052116 at 3.5-18, available at <http://www.ci.rohnertpark.ca.us/Modules/ShowDocument.aspx?documentid=2330#page=532>).

By failing to scale down the community wide per capita number for a project-level analysis, the Proposed Thresholds do not effectuate the intent of letting only well situated and well designed projects reach a less than significant determination if emissions are above the proposed 1,100 tons quantitative threshold. By applying the general plan per capita number as currently proposed, projects that do not have these attributes, are inconsistent with a low-carbon future, and perhaps not the type of project envisioned by BAAQMD as those properly taking advantage of this threshold can make a less-than-significant finding because they comply with community-wide per capita objectives consistent with near-term 2020 emission reduction targets. For example, Newhall Ranch, a massive proposed development on open space located on the fringe of Los Angeles County, far from jobs and public transit, calculated per capita emissions at 5.4 tons (with total project emissions over 340,000 tons). (Newhall Ranch DEIR/S at 8.0-58, available at <http://www.dfg.ca.gov/regions/5/newhall/docs/>.) If a per capita threshold is to be used at the project level, it should be set at a level no higher than one that captures the attributes of a very well-designed and well-located infill project so that it

does not inadvertently let projects without these characteristics claim that their greenhouse gas impacts are less than significant.

An additional concern with the per capita project-level threshold is that it has no upper bound on total project emissions. Thus, any project, regardless of its actual emissions, could be considered less than significant. Absent a programmatic analysis through a climate action plan or similar document, the notion that any quantity of emissions from a project is less than significant provided the project meets certain performance criteria is not supportable. Depending on community needs, a large project resulting in significant greenhouse gas emissions, though efficient on a per capita basis, may undermine community-wide emission reduction objectives. Were a large project consistent with qualified climate action plan as described under proposed Guideline § 15183.5, it could tier off this document and determine its greenhouse gas impacts are less than significant. However, because greenhouse gas emissions must be significantly reduced from existing levels to reduce the risk of severe climate impacts, there is no scientific basis to conclude that large new sources of emissions, when viewed in isolation without the support of a programmatic document, are not cumulatively considerable. Therefore, the proposed per capita threshold would be more defensible if it acknowledged that even if a project met a per capita objective, at a certain level of emissions, it could not legitimately conclude that its greenhouse gas emissions were not cumulatively considerable absent a demonstration of consistency with a qualified climate action plan.

An upper boundary on a per capita project-level threshold would presumably relate to the stringency of the per capita number. While it might be helpful to look at the most forward-thinking and sustainable developments in the Bay Area to formulate a per capita project-level threshold and upper limit to its application, the Sonoma Mountain Village Project would suggest that a per capita emission under 3 tons per person with an upper boundary of 10,000 tons of emissions may be appropriate.

3. Use of the phrase "fair share" in the Threshold Report creates needless ambiguity

Section 4:2.3.8 repeatedly uses the phrase "fair share" to describe the expectations of reductions from the land use sector under AB 32. As recognized in the Scoping Plan for AB 32, because local governments are "essential partners in achieving California's goals to reduce greenhouse gas emissions" they should do their part in ensuring that greenhouse gas pollution is reduced. (AB 32 Scoping Plan at 26.) However, characterizing the expectations for the land-use sector and the contribution of local governments as a "fair share" in the CEQA context is confusing and misleading. In CEQA "fair share" typically refers to a monetary contribution to a mitigation fund that is proportionate to the project's impact. *See, e.g., Anderson First Coalition v. City of Anderson*, 140 Cal. App. 4th 1173, 1187-88 (2005). While the concept of "fair share" is part of the consideration of the mitigation of project impacts, it has nothing to do with the determination of significance. In the context of a resource that is near or at capacity, the relevant question for the purposes of determining significance is the extent to which the

48-3

project contributes to the cumulative problem, not whether what the project is doing can be viewed as equitable in light of expectations for existing projects that also impact that resource. See *Kings County Farm Bureau v. City of Hanford*, 221 Cal.App.3d 692, 718-21 (1990) (relevant question in determining cumulative impacts of project on ozone "to be addressed in the EIR is not the relative amount of precursors emitted by the project when compared with preexisting emissions, but whether any additional amount of precursor emissions should be considered significant in light of the serious nature of the ozone problems in this air basin.") To avoid ambiguity, references to "fair share" in regards to reaching a determination of significance under CEQA should be removed from the Thresholds Report.

48-3

Thank you for your consideration of these comments. Please do not hesitate to contact Matthew Vespa at (415) 436-9682 x309 or mvespa@biologicaldiversity.org if you have any questions or concerns.

Sincerely,



Matthew Vespa
Senior Attorney

Attachment: Letter dated April 15, 2009 from the Center for Biological Diversity to South Coast Air Quality Management District re: Comments on Survey of CEQA Documents on Greenhouse Gas Emissions Draft Work Plan and Development of GHG Threshold of Significance for Residential and Commercial Projects.

cc: David Vintze
Sandy Crockett

Faint, illegible text, possibly bleed-through from the reverse side of the page.



April 15, 2009

Via Electronic Mail

Elaine Chang
Deputy Executive Officer
Planning, Rule Development, and Area Sources
South Coast Air Quality Management District
21865 Copley Drive
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**Re: Comments on Survey of CEQA Documents on Greenhouse Gas Emissions
Draft Work Plan and Development of GHG Threshold of Significance for
Residential and Commercial Projects**

This letter provides comments from the Center for Biological Diversity ("the Center") on the "Survey of CEQA Documents on Greenhouse Gas Emissions Draft Work Plan" as well as SCAQMD's continuing efforts to develop a greenhouse gas (GHG) threshold of significance for residential and commercial projects.

SCAQMD's survey of the GHG emissions from residential, commercial, and mixed-use projects should yield valuable data on the range of emissions resulting from these types of Projects in the South Coast air basin. Under the Work Plan, SCAQMD will use this data "to determine the level of GHG emissions for residential and commercial projects that constitute the 90th percentile ... or other percentile desired." (Work Plan at 1.) According to SCAQMD, a threshold based on the 90% capture of sector emissions is consistent with the long-term emission reduction objectives set by Executive Order S-3-05, which calls for emission reductions to 80% below 1990 levels by 2050, or 90% below current levels. (SCAQMD Interim GHG Significance Threshold Staff Proposal (revised), at 3-2.) Compliance with Executive Order S-3-05 targets is presumed to be sufficient "to contribute to worldwide efforts to cap GHG concentrations at 450 ppm, thus, stabilizing the climate." (*Id.*)

While the Center appreciates SCAQMD's recognition that a GHG threshold must be based on long-term climate stabilization objectives, the best available scientific data now indicates that the threats posed by even small increases in temperature are far greater than previously thought. Stabilization of greenhouse gas emissions at 450 ppm as contemplated under Executive Order S-3-05 is insufficient to minimize the risk of catastrophic outcomes. Therefore, the capture of 90% of emissions from the residential and commercial sectors, which is based on compliance with Executive Order S-3-05, is

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not a sufficiently stringent capture rate to sufficiently contribute to preventing dangerous climate change.

Importantly, while the emission reduction targets embodied in AB 32 and Executive Order S-3-05 can inform a significance determination, it is only to the extent that these targets accurately reflect scientific data on needed emissions reductions. Under CEQA, regulatory standards can serve as proxies for significance where they accurately reflect the level at which an impact can be said to be less than significant. *See, e.g., Protect the Historic Amador Waterways v. Amador Water Agency*, 116 Cal. App. 4th 1099, 1109 (2004).

To ensure that an adopted threshold of significant is an accurate reflection of scientific and factual data, this letter sets for the best available science on climate change. As set forth below, the best available science most strongly support a threshold of zero. The further a threshold is from zero, the more tenuous the evidence to support a determination that the threshold is effective at meeting the environmental objective of avoiding dangerous climate change. Framed in the context of SCAQMD's methodology, the further a threshold is from a 100% capture rate, the more tenuous the evidence to support a determination that the threshold is effective. Accordingly, in the event SCAQMD is unwilling to set a zero threshold, SCAQMD should consider increasing the capture rate beyond 90% and also require projects with emissions less than this threshold to adopt measures to reduce their GHG emissions before reaching a determination that project impacts are less-than-significant. A non-zero quantitative threshold – assuming it is sufficiently stringent – coupled with performance standards that projects under this threshold must adopt recognizes that all projects must be part of the solution to global warming and would seem to be more equitable and defensible than a bright-line non-zero threshold alone.¹

Finally, with regard to the Work Plan itself, it would be helpful to include data on emissions from categorically exempt projects. In the debate over an appropriate threshold of significance for GHGs, arguments have been forwarded that a low threshold would eliminate the application of categorical exemptions. Whether or not this is the case, actual data on the emissions typically resulting from projects invoking a categorical exemption would better inform this discussion.

1. A GHG Threshold That Purports to Be Consistent with Executive Order S-3-05 Emission Reduction Targets Is Insufficient to Prevent Dangerous Climate Change

CEQA calls for the identification of “any critical thresholds for the health and safety of the people of the state.” Pub. Res. Code § 21000(d). With regard to GHGs, this

¹ Were the District to adopt a non-zero threshold, a quantitative threshold that does not require projects under this threshold to take any action to reduce GHGs may also create an improper *de minimis* exception. *See, e.g., Communities for Better Env't v. California Resources Agency*, 103 Cal. App. 4th 98, 121 (2002) (“Focusing on the *de minimis* effect in absolute terms isolates the effect individually, and this runs counter to the combined approach that CEQA cumulative impact law requires.”).

critical threshold is avoiding dangerous anthropogenic interference (DAI) with the climate system. Article 2 of the United Nations Framework Convention on Climate Change (UNFCCC) calls for "stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference (DAI) with the climate system."² With the United States and over 180 other countries as signatories, the UNFCCC's objective of avoiding DAI with the climate is widely viewed as the international regulatory standard for protecting the global climate. The environmental objective of avoiding DAI is recognized in ARB's Draft GHG Threshold Guidance. (ARB Preliminary Draft Staff Proposal, Recommended Approaches for Setting Interim Significance Thresholds for Greenhouse Gases under the CEQA ("ARB Draft GHG Threshold"), Oct. 24, 2008 at 3.) In its Policy Objective for the Interim GHG Threshold for Industrial Projects, SCAQMD seems to set a roughly analogous objective of "reducing GHG emissions to stabilize climate change." (SCAQMD Interim GHG Significance Threshold Staff Proposal (revised), at 3-2.)

The policy objectives of both ARB and SCAQMD's threshold proposals both state that reaching the emission reduction targets set forth by Executive Order S-3-05, whereby emissions are reduced to 80% below 1990 levels by 2050, would contribute to avoiding dangerous climate change because these reductions are consistent with a pathway to the stabilization of atmospheric concentrations of GHG emissions at 450 ppm. (ARB Draft GHG Threshold at 3; SCAQMD Interim Threshold Proposal at 3-2.) Stabilization of GHGs at 450 ppm provides a 50/50 chance of limiting mean temperature rise to 2°C above pre-industrial levels.³

A pathway toward stabilization of GHGs at 450 ppm presents two serious concerns. First, the best available scientific evidence now indicates that a warming of 2°C is not "safe" and would not prevent dangerous interference with the climate system. Second, because the consequences of overshooting a 2°C threshold could include the displacement of millions due to sea level rise, irreversible loss of entire ecosystems, and the triggering of multiple climactic "tipping points" wherein climate change begins to feed on itself and spin rapidly out of control, the risk tolerance for overshooting a 2°C temperature rise should be extremely low. Yet a stabilization target of 450 ppm seems content to, at best, flip a coin in the hopes that future generations are not left with few choices beyond mere survival. While the emission reduction targets set forth under Executive Order S-3-05 is a significant improvement from business-as-usual, because these targets are insufficient to adequately minimize the risk of DAI, compliance with Executive Order S-3-05 is not a sufficiently stringent objective from which to develop a threshold of significance.

² United Nations Framework Convention on Climate Change, art. 2, May 9, 1992, available at http://unfccc.int/essential_background/convention/background/items/1349.php.

³ Union of Concerned Scientists, *How to Avoid Dangerous Climate Change: A Target for U.S. Emissions* 3 (Sept. 2007); Malte Meinshausen, *What Does a 2°C Target Mean for Greenhouse Gas Concentrations? A Brief Analysis Based on Multi-Gas Emission Pathways and Several Climate Sensitivity Uncertainty Estimates* in AVOIDING DANGEROUS CLIMATE CHANGE 268 (Cambridge Univ. Press 2006).

Projected risks and damages from global warming are more serious than believed even a few years ago. In 2001, the Intergovernmental Panel on Climate Change (IPCC) used five Reasons For Concern (RFCs) in its Third Assessment Report (TAR) to illustrate the temperature range at which impacts may be considered dangerous.⁴ Relationships between the impacts reflected in each RFC and increases in global mean temperature were portrayed in a “burning embers” diagram, which reflected the severity of risk from rising temperature through gradations in color from white (no or little risk) to yellow (moderately significant risk) to red (substantial or severe risk).⁵ Depending on the RFC, substantial impacts or risks (transition from yellow to red) occurred with a temperature rise from 1°C to 4°C from current levels.⁶

Since the release of the TAR, scientific understanding of the vulnerability of the climate to temperature rise has evolved considerably.⁷ Based on new findings in the growing scientific literature since the TAR was released, the burning embers diagram was revised in 2008 to reflect the dangerous risks posed by smaller increases in temperature than originally identified in the TAR.⁸ In the updated burning embers diagram, substantial impacts or risks now occur at or near current temperature levels for a number of RFCs.⁹ As reflected in the updated RFCs, a 2°C temperature increase from pre-industrial levels (or 1.4°C increase from 1990 levels) is well past the point where severe and irreversible impacts will occur.¹⁰

It is now estimated that a mean global temperature increase of 1.5°C above pre-industrial levels has the potential to trigger irreversible melting of the Greenland ice sheet, a process that would result in an eventual 7m sea level rise over and above that caused by thermal expansion of the oceans, and potentially causing an additional sea level rise of 0.75m, as soon as 2100.¹¹ Specific consequences of a 2°C temperature rise from pre-industrial levels include the loss of 97% of the world’s coral reefs and the transformation of 16% of global ecosystems.¹² At a 2°C temperature rise, approximately one to three

⁴ IPCC, CLIMATE CHANGE 2001: SYNTHESIS REPORT, SUMMARY FOR POLICYMAKERS 11 (2001). The five RFCs identified in the TAR are: 1) Risks to Unique and Threatened Systems; 2) Risks of Extreme Weather Events; 3) Distribution of Impacts; 4) Aggregate Impacts; and 5) Risks of Large Scale Discontinuities. *Id.*

⁵ *Id.*; Joel B. Smith et al., *Assessing Dangerous Climate Change Through an Update of the Intergovernmental Panel on Climate Change (IPCC) “Reasons for Concern,”* PNAS- PROCEEDINGS OF THE NATIONAL ACADEMY OF SCIENCES USA EARLY EDITION 1 (2008), available at <http://www.pnas.org/cgi/doi/10/1073/pnas/081235106>.

⁶ IPCC, *supra* note 4, at 11. The RFC’s assessed impacts from a baseline of 1990 temperature levels rather than pre-industrial levels. Because pre-industrial warming until 1990 was 0.6°C, an impact resulting from a temperature rise of 1°C equates to a 1.6°C rise from pre-industrial levels.

⁷ Smith, *supra* note 5, at 1, 5.

⁸ *Id.*

⁹ *Id.* at 5.

¹⁰ *Id.* 3.

¹¹ Rachel Warren, *Impacts of Global Climate Change at Different Annual Mean Global Temperature Increases* in AVOIDING DANGEROUS CLIMATE CHANGE 95 (Cambridge Univ. Press, 2006). Unlike the IPCC’s RFC, Warren assessed impacts from temperature rise from pre-industrial levels, not 1990 levels.

¹² *Id.* Indeed, given increased confidence that 1°C to 2°C increase poses significant risks to many unique and threatened systems, including many biodiversity hotspots, the updated burning embers diagram indicates substantial impacts and/or moderate risks from warming that has already occurred. Smith, *supra* note 5, at 5.

billion people would experience an increase in water stress, sea level rise and cyclones would displace millions from the world's coastlines and agricultural yields would fall in the developed world.¹³ In the Arctic, ecosystem disruption is predicted upon expectations of a complete loss of summer sea ice, with only 42% of the tundra remaining stable. This would destroy the Inuit hunting culture, cause the extinction of the polar bear and result in large losses in global bird populations. Moreover, because Arctic ice functions to reflect heat back into the atmosphere, its loss would allow more sunlight to heat the Arctic Ocean and further accelerate the buildup of heat and the melting of the Greenland ice sheet. As the devastating and irreversible impacts resulting from a 2°C mean global temperature rise are far in excess of any reasonable definition of DAI, limiting mean temperature rise to 2°C above pre-industrial levels is not a sufficient environmental objective for the purposes of developing a GHG significance threshold.

Specific impacts to California are also more dire than previously estimated. For example, in its most recent report, the Climate Action Team determined that the latest scientific findings indicate that "prior estimates [of sea-level rise] likely have been too low."¹⁴ Based on two recent models, "[b]y 2050, sea-level rise could range from 30-45 cm (11 to 18 inches) higher than in 2000, and by 2100, sea-level rise could be 60 to 140 cm (23 to 55 inches) higher than in 2000. As sea level rises, there will be an increased rate of extreme high sea-level events, which can occur when high tides coincide with winter storms and there are associated high wind wave and beach run-up conditions."¹⁵ Moreover, the rise in sea-level may be much higher than even these models predict because they do not account for the ice-melt contributions from the Greenland and Antarctic ice sheets and assume medium to medium high emissions scenarios.¹⁶

Not only are the climate impacts expected from a 2°C temperature increase far in excess of what should be considered "safe", but policies which propose greenhouse gas stabilization levels of 450 ppm CO₂eq present substantial risks of overshooting this target, thus exacerbating the problem. Equating a particular atmospheric concentration of greenhouse gases with a specific temperature increase involves a significant degree of uncertainty. This is because climate sensitivity – the extent to which temperatures will rise as a result of increasing concentrations of heat-trapping gases – depends on Earth's response to certain physical processes that are not fully understood.¹⁷ Thus, due to uncertainty in climate sensitivity, scientists estimate that the mean probability of exceeding 2°C where stabilizing greenhouse gases at a CO₂eq level of 450 ppm is 54% with a 30% probability that global average temperature would rise more than 3°C.¹⁸ At

¹³ Warren, *supra* note 11 at 98.

¹⁴ California Action Team, Draft Biennial Report (Mar. 2009) at 1.9.

¹⁵ *Id.* at 1.10.

¹⁶ California Climate Change Center, The Impacts of Sea-Level Rise on the California Coast, CEC-500-2009-024D (March, 2009) at 1.

¹⁷ See, e.g., Luers, Amy, Cayan Daniel, Franco Guido, Hanemann Michael, Croes Bart, California Climate Change Center, *Our Changing Climate: Assessing the Risks to California* at 4 (2006) CEC-500-2006-077.

¹⁸ Malte Meinshausen, *What Does a 2°C Target Mean for Greenhouse Gas Concentrations? A Brief Analysis Based on Multi-Gas Emission Pathways and Several Climate Sensitivity Uncertainty Estimates* in AVOIDING DANGEROUS CLIMATE CHANGE (Cambridge Univ. Press) (2006) at 268-69. Meinshausen operates under assumptions that do not roughly equate CO₂ eq with CO₂ concentrations. In *What Does a*

400 ppm CO₂eq, the mean probability of exceeding 2°C is 28%.¹⁹ If greenhouse gas emissions were stabilized at 350 ppm CO₂eq, the mean probability of exceeding 2°C would be reduced to 7%.²⁰

Properly accounting for climate sensitivity in climate policy is critical because, as dire as the projected impacts resulting from a 2°C mean temperature increase, increases above 2°C would result in impacts of apocalyptic proportions. If a 2-3°C increase in mean global temperature occurred, feedbacks in the climate system would cause a shift in the terrestrial carbon cycle. Currently, land-based carbon acts as a sink for CO₂, buffering the effects of anthropogenic climate change. If CO₂ concentrations continue to rise, this sink will become a source, owing to increased soil respiration, further exacerbating climate change. The most dramatic impacts will be a widespread loss of forests and grassland, including the Amazon rainforest, which would undergo a transition to savannah, triggering wide spread implications for local population, global biodiversity, and the global carbon cycle.²¹ At a global increase in temperature of 3°C above pre-industrial levels, many additional impacts in human and natural systems would occur in ways exponentially more devastating than those predicted for a 2°C temperature increase. Few ecosystems can adapt to such a large temperature rise: 22% would be transformed losing 7% to 74% of their extent.²² An additional 25 to 40 million people would be displaced from coasts due to sea level rise, an additional 1200 to 3000 million would suffer an increase in water stress and 65 countries would lose 16% of their agricultural GDP.²³

Based on the severe impacts already observed as well as future impacts and risks posed by additional warming to which we are committed due to inertia in the climate system, climatologists are increasingly concluded that current climate conditions already constitute DAI and that greenhouse gas emissions ultimately must be drawn down to net negative levels through the rapid phase-out of coal and improved forest and agricultural management.²⁴ Atmospheric concentrations of CO₂ have risen from a pre-industrial

2°C Target Mean for Greenhouse Gas Concentrations?, Meinshausen notes that 550 CO₂ eq roughly corresponds to a stabilization of 475 ppm CO₂ only. *Id.* at 269. In a second paper that appears to utilize the same assumptions, Meinshausen notes that 500 CO₂ eq is approximately equivalent to 450 ppm CO₂ stabilization, 450 CO₂ eq is approximately equivalent to 400 ppm CO₂ stabilization, and 400 CO₂ eq is approximately equivalent to 350-375 ppm CO₂ stabilization; Union of Concerned Scientists, *How to Avoid Dangerous Climate Change: A Target for U.S. Emissions* (Sept. 2007) at 3.

¹⁹ Malte Meinshausen, *What Does a 2°C Target Mean for Greenhouse Gas Concentrations? A Brief Analysis Based on Multi-Gas Emission Pathways and Several Climate Sensitivity Uncertainty Estimates* in AVOIDING DANGEROUS CLIMATE CHANGE (Cambridge Univ. Press) (2006) at 270.

²⁰ *Id.*

²¹ Rachel Warren, *Impacts of Global Climate Change at Different Annual Mean Global Temperature Increases* in AVOIDING DANGEROUS CLIMATE CHANGE (Cambridge Univ. Press) (2006) at 98-99.

²² *Id.* at 99.

²³ *Id.* at 96-97.

²⁴ James Hansen et al., *Target Atmospheric CO₂: Where Should Humanity Aim?* 2 OPEN ATMOSPHERIC SCIENCE J. 217, 226-27 (2008); see also Matthews H.D. & Caldeira, K., *Stabilizing the Climate Requires Near-Zero Emissions*, 35 GEOPHYSICAL RESEARCH LETTERS L04705 (2008) ("future anthropogenic emissions would need to be eliminated in order to stabilize global-mean temperature.").

concentration of 280 ppm to 383 ppm in 2007.²⁵ Annual mean global temperature has increased by 0.76°C relative to pre-industrial times and is increasing at a rate of 0.17°C/decade.²⁶ Impacts from this anthropogenic interference with the climate has already resulted in tens of thousands of climate-related deaths, species extinction, ocean acidification and loss of coral reefs, and the significant retreat of glaciers and sea ice. In addition to the impacts already observed, additional warming “in the pipeline” due to inertia in the climate system and their feedback loops will result in further increases in temperature posing significant risks of severe and irreversible impacts.²⁷ The climate is locked into anywhere from 0.3 to 0.7°C additional warming relative to late 20th century levels due to the eventual impacts of past historical emissions.²⁸ On account of additional warming to which we are committed, Ramanathan and Feng found that there is a “high probability that the DAI threshold is already in our rearview mirror.”²⁹ Similarly, on the basis of paleoclimate evidence and ongoing climate change, James Hansen and other leading climate scientists concluded the present CO₂ levels of 385 ppm are “already in the dangerous zone” and that “[i]f humanity wishes to preserve a planet similar to that on which civilization developed and to which life on Earth is adapted, paleoclimate evidence and ongoing climate change suggest that CO₂ will need to be reduced from its current 385 ppm to at most 350 ppm, but likely less than that.”³⁰ In looking at dangerous climate change through the lens of risk tolerance, Harvey concluded that, at a 10% risk tolerance, atmospheric CO₂ concentrations close to present levels “violates the UNFCCC” for a range of assumptions of climate sensitivity.³¹ Accordingly, as the climate change to which we are committed is already dangerous, there is little scientific basis to conclude that any new source of emissions is innocuous.

2. Conclusion

The Center appreciates SCAQMD’s continued work to develop a threshold of significance for GHGs. The Center urges SCAQMD to apply the data derived from the Work Plan in a manner that is consistent with the scientific and factual data on the emission reductions necessary to avoid DAI. See Guidelines § 15064(h). Given the

²⁵ Global Carbon Project, *Carbon Budget and Trends 2007* (2008), available at: <http://www.globalcarbonproject.org/carbontrends/index.htm>.

²⁶ Kevin E. Trenberth et al., *2007: Observations: Surface and Atmospheric Climate Change in CLIMATE CHANGE 2007: THE PHYSICAL SCIENCE BASIS, CONTRIBUTION OF WORKING GROUP I TO THE FOURTH ASSESSMENT REPORT OF THE INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE 252* (Susan Solomon et al. eds., Cambridge Univ. Press 2007).

²⁷ V. Ramanathan & Y. Feng, *On Avoiding Dangerous Anthropogenic Interference With the Climate System: Formidable Challenges Ahead*, 105 PNAS 14245, 14249 (Sept. 23, 2008); James Hansen et al., *Target Atmospheric CO₂: Where Should Humanity Aim?* 2 OPEN ATMOSPHERIC SCIENCE J. 217, 226 (2008).

²⁸ Michael E. Mann, *Defining Dangerous Anthropogenic Interference*, 106 PNAS 4065, 4066 (Mar. 17, 2009).

²⁹ V. Ramanathan & Y. Feng, *On Avoiding Dangerous Anthropogenic Interference With the Climate System: Formidable Challenges Ahead*, 105 PNAS 14245, 14249 (Sept. 23, 2008).

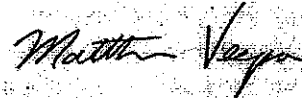
³⁰ James Hansen et al., *Target Atmospheric CO₂: Where Should Humanity Aim?* 2 OPEN ATMOSPHERIC SCIENCE J. 217, 217-18 (2008).

³¹ Danny Harvey, *Dangerous Anthropogenic Interference, Dangerous Climatic Change, and Harmful Climatic Change: Non-Trivial Distinctions With Significant Policy Implications*, 82 CLIMATE CHANGE 1, 20 (2007).

severe and irreversible impacts resulting from a 2°C mean global temperature rise and the significant risk that this temperature would increase beyond 2°C at GHG levels of 450 ppm, a stabilization objective of 450 ppm CO₂eq is far in excess of what can be considered safe. Accordingly, setting a threshold based on consistency with a 450 ppm stabilization target is inconsistent with CEQA's purpose to "identify any critical thresholds for the healthy and safety of people of the state." Pub. Res. Code § 21000(d). Because the 90% capture rate is based on the outdated presumption that compliance with Executive Order S-3-05 targets is sufficient to avoid dangerous climate change, SCAQMD should adopt a threshold for residential and commercial projects that captures a higher percentage of emissions and requires projects with emissions below this threshold to comply with performance standards.³²

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

Sincerely,



Matthew Vespa
Senior Attorney

cc: Steve Smith
Michael Krause

³² The 90% capture rate used for SCAQMD's industrial threshold purportedly reflected the practical concern that minimal mitigation was available for the types of projects (such as boilers) that fell under this threshold. These concerns do not apply to residential and commercial structures, where any number of mitigation measures are available for all sizes of projects to reduce GHG emissions.

Comment Letter #: 48

Date: October 26, 2009

From: Matthew Vespa, Center for Biological Diversity

Response to Comments:

48-1 Staff appreciates the positive comment.

48-2 Staff agrees that the project level efficiency-based threshold should not be the same as the plan level efficiency-based threshold. A review of an individual land use project only must consider the project's new land-use based GHG emissions, while a review of a general plan must consider GHG emissions from all sources covered under the plan, including existing sources and new sources from all sectors, including stationary sources. In response to this and similar comments and upon further review, Staff has re-analyzed the bases of the efficiency metrics for both plan-level and individual project review. Rather than calculate both efficiency metrics based on land-use sector GHG emissions only, Staff has calculated the plan level efficiency-based threshold based on all GHG emissions from all sectors allowable in 2020 to be consistent with AB 32 goals.

The revised plan level efficiency-based threshold is thus based on the mass of GHG emissions that is allowable in 2020 under AB 32 goals (1990 levels of emissions), divided by the total expected population and employment levels in 2020. The individual project efficiency-based threshold remains based on only land-use emissions allowable in 2020 under AB 32 goals (1990 levels of emissions), divided by the total expected population and employment levels in 2020.

This new analysis results in increasing the GHG efficiency threshold for plan-level review, thus rendering the individual project efficiency threshold more stringent than Staff's recommended efficiency threshold for plan level review. Staff proposes a GHG efficiency threshold of 4.6 MT CO₂e/SP, while for plan level review, Staff recommends a GHG efficiency threshold of 6.6 MT CO₂e/SP. Projects consistent with these efficiency metrics will be consistent with achieving AB 32 goals. Only the most well designed, GHG-efficient projects will meet the threshold and be considered insignificant.

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

48-3 Staff disagrees that it is inappropriate to use the term "fair share" in the analysis and justification of the proposed greenhouse gas thresholds. The commenter is correct that the term is often used in the context providing mitigation by contributing to a mitigation fund, but it can be used equally well in describing actual measures that the project itself will implement on the ground to reduce its emissions to a level that is less than cumulatively considerable and therefore not significant. This conclusion is clear from the language of CEQA Guidelines Section 15130(a)(3), which states that "a project's contribution is less than cumulatively considerable if the project is required to *implement or fund* its fair share of a mitigation measure or measures designed to alleviate the cumulative impact" (emphasis

added). This passage indicates that the Guidelines intended the “fair share” analysis – that is, whether a project is doing its part to resolve the cumulative environmental issue – to apply both in the context of a project *funding* a mitigation measure by contributing to a fund and in the context of a project actually *implementing* a mitigation measure by incorporating concrete measures into the project to reduce its emissions.

But regardless of the semantic issue of whether the term “fair share” is used in the analysis or not, the issue of whether a project will be significant or not ultimately turns on whether the project’s incremental contribution to the overall problem is cumulatively considerable. Where a project is being built consistent with achieving the AB32 goals and is therefore contributing to the solution instead of being part of the problem, that project can be considered less than “cumulatively considerable” regardless of whether the “fair share” terminology is used or not. “Fair share” provides a useful shorthand term to encompass the substantial amount of data and analysis that the District has incorporated into its proposed thresholds approach, as detailed in the documentation that that District has published, but ultimately it is the data and analysis that support the thresholds, not the terminology used to describe it. That data and analysis show that projects built consistent with the proposed thresholds will accommodate projected growth in the land use sector within the Bay Area between now and 2020 and still allow the sector to comply with its allocated proportion of California’s 2020 emissions target under AB32. Since these projects are doing their part to solve the problem of climate change, it makes sense to use terminology like “fair share” to summarize the data and analysis justifying why such projects will be less than significant.

Finally, it is worth clarifying one question that this comment raises regarding the “fair share” terminology. Staff agrees with the commenter that when looking at the significance of a new project’s emissions, the analysis must focus on whether their incremental addition is cumulatively considerable in light of the overall problem. The analysis should not focus on what is equitable in light of what has been achieved in the past by existing projects. For this reason, Staff has focused their analysis on emissions from new projects, and the greenhouse-gas efficiency thresholds that Staff are proposing reflect a better level of efficiency than seen in existing projects in the Bay Area. This was always Staff’s intent underlying the “fair share” analysis, and Staff take this opportunity to clarify to the commenters that this is what they intend when using the “fair share” terminology.

#49



October 19, 2009

Greg Tholen, Principal Planner
Bay Area Air Quality Management District
939 Ellis Street
San Francisco, CA 94109

RE: Proposed Changes to CEQA Guidelines

Dear Mr. Tholen:

As members of the Bay Area Ditching Dirty Diesel (DDD) Collaborative, including community residents of neighborhoods that face high levels of air pollution from trains and railyards, we offer the following comments on your proposed changes to CEQA Guidelines. DDD is a coalition of over twenty grassroots organizations, environmental and health non-profit groups, labor unions, and agencies, that advocates for the reduction of diesel pollution in the San Francisco Bay Area, particularly in low-income communities of color.

We believe that stringent thresholds should be established for Diesel Particulate Matter (DPM) and other fine particulates that have a significant impact on human health. We are pleased that you are proposing new PM_{2.5} guidelines for construction and project operations. We also believe that the CEQA Guidelines must account for the cumulative impacts of pollution from proposed new sources and on proposed new receptors. Your proposed guidelines in regards to cumulative impacts are a step in the right direction, and below we offer some proposed changes to strengthen these guidelines.

However, we are very disappointed that you have chosen to weaken thresholds of significance for siting new sources and receptors in designated Impacted Communities compared with what was in your earlier proposed guidelines. We believe that the increased burden from new sources of pollution on already impacted communities must be recognized, and that CEQA Guidelines are an important tool used by local entities to avoid increasing this already unjust excessive burden. The principles of Environmental Justice, as adopted by the State of California, demand the fair treatment of people of all races, cultures, and incomes with respect to the development, adoption, implementation, and enforcement of environmental laws and policies. From its inception, DDD has recognized that environmental justice communities in the Bay Area are overburdened with multiple sources of pollution and that addressing diesel pollution is just one part of the problem. Having identified certain areas within your jurisdiction as disproportionately impacted, having acknowledged the significant health impacts of fine particulate matter, and having confirmed that the cumulative impact of multiple sources of pollution on a single receptor

49-1

shouldn't be ignored, these principles demand that you propose updated CEQA Guidelines that take positive steps to address these injustices. To do otherwise would be grossly unfair, and would violate these Environmental Justice principles. Unfortunately, you have done just that by eliminating the proposal to require stricter thresholds of significance for new sources in designated Impacted Communities. We strongly urge you to reinstate stricter thresholds of significance for the priority communities you have identified.

49-1

As a related matter, the principles of Environmental Justice demand that for decisions such as this to be fair, disproportionately impacted communities must have the ability to fully participate in the decision-making process. The deadline to submit public comment for the earlier draft of the updated CEQA Guidelines was October 9. Replacing the proposed stricter thresholds of significance for designated Impacted Communities with weaker proposed guidelines the day before, on October 8, denied impacted communities the right to be fully heard. Your decision to change the proposed guidelines before receiving and considering all public comments was unfair and calls into question the credibility of your decision-making process. We hope that in the future you will allow for full participation by impacted communities in this very important decision that directly affects their health.

49-2

The proposed alternative to stricter thresholds of significance for Impacted Communities, the development of Community Risk Reduction Plans (CRRPs), does not adequately address significant impacts to human health in priority communities. First, it is unclear what jurisdictions are responsible for developing and certifying CRRPs. Second, the Air District has not developed specific guidelines (regarding thresholds of significance for PM_{2.5}, cancer risk, and non-cancer health risk) to ensure that CRRPs are health-protective. Further, it is unclear what recourse is available to the public if CRRPs are *not* health-protective. Lastly, and most significantly, lead agencies have no incentive to follow existing CRRPs or develop their own if CRRPs are to establish tighter health risk thresholds than those established by the Air District. Any and all measures or plans with the goal of reducing risk and exposure in Impacted Communities must be approved by and monitored for compliance by the Air District. Approval processes for measures and plans should explicitly include an opportunity for the public to review and comment on proposed plans, and appeal the issuance of certification and implementation.

49-3

While some good first steps have been taken to address the Environmental Injustice borne by many communities due to their disproportionate exposure to the toxic emissions, noise, and congestion from diesel trucks, trains, ships and construction equipment, we offer the following recommendations to strengthen the proposed CEQA Guidelines.

- 1) Reinstate stricter thresholds of significance for cancer-risk, non-cancer health risk, and PM_{2.5} in designated Impacted Communities.
- 2) Develop a methodology to account for cases where there are significant impacts from major sources of air pollution beyond 1000 feet from receptors. In section 1.2.4.2 of the *Draft Options and Justification Report*, the 1000-foot zone for assessing cumulative impacts on receptors may not be sufficient in all cases. For example, the CARB Health Risk Assessment for West Oakland determined that Port of Oakland operations generate 265 tons of diesel particulate matter per year, contributing significantly to potential cancer risk in the West Oakland community. Cancer risk isopleths in Figure D-2 (attached) illustrate that diesel pollution from port activities results in a cancer risk of 200

49-4

49-5

in a million up to 2 km (6,562 ft) from the Port boundaries. This level of cancer risk is already significantly higher than the risk threshold for cumulative impacts of 100 in a million in your proposed guidelines.

- 3) The definition of a source in the guidelines should be constructed to include "magnet" sources of diesel pollution such as warehouses, ports, rail yards, transfer stations, and recycling centers. All sources of DPM associated with these magnet sources need to be included in the calculations to determine the level of impact. 49-6
- 4) In section 1.1.4 of the *Draft Options and Justification Report*, the CEQA Guidelines should specify stringent T-BACT/BBP measures that any new project in Impacted Communities should take during the construction phase. For example, the CEQA Standards for Clean Construction developed by the NRDC are considered the "gold standard" and could be required by the CEQA Guidelines (see attached). 49-7
- 5) Since these proposed CEQA Guidelines contain significant new concepts and requirements, outreach and oversight plans should be developed to ensure that they are understood and are being followed by all lead agencies within your jurisdiction. 49-8

Updating BAAQMD's CEQA Guidelines provide a unique opportunity to execute an important objective of the Community Air Risk Evaluation (CARE) program: "develop and implement mitigation measures—such as grants, guidelines, or regulations—to achieve cleaner air for the public and the environment, focusing initially on priority communities." Ditching Dirty Diesel urges you to include the above outlined measures in order to prevent future increases and achieve significant reductions in diesel particulate matter and associated health risks.

We look forward to working with you and your staff to maximize health protections in the revised CEQA Guidelines.

Thank you.

Sincerely,

Ditching Dirty Diesel Collaborative which includes the following signatories and organizations:

Wafaa Aborashed, Healthy 880 Communities
Diane Bailey, Natural Resources Defense Council
Christine Cordero, Center for Environmental Health
Joel Ervice, Regional Asthma Management and Prevention
Margaret Gordon, West Oakland Environmental Indicators Project
Michael Kent, Contra Costa Health Services
Anna Yun Lee, Communities for a Better Environment
Karen Pierce, Bayview Hunters Point Community Advocates
Swati Prakash, Pacific Institute

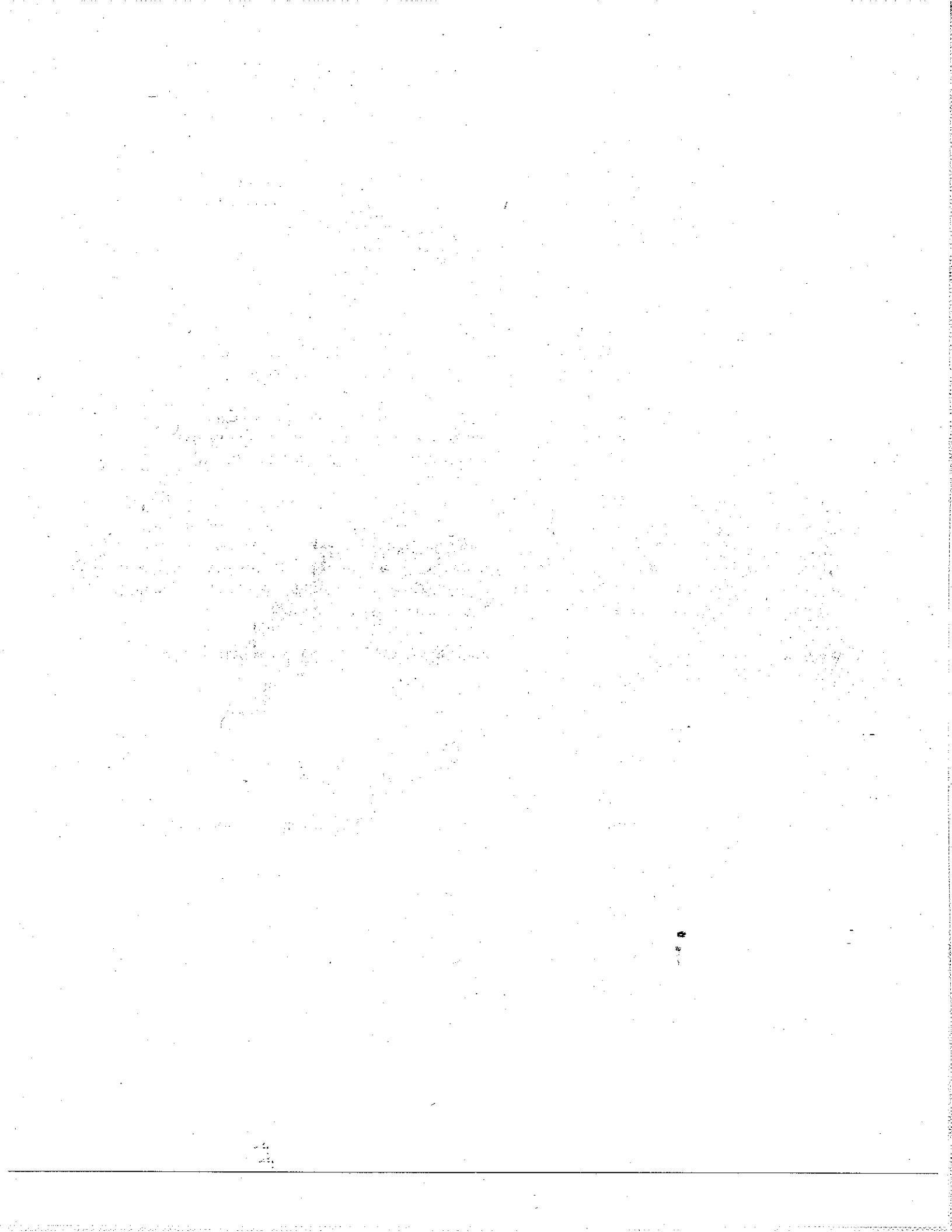
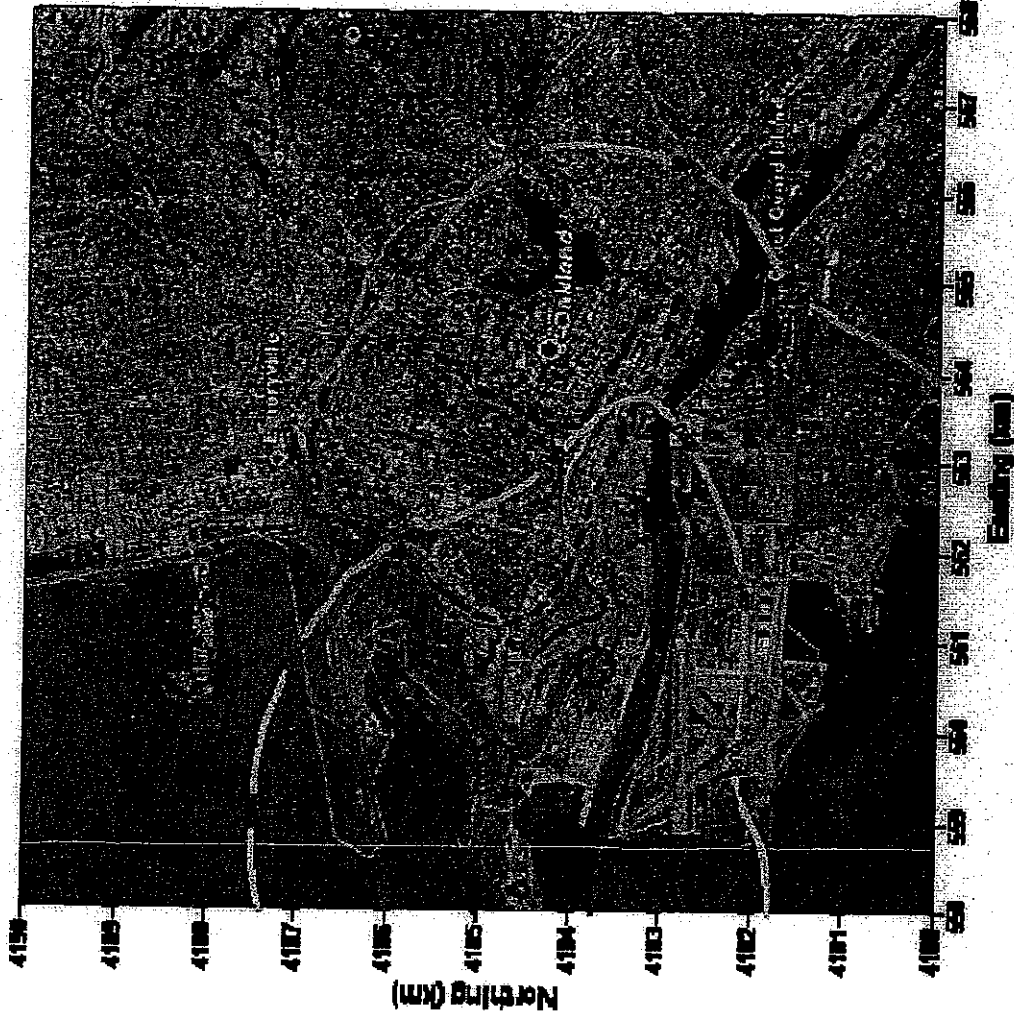


Figure D-2: Diesel PM Potential Cancer Risk Isoleth – All Activities from the Port (Part-I)



Di, Pingkuan. Diesel Particulate Matter Health Risk Assessment for the West Oakland Community. California Air Resources Board [2008]. Web. 19 October, 2009. (Page D-7, Appendix D)
<<http://www.arb.ca.gov/ch/communities/ra/westoakland/westoakland.htm>>

Comment Letter #: 49

Date: October 19, 2009

From: Ditching Dirty Diesel Collaborative

Response to Comments:

- 49-1 The Proposed Thresholds of Significance report (November 2, 2009), recommends a single community risk and hazards threshold for all areas in the Bay Area, including impacted communities. Staff agrees with several commenters that the problem of certain areas being disproportionately adversely impacted should be addressed as a cumulative impacts problem. Staff has revised the proposed thresholds to do so. Under staff's current proposal, areas that are disproportionately burdened with TAC emissions sources in the local vicinity will benefit from a cumulative analysis threshold that will require projects to evaluate the cumulative impact of all such sources within a 1,000 foot radius of the proposed project. This revised approach will provide a tool for lead agencies to carefully consider whether to site new sources or receptors in disproportionately burdened areas, without establishing different health risk standards for different segments of the population. In addition, the Air District believes that withdrawing the earlier, more stringent threshold, is also appropriate in light of using OEHHA's more conservative risk factors (substantially increasing estimated risk levels) and the addition of community risk reduction plans. Risk reduction plans provide a programmatic approach to the overall problem and can also address existing sources of risks and hazards and can require design standards of new development not always available through the CEQA process.
- 49-2 See Master Response MR-8.
- 49-3 The updated CEQA Guidelines will provide a broad view of what Staff anticipates will be required in a Community Risk Reduction Plan (CRRP). Understanding that no such plans yet exist in the Bay Area, the Air District will initiate a public process to engage stakeholders in identifying steps and defining criteria for a CRRP. The public engagement process will work to answer the CCRP questions raised by the commenter.
- 49-4 See response 46-1.
- 49-5 It is in the purview of the lead agency to decide to extend the risk evaluation from a fence line past 1,000 feet to include significant emission sources. The Air District recommends including very large sources located beyond the 1,000-foot zone of influence.
- 49-6 The Air District will be providing tables with estimated calculations of community risk and hazards from all permitted sources and major roadways in the Bay Area. In the long term, it is our intention to include risk tables for magnet sources as well.
- 49-7 The community risk and hazard thresholds have been modified in the *Proposed Thresholds of Significance* report (November 2, 2009) and no longer include toxic bet practices as part of the threshold. However, the updated CEQA Guidelines will strongly recommend them as mitigation measures. Staff will consider recommending NRDC's standards for clean construction in the mitigation measures as well.

49-8 Staff agrees with the commenter's suggestion and will initiate an outreach effort to assist stakeholders in using the CEQA Guidelines following future adoption of the proposed thresholds



SF Environment

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A Department of the City and County of San Francisco



#50

GAVIN NEWSOM
Mayor

DAVID ASSMANN
Acting Director

October 26th, 2009

Mr. Greg Tholen
Principal Environmental Planner
Bay Area Air Quality Management District
939 Ellis Street
San Francisco, CA 94109
gtholen@baaqmd.gov

On behalf of the San Francisco Mayors Office and Department of the Environment we would like to offer the following comment on your newly released Draft CEQA Guidelines. We acknowledge and applaud BAAQMD taking action to include greenhouse gas considerations in land use and transportation planning and working to set a high bar for GHG reduction policy that will work towards actualizing the ambitious and necessary goals of AB32. However, it is of critical importance that the right bar be set so that the cities and counties under your jurisdiction are further enabled in their in climate planning and emissions reductions. **BAAQMD should convene a series of stakeholder workshops to allow local planning professionals, modeling experts, and climate change staff to propose alternate methodologies to advance regional GHG goals without penalizing smart growth. We strongly urge BAAQMD to postpone adoption of any standards until convening with local planning agencies well-versed in the local land use and CEQA process.**

50-1

Technical concerns with the new Draft CEQA Guidelines have been expressed by the San Francisco Planning Department. We second these concerns and would like to add the following.

- **The proposed greenhouse gas (GHG) thresholds in the Draft 2009 Air Quality Guidelines Update are seriously flawed and should not be adopted in their current form.** As drafted, the thresholds would have unintended negative environmental consequences, undermining the ability of the Bay Area to meet its share of GHG reduction targets by increasing the regulatory obstacles to building high-density mixed-use development in transit-rich urban infill locations.
- **The proposed one-size-fits-all absolute numerical GHG threshold doesn't make sense.** While we understand they are meant to reflect the necessary reductions per AB32 targets they do so by assuming uniform reductions across sectors and are not specific to the land use and transportation sector allocations. Individual jurisdictions may already calculate project level or community level transpiration emissions via different models than the ITE. Finally numeric thresholds are problematic in that they don't consider relative density, location, mixed use,

50-2

50-3

proximity to other uses, alternative transportation and other local factors that work together to shape a projects lifetime carbon impact.

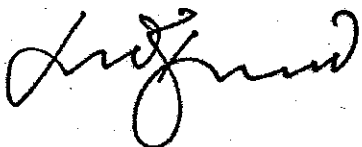
- **The proposed screening levels would trigger unnecessary and burdensome environmental review.** The screening levels (the point at which a land use project is presumed to have an impact) appear to be based on suburban assumptions of high auto trip generation and mode share rates. In other words, a 100-unit garden apartment project in an auto-oriented sprawling suburban location like Tracy is treated as equivalent to a 100-unit high-rise in downtown San Francisco. Screening levels need to be context sensitive. If enacted, the proposed screening levels would require modest mixed-use infill projects that would otherwise qualify for categorical exemptions to prepare expensive and lengthy negative declarations or EIRs. We would like to caution BAAQMD from creating further emphasis on upfront emissions projects and quantifications which can be overly burdensome, time consuming and prohibitively expensive. 50-4
- **Instead of focusing GHG emissions analysis on a quantitative threshold, a more appropriate approach may be to develop project-based reduction targets and standard mitigations.** There should be a mechanism by which projects can reduce their emissions by a percentage compared to "business as usual." BAAQMD states in its *Workshop Draft Options Report* that theoretically, if all land use projects reduced their emissions by 24 percent, AB32 land use goals would be met. Accordingly, there should be a mechanism for projects to reduce GHG emissions to less than significant by showing similar percentage reductions: perhaps 30 percent to account for projects not subject to CEQA, or 35 percent, since this is determined to be the highest feasible GHG reduction. This would give projects a real incentive to mitigate emissions rather than just concluding an impact to be significant and unavoidable. More research should be placed on standard mitigations. 50-5
- **Do not require CEQA Review of municipal Climate Action Plans.** As they are now municipal Climate Action Plans cannot act as the baseline for numerical project specific emissions impacts estimates or tracking. Community wide emissions inventories (which serve as the numerical basis for municipal Climate Action Plans) do not prescribe, or track reductions on a project by project or even policy basis, but rather track overall emissions by sector, sinks and material streams. This means that while a specific development project may have reduced its emissions below business as usual in compliance with AB32, a number of other factors may have caused community wide emissions to remain level or even increase. Furthermore the requirements that at a Climate Action Plan would have to meet under this option to house all climate related policies is prohibitive to the process of local government. A city's "green" or climate related policies do not live all in one place but are spread throughout city code in the many areas that affect climate; green building codes, recycling ordinances, energy efficiency and renewable energy financing and retrofit programs, urban forests and gardens, transportation agency plans and services, fleet fuel requirements, commuter benefit programs, community outreach programs, and education. All these programs and policies have come from unique forms of mandates, voter requirements, executive orders, committee recommendations and due public process. While the Climate Action Plans may point to these policies as the implementation pieces of the city's larger climate goals it would be organizational and politically infeasible for the CAP to prescribe (author) and house said policies. CAPs serve instead to enable these policies. *We urge BAAQMD to not require local Climate Action Plans be CEQA compliant and instead encourage BAAQMD to allow municipal flexibility in demonstrating compliance with AB32 goals, to house climate reduction specifications in General Plans and other project specific plans.* 50-6

- 1
- **Standardize Carbon Accounting.** Before any form of numerical thresholds can be established there needs to be a clear assignment of carbon accounting procedures so as to standardized baselines and sources of projected emissions across projects and jurisdictions. Our concern is that the current recommendations for the proposed thresholds will not achieve the desired results as they are based on what has heretofore been and remains today, a non standardized system of municipal climate planning and emissions accounting which does not, yet, have the robustness of standard planning models, does not, per AB32 integrate with the state inventory, and is still very much in development as our understanding of the science and our impacts continues to change. 50-7
 - **The proposed GHG regulations undermine the regional planning goals of SB 375.** SB 375 was enacted to align local planning for transportation, jobs and housing with regional policies to reduce the cumulative transportation and GHG emission impacts of growth. The absolute threshold would hinder the region's ability to take advantage of SB375's Sustainable Communities Strategy (SCS) provisions that encourage growth in lower-GHG-generating locations by granting exemptions from GHG analysis for transit-oriented projects that conform to locally-adopted plans that conform to a regionally-adopted SCS (CEQA Section 21151.1). Although it will take time to implement the SCS planning process, SB 375, unlike the proposed 2009 Guidelines, recognizes the importance of not just considering the land use type and square footage, but also taking into account location, density, proximity to transit and other factors affecting a project's contribution to GHGs. 50-8

Thank you for your time and consideration of this important and precedent setting matter. The City of San Francisco looks forward to working with the Air District to move regional climate policy forward and is a willing partner in our proposed stakeholder review process. It is critical that we get this right from the start and apply the knowledge we already have from our current climate and policy city planning work. The City recommends that the adoption of the Guidelines be postponed until a stakeholder review processes take place and public comment is incorporated.

Please contact Calla Rose Ostrander, Climate Action Coordinator at calla.ostrander@sfgov.org or 415 355-3785 if you have any questions.

Sincerely



Jared Blumenfeld
Director, San Francisco Department of the Environment
11 Grove Street,
San Francisco, CA 94102

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Comment Letter #: 50

Date: October 26, 2009

From: Jared Bluemenfeld, Director, San Francisco Department of the Environment

Response to Comments:

50-1 See master response MR-7.

50-2 See master response MR-2.

50-3 See master response MR-2 and MR-3.

50-4 See master response MR-2.

50-5 See master response MR-3.

50-6 OPR's proposed amendments to the CEQA Guidelines Section 15064.4 directs Lead Agencies to consider the following regarding consistency with a climate action plan:

(3) The extent to which the project complies with regulations or requirements adopted to implement a statewide, regional, or local plan for the reduction or mitigation of greenhouse gas emissions. Such regulations or requirements must be adopted by the relevant public agency through a public review process and must include specific requirements that reduce or mitigate the project's incremental contribution of greenhouse gas emissions. If there is substantial evidence that the possible effects of a particular project are still cumulatively considerable notwithstanding compliance with the adopted regulations or requirements, an EIR must be prepared for the project.

The Air District's recommendation that a climate action plan be vetted through the CEQA process is consistent with OPR's requirement for the plan to be adopted by the agency through a public review process.

The plan-level GHG threshold in the *Proposed Thresholds of Significance* report recommends for local governments that have not yet adopted a stand alone qualified climate action plan as defined by the CEQA Guidelines, they have the option to demonstrate that their collective set of climate action policies, ordinances, and other programs are consistent with AB 32. Demonstration of AB 32 consistency should be considered equivalent to a qualified climate action plan. In the case of demonstrating that a collective set of climate action policies, ordinances, and programs are consistent with AB 32, this would not qualify as a project under CEQA and would not need to go through CEQA review.

50-7 See master response MR-3 and MR-7.

50-8 See master response MR-3 and MR-5.



October 26, 2009

Greg Tholen, Principal Environmental Planner
Bay Area Air Quality Management District
939 Ellis Street
San Francisco, CA 94109
gtholen@baaqmd.gov

Subject: CEQA Guideline Update Comments

The City of Fremont wants to recognize the significant effort and time the Air District staff has expended in the comprehensive update of the 1999 CEQA Guidelines. The City and the Air District have the same long term goals of promoting sustainable development. The City has been a strong supporter of smart growth initiatives and sustainable practices that range from restrictions on hillside development to extending BART to Warm Springs and San Jose. Recently we have emphasized future sustainability by planning three infill areas for development as Priority Development Areas (PDA). As a City planning for infill and transit supported growth, we have concerns about both operational and temporary construction thresholds that are not supportive of regional goals of sustainability. A summary of our concerns includes:

51-1

1. Applicability to Categorical and Infill Exemption Projects
2. Temporary Construction Impacts Methodology
3. Penalty to Large Projects Versus Small Projects
4. Climate Action Plan Consistency

Infill Development

Supporting appropriate growth and sustainable development should be the priority of the draft guidelines. The City of Fremont concurs with comments from the City of Berkeley that the guidelines have the potential to undermine approval of desirable and long-term beneficial development projects by lengthening their evaluation. This would be a counter productive exercise of delaying infill projects and possibly deterring the undertaking of projects at all. There are many solutions to this issue as discussed by the City of Berkeley, we believe that at a minimum the scope of applicability should be modified.

51-2

We suggest the guidelines be revised to simply state they do not apply to exempt projects and that evaluation of project's location and features should occur before considering the application of mitigation measures. Projects consistent with the General Plan and a Climate Action Plan would not have a potentially significant impact



Construction Emissions

The new rules for temporary emissions associated with construction are disconcerting. We agree with the separate capture of construction and operational emissions. We disagree that evaluating construction emissions at the newly proposed project level is appropriate. Construction projects of all types and sizes are going on throughout the basin at any one time and are part of the background or baseline condition of air quality. The Air District analysis does not support extricating this particular background element of air quality as an individual project threshold. It does not stand to reason that doing multiple small construction projects or doing construction at a slower rate results in better air quality than a large project or a project that completes work quickly. Appropriate controls for construction are as an industry type, not as a project attribute. There does not appear to be a benefit of applying this type of threshold at this time.

51-3

The standard is also problematic when considering the screening thresholds alignment with proposed operational thresholds. It is impractical to consider that a project could have a temporary construction impact that requires an EIR when the completed project itself may not have an operational impact over the life of the project. Such a process for temporary impacts would be unacceptable to recruitment and retention efforts for economic development. Business timing and certainty are two of the most important attributes that a good planning and environmental review process can provide to allow the Bay Area to be competitive for new jobs and development. The City's recent experience in site selection exercises is that competition is not just within the air basin or California, but rather within the United States as a whole. It is unlikely that we could have retained a local solar panel manufacturing plant expansion project supported by the Governor and United States Department of Energy if the project schedule had included six additional months of review and complexity for a construction impact EIR. Adding this type of timeline to a shovel ready project would likely displace such project to another region. Limiting economic growth because of a temporary impact threshold is not an acceptable remedy for improving air quality in the long term.

51-4

Our recommendations are to consider construction impacts only when they are evaluated in conjunction with a project that has a potentially significant operational impact. Alternatively if a project construction threshold exists, we recommend replacing the proposed screening thresholds with the standards of CEQA Guideline 15206 (b) 2 A through E.

If a project has a potential long term operating impact it is good planning and environmental practice to consider the full effects of the project's implementation. This methodology is a practical approach to addressing air quality concerns for significant projects. While we do not believe construction emissions should stand alone, if they do remain then it is important to change the screening threshold to capture significant projects affecting the air basin. The proposed assumption driven thresholds create widely variable project area size capture that is unequal and overall too small. Furthermore, the local entitlement process often does not have the level of detail needed for these assumptions. It is much easier to implement a "bright line" threshold based on existing standards for regional issues. Relying on Guideline 15206 (b) 2 A-E for project size definitions will capture the projects that are of truly regional significance to the air basin. Using the regional project threshold also yields relative consistency with the screening thresholds proposed for ozone precursor operational impacts.

51-5



Project Size

We understand the draft guidelines were revised in October to include alternative metrics for evaluating plans and projects. Establishing an absolute value threshold is not consistent with the intent of AB32. We support the stated goal in the October report on page 38 for the guidelines to address a project's fair share of emission reductions. We want to state our support for recognizing the value of a per capita type measure of project impacts and support extending the service population concept to all types of employment uses, not just mixed use. We also support analyzing consistency with the Clean Air Plan through performance measures, rather than population growth alone. This approach fairly allows more infill development to occur when an opportunity arises to increase density appropriately. Promoting infill without additional regulation is critical to reaching everyone's goals.

51-6

However, there will be difficulty in applying an air basin wide metric once Climate Action Plans are approved locally. Language should allow for local substitution of a standard established by a General Plan or Climate Action Plan. Further it should be clear that regardless of project size or type that a project consistent with the General Plan or Climate Action Plan should not have consideration as a potentially significant source of emissions.

51-7

We support the use of performance and per capita types of metrics for evaluating projects and not penalizing large projects that operate efficiently. Furthermore, the guidelines should be clear that projects consistent with General Plans or Climate Action Plans are not potentially significant sources of emissions.

51-8

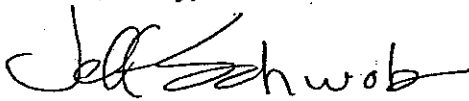
Climate Action Plans

The guidelines reference to Climate Action Plans is important, but may be unproductive at this time. Climate Action Plan protocols and methodologies are still under development and are highly localized in their assumptions and applicability to local actions. We support the City of Berkeley comment letter recommending additional work be undertaken around Climate Action Plans before finalizing the guidelines.

51-9

We thank the Air District for their attention to our concerns and their overall effort to promote improved air quality planning. The draft guidelines provide valuable expertise on the issue of air quality and health. We look forward to reviewing updated guidelines prior consideration by the Board.

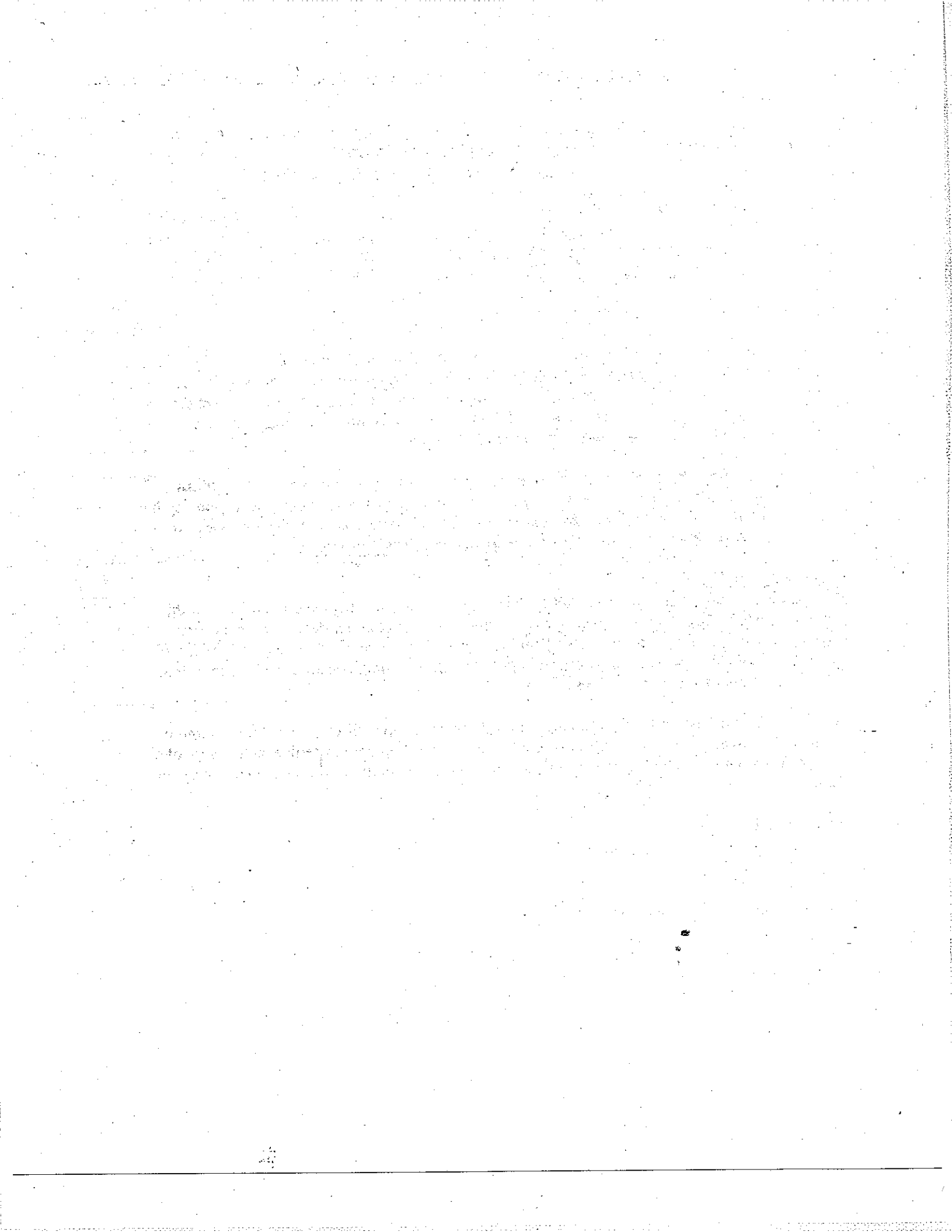
Yours Truly,



Jeff Schwob, Planning Director

cc: Jill Keimach, Community Development Director
Kelly Dickmann, Senior Planner





Comment Letter #: 51

Date: October 26, 2009

From: Jeff Schwob, Planning Director, City of Fremont

Response to Comments:

- 51-1 Comment noted. The Air District shares the long term goals of sustainable, health-protective development with the City of Fremont.
- 51-2 See Master Response MR-2. It is not within the authority of the Air District under CEQA to simply exempt a certain type of project such as infill development. If a project qualifies for an exemption under CEQA it is within the authority of the Lead Agency to claim the exemption.
- 51-3 The Bay Area has not attained the state ozone standard and anticipates being designated nonattainment of the new, lower national ozone standard. The Bay Area has also been designated nonattainment of the new, lower national PM_{2.5} 24-hour standard. These pollutants and their precursor emissions must be reduced if the Bay Area is to attain the standards. Every emission sector, where feasible, including construction activity, will need to contribute appropriate reductions. In addition, these pollutants, once emitted, stay in the atmosphere for several days and combine with other emissions to create unhealthy concentrations. Therefore, curtailing emissions on even a daily basis helps bring the Bay Area closer to attainment goals.
- 51-4 Temporary significant adverse impacts carry the same weight as long term impacts under CEQA. An adverse impact is not rendered less than significant simply because it is of short duration. Also see Master Response MR-1.
- 51-5 The screening tables provided in the revised CEQA Guidelines are not thresholds of significance and will not, based on the screening table alone, trigger a mandatory EIR. Rather, they are just screening levels to minimize the need for full analysis in situations where BAAQMD has determined no significant air quality impact would occur because Air District staff have modeled the screening level projects under very conservative assumptions and have determined that such projects will not exceed the applicable thresholds of significance. Most projects will have characteristics, such as nearby transit and services, which will reduce estimated emissions and allow a larger project than indicated in the screening table to be less than significant. The screening table for construction is a conservative estimate based on typical construction practices in the Bay Area. The proposed thresholds are expressed as a bright line based on emissions. It is not appropriate to base a threshold on the size of a project as the commenter suggests because the size of project is not the best indicator of its efficiency and potential emissions.
- 51-6 See Master Response MR-3. The Air District appreciates the commenter's support and recognition that the efficiency threshold for GHG is supportive of infill development. The Air District also appreciates the commenter's support of the Air District staff's proposed changes to the plan consistency threshold that encourages placing new growth and development in more dense urban patterns.

- 51-7 In response to this and similar comments, Air District staff's final proposed thresholds of significance recommend local jurisdictions adopt a qualified climate action plan *or similar criteria included in a General Plan* that is consistent with AB 32.
- 51-8 The Air District appreciates the commenter's support of the efficiency thresholds for GHG. The proposed thresholds of significance recommend that a Lead Agency may find that a project consistent with a climate action plan, or similar criteria included in a general plan, is less than significant for GHG emissions. However, the Air District cautions the commenter that the efficiency thresholds are not boundless. A project estimated to have very high GHG emissions may exceed a community's relative GHG "budget" and should also consider CEQA's fair argument standard that, despite consistency with and established threshold, if a fair argument is made that an impact may be significant an EIR should be prepared.
- 51-9 The Air District acknowledges that many communities will not be able to develop climate action plans in the near future. Many communities have adopted climate-friendly ordinances, such as green building codes, that can be included in climate action plans. Development of climate action should demonstrate consistency with AB 32 at a minimum, and use the best available data.

#52



Environmental Justice Air Quality Coalition • Immigrant Power for Environmental Health and Justice • Bay Area Clean Air Task Force • Contra Costa Asthma Coalition • Environmental Law and Justice Clinic • Regional Asthma Management and Prevention Initiative

October 26, 2009

Greg Tholen, Principal Planner
Bay Area Air Quality Management District
939 Ellis Street
San Francisco, CA 94109

RE: Proposed Revision to CEQA Guidelines for Air Quality Impacts

Dear Mr. Tholen:

In July 2008, the Board of the Air Quality District (District) resolved that the agency commits to continue to address the cumulative impact of new and existing mobile and stationary sources of air pollution—particularly in disproportionately impacted communities—for sources that on a relative basis contribute most to health risk at a local and regional level; and that the Board will continue to explore and consider additional actions to reduce cumulative impacts throughout the Bay Area and that these actions will include, but not be limited to the development of new tools and methods, potentially including regulatory approaches, to consider and reduce cumulative impacts for sources that contribute most to health risk at a local and regional level. This resolution is compatible with and furthers the intent of Environmental Justice policy previously adopted by the Board.

In keeping with the Board's directive, BAEHC sees the CEQA revision as a prime opportunity to reduce cumulative impacts for disproportionately impacted communities. As the CEQA proposal serves as Guidance rather than regulation, it provides the District a chance to set the bar as high as technically feasible.

Loss of Tiered Approach to Thresholds of Significance

BAEHC agrees that the District is attempting to propose a new CEQA Thresholds of Significance for Land Use Planning as a means to improve the air quality of disproportionately impacted communities. However, we feel that this effort has fallen short in several aspects detailed in this letter. Most importantly, BAEHC is dismayed that the September 2009 proposal with a Tiered Approach of more protective thresholds of significance for Priority Communities was eliminated *prior* to the date that public comments were due. Therefore, we had not yet submitted our comment to be on record in support of the Tiered Approach. At times like this, we wonder about the transparency of the policy-making process, and why the Board had not been given an opportunity to weigh in on the Tiered Approach as part of the public record.

52-1

Disproportionate exposure to environmental pollution contributes to disproportionate health disparities. The District's CARE Program has made excellent strides in identifying high priority areas within its jurisdiction where the highest levels of toxic emissions overlap with sensitive populations. These disproportionate impacts are an Environmental Injustice, and in accordance with the District's Environmental Justice policy, must be fairly accounted for with respect to the development, adoption, implementation, and enforcement of

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environmental laws and policies. To develop a CEQA policy that would acknowledge these disproportionate impacts, but that would not take affirmative steps to reduce these impacts, would have to be considered an unfair policy.

Establishing more stringent CEQA significance thresholds for sources in these priority areas is a fair and reasonable approach to addressing this Environmental Injustice. Requiring more stringent CEQA thresholds in the high priority areas allows for additional mitigation measures that will reduce the disproportionate exposure between people living in these areas and people living in the rest of the Bay Area.

Given the directives of the Board's Environmental Justice and Cumulative Impacts policies and the defective public comment process, BAEHC demands that District staff reinstate your earlier proposed thresholds for siting new sources in high priority areas and present this Tiered Approach for consideration by the District's Board of Directors.

Lack of Detail Provided for Health-Protective Requirements of Community Risk Reduction Plan Approach Prior to Due Date for Comments

BAEHC agrees that the District is proposing Community Risk Reduction Plans (CRRP) as a means to improve the air quality of disproportionately impacted communities. No detail has been provided that assures us that the health-protective criteria of a CRRP would be equal to or greater than the default Thresholds of Significance for those jurisdictions that do not adopt CRRPs, and that the defined cumulative impact thresholds would still be required. Due to the great potential for the CRRP mechanism to be abused as a loophole, the Guidelines should also clarify that the other important cumulative impacts thresholds will remain after adoption of a CRRP. It is unclear what public participation protocols would be required of local jurisdictions before the District's staff would approve their proposed CRRPs.

It is unclear how the District would be staffed to effectively monitor these CRRPs, all of which call for enforceable measures, but does not designate by whom they are enforceable. If these issues can be clarified and resolved, and CRRP is truly advantageous for protecting Impacted Communities, as suggested in the October 2009 revision document, then it should be required for land use development in impacted communities. In addition, a minimum standard for public participation should be established to gain approval for a CRRP, particularly in impacted communities.

BAEHC proposes that the guidelines established for CRRPs within Impacted Communities must strengthen the Thresholds of Significance for individual new sources and cumulative impacts, to result in no net increase in air pollution. Furthermore, the District should commit to technical assistance and loan and grant programs for pollution sources in the CRRP defined area for funding necessary mitigations, if this approach is to be considered acceptable.

Construction-Related Thresholds

We are in support of the District's first-time inclusion of Construction-Related Project-Level Thresholds of Significance, but we strongly assert, along with partner coalitions, Ditching Dirty Diesel and the Clean Air Task Force, that the proposed Maximum Daily Emissions (lb/day) thresholds for Construction-Related Particulate Matter (PM 10 and 2.5) are insufficient to protect against local risks to public health, and that a more protective threshold needs to be established for Impact Communities. Much of new land use development occurs in impacted communities, and the construction phase alone can last 5-10 years, allowing for a significant daily impact from construction equipment emissions. Use of best available control technology would be a cost

effective way to address a major source of toxic risk in the priority communities. The District's research in the CARE program found that construction equipment is 29% of the weighted cancer risk in the priority communities, and in some communities such as Bayview Hunters Point, it is even higher. Use of retrofits and higher tier engines can cut up to 85% of the fine particulate matter emitted, so adoption of toxic best practices could potentially result in a 25% reduction in cancer risk in the priority communities. Air Resources Board studies comparing the costs and benefits of requiring higher tier engines and retrofits showed a nine to one ratio of health benefits and industry costs, demonstrating that cleaner diesel equipment is an extremely cost effective measure.

Until Clean Construction Equipment is the required standard in Impacted Communities, these residents will continue to suffer disproportionate health impacts. Furthermore, there is no effective enforcement mechanism for monitoring the maximum daily emissions now included in the proposed CEQA thresholds.

Operational-Related Thresholds for Criteria Air Pollutants

We are in support of the District's first-time inclusion of Criteria Air Pollutants, and its effort to define thresholds for both siting a new source or receptor, as well as a cumulative significance criteria. **In addition to comments about enforcement of maximum daily emissions above, BAEHC urges that the Guidelines clarify that for specific exceptionally high-polluting sources, impacts between 1,000 – 2,000 feet should be considered based on the modeled impacts of these sources.**

Even in areas with annual attainment, particulate matter emissions provide significant health risks to local communities. For example, San Francisco received an "F" on the American Lung Association's 2009 *State of the Air Report Card* for 24 hour Particle Pollution for 14 days in the highest risk Orange zone. Quoting the Lung Association guide, "First and foremost, short-term exposure to particle pollution can kill. Peaks or spikes in particle pollution can last for hours to days. Deaths can occur on the very day that particle levels are high, or within one to two months afterward. Particle pollution does not just make people die a few days earlier than they might otherwise—these are deaths that would not have occurred if the air were cleaner." Particle pollution also diminishes lung function, causes greater use of asthma medications and increased rates of school absenteeism, emergency room visits and hospital admissions. Other adverse effects can be coughing, wheezing, cardiac arrhythmias and heart attacks. This Lung Association air quality indicator was projected to negatively impact close to 60,000 San Francisco residents with asthma and 230,000 residents with cardiovascular disease. We know that the eastern neighborhoods of San Francisco defined as Impacted Communities under the District's CARE Program have a disproportionate prevalence of these health impacts.

BAEHC proposed Pollution Reduction and Public Participation Protocols

While we support many of the concepts proposed by the District, BAEHC's position is that in Impacted Communities, an updated CEQA Guideline should prohibit new or modified pollution permits with the following exceptions:

Urgent Community Need: Projects that address urgent community needs could be exempt from the prohibition. Urgent community needs are defined as healthcare facilities, childcare and school facilities, affordable housing and grocery stores of appropriate scale to the neighborhood. For this exemption to be granted, BAAQMD must document strong community support for the project through implementation of a thorough public participation process as described in BAEHC's Public Participation Protocol.

Net Reduction in Emissions and Risk: Projects that result in a net decrease in emissions and health risk to nearby residents and sensitive receptors would be exempt from the prohibition. Offsetting reductions in emissions must be at least 120% of new emissions and must be on-site or in very close proximity to the new source. 52-5

To further protect impacted communities, we request that the updated CEQA Guideline include criteria and explanation of how local planning agencies and redevelopment commissions and their EIR consultants can use the "No Project Option" that presently exists under CEQA authority.

BAEHC also believes the CEQA Guidelines should direct Lead Agencies, consultants, and other parties to develop and implement outreach, public input and oversight plans to ensure that the significant new concepts and requirements are understood and are being followed in impacted communities. 52-6

Linkage to CARE Mitigation Action Plan

As the District initiated the CARE Program in order to develop and implement mitigation measures—such as grants, guidelines, or regulations—to achieve cleaner air for the public and the environment, focusing initially on priority communities, it is essential that the District's CEQA Guidelines complement and enhance the CARE Program's charge. Furthermore, the District Board has adopted both Environmental Justice and Cumulative Impacts policy resolutions which support the priority given to reducing cumulative air pollution impacts on environmental justice communities in the Bay Area that are already documented to be disproportionately impacted by multiple sources of air pollution (stationary, magnet, construction and mobile sources) and their associated health effects. Independently of the CEQA Guidelines update, we expect the Air Quality District to continue to develop both regulatory and other strategies that will reduce these cumulative impacts on the most highly impacted communities. 52-7

BAEHC is a regional coalition of over a twenty grassroots, environmental and health organizations and agencies that advocates for the reduction of cumulative air pollution impacts in the San Francisco Bay Area. Thank you for your careful consideration of our comments to the revised CEQA Thresholds of Significance proposal. We look forward to working with you to maximize health protections for impacted communities.

Sincerely,



Gordon Mar
Interim Campaign Director
Bay Area Environmental Health Collaborative

Attachments:

BAEHC Pollution Reduction Protocol
BAEHC Public Participation Protocol

cc: Members of Bay Area Air Quality Management District Board of Directors



Environmental Justice Air Quality Coalition • Immigrant Power for Environmental Health and Justice • Bay Area Clean Air Task Force • Contra Costa Asthma Coalition • Environmental Law and Justice Clinic • Regional Asthma Management and Prevention Initiative

Bay Area Environmental Health Collaborative
Proposed Bay Area Air Pollution Reduction Protocol
March 2009

Purpose

The following protocol presents an approach to reducing cumulative air pollution hazards in Bay Area communities exposed to disproportionate emissions of toxic and criteria air pollutants. It is intended to reduce pollution in highly impacted areas, prevent worsening conditions in other areas, and minimize disproportionate pollution burdens and impacts throughout the region.

The protocol is designed for implementation by the Bay Area Air Quality Management District (BAAQMD or District) and is limited to actions within BAAQMD's jurisdiction and under its broad authority to protect public health from the adverse impacts of air pollution. The protocol should be viewed as a key component of a comprehensive collaborative strategy to reduce adverse cumulative impacts on affected communities, involving other regulatory authorities and levels of governments as appropriate.

Under the protocol, BAAQMD would consider all forms of outdoor air pollution in assessing potential cumulative air impacts, and would place additional regulatory requirements on both new and existing point, area, and indirect sources in highly impacted areas, and in areas where residents are vulnerable to the adverse effects of pollution.

More specifically, BAAQMD would define "high," "medium" and "low" air hazard areas throughout the region, in addition to the "priority communities" the District has already identified through the Community Air Risk Evaluation (CARE) Program. BAAQMD would prohibit new point sources and air emission increases at existing sources in and affecting all CARE priority communities and other high hazard areas (commonly referred to as "highly impacted" or "hotspot" areas). In medium and low hazard areas, BAAQMD would restrict emissions increases to ensure that, in addition to protecting public health using a cumulative air impact analysis, pollution levels are prevented from deteriorating to the next level zone.

Second, BAAQMD would implement measures to influence local land use decisions beyond its authority where adverse cumulative air impacts would result from proposed projects. BAAQMD would create maps and develop appropriate guidelines for local land use permitting, in consultation with county public health and environmental health departments. BAAQMD would also participate in local land use proceedings where proposed projects could have an adverse cumulative impact on public health. In these proceedings, BAAQMD would recommend limiting or denying proposed use permits that would result in increased pollution exposures in CARE priority communities and other high hazard areas, and mitigation to avoid adverse cumulative health and environmental effects in medium hazard areas and areas with vulnerable populations.

52-8

Third, BAAQMD would develop a comprehensive pollution reduction strategy and timeline including promulgating new rules to reduce emissions from sources within its jurisdiction. The strategy would be developed with extensive public input. BAAQMD would consider a broad range of options. All feasible reduction and prevention measures would be implemented. In reducing emissions from existing sources, BAAQMD would require Best Available Control Technologies (BACT), and BACT updates would be promptly incorporated as new technologies become available.

BAEHC recognizes that in many cases, the bulk of the pollution hazard in any area may be from mobile sources. Therefore, the most appropriate regulatory response may frequently be to reduce pollution from mobile sources, including indirect sources. Given its limited direct authority over mobile sources, BAAQMD's regulatory efforts would in such cases be focused on reducing indirect source pollution.

Finally, the protocol utilizes a relative risk methodology to specifically address environmental inequities in neighborhoods that experience disproportionate emissions of air pollutants. It would require emission reductions regardless of the absolute value of health risk that is implied by these emissions. BAEHC realizes this is a departure from the typical regulatory approach of permitting air pollution exposures up to a specifically defined acceptable value of health risk. However, BAEHC points out that air pollution risks in highly impacted areas throughout the region are currently higher than acceptable levels and may already result in adverse health impacts. Therefore, the protocol could be implemented for some time without conflicting with current regulatory programs that are based on the standard risk assessment/risk management paradigm.

Definition of Terms

1. **Air pollutants or air pollution** refers to Toxic Air Contaminants, Criteria Air Pollutants, and emissions of any potentially harmful substances not currently listed as regulated pollutants.
2. **Highly impacted areas or hotspots** refers to high air pollution hazard areas as designated by this protocol – specifically areas identified as “priority communities” under the District’s CARE program and other areas classified as having high hazard potential. *Note:* The definition used in this protocol is more restrictive than the definition used in the proposed BAEHC Public Participation Protocol (March 2009).
3. **Vulnerability** means increased sensitivity or susceptibility to pollution hazards as a result of other social, economic, cultural or community factors that affect health risk and may lead to disparities, such as race/ethnicity, poverty, existing health status, level of civic engagement, etc.
4. **Indirect or magnet sources** are facilities or areas such as ports, railyards, distribution centers, freeways, large shopping centers, and heavy trucking corridors that attract a substantial number of vehicles that collectively produce significant levels of air pollution.
5. **Cumulative impacts** refers to the public health and environmental effects of the combined exposure to all types of substances, emissions and discharges in a geographic area, where people live, work, play, learn, etc. Cumulative impacts encompasses all types of health

hazards, whether single or multi-media, mobile or stationary, routinely, accidentally or otherwise released. It also includes consideration of vulnerability factors.

6. **Cumulative air impacts** refers to outdoor air pollution created by all types of air pollution sources, whether stationary, area, or indirect sources.

Protocol

1. **Priority Categories.** Using a cumulative air impacts approach, BAAQMD would categorize areas in the region according to air pollution hazard potential. The first classification would be areas identified as "priority communities" under the District's Community Air Risk Evaluation (CARE) Program. Other "high," "medium" and "low" hazard areas would be classified according to the methodology in Item 2 below. Air pollution categories would take into account mobile, stationary, area, and indirect or magnet sources, and both Toxic Air Contaminants (TACs) and Criteria Air Pollutants (CAPs).
2. **Method of Categorization.** Categorization of areas would be based on cumulative air pollution hazard potential, e.g., calculating the total risk-weighted air emissions in the target area. Areas would be designated to protect communities at the micro-scale (i.e., neighborhood blocks) and exposure to air pollutants would be evaluated at the street level. Both individual and population-weighted risk considerations would be used in the hazard assessment. BAAQMD would consult with county public health and environmental health departments to identify vulnerable populations and communities in need of greater protection. Vulnerability indicators would be incorporated into decision-making as effective methodology becomes available.
3. **Limits: CARE Priority Communities and High Hazard Areas.** In CARE priority communities and other high hazard areas, BAAQMD would limit emissions levels of all air pollutants under its authority. Any proposed additional exposures in or affecting such areas would be presumed to have a significant cumulative impact. No new pollution permits allowing new air emissions in or affecting these areas would be issued, nor would the District modify pollution permits to allow increased levels of air emissions from existing facilities. Pollution trading would not be allowed.
4. **Limits: Medium and Low Hazard Areas.** In medium and low hazard areas, and in areas with vulnerable populations, BAAQMD would limit new emissions of air pollution under its authority to ensure protection of the public and vulnerable populations from adverse cumulative air impacts. BAAQMD would consult with county health and environmental health departments to identify vulnerable populations and communities. In addition, BAAQMD would ensure that pollution levels are prevented from increasing to the next level zone – i.e., medium hazard areas would be prevented from deteriorating into high hazard areas, and low hazard areas would be prevented from deteriorating into medium hazard areas.
5. **Land Use Consultation.**
 - a) **Map and Guidelines**
 - i. **General.** Consistent with the classifications under the protocol, BAAQMD would publish maps designating areas with high, medium and low air pollution hazards, and identifying the CARE priority communities. The maps would identify vulnerable receptors and populations, which would be identified in consultation with county public health and environmental health departments.

52-8

The maps would be accompanied by a set of guidelines on appropriate potential land uses for each hazard category, consistent with this protocol. The maps and guidelines would be provided to local land use and planning agencies, and accompanied by educational outreach regarding their purpose and intent.

- ii. **CARE Priority Communities and High Hazard Areas.** For CARE priority communities and other high hazard areas, BAAQMD would recommend denial of any proposed project in or affecting the area that would not satisfy the requirements of Item 3 above.
 - iii. **Medium and Low Hazard Areas.** For medium and low hazard areas, BAAQMD would recommend denial or mitigation of any proposed project in or affecting the area that would not satisfy the requirements of Item 4 above.
- b) **Participation in Local Proceedings.** Where a project is proposed for approval by a local agency that would affect (i) a CARE priority community or other high hazard area, or (ii) a medium or low hazard area with vulnerable populations, BAAQMD would submit written comments, and where possible provide testimony, recommending denial of the use permit or mitigation where increased pollution or adverse cumulative exposures would result from the proposed project. BAAQMD would urge local entities to evaluate potential cumulative health and environmental impacts, including the effect of exacerbating existing conditions if the project is approved.

6. **Reductions.** BAAQMD would develop a cumulative air pollution reduction strategy and timeline to continually reduce emissions and eliminate disproportionate exposures in the region. Reductions in CARE priority communities and other high hazard areas and areas with vulnerable populations would be prioritized. The strategy would be developed with public input, including a series of public workshops,¹ and in consultation with local county public health and environmental health departments. The strategy would include a list of regulatory and other measures that would be taken to achieve reduction targets, including but not limited to the measures listed below. BAAQMD would consider a broad range of options. All feasible measures would be implemented. Special pollution reduction measures and/or shorter timelines would be required in highly impacted areas and areas with vulnerable populations. Measures for consideration would include:

- i. **indirect source rule** for new, modified and existing sources
- ii. **existing source rule**
- iii. **source specific rules** including more stringent production/emission limits for high risk sources
- iv. **update/revise "thresholds of significance"** to include cumulative air risk and impact criteria
- v. **require mitigation** in highly impacted areas
- vi. **require BACT for all existing sources**, including "grandfathered" sources
- vii. **update/revise BACT frequently** to incorporate less toxic alternatives and technologies as they become available

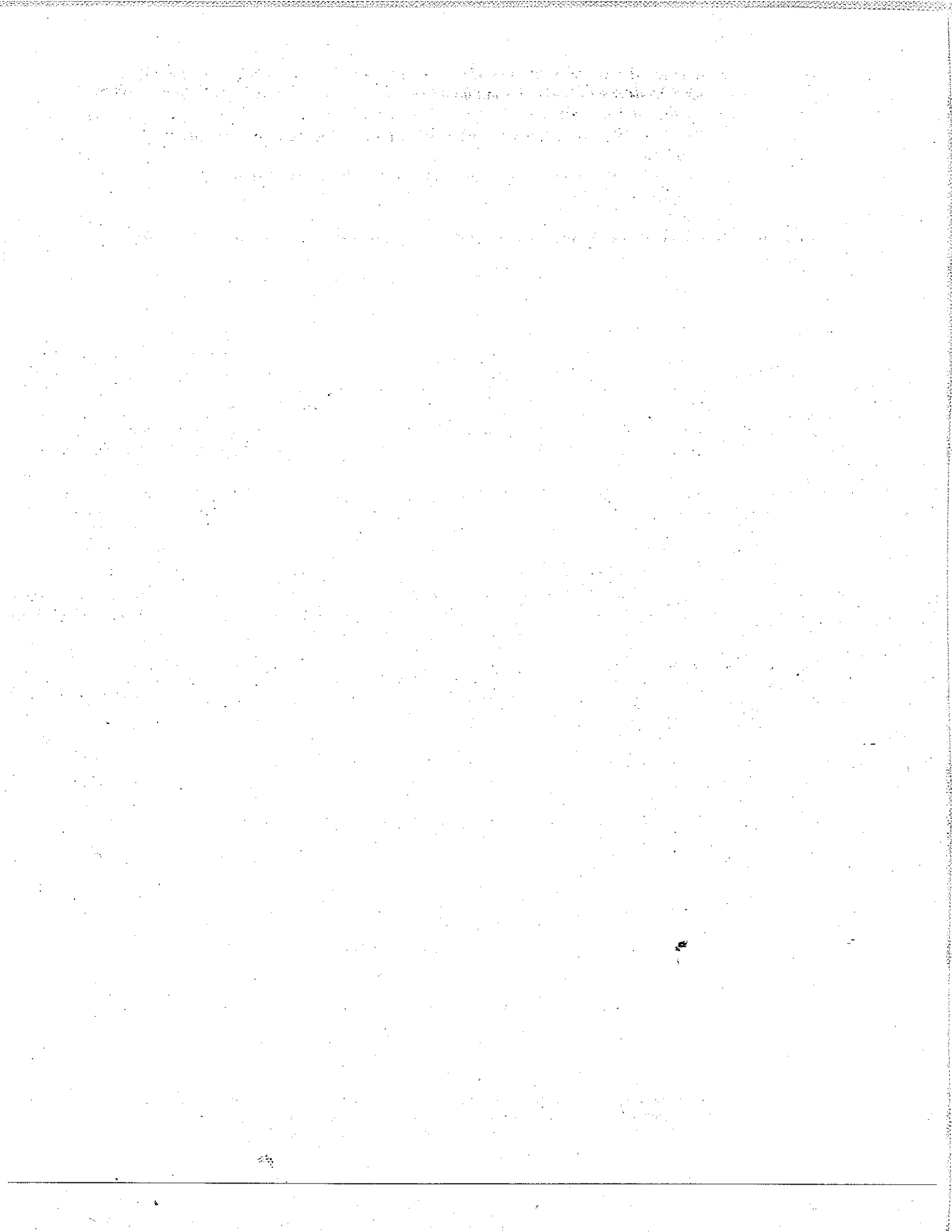
¹ This public process should include, but not be limited to, a series of public workshops and meetings in CARE "priority communities" and "high" hazard areas, as well as "medium" hazard areas with vulnerable populations. Outreach would be conducted consistent with the BAEHC Public Participation Protocol (March 2008) and Limited English Proficiency Proposal (Sept. 2008), and in consultation with relevant BAAQMD advisory bodies, committees, the CARE Task Force and CARE Cumulative Impact Working Group.

52-8

- viii. provide incentives and technical assistance for investment and transition to less hazardous technologies and materials
- ix. require energy efficiency audits and reporting
- x. increase enforcement activity in high impact areas, especially for repeat violators
- xi. increase enforcement activity for potential nuisance activities; make verification easier

52-8

7. *Updates.* Hazard potential areas and pollution reduction targets would be updated every three years.





Environmental Justice Air Quality Coalition • Immigrant Power for Environmental Health and Justice • Bay Area Clean Air Task Force • Contra Costa Asthma Coalition • Environmental Law and Justice Clinic • Regional Asthma Management and Prevention Initiative

Bay Area Environmental Health Collaborative
Proposed Bay Area Public Participation Protocol
March 2009

Purpose

For years, community leaders and public advocates have urged the Bay Area Air Quality Management District (BAAQMD) to improve its public outreach and participation to enable more effective community involvement in BAAQMD programs and decision-making processes. Towards this end, the Bay Area Environmental Health Collaborative (BAEHC) proposes the following Public Participation Protocol for adoption and swift implementation. This Protocol will aid BAAQMD in advancing its mission of achieving clean air to protect the public's health and the environment in the region, including development and implementation of protocols and policies to advance Environmental Justice goals.

Scope

The protocol focuses on public notice, comment and hearing procedures in air pollution permitting processes, but is also applicable to other regulatory actions. This protocol refers to two sets of BAEHC recommendations specifically formed to improve public outreach and participation in BAAQMD programs: the Limited English Proficiency Proposal (September 2008) and District Website Recommendations (December 2008).

Moreover, this protocol is designed to complement the proposed BAEHC Pollution Reduction Protocol (March 2009). BAEHC notes that the definition of the key term "highly impacted areas" in this document is more broad and inclusive than the BAEHC Pollution Reduction Protocol's definition of the same term, as the intent here is to expand opportunities for public access and participation in BAAQMD decision-making processes.

Definitions

1. Highly Impacted Areas

- A. *Highly impacted areas* include, but are not limited to, the following:
- i. Existing "*priority communities*" as designated under the Community Risk Evaluation (CARE) Program;
 - ii. Areas identified as *high hazard* under the BAEHC Pollution Reduction Protocol (March 2009);
 - iii. Areas that are the most heavily burdened by air pollution in: Southeast San Francisco, Richmond, Martinez, Benicia, East and West Oakland, San Leandro, East San Jose, Hayward, Pittsburg, Antioch, Hercules, East Palo Alto, East San Jose, and West Berkeley.
 - iv. Note: This shall be a working and expandable definition.
- B. To determine where additional highly impacted areas may be located, BAAQMD shall conduct a community-based and participatory process.

2. "Medium" and "Low" Hazard Areas

- A. BAAQMD shall define "medium" and "low" hazard areas consistent with the BAEHC Pollution Reduction Protocol (March 2009).

52-8

Proposed Protocol

1. Website Accessibility and Right-to-know
BAAQMD shall adopt BAEHC recommendations regarding website accessibility as outlined in the District Website Recommendations (December 2008).
2. Language Access for Limited English Proficiency Residents
BAAQMD shall adopt BAEHC recommendations regarding language access as outlined in the Limited English Proficiency Proposal (September 2008).
3. Outreach Implementation Plan
BAAQMD shall develop and implement an effective public outreach plan for each identified area to effectively determine the community's priorities and needs regarding public notice, outreach, and opportunities for participation.
 - A. **Public Workshops.** BAAQMD shall conduct a series of workshops in each target area, planned and coordinated in partnership with community organizations and interested residents. Through these workshops, BAAQMD shall determine the most appropriate form of outreach in each area, and shall identify additional outreach measures as appropriate. The objective is to gather information for BAAQMD to conduct efficient public outreach to prepare community residents for effective participation in BAAQMD proceedings.
 - B. **Notification List.** BAAQMD shall develop a notification list for each target area, including, but not limited to, public libraries, neighborhood and community centers, and local media, in addition to entities automatically added to the list and residents added by request (see Section 3.C and 4.B below).
 - C. **Information Repositories.** BAAQMD shall determine, in consultation with community residents, the best locations for repositories of public information including public notices and related permit documents.
 - D. **Public Record.** BAAQMD shall keep a public record of its outreach activities, including comments raised at public meetings and workshops.
4. Public Notice
 - A. **Highly Impacted Areas.** For all proposed permit and regulatory actions in *highly impacted areas*, BAAQMD shall provide adequate notice of availability of public documents and access to public proceedings for all proposed regulatory actions, including permit applications, public comment periods, public meetings and public hearings. All relevant documents shall be made available in a timely manner by the means identified through the outreach implementation workshops (see Section 5), and on the BAAQMD website.
 - B. **Adequate Notice.** To fulfill adequate public notice requirements, BAAQMD shall, in addition to fulfilling existing legal requirements regarding public notification (e.g., per BAAQMD Reg. 2-1-412 2-6-412, and under CEQA), provide public notice of any proposed permit or regulatory action:

52-8

- i. *Within a Geographic Boundary.* Notice shall be provided to all residents, property owners, organizations and businesses within 3,000 feet of a site at which regulatory action is proposed.
- ii. *In Accessible Language.* Notice language and permit documents shall be readily accessible in easily understandable language, in addition to the recommendations in the BAEHC Limited Proficiency Proposals (September 2008).
- iii. *By Request.* Any member of the public can request to be on a "public notification list" to receive public notices, in a method of her or his choosing,¹ for all BAAQMD permit applications and proposed regulatory actions for any facility or facilities in a geographic region (e.g., by zip code, city, county, or district-wide) or the region as a whole.
- iv. *Automatically to Certain Entities.* When the public notice requirement is triggered, in addition to entities required by law and identified by request, BAAQMD shall automatically provide adequate notice to environmental health and justice organizations and neighborhood associations identified through the outreach implementation plan.

C. **Neutral Language.** BAAQMD shall provide neutral language in public notices and permit documents.

- i. *Proposed Actions.* BAAQMD notices shall clarify that the proposed actions under consideration are proposed, not final, and that public comment is sought on proposed actions.
- ii. *Unbiased Language.* BAAQMD notices shall use neutral and unbiased language and shall not rely on industry marketing materials or industry claims as the basis for proposed decisions.

5. Public Comment

- A. **Comment Periods.** To fulfill public comment requirements, BAAQMD shall, in addition to fulfilling existing legal requirements regarding public notification and comment (e.g., per BAAQMD Reg. 2-1-412 2-6-412, and under CEQA), provide a public comment period for any proposed permit or regulatory action, as follows:
 - i. *Highly Impacted Areas.* In highly impacted areas, BAAQMD shall provide a mandatory public comment period of at least 30 days for all proposed permit actions, consistent with the BAEHC Pollution Reduction Protocol (March 2009).
 - ii. *Medium and Low Hazard Areas.* In "medium" and "low" hazard areas, BAAQMD shall provide a public comment period of at least 30 days for all upcoming permit actions, if requested by a member of the public.
- B. **Response.** Before a final decision is made, BAAQMD shall respond in writing to all public comments made during the public comment period or at public meetings on proposed proceedings. All comments and responses to comments shall be posted on the BAAQMD website in a timely manner.
- C. **Public Record.** BAAQMD shall keep a public record of all comments raised during permit proceedings, and BAAQMD responses.

¹ Including by E-mail, U.S. Postal Service, telephone, or other methods as determined by the outreach implementation plan.

6. Public Hearings

- A. **Highly Impacted Areas.** BAAQMD shall hold a public hearing for all proposed regulatory actions in or affecting highly impacted areas.
- B. **Medium Hazard and Low Hazard Areas.** In medium and low hazard areas where a public hearing is not already planned, BAAQMD shall hold a public hearing upon request or when concern is raised by any of the following parties, even if the site is not in a CARE priority community or other high hazard area: 52-8
- i. *Residents.* A group of five residents
 - ii. *Organization or Association*
 - iii. *Individual Member of the Public.* A member of the public raises a legitimate concern during the public comment period.
- C. **Accessibility of Public Hearings and Informational Meetings.** Public hearings and public informational meetings shall be held in the affected area and at a convenient time and place in order to maximize community attendance and the public's ability to participate. The desired times and locations shall be determined through the public workshops in the outreach implementation plan.
- D. **Demolition, Remediation, Clean-up Activities.** Where demolition, remediation, or clean-up activities are planned and subject to BAAQMD jurisdiction, BAAQMD shall hold a public hearing in the affected area after conducting outreach through the means identified in the outreach implementation plan (see Section 5). Residents shall be informed about proposed activities including BAAQMD oversight and enforcement, and shall be given an opportunity to provide input.

Comment Letter #: 52

Date: October 26, 2009

From: Gordon Mar, Bay Area Environmental Health Coalition

Response to Comments:

- 52-1 The Proposed Thresholds of Significance report (November 2, 2009), recommends a single community risk and hazards threshold for all areas in the Bay Area, including impacted communities. Staff agrees with several commenters that the problem of certain areas being disproportionately adversely impacted should be addressed as a cumulative impacts problem. Staff has revised the proposed thresholds to do so. Under staff's current proposal, areas that are disproportionately burdened with TAC emissions sources in the local vicinity will benefit from a cumulative analysis threshold that will require projects to evaluate the cumulative impact of all such sources within a 1,000 foot radius of the proposed project. This revised approach will provide a tool for lead agencies to carefully consider whether to site new sources or receptors in disproportionately burdened areas, without establishing different health risk standards for different segments of the population. In addition, the Air District believes that withdrawing the earlier, more stringent threshold, is also appropriate in light of using OEHHA's more conservative risk factors (substantially increasing estimated risk levels) and the addition of community risk reduction plans. Risk reduction plans provide a programmatic approach to a localized problem, address existing sources of risks and hazards, and require design standards of new development not always available through the CEQA process.
- 52-2 The updated CEQA Guidelines will provide a broad view of what Staff anticipates will be required in a Community Risk Reduction Plan (CRRP). Understanding that no such plans yet exist in the Bay Area, the Air District will initiate a process to identify steps and defining criteria for a CRRP. The process will work to answer the CCRP questions raised by the commenter. In addition, the commenter's subsequent comments regarding reducing emissions in impacted communities could serve as guidance in defining a CCRP. District Staff will consider these comments in the CCRP development process.
- 52-3 The Air District encourages cities and counties to develop community risk reduction plans. Such plans would be the appropriate place to recommend clean construction equipment as a required standard in impacted communities.
- 52-4 It is in the purview of the lead agency to decide to extend the risk evaluation from a fence line past 1,000 feet to include significant emission sources.
- 52-5 As part of the proposed community risk and hazard threshold, the Air District encourages cities and counties to develop community risk reduction plans. If projects, as the ones suggested by the commenter, are consistent with the community risk reduction plan, then it can be assumed that their air quality impacts will be less than significant.
- 52-6 Staff agrees with the commenter's suggestion and will initiate an outreach effort to assist stakeholders in using the CEQA Guidelines following future adoption of the proposed thresholds.
- 52-7 The community risk and hazard thresholds in the *Proposed Thresholds of Significance* report (November 2, 2009) were developed with consideration to the Air District's CARE program. The Air

District is committed to continue enhancing its CARE program and believes that the proposed community risk and hazard thresholds support the CARE program and will reduce cumulative impacts in impacted communities.

52-8 See comment response 52-2.

#53

Department of Conservation & Development

Contra Costa County

Catherine O. Kutsuris
Director

Aruna Bhat
Deputy Director
Community Development Division

Community Development Division

County Administration Building
651 Pine Street
North Wing, Fourth Floor
Martinez, CA 94553-1229



October 26, 2009

Phone:

Mr. Gregory Tholen, Principal Planner
Bay Area Air Quality Management District
939 Ellis Street
San Francisco, CA 94109

Subject: *Draft BAAQMD CEQA Guidelines, Sept. 2009*

The Contra Costa County Department of Conservation and Development has reviewed the draft CEQA Guidelines (September 2009) issued by the Bay Area Air Quality Management District. As a general comment, we support the Air District's goals of developing CEQA guidelines that provide an effective and meaningful way to gauge the significant air quality impacts of development projects. We observe that the Air District's Draft CEQA Guidelines necessarily contain significant technical information and call for cities, counties, and other public agencies in the Bay Area to apply a more sophisticated air quality analysis as part of the lead agency's CEQA Process. Therefore it is important that the guidelines be as easy to understand and apply as possible, since most local jurisdictions have limited resources and expertise in this area. We support the development of guidelines that will improve the CEQA process, and ultimately provide meaningful and relevant information to local decision-makers about the air quality impacts from new development.

53-1

53-2

We offer the following specific comments on the draft guidelines:

1. We support the emphasis on gauging cumulative impacts on communities that are already disproportionately impacted by air quality problems. We note that Bay Point, an industrially impacted community in eastern Contra Costa County, is not included in the Air District's map of impacted communities as shown in Figure 4-1, Communities of High Concern (page 4-3; Draft CEQA Guidelines, Sept. 2009). Many Bay Point residents live in close proximity to chemical plants. There are also two active freight railroads, including the mainline of the Burlington Northern Santa Fe (BNSF) and the Mococo line of the Union Pacific Railroad, which traverse through Bay Point and the cities of Pittsburg, Antioch, Oakley, and Brentwood. These freight railroads not only emit diesel particulate matter from the locomotive engines, but often carry hazardous materials on these railroad lines destined for industrial users in the Bay Area or for export through the Port of Oakland.

53-3

2. We support the establishment of threshold screening sizes as shown in Table 2-2, Operation Criteria Air Pollutant and Precursor Screening Level Sizes (pages 2-3 to 2-4, Draft CEQA Guidelines, Sept. 2009), which provide threshold sizes for each type of development that would be analyzed for air quality impacts. Many of the development applications that Contra Costa County processes are for smaller, infill residential development projects that would not, by themselves, generate significant air quality impacts. We also suggest the Air District offer additional guidance to a local jurisdiction on how to address the air quality impacts of smaller, infill residential development project that is not included in Table 2-2.

53-4

3. We welcome the menu of potential mitigations that are offered in the draft guidelines, but we note that some of the mitigations are beyond the authority of local governments to implement. It is important that the mitigations fall within local authority so that we are able to implement them. The mitigations also should be consistent with local guidelines that encourage infill development. As an example, at page 3-11, Section 3.3 Mitigating Operational-Related Impacts, Included as mitigation measures in this section are "transit passes" and "transit service" itself. Additional detail with these mitigation measures will substantially increase the effectiveness of the mitigation measures, ensure they are feasible, would result in guidelines that are much more useful to local staff, and would represent an evolution of transit related mitigation measures made necessary by the expectations established in SB 375. The mitigation measures should include the establishment of an ongoing funding mechanism (assessment district, parcel tax, service area fee, etc.) to pay for transit passes and/or the transit service itself. Without such a mitigation measure of this type, there can be no assurance that transit will be present to take advantage of "free transit passes" or to justify the reductions for "transit service" that may be in place during the time of environmental review but disappear with the next round of funding cuts. Absent such mitigation as this, the guidelines should be clear that in order to take advantage of reductions for transit mitigation measures the project proponent must establish that it is reasonable to assume the transit service will be present in perpetuity or for the duration of the project.

53-5

53-6

As a final matter, we are aware that Dr. Wendel Brunner, M.D., Director of Public Health, Contra Costa County, has also submitted a letter to the Air District commenting on the draft guidelines (dated October 23, 2009). In his letter, Dr. Brunner identifies his support on several of the approaches to determining air quality impacts proposed under the draft guidelines. However, he recommends that the Air District reconsider its decision to withdraw an earlier proposal to establish more stringent CEQA significance thresholds for sources of air pollution in the "Communities of High Concern" (Figure 4-1, page 4-3, Draft BAAQMD

53-7

Guidelines, Sept. 2009). Dr Brunner is urging the reinstatement of the earlier proposed thresholds of significance for siting new sources of air pollution in the communities with a disproportionate exposure to air pollutants. Dr. Brunner points out that there are significant health disparities associated with air pollution in the high concern (impacted) communities as compared to less impacted communities, and he notes that establishing more stringent CEQA significance thresholds for new sources of air pollution would allow for additional mitigation measures that would advance environmental justice to these impacted communities. We respectfully urge the Air District to give due consideration to Dr. Brunner's request and recommendation to reinstate the more stringent CEQA significance thresholds for new sources of air pollution in communities of high concern that have been identified by the Air District.

53-7

The Contra Costa County Department of Conservation and Development appreciates the opportunity to review and comment on the Draft CEQA Guidelines. We fully appreciate the difficult task of updating the guidelines, particularly in balancing the needs and desires of the many stakeholders in the process. So, we hope that you will view these comments as we intend them, constructive and supportive.

53-8

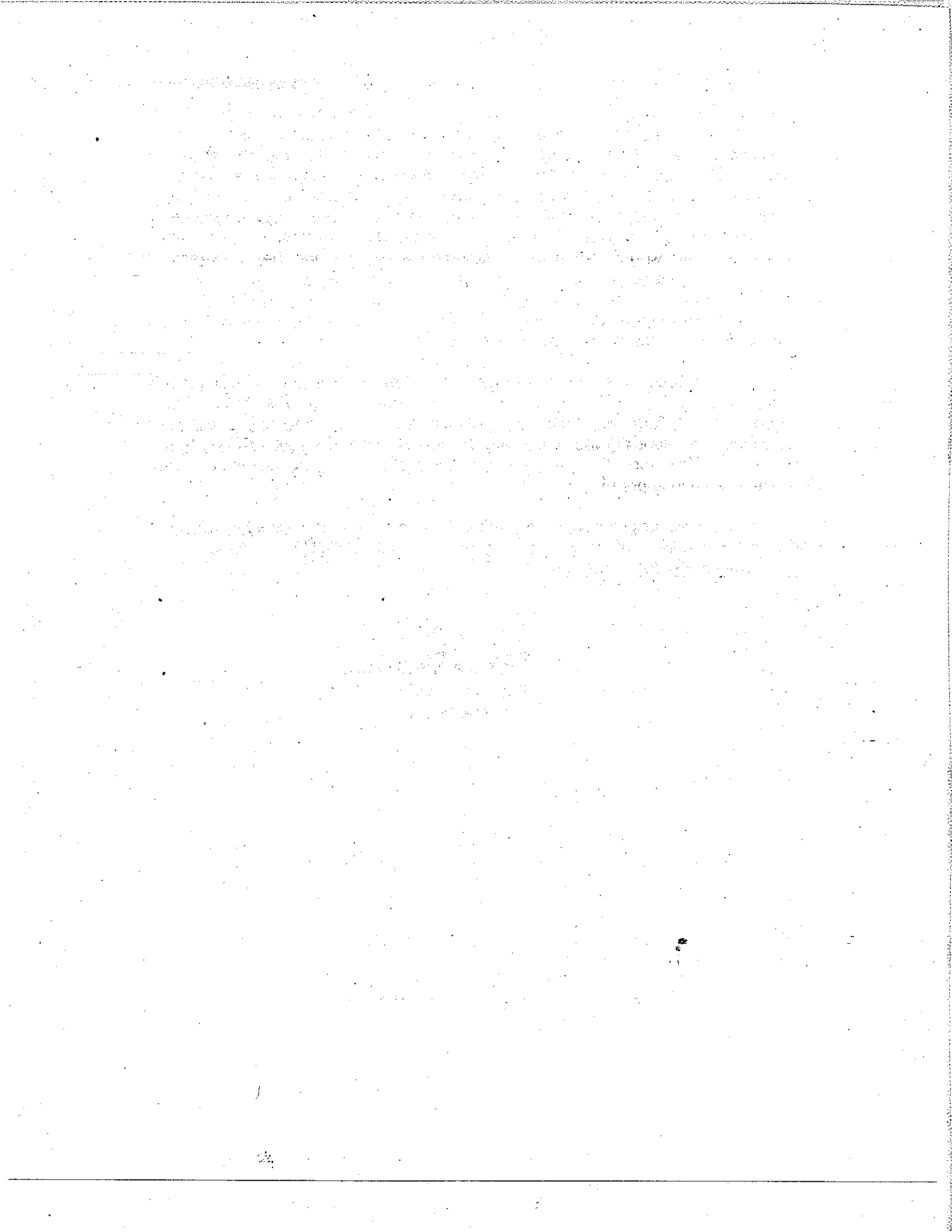
Should you have any questions regarding the concerns and comments raised in this letter, please contact me by telephone at (925) 335-1242 or by e-mail at proch@cd.co.contra-costa.ca.us

Sincerely yours,



Patrick Roche
Principal Planner

CC: Supervisor John Gioia, District I, CCC-BAAQMD Board Rep.
Supervisor Gayle B. Uilkema, District II, CCC-BAAQMD Board Rep.
Dr. Wendel Brunner, M.D., Director of Public Health, Contra Costa County
C. Kutsuris, Dir., Dept. of Conservation and Development, Contra Costa County
CCC PITCH members



Comment Letter #: 53

Date: October 26, 2009

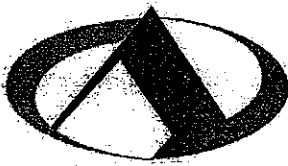
From: Patrick Roche, Principal Planner, Department of Conservation & Development, County of Contra Costa

Response to Comments:

- 53-1 The Air District appreciates the commenter's general support of the CEQA Guidelines update effort.
- 53-2 The Air District is continually working to enhance the ease of understanding and direction included in the revised CEQA Guidelines. Air District staff is preparing numerous tools and look-up tables to relieve local agencies staff of arduous technical analyses. Air District staff is also prepared to assist local agencies with methodologies contained in the revised CEQA Guidelines.
- 53-3 The CARE program used specific criteria to identify communities of high concern. In the proposed thresholds of significance and revised CEQA Guidelines, the Air District encourages cities and counties to develop community risk reduction plans. Risk reduction plans can be developed for any community the local jurisdiction deems appropriate.
- 53-4 The screening tables provided in the revised CEQA Guidelines are not thresholds of significance and will not, based on the screening table alone, trigger a mandatory EIR. Rather, they are just screening levels to minimize the need for full analysis in situations where BAAQMD has determined no significant air quality impact would occur because Air District staff have modeled the screening level projects under very conservative assumptions and have determined that such projects will not exceed the applicable thresholds of significance. The screening tables include all land uses found in the URBEMIS model. Air District staff is available to assist local agencies identify land uses not included in the screening tables.
- 53-5 Air District staff strives to include all available mitigation in the menus of options. With regard to mitigation calling for a project proponent to offer transit passes to occupants or users of a development, Air District staff believes it within a Lead Agency's authority to require such mitigation as a condition of project approval. A project proponent may also choose an alternative to locate near established transit routes, or provide its own transit or shuttle service to existing transit lines.
- 53-6 The Air District has not yet considered establishing a region-wide funding mechanism to support free or subsidized transit passes. However, it may be within the authority of local agencies to establish such a mechanism, and perhaps have it funded by businesses within the community.
- 53-7 See comment response 41-5.
- 53-8 Comment noted. The Air District encourages and values constructive and supportive comments.



#54



ALAMEDA COUNTY COMMUNITY DEVELOPMENT AGENCY
PLANNING DEPARTMENT

Chris Bazar
Agency Director

Albert Lopez
Planning Director

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West Winton Ave.
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October 26, 2009

Mr. Greg Tholen, Principal Environmental Planner
Bay Area Air Quality Management District
939 Ellis Street
San Francisco, CA 94109
gtholen@baaqmd.gov

RE: COMMENTS ON PROPOSED CEQA GUIDELINES

Dear Mr. Tholen:

Thank you for the opportunity to comment on the September Draft CEQA Guidelines. As a County that is currently engaged in Climate Action Planning and is committed to reducing its greenhouse gas (GHG) emissions, we appreciate the efforts of the BAAQMD to assist Bay Area agencies with development of a consistent set of guidelines for addressing the climate crisis. However, we feel that many of the guidelines and methods proposed by the BAAQMD have a number of potentially unintended consequences for CEQA analysis of various types of projects, including the possible effect of providing disincentives for smart growth and sustainable development in places where such development would help to reduce vehicle trips, increase public transit use and help to reduce GHG emissions.

54-1

Alameda County therefore wishes to support the discussion and arguments of the City of Berkeley in its letter of October 26, 2009. We believe the City makes a number of excellent points about potential drawbacks of the new guidelines regarding GHG emissions, and we make those same arguments for not only our jurisdiction, but also any other agency whose goal is to provide an effective vehicle for helping to resolve the climate crisis. To summarize the issues raised by the City of Berkeley in its letter:

54-2

1. The Guidelines would place obstacles to local and regional smart growth efforts, which are fundamental to achieving GHG reduction goals related to land use and transportation.

54-3

2. The Guidelines would essentially eliminate the "infill-exemption" for many multi-family infill projects (projects over roughly 80 - 90 units). This exemption is one valuable way to encourage appropriate regional development patterns in places where infrastructure exists, and where the population may be better served by transit and community facilities.

54-4

3. The Guidelines place too much and too narrow reliance on jurisdictions adopting enforceable Climate Action Plans for promoting overall policies to reduce GHG at a time when there are no clear metrics or standards for developing and measuring/modeling the efficacy of such plans. It is Alameda County's intent at this time to accomplish the goal of developing and incorporating an effective enforceable Community CAP, but it will take a significant amount of time locally, and we recognize that not every agency may have this goal.

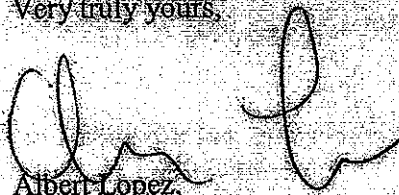
54-5

We do appreciate the thought and effort put into the draft Guidelines by the BAAQMD, and encourage the effort to continue to closure; however, we urge you to consider these concerns and work closely with the agencies who, on a daily basis, must deal with these issues and arrive at effective and workable solutions to the climate change problems facing each of us.

54-6

Thank you for your consideration. If you have any questions, please contact Sonia Urzua or Bruce Jensen of this office at (510) 670-5400, or at sonia.urzua@acgov.org or bruce.jensen@acgov.org.

Very truly yours,



Albert Lopez,
Planning Director

cc: Chris Bazar, CDA Director

Comment Letter #: 54

Date: October 26, 2009

From: Albert Lopez, Planning Director, Planning Department, Alameda County Community Development Agency

Response to Comments:

54-1 Comment noted. Also see Master Responses MR-1 and MR-2.

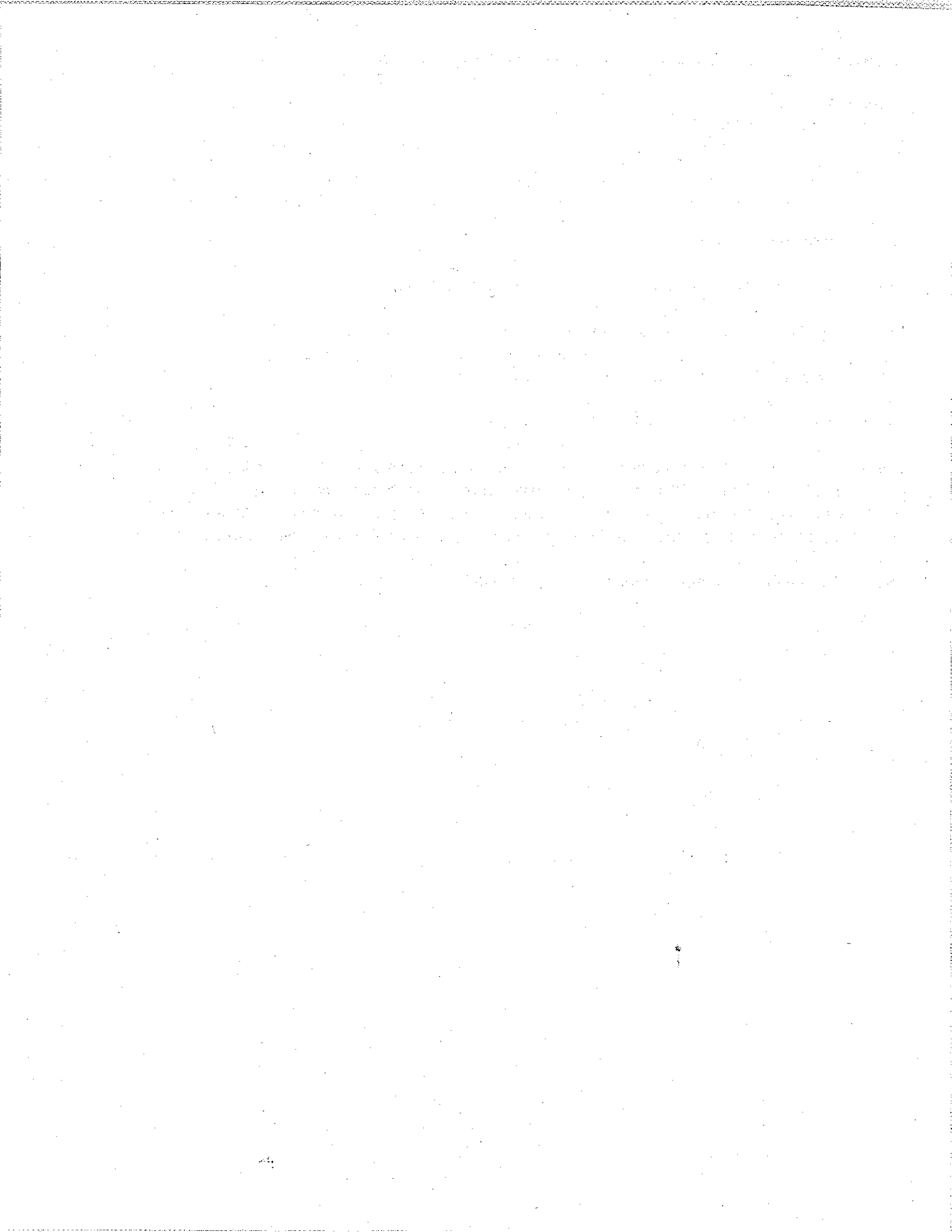
54-2 See comment letter 45 responses.

54-3 See Master Response MR-1.

54-4 See Master Response MR-2.

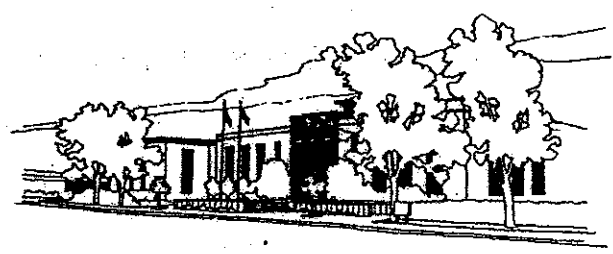
54-5 The Air District acknowledges that many communities will not be able to develop climate action plans in the near future. Many communities have adopted climate-friendly ordinances, such as green building codes, that can be included in climate action plans. Development of climate action should demonstrate consistency with AB 32 at a minimum, and use the best available data.

54-6 Comment noted. Also see Master Response MR-8.



#55

City of San Leandro
Civic Center, 835 East 14th Street
San Leandro, California 94577



Mr. Greg Tholen
Principal Environmental Planner
Bay Area Air Quality Management District
939 Ellis Street, San Francisco, CA 94109

October 26, 2009

Re: Comments on the BAAQMD Draft CEQA guidelines:

Dear Mr. Tholen,

The City of San Leandro has reviewed BAAQMD's draft CEQA Guidelines as well as comments from other jurisdictions. Based on this review the City of San Leandro supports the recommendations contained in the City of Berkeley's comments dated October 26, 2009. The Berkeley letter makes the following recommendations:

55-1

- 1) We recommend that BAAQMD establish appropriate GHG metrics and thresholds for projects and plans based on regional location and other smart-growth criteria. As an incentive to appropriate development patterns, BAAQMD should evaluate how its Guidelines can minimize the necessity of undertaking air quality assessments for projects and plans that further appropriate development patterns, and perhaps even provide "GHG Credits" for certain types of projects.
- 2) We recommend that BAAQMD set forth specific measures for how thresholds should be modified based on smart growth location criteria, and for projects that incorporate specific GHG reduction measures in the project description.
- 3) We recommend that BAAQMD take a leadership role in better defining GHG reduction metrics and do so prior to adopting revised Guidelines.
- 4) We recommend that prior to setting forth standards to be achieved by Climate Action Plans, that the District work directly with a few Bay Area cities to prepare a model CAP, showing how the various inventories and mitigations would fit together to achieve AB 32 goals.

55-2

55-3

55-4

55-5

Additionally, we believe that BAAQMD is proposing adoption of the CEQA Guidelines too quickly as staff may not have foreseen the unintended consequences of these guidelines. We urge BAAQMD to extend its timeline in order to consider these consequences.

55-6

If you have any questions please feel free to call me at (510) 577-3350.

Sincerely,

Kathleen Livermore, Planning Manager

Tony Santos, Mayor

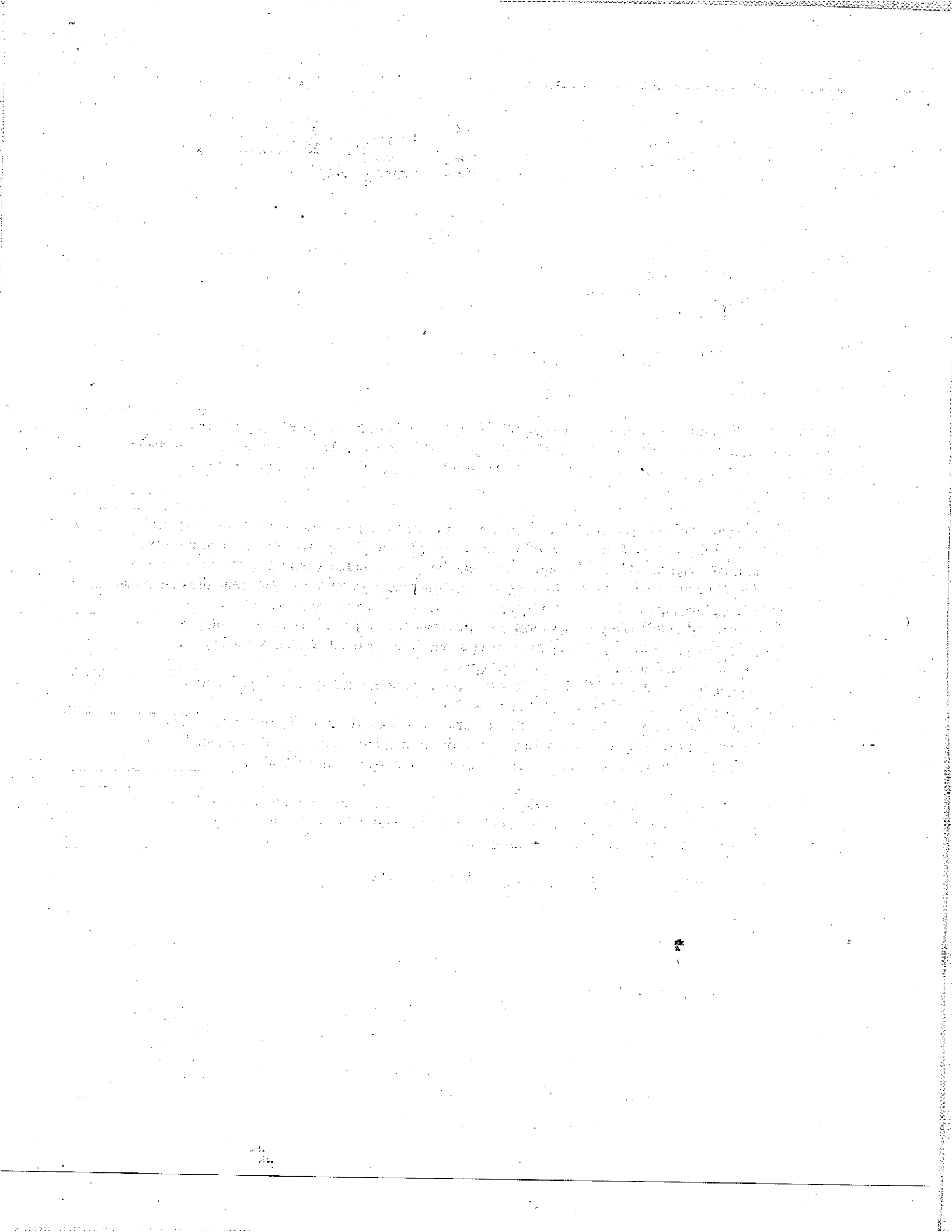


City Council:

Surlene G. Grant
Diana M. Souza

Michael J. Gregory
Joyce R. Starosciak

Jim Prola
Bill Stephens



Comment Letter #: 55

Date: October 26, 2009

From: Kathleen Livermore, Planning Manager, City of San Leandro

Response to Comments:

- 55-1 See comment letter 45 responses.
- 55-2 See Master Response MR-5. The revised CEQA Guidelines provide recommended methodologies that allow well-designed, efficient projects to "take credit" for reducing emissions compared to less efficient projects. In addition, projects located near transit and support services may be able to achieve even lower emission levels and possibly an impact finding of less than significant for air quality.
- 55-3 The screening tables provided in the revised CEQA Guidelines are not thresholds of significance and will not, based on the screening table alone, trigger a mandatory EIR. Rather, they are just screening levels to minimize the need for full analysis in situations where BAAQMD has determined no significant air quality impact would occur because Air District staff have modeled the screening level projects under very conservative assumptions and have determined that such projects will not exceed the applicable thresholds of significance. Most projects will have characteristics, such as nearby transit and services, which will reduce estimated emissions and allow a larger project than indicated in the screening table to be less than significant. Also see Master Response MR-2.
- 55-4 In response to this and similar comments, Air District staff has worked to improve guidance on applying estimates of mitigation effectiveness. Air District staff will continue to refine the guidance. Air District staff is available to assist with estimating emissions and mitigation efficiency. Air District staff is also developing off-model tools to use in conjunction with the URBEMIS model.
- 55-5 The Air District is continually working to enhance existing metrics to quantify community GHG emissions and climate action plan recommendations. Air District staff are prepared to assist local agencies prepare climate action plans.
- 55-6 See Master Response MR-8.





October 26, 2009

Bay Area Air Quality Management District (BAAQMD)
939 Ellis Street
San Francisco, CA 94109
Attn: Greg Tholen, Principal Planner

Dear Mr. Tholen:

We appreciate the opportunity to provide comments to the BAAQMD on the Draft CEQA Guidelines. The City of Livermore recently adopted a Climate Change Element in the 2003 Livermore General Plan and is about to begin preparation on a Climate Action Plan for the Community. For these reasons, we are very interested in the realistic implementation effects of the proposed thresholds, particularly at the project-level. Specifically, we are concerned (and in agreement with comments provided by the City of Berkeley) regarding three specific areas of the Draft Guidelines:

56-1

- Smart Growth Strategies for Vehicle Miles Traveled (VMT) Reduction - The City of Livermore Climate Change Element seeks to reduce GHG's through a variety of goals and objectives—one important objective being the link between transportation, commercial services, employment and residential density to reduce vehicle miles traveled. Land use strategies linked to mixed-use and infill development near transportation modes, services, and employment will reduce GHG emissions associated with vehicle travel. Yet, the proposed guidelines do not address or include VMT reduction measures in the threshold determination for operational impacts at the project-level.

56-2

- Infill Exemption - The proposed threshold measures for project-level operational impacts will make it much more difficult for mixed-use infill development projects to meet the infill categorical exemption. This seems contrary to the intent of establishing this exemption and further undermines smart growth policies to reduce Greenhouse Gas Emissions.

56-3

- Detailed Climate Action Plans - We concur with City of Berkeley comments that not all local jurisdictions have the ability at this time to produce inventories and measurable (and enforceable) benefits from specific reduction measures that are achievable at a realistic cost and timeframe. Therefore it is not realistic to rely on detailed, individual city-prepared Climate Actions Plans for project by project CEQA assessment of GHG impacts.

56-4

Given the importance of comments that are being raised by numerous jurisdictions, we respectfully request that the BAAQMD acknowledge and address the comments received prior to taking any action to adopt the new Guidelines. Additionally, we encourage the BAAQMD to revise the guidelines and allow for additional opportunity for stakeholder input and review of the Guidelines.

56-5

If you have any questions, please do not hesitate to contact me at (925) 960-4450.

Sincerely,

Ingrid Rademaker for Susan Frost

Susan Frost
Principal Planner
Advanced Planning, Community Development Department
(925) 960-4450
(925) 960-4459

cc: Fred Osborn, Planning Manager

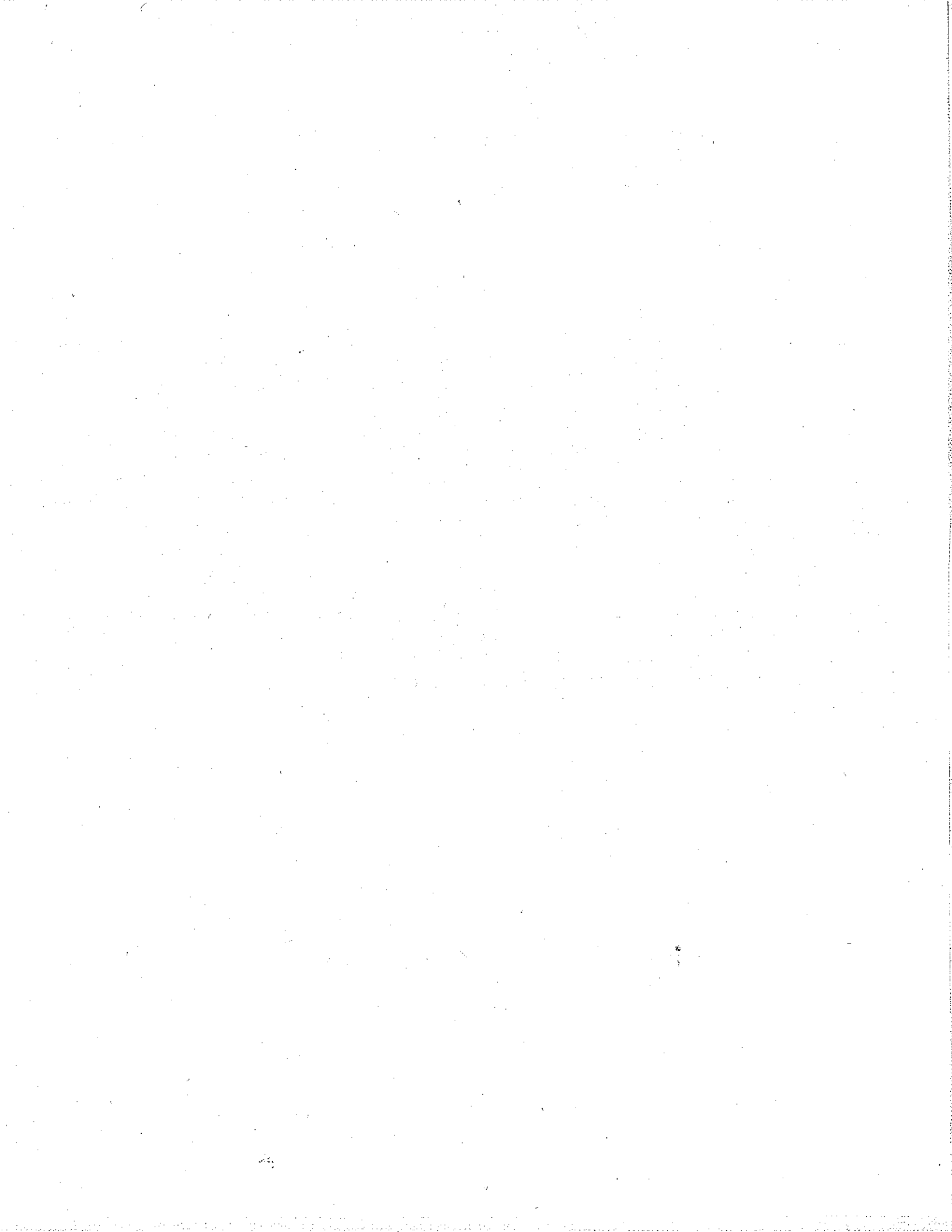
Comment Letter #: 56

Date: October 26, 2009

From: Susan Frost, Principal Planner, Advanced Planning, Community Development Department, City of Livermore

Response to Comments:

- 56-1 See comment letter 45 responses.
- 56-2 The screening tables provided in the revised CEQA Guidelines are not thresholds of significance and will not, based on the screening table alone, trigger a mandatory EIR. Rather, they are just screening levels to minimize the need for full analysis in situations where BAAQMD has determined no significant air quality impact would occur because Air District staff have modeled the screening level projects under very conservative assumptions and have determined that such projects will not exceed the applicable thresholds of significance. Most projects will have characteristics, such as nearby transit and services, which will reduce estimated emissions and allow a larger project than indicated in the screening table to be less than significant. Well designed projects that incorporate recommended measures in the project proposal are not considered mitigated projects and may still be found less than significant and qualify for a categorical exemption.
- 56-3 See Master Response MR-2.
- 56-4 The Air District acknowledges that many communities will not be able to develop climate action plans in the near future. Many communities have adopted climate-friendly ordinances, such as green building codes, that can be included in climate action plans. Development of climate action should demonstrate consistency with AB 32 at a minimum, and use the best available data.
- 56-5 See Master Response MR-8.



#57

Transportation Solutions Defense and Education Fund

P.O. Box 151439 San Rafael, CA 94915 415-331-1982

October 26, 2009
By E-Mail

Greg Tholen
Bay Area Air Quality Management District

Re: Revised Draft CEQA Guidelines—Supplemental Comments

Dear Greg:

TRANSDEF would like to offer the following comments on Chapter 3.3 of the Draft CEQA Guidelines:

1. Please include a sentence indicating that "Mitigations must be included in project conditions of approval, in a form that is enforceable by the approving agency."
2. The Unscaled Reductions for Free Transit Passes should read "25% of reductions for transit service." The way it is written, it looks like there are reductions for transit service reductions.
3. The Unscaled Reductions for Other Transportation Demand Measures is hard to read. Better would be "1% reduction for at least 3 elements plus 5% of the total reduction for transit and pedestrian/bike friendliness; 2% reduction for at least 5 elements plus 10% of the total reduction for transit and pedestrian/bike friendliness."
4. The clustering of measures is non-intuitive. We recommend eliminating the Others Measures sub-category, and modifying the Area-Source category. If we number the measures starting with Area-Source measure "Increase Energy Efficiency..." as 1, and ending at 29, then we have the following groupings:

Non-URBEMIS Energy Efficiency-Related Measures: 1, 4-12, 17, 20-22,

Non-URBEMIS Planning-Related Measures: 13-16, 19

Non-URBEMIS Water-Related Measures: 18, 26-29

Non-URBEMIS Landfill-Related Measures: 23-25

Non-URBEMIS Area-Source Measures: 2, 3

We suggest using an asterisk and footnote to indicate the measures for which there are no quantifiable emissions reductions.

57-1

Thank you for the consideration of these comments. As always, we stand ready to assist the District in the development and implementation of these Guidelines.

Sincerely,

/s/ DAVID SCHONBRUNN

David Schonbrunn,
President

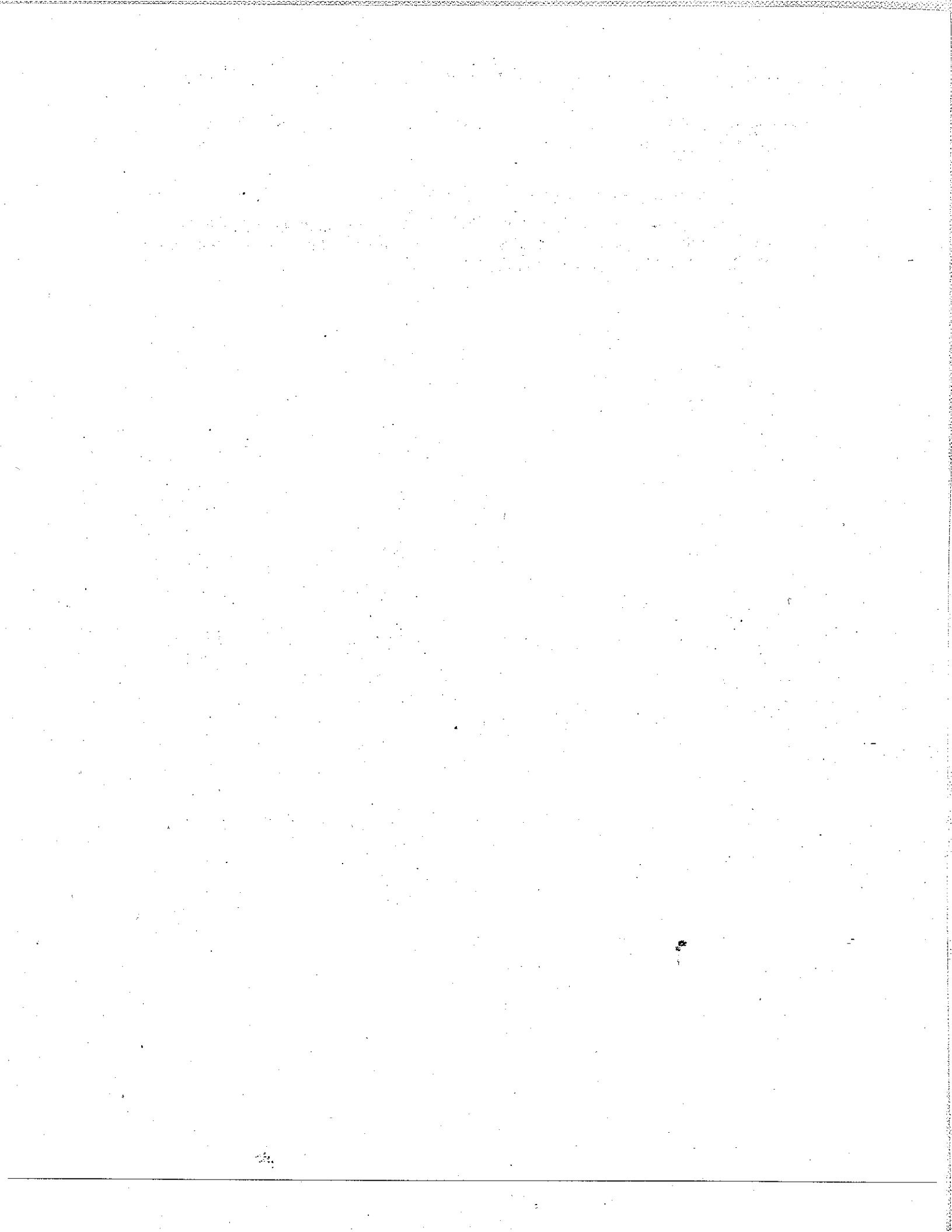
Editorial Suggestions

p. 41: delete "see" in Step 6.

p. 45: "estimated" rather than "estimate" on the 4th line.

p. 45: The text uses the phrase "land use development" several times, including on this page. Although this phrase may sound very professional and plannerly, isn't this usage incorrect? Shouldn't it be "land development?"

57-1



Transportation Solutions Defense and Education Fund

P.O. Box 151439 San Rafael, CA 94915 415-331-1982

October 25, 2009
By E-Mail

Greg Tholen
Bay Area Air Quality Management District

Re: Revised Draft CEQA Thresholds of Significance

Dear Greg:

We are struck by the fact that the recommended GHG thresholds are focused solely on achieving 2020 emissions reduction goals, and not the longer-term 2050 goals. (p. 52.) Because the longer-term goals require a far greater emissions reduction effort—one that can be considered “game-changing”—we wonder about the wisdom of a policy choice that sets in motion an evaluation system that will be seen in the future to have exceedingly modest goals. The long-term nature of investments in land development demands that profound changes in energy consumption be adopted as soon as possible, because the GHG emissions remain in the atmosphere for 100+ years.

Because of the cumulative nature of GHG emissions over the years, emissions reductions in the earlier years of the 2010 - 2050 period will be far more beneficial than the later years. One way to resolve this policy question would be to identify emissions reductions beyond these threshold levels as “additional” and therefore available to generate credits in future programs of the California Climate Action Registry.

It is troubling that the CEQA Thresholds of Significance, Revised Draft Options and Justification Report (Thresholds Report) was released substantially after the publication of the Draft CEQA Guidelines. Upon close review, it appears the documents were produced independently, with the CEQA Guidelines report selecting different thresholds than were recommended in the Thresholds Report. The problem is serious enough as to make the adoption of new Guidelines in November unlikely.

The disconnect between these two documents was highlighted by the difference in the sequence of different thresholds. In the CEQA Guidelines, Operational comes before Plan-level, which comes before Construction. In the Thresholds Report, Construction comes before Operational, which comes before Plan-level. This lack of coherence detracts from the important work of setting and justifying new CEQA Guidelines. We suggest making the two documents parallel in sequence.

p. 17: Section 3.2, Analysis of Bay Area Growth and Emissions Forecasts, clearly has some role to play in the development of thresholds. However, we were unable to find any text providing an overview of how these forecasts relate to the larger task at hand.

57-2

57-3

- Please expand on the explanation of the process of the development of the thresholds. In particular, identify how the data in Table 5 is to be used. 57-4
- p. 21: Please verify whether each datum of Unmitigated Emissions in Table 5 is cumulative for all the projects in that ten year window that precede it.
- p. 22: Table 6 would not have been confusing had the introduction said "Threshold options to be evaluated are summarized in Tables 6 and 7." 57-5
- p. 26: The following statement appears to have no evidentiary basis for PM, because the District has not developed any PM attainment plans, and little basis for other pollutants, seeing as the CCAA requires all feasible measures: "Thus, utilization of the BACT Requirements as thresholds of significance for CEQA would result in achieving considerably more emission reductions from land use development than is needed to achieve air quality goals." Unless the District can justify this language, it must be deleted, and the 10 lb/day BACT Requirements for criteria pollutants must be recommended instead. This would then require the revision of Tables 6-1 and 6-2. 57-6
- p. 27: The recommendation is for a BMP approach to a fugitive dust significance threshold. However, that was not the approach taken in the Draft Guidelines. The text on p. 6-11, Section 6.3.1, lists the BMPs as Additional Construction Mitigation Measures. This conflict must be resolved. 57-7
- p. 28: GHG Threshold 6.4 (p. 6-14) is inconsistent with Staff Recommendation 4.1.3.4. This conflict must be resolved. 57-8
- p. 30: TAC Threshold 6.5 (p. 6-15) took the Option 2 approach, the Tiered Quantitative Threshold, which is inconsistent with Staff Recommendation 4.1.4.4, which took the Option 3 approach. This conflict must be resolved.
- p. 31: We are struck by a fundamental problem we identified in our comments on the CEQA Guidelines: Plan consistency with the Clean Air Plan (AQP) is overly subjective, due to the inclusion of control measures in the AQP that are not actually being implemented. Because the region is in non-attainment of several NAAQS, there needs to be a well-defined minimal amount of mitigation effort required by the AQP, before a project or plan could, with confidence, be considered consistent with the AQP. This concern pertains to the evaluation of cumulative operational impacts. 57-9
- p. 33: Unless we are mistaken, Table 13 refers only to CCAA 5% reductions to the 2010 base year inventory, but ignores the emissions increases from projects in the 2010 - 2020 window. 57-10
- p. 37: Recommendation 4.2.1.5 did not sufficiently demonstrate that adoption of the proposed thresholds will not hinder attainment of NAAQS or prevent further deterioration of air quality. Specifically, the assertion that these thresholds for ozone precursors would be "an appropriate approach to prevent further deterioration of ambient air quality..." was unsubstantiated by evidence. The sensitivity analysis offered nothing relevant to the question of attainment. Nothing in this section justifies why using a federal Significant Emission Rate as a threshold will prevent cumulative PM emissions from increasing. 57-11

p. 40: After consulting with individuals familiar with SB 375, it appears that the following citation is simply untrue: "If MPOs do not meet the GHG reduction targets, transportation projects would not be eligible for State funding programmed after January 1, 2012."

57-12

p. 47: Table 18 is close to impenetrable. It is not self-explanatory. Part of the problem is that the second and third columns on the left are secondary assumptions, not the primary assumption. The table would be much more understandable if the second column were the Mass Emission Threshold Levels, in numerical order. The % Projects Captured column is dependent on the Threshold levels. The Mitigation Effectiveness is then a secondary assumption, upon which the % of Emissions Captured column is based. The MT/yr Emissions Reduction is actually redundant, given the MMT figures in the next column.

57-13

pp. 48 & 72: Please be sure to identify the GHG efficiency metrics as annual emissions per capita. These metrics are cited in multiple places in the document, but not with the "per year" descriptor.

57-14

p. 58: Something is wrong with y axis labels on Table 4. There is no way that each of those histograms can represent 20% of the total number of grid cells. The total number of histograms needs to add to 100%.

p. 59: Label the x axis Excess Cancer Risk (per million).

p. 60: define "HI."

p. 61: The discussion of the infeasibility of no net increases in TACs is totally flawed. The situation should instead be analogized to 'no net increase' in water consumption, a policy found more frequently in the Bay Area. Developers seeking to install a new water connection need to invest in off-site water efficiency technology to reduce consumption elsewhere, thus freeing up capacity for a new project. There is no reason why an analogous TAC program could not be constructed.

57-15

p. 62: We fail to detect a health-based rationale for recommending a 500 per million threshold. It would appear that a 100 per million threshold would at least restrict exposures to the lightest exposures now found in the region.

57-16

p. 65: If the District is proposing to tier off a CRRP, then its contents must be mandatory. Replace the "should" with "shall" in the sentence following the Qualified plans heading.

57-17

p. 65: It would read better to say "Projects would be considered to have a significant air quality impact when proposed in areas where a CRRP has not been adopted and the potential exists to expose sensitive receptors or the general public to emissions-related risk in excess of the following thresholds from any source." Note the misspelling of 'exists.'

p. 66: The text offers no justification for not using the methodology provided by SFDPH that set a PM_{2.5} limit at 0.2 µg/m³. On the contrary, the text clearly indicates that the SIL is a threshold for areas in attainment. (p. 61.) That is not the case in the Bay Area. Given the failure to support a 0.3 µg/m³ threshold as health-protective, a 0.2 µg/m³ must be recommended instead. Interestingly, the Draft CEQA Guidelines uses both.

57-18

p. 66: Although the Recommendation for siting a new source or receptor claims to include Option 3--Tiered Approach, there is no reference whatsoever to an impacted community in this Recommendation. This is a critical part of the CARE program, and was written into the Draft CEQA Guidelines. This conflict must be resolved.

57-19

pp. 66-68: This section on Cumulative Option 2 has no citation to literature indicating that an 0.8 $\mu\text{g}/\text{m}^3$ threshold for $\text{PM}_{2.5}$ is health-protective. Instead, the fact that that level was approached by mice tells us nothing.

57-20

p. 68: The Recommendation for Cumulative TAC is silent on the topic of impacted communities. The District needs to justify this omission. Why are the cumulative impacts on impacted communities not the basis for additional health protection?

57-21

p. 68: The Recommendation for Cumulative TAC includes the ugly sentence discussed above (see comment re: p. 65.) Please note that the "following thresholds" no longer appear following that sentence.

57-22

p. 70: We are struck by a fundamental problem we identified in our comments on the CEQA Guidelines: Plan consistency with the Clean Air Plan (AQP) is overly subjective, due to the inclusion of transportation control measures in the AQP that are not actually being implemented. Because the region is in non-attainment of several NAAQS, there needs to be a well-defined minimal amount of mitigation effort required by the AQP, before a plan could, with confidence, be considered consistent with the AQP.

57-23

p. 73: We strongly disagree with the discussion of 2050 vs. 2020 goals. See our introductory comments above.

57-24

Editorial Suggestions

p. 41: delete "see" in Step 6.

p. 45: "estimated" rather than "estimate" on the 4th line.

p. 45: The text uses the phrase "land use development" several times, including on this page. Although this phrase may sound very professional and plannerly, isn't this usage incorrect? Shouldn't it be "land development?"

p. 64: add: "(if mitigation is available to reduce to below threshold levels)"

p. 71: "development" not "develop" in the first paragraph.

57-25

Thank you for the consideration of these comments. As always, we stand ready to assist the District in the development and implementation of these Guidelines.

Sincerely,

/s/ DAVID SCHONBRUNN

David Schonbrunn,
President

Sigalle Michael

From: Gregory Tholen
Sent: Monday, October 26, 2009 5:28 PM
To: Sigalle Michael
Cc: David Vintze
Subject: FW: Additional Threshold comments

Greg Tholen
(415) 749-4954

From: David Schonbrunn [mailto:David@Schonbrunn.org]
Sent: Monday, October 26, 2009 5:24 PM
To: Gregory Tholen
Cc: David Vintze
Subject: Additional Threshold comments

In our comment letter submitted today, we noted that plans that are eligible to be tiered off for CEQA purposes needs to have mandatory contents. The list of Climate Action Plan contents starts with "should" on p. 73. This "should" must be changed to "must."

57-26

Also, the second sentence of Section 4.3.2.2 on p. 73 has no main verb or object. It is incomplete.

p. 74: "includes requirements for feasible measures..."

p. 74: We are strongly opposed to 'back door' Climate Action Plans. Because these can be tiered off, it is rash to propose a bypass pathway that does not require CEQA or enforceable measures. We were surprised to find this recommendation at the very back of the Report, having never heard it mentioned previously. It is not consistent with what was published in the Draft CEQA Guidelines. This conflict must be resolved.

57-27

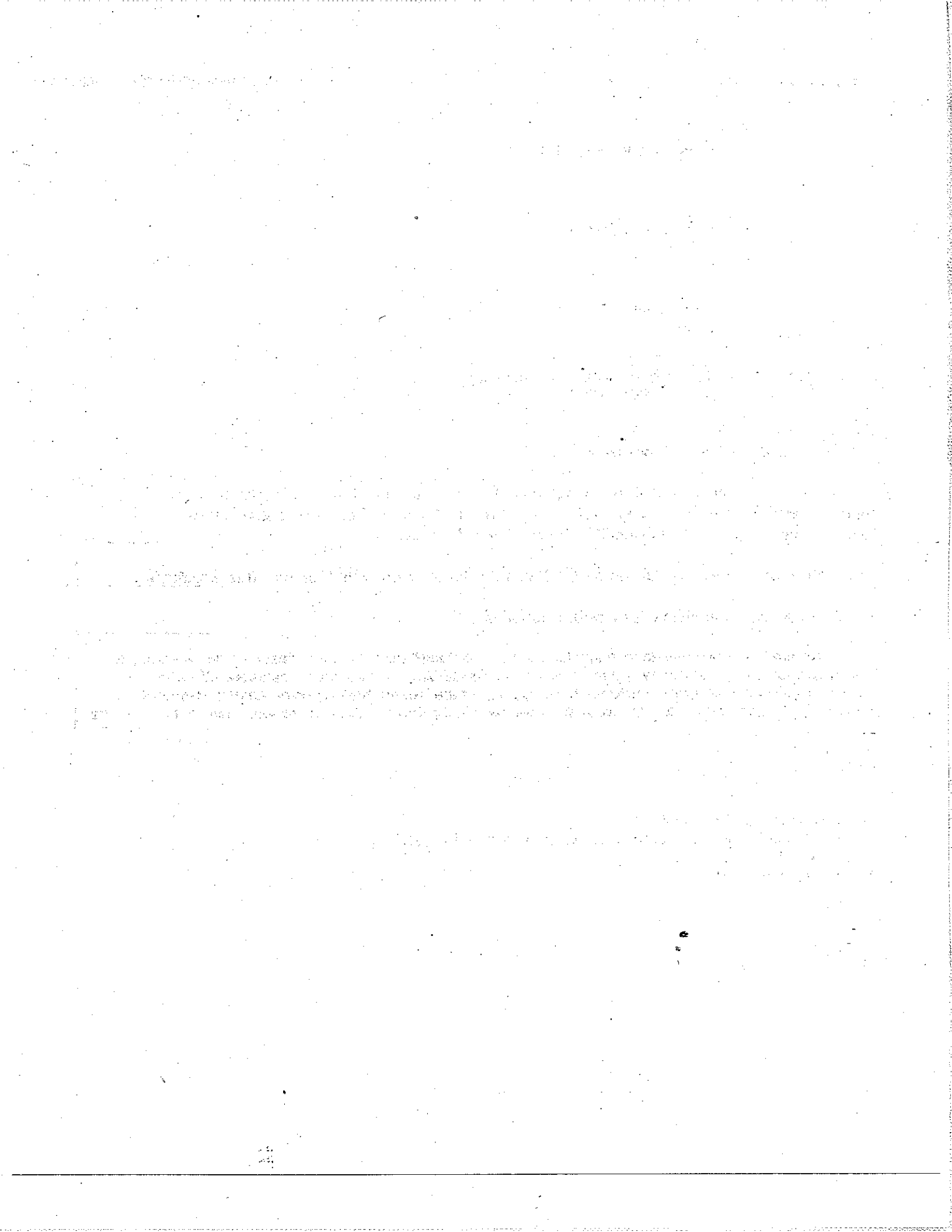
--David

David Schonbrunn, President
Transportation Solutions Defense and Education Fund (TRANSDEF)
P.O. Box 151439
San Rafael, CA 94915-1439

415-331-1982

David@Schonbrunn.org
www.transdef.org

10/27/2009



Comment Letter #: 57

Date: October 26, 2009

From: David Schonbrunn, President, Transdef

Response to Comments:

- 57-1 Comments have been noted and staff will apply the commenter's suggestions in Chapter 3.3 of the updated CEQA Guidelines where appropriate such as clarifying the noted mitigation measure emission reductions and reorganizing the area-source measure categories.
- 57-2 As noted in the *Proposed Thresholds of Significance* report (November 2, 2009), the year 2020 is examined in the threshold evaluation because doing so for the year 2050 would be too speculative. Advances in technology and policy decisions at the state level will be needed to meet the aggressive 2050 goals. It is beyond the scope of the analytical tools available at this time to examine reasonable emission reductions that can be achieved through CEQA analysis in the year 2050. As the 2020 timeframe approaches, the Air District will need to reevaluate the thresholds to better represent progress toward the 2050 goals.
- 57-3 The updated CEQA Guidelines will be reorganized, reflecting some of the commenter's suggestions from a previous letter. Staff does not intend to update the Revised Draft Options and Justification Report or to reorganize it since it will not be part of the final CEQA Guidelines. The Proposed Thresholds of Significance (November 2, 2009), which provides Air District Staff's proposed thresholds and the substantial evidence that justifies their adoption and use, will be included in an appendix of the revised CEQA Guidelines. See also Master Response MR-8.
- 57-4 Table 5 in the Revised Draft Options and Justification Report is intended to illustrate the number of projects and associated emissions the Air District estimates will occur in future years in the Bay Area. The forecasted projects and emissions helped to inform the potential emission capture rate of proposed thresholds. The forecasted projects were used to evaluate the sensitivity such as, emission reductions and capture rates, of different threshold levels for pollutants. The Air District conducted a sensitivity analysis which involved adjusting the threshold to attain different amounts of emission reductions. Each datum of unmitigated emissions in Table 5 in the Revised Draft Options and Justification Report represents the total number of projects in five year windows.
- 57-5 Comment noted.
- 57-6 Comment is noted, however, Air District Staff does not anticipate revising the Revised Draft Options and Justification Report.
- 57-7 Air District staff will update the CEQA Guidelines with the thresholds from the *Thresholds of Significance* report (November 2, 2009).
- 57-8 The plan-level threshold in the updated CEQA Guidelines will refer users to the Air District's most recent Air Quality Plan for criteria on how a proposed plan should be consistent with the most recent Air Quality Plan. Since the Air District's Air Quality Plan is updated more frequently than the CEQA Guidelines, it can better address changing needs and issues. The Air District's Air Quality Plan will detail

the minimum amount of control measures that a proposed plan should implement to be consistent with the Air Quality Plan.

57-9 Comment noted.

57-10 As noted in the *Proposed Thresholds of Significance* report, the criteria pollutant threshold levels are well-established in terms of existing regulations as promoting review of emissions sources to prevent cumulative deterioration of air quality. Using existing environmental standards in this way to establish CEQA thresholds of significance under Guidelines section 15067.4 is an appropriate and effective means of promoting consistency in significance determinations and integrating CEQA environmental review activities with other areas of environmental regulation. (*See Communities for a Better Environment v. California Resources Agency* (2002) 103 Cal. App. 4th 98, 111.4)

57-11 Comment noted.

57-12 Staff recognizes that Table 18 in the Revised Draft Options and Justification Report is difficult to understand. If the table is used in the updated CEQA Guidelines, it will be revised suggested by the commenter.

57-13 Comments noted and will be addressed if the Revised Draft Options and Justification Report is updated.

57-14 A threshold of no net increase in toxic air contaminants was deemed infeasible from stakeholder input received in the CEQA Guidelines update process. Many local governments expressed that a no net increase thresholds for TACs would discourage infill and transit-oriented development in Preferred Development Areas.

57-15 The proposed threshold for community risk and hazard in the *Proposed Thresholds of Significance* report (November 2, 2009) has been modified to a cancer risk of 100 in a million cumulative risk from all sources.

57-16 The updated CEQA Guidelines will provide a broad view of what Staff anticipates will be required in a Community Risk Reduction Plan (CRRP). Understanding that no such plans yet exist in the Bay Area, the Air District will initiate a public process to engage stakeholders in identifying steps and defining criteria for a CRRP. The public engagement process will work to answer the CCRP questions raised by the commenter.

57-17 The Proposed Thresholds of Significance report (November 2, 2009), recommends a single community risk and hazards threshold for all areas in the Bay Area, including impacted communities. Staff agrees with several commenters that the problem of certain areas being disproportionately adversely impacted should be addressed as a cumulative impacts problem. Staff has revised the proposed thresholds to do so. Under staff's current proposal, areas that are disproportionately burdened with TAC emissions sources in the local vicinity will benefit from a cumulative analysis threshold that will require projects to evaluate the cumulative impact of all such sources within a 1,000 foot radius of the proposed project. This revised approach will provide a tool for lead agencies to carefully consider whether to site new sources or receptors in disproportionately burdened areas, without establishing different health risk standards for different segments of the population. In addition, the Air District

believes that withdrawing the earlier, more stringent threshold, is also appropriate in light of using OEHHA's more conservative risk factors (substantially increasing estimated risk levels) and the addition of community risk reduction plans. Risk reduction plans provide a programmatic approach to the overall problem and can also address existing sources of risks and hazards and can require design standards of new development not always available through the CEQA process.

57-18 Air District staff will update the CEQA Guidelines with the thresholds from the *Proposed Thresholds of Significance* report (November 2, 2009).

57-19 The *Proposed Thresholds of Significance* report (November 2, 2009) cites a number of studies discussing the health protectiveness of the proposed PM_{2.5} threshold.

57-20 See response to comment 57-17.

57-21 Comment noted.

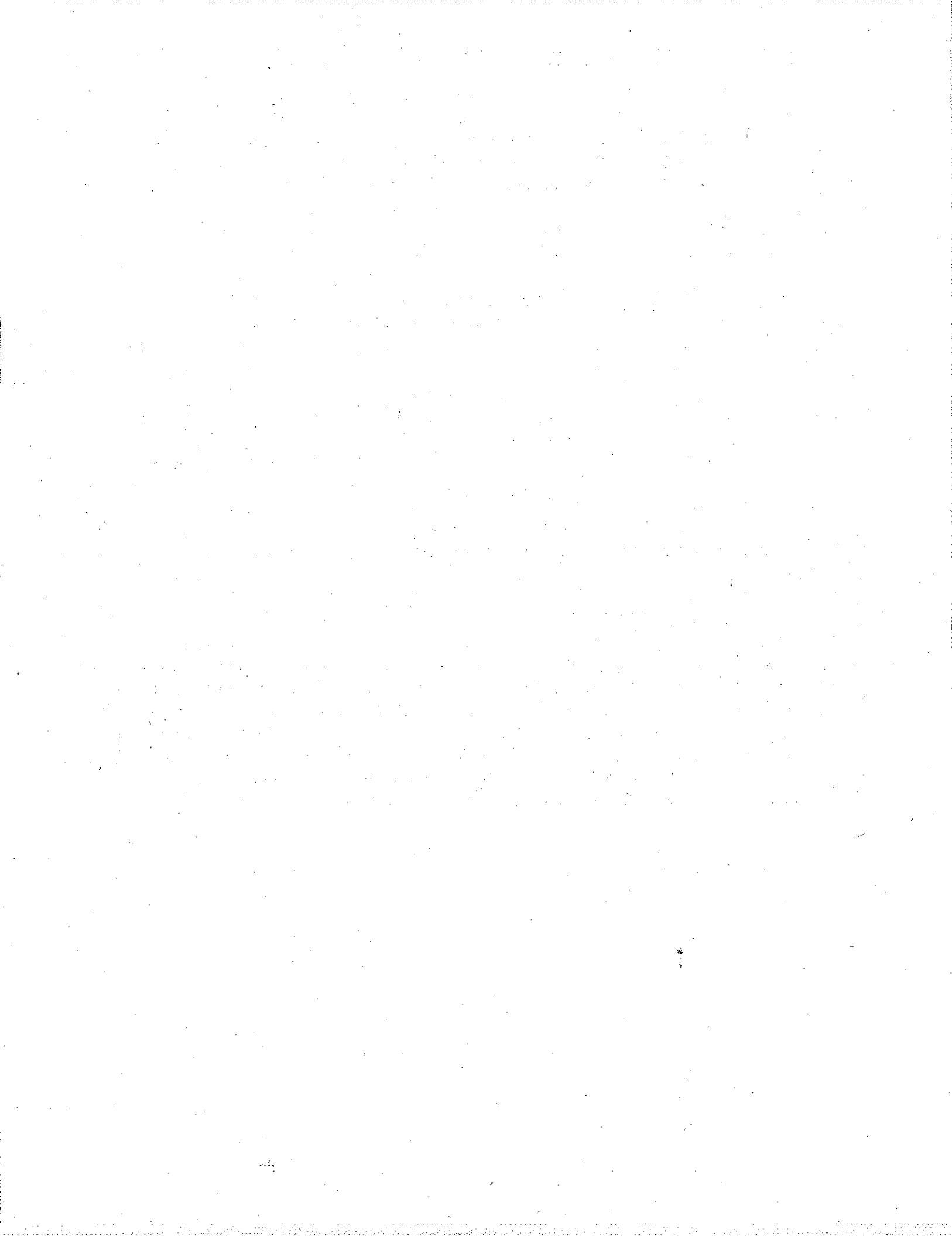
57-22 See response to comment 57-9.

57-23 See response to comment 57-2.

57-24 Comments noted and will be addressed if the Revised Draft Options and Justification Report is updated.

57-25 See response to comment 57-24.

57-26 The revised plan-level GHG threshold in the *Proposed Thresholds of Significance* report (November 2, 2009) reflects the commenter's suggestion. The revised plan-level GHG threshold recommends that if a proposed project is consistent with an adopted qualified climate action plan, or Sustainable Communities Strategy, it can be presumed that it will not have significant GHG emission impacts. In addition, for local governments that have not yet adopted a qualified climate action plan as defined by the CEQA Guidelines, they have the option to demonstrate that their collective set of climate action policies, ordinances, and other projects are consistent with AB 32.



#58

Office of the City Manager
Peter Ingram



1017 Middlefield Road
Redwood City, CA 94063
Telephone (650) 780-7301
FAX (650) 780-7225

October 26, 2009

Bay Area Air Quality Management District
Attention: Greg Tholen, Principal Planner
gtholen@baaqmd.gov

**RE: Revised CEQA Thresholds Options and Justifications Report;
Indirect Source Review Rule Development;
2009 Clean Air Plan
Regulation 2, Rule 5 Development**

Dear Mr. Tholen:

The City of Redwood City appreciates the opportunity to provide these comments on the Bay Area Air Quality Management District's proposal to revise its California Environmental Quality Act ("CEQA") guidelines and recommended thresholds of significance for use by cities in carrying out their obligations under CEQA. The City supports and applauds the District's efforts to improve air quality in the region, combat the effects of climate change, and protect the health of all residents in the Bay Area.

58-1

We understand that, in addition to its revisions to its CEQA guidelines, the District has initiated several other rulemaking processes and programs that have the potential to affect local municipalities land use planning and economic development activities. These programs and processes include the District's Community Air Risk Evaluation ("CARE") program, its development of an Indirect Source Review Rule, its update to its Clean Air Plan, and its proposed amendments to its proposed revisions to Regulation 2, Rule 5, relating to new source review of toxic air contaminants. Our comments herein are intended to apply generally to all of these programs and processes, and to alert the District to certain concerns held by Redwood City, which we imagine are shared by other cities in the region. We offer these comments in the hope that it will help the District to develop and implement feasible and practical programs and regulations that will help the District achieve its goals with respect to air quality, while respecting the concerns of cities throughout the region regarding their obligations to manage land uses and promote economic development.

58-2

Redwood City is currently in the midst of a two-year process to overhaul and update its General Plan. A key tenet of the City's proposed General Plan is the City's commitment to sustainable growth. Through its General Plan update process, the City seeks to identify and implement sustainable urban planning practices focusing on new and innovative land use and transportation

58-3

policies that will reduce greenhouse gas emissions and protect and conserve natural resources, including our air quality resource. In conjunction with the General Plan update, the City is also preparing its first Climate Action Plan.

58-3

A key strategy for implementing sustainable development in Redwood City is to promote in-fill development in the Downtown area and along the City's major transportation corridors. The Downtown area has been designated a "Priority Development Area" ("PDA") pursuant to the Focus program which is a development and conservation strategy for the San Francisco Bay Area. The Focus program is supported by the Association of Bay Area Governments ("ABAG"), Metropolitan Transportation Commission ("MTC"), the Bay Conservation and Development Commission ("BCDC"); and the Bay Area Air Quality Management District ("BAAQMD"). PDAs are planning areas that have been determined by these agencies to present unique or important in-fill development opportunities that could reduce housing costs and traffic congestion and preserve natural resources. With respect to its El Camino Real corridor, the City is carefully coordinating its development strategy with various other cities in San Mateo and Santa Clara counties in the multi-jurisdictional "Grand Boulevard Initiative." Within San Mateo County, the entire El Camino Real corridor, including the two-mile portion in Redwood City and all of the properties along the route, has also been designated as a PDA. By encouraging more compact, mixed-use development in its Downtown and along its primary corridors, the City seeks to transform these areas into more pedestrian-friendly environments that will reduce single-passenger vehicle use and encourage alternative forms of travel.

58-4

As you know, a substantial portion of the City has been designated as a "Priority Community" under the District's CARE program. This designation includes most of the Downtown area and El Camino Real corridor, and several other primary corridors in the City. We understand that the District is considering more stringent air quality regulations for Priority Communities than for non-Priority Communities. The City is concerned that heightened regulatory requirements on development in Downtown and along its primary transportation corridors could impede the City's efforts to implement its sustainable development policies by making it difficult to attract development to and investment in these areas. In moving toward establishing a Sustainable Community Strategy pursuant to SB 375, ABAG and the other regional planning agencies will rely upon the PDAs including Downtown Redwood City and El Camino Real.

58-5

A second important element of the City's sustainable development strategy is a healthy and vibrant Port of Redwood City. As the only deep-water port in south San Francisco Bay, the Port is one of the City's great assets. It is designated by the BCDC for maritime uses in the BCDC's Seaport Plan. The Port area is currently home to many light and heavy industrial uses, including many shipping related activities for building construction materials. All of these uses contribute significantly to the City's economic health, and the City's proposed General Plan update contains policies that reflect the value of the Port to the City by emphasizing its protection and maintenance as an important employment center and economic generator.

The Port is entirely within the District's Priority Community designation. We are concerned that the more stringent air quality regulations being considered by the District could affect the development and maintenance of employment-generating uses at the Port as well as the Port's ability to enable goods movement via its bulk materials shipping facility as well as freight rail, two methods which offset the need for trucking freight on the San Francisco Peninsula. We

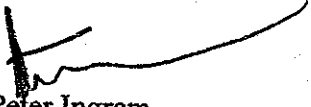
further understand that the proposed regulatory changes could result in the application of more stringent emission standards on emission sources in the Port area due to its proximity to residential areas to the west of the Port. We also note that the Port is home to salvaging and recycling activities which contribute to the City's overall conservation and sustainability efforts, and these activities may be expanded in the future. We are concerned that increased air quality regulation could inhibit the expansion of these conservation efforts.

58-5

The current state of the economy presents unusual challenges to everyone in California. Californians are looking to cities and businesses to take all necessary and appropriate steps to create new jobs, expand economic development opportunities, and improve the economy. Such improvement requires generating job growth by expanding business opportunities and promoting new development including residential development, which despite the economic downturn, remains a primary concern in the Bay Area. While supporting the District's efforts to protect the Bay Area's air quality, the City has taken this opportunity to alert the District to potential conflicts between various District programs and proposals and the City's and the regions efforts to restore job growth and improve the economic circumstances of all residents in the Bay Area.

58-6

Very truly yours,



Peter Ingram
City Manager

Copy via email:

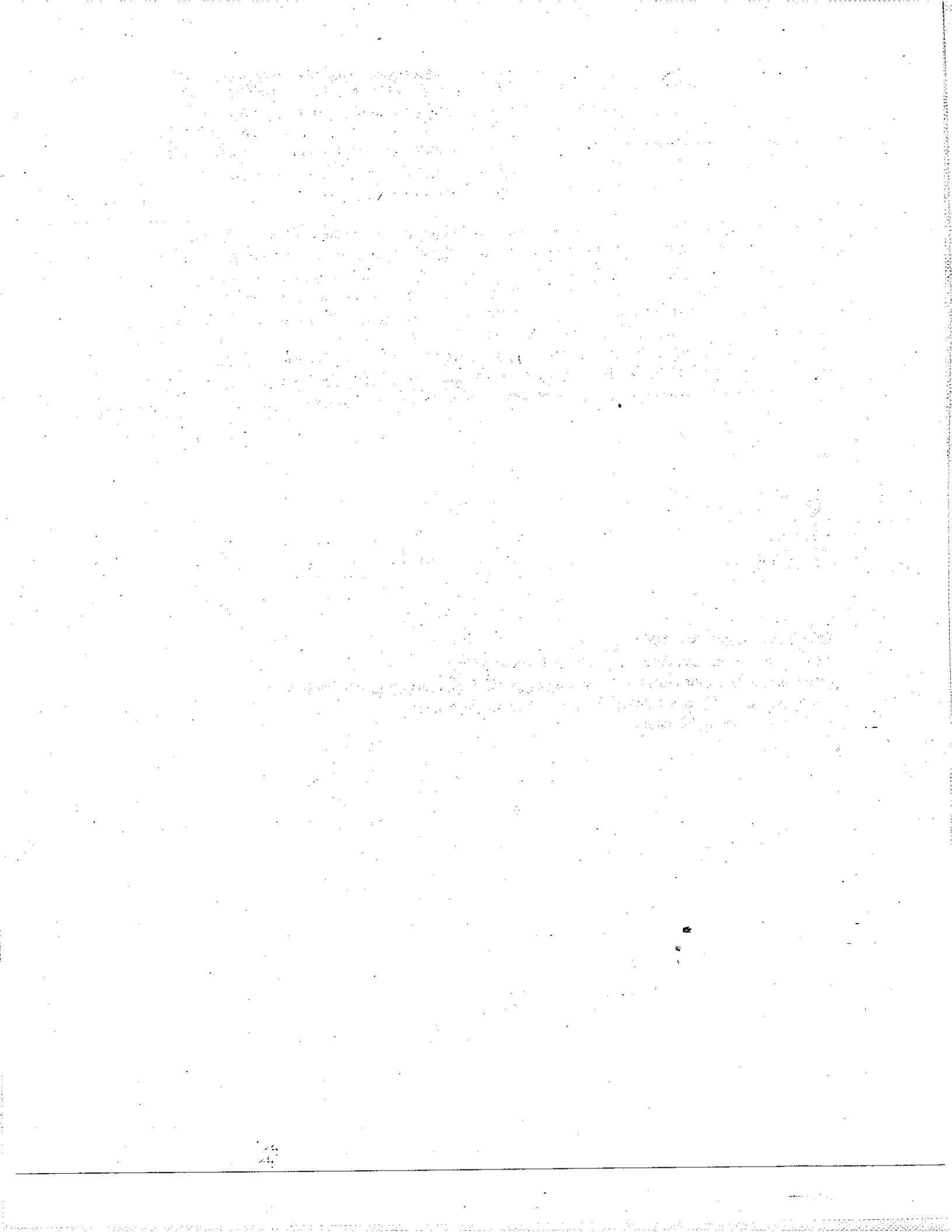
Stan Yamamoto, City Attorney

Mike Giari, Executive Director Port of Redwood City

Chu Chang, Director Building Infrastructure and Transportation Department

Larry Barwacz, Director Public Works Services Department

Jill Ekas, Planning Manager



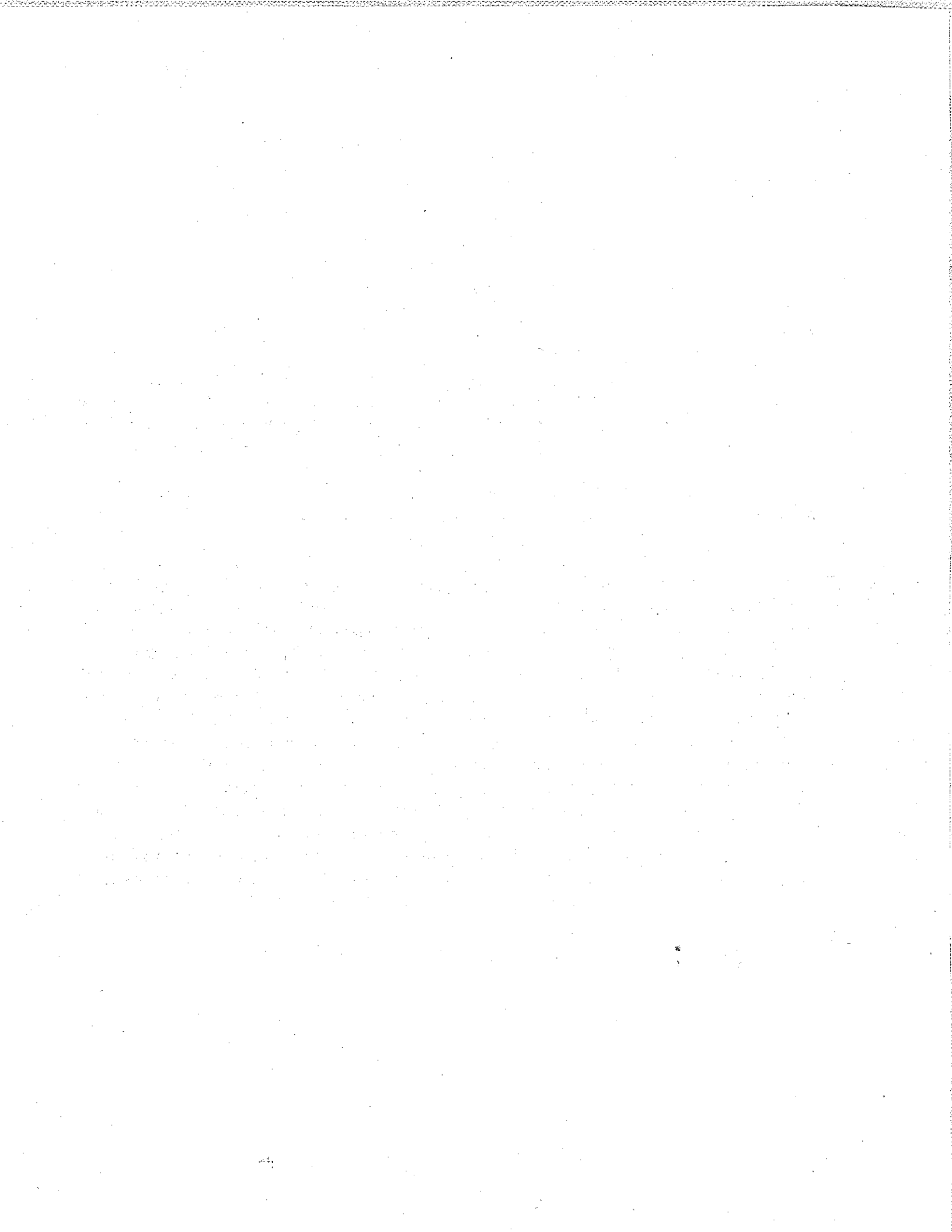
Comment Letter #: 58

Date: October 26, 2009

From: Peter Ingram, City Manager, Redwood City

Response to Comments:

- 58-1 Comment noted. The Air District appreciates Redwood City's support to improve air quality in the region, reduce the effects of climate change and protect public health.
- 58-2 Comment noted. The Air District encourages and values constructive and supportive comments as it implements programs to achieve its goals.
- 58-3 The Air District supports Redwood City's general plan update and preparation of a climate action plan, and the decision to focus the update on sustainable urban practices and policies that will reduce GHG emissions.
- 58-4 The Air District is a strong supporter of the Bay Area FOCUS program and development of Priority Development Areas (PDA). The Air District encourages Redwood City to develop PDAs in an efficient and health-protective manner.
- 58-5 The Proposed Thresholds of Significance report (November 2, 2009), recommends a single community risk and hazards threshold for all areas in the Bay Area, including impacted communities. Staff agrees with several commenters that the problem of certain areas being disproportionately adversely impacted should be addressed as a cumulative impacts problem. Staff has revised the proposed thresholds to do so. Under staff's current proposal, areas that are disproportionately burdened with TAC emissions sources in the local vicinity will benefit from a cumulative analysis threshold that will require projects to evaluate the cumulative impact of all such sources within a 1,000 foot radius of the proposed project. This revised approach will provide a tool for lead agencies to carefully consider whether to site new sources or receptors in disproportionately burdened areas, without establishing different health risk standards for different segments of the population. In addition, the Air District believes that withdrawing the earlier, more stringent threshold, is also appropriate in light of using OEHHA's more conservative risk factors (substantially increasing estimated risk levels) and the addition of community risk reduction plans. Risk reduction plans provide a programmatic approach to the overall problem and can also address existing sources of risks and hazards and can require design standards of new development not always available through the CEQA process.
- 58-6 See Master Response MR-1.



Core Members

American Lung Association
of California
Greater Bay Area
www.californiahlung.org

Bayview Hunters Point
Community Advocates
bhunterspoint@sbcglobal.net

Breathe California
www.ggbreathe.org

Friends of the Earth
www.foe.org

Natural Resources Defense
Council
www.nrdc.org

Our Children's Earth
Foundation
www.ocefoundation.org

RAMP: Regional Asthma
Management & Prevention
www.rampasthma.org

Sierra Club
www.sierraclub.org

Union of Concerned Scientists
www.ucsusa.org

West Oakland Environmental
Indicators Project
www.pacinst.org

BAY AREA CLEAN AIR TASK FORCE

October 26, 2009

Greg Tholen
Principal Environmental Planner
Bay Area Air Quality Management District
939 Ellis St.
San Francisco, CA 94109

Mr. Tholen:

The Bay Area Clean Air Task Force offers the following comments on the Draft Air Quality Guidelines for administering the California Environmental Quality Act. In general, the Guidelines establish stronger thresholds that will protect public health and the climate. However, there are particular areas that do not adequately recommend to Lead Agencies how to account for the operational impacts of projects, or for the cumulative impacts or for health-protective risk standards.

These comments are in response to both the September 2009 Draft Guidelines, and the October 9, 2009 release of the Revised Thresholds Options Report. We are concerned that the Revised Thresholds Options Report was released before the original comment deadline, and therefore was not in response to comments from the public health community. Therefore, we urge a new look at the revisions in light of public health concerns.

1. Greenhouse Gases Thresholds Establish Modest, but Improved Standards

The proposed thresholds for greenhouse gas emissions take an important step in addressing the climate crisis by providing guidance to lead agencies in assessing the environmental impacts of projects on the global climate, which impacts air quality in the Bay Area. BAAQMD could have set a higher standard than AB 32 targets based on either the Governor's Executive Order, or the substantial science demonstrating the need for stronger emission reductions. BAAQMD could have also incorporated additional GHG emissions in the reduction goal used in the "gap analysis," such as emission reductions planned as part of local government reductions and SB 375 implementation. Therefore, the proposed thresholds are modest, and a minimum level to begin application of CEQA to GHG emissions.

59-1

2. Local Community Risk and Hazard Impacts

Approach Most Protective of Community Health - The heightened protection for priority communities in the September 2009 Draft is an important step for assessing public health impacts of permits on the basis of cumulative impacts (p. 2-6). The September 2009 Draft proposed "Option

59-2

3: Tiered Approach,” and set a more stringent threshold of a 5 in a million cancer risk, and 0.2 $\mu\text{g}/\text{m}^3$ $\text{PM}_{2.5}$ annual average for proposed sources in the impacted communities. Although this proposal merely slowed the increase of toxics in priority communities, and did not act to fully protect the health of residents, we strongly support efforts to more stringently protect public health where needed the most.

In the context of priority communities with double or triple the background cumulative cancer risk, the September 2009 proposal recommending “Option 3: Tiered Approach” should continue to be recommended, and should be presented to the Board as an option that would provide needed health protection. If a Community Risk Reduction Plan is allowed as a substitute for a directly meaningful threshold, the September 2009 / Option 3 proposal for heightened protection for impacted communities should serve as an interim threshold until such a Qualified Plan is adopted and remains in compliance with the Guidelines.

Consistency within CRRP - The Guidelines do not adequately define the meaning of “consistency” with a Qualified Community Risk Reduction Plan (CRRP). Local jurisdictions are given unchecked discretion to establish risk and exposure reduction targets for the community, but are not given guidance on needed reductions. While measures will be required to reduce exposures, there is nothing to prevent a new source with cumulatively considerable risk, and for a plan to deem this project “consistent,” because the plan did not rely on such a new source to contribute toward reductions. A new source may be deemed “consistent,” but may operate outside the projects intended to effect pollution reductions. The pollution reduction programs could remain unfunded, without a clear and required implementation mechanism. The Guidelines must strengthen the Thresholds within the CRRP for individual new sources, and the mechanisms for funding mitigation if this approach is to be considered acceptable. Due to the great potential for this mechanism to be abused as a loophole, the Guidelines should also clarify that the other important cumulative impacts thresholds and the thresholds for new source impacts and ambient particulate matter will remain after adoption of a CRRP. The CRRP may not be as health protective, or enforceable. While it is a positive step for BAAQMD to collaborate with local jurisdictions on air quality planning, the CRRP should be in addition to strong Thresholds, not a substitute.

59-3

Site Design Toxic Best Practices - The September 2009 proposal also included a site design toxic best practice to locate the HVAC system intake as far from the source of risk as possible for projects within the impacted communities (p. 2-6). This very feasible measure should be retained, though there should also be recommended methods of minimizing the impacts. There may be multiple sources of risk at a site, or situations where the intake being further from a source may not always equate with minimizing risk.

59-4

Magnet Source Impacts - Many sources in the Bay Area are not permitted point sources, but are “magnet” sources, which attract mobile sources indirectly. Some point sources also attract indirect sources as magnet sources. We urge clarification in Section 3 and elsewhere in the Guidelines that magnet source impacts are to be considered within the scope of impacts to be assessed, and include induced demand for mobile sources, including light-duty and heavy-duty vehicles that are expected to travel to and from the site, and expected engine idling that may occur at the site.

59-5

3. Plan-Level Impacts

VMT Threshold - The Draft Guidelines include a chart of Thresholds of Significance for Plans on page 2-7. The chart omits the second bullet on page 2-9, which specifies as a Criteria Air Pollutant Threshold that proposed plans must show over the planning period that the rate of increase in VMT is equal to or lower than the rate of increase in population projected. The chart should be corrected to include reference to both Criteria Air Pollutant Thresholds. This Threshold for VMT is a significant improvement for protecting climate and reducing mobile source emissions.

59-6

Climate Action Plan Approach Requires Clarification - The Climate Action Plan approach is described on pages 2-9, and 5-2 through 5-4. This mechanism may be a desirable option for cities to comply with the Guidelines in a flexible manner, but it is important that mitigations for significant impacts are not lost in the process. There is no guidance on what is an appropriate base year. There is also no guidance on how to determine that the GHG reduction target meets or exceeds AB 32. We urge clarification to the Guidelines that a Climate Action Plan that reduces 2020 emission levels to 1990 levels within the jurisdiction is in compliance with AB 32, but requires additional detail. **The requirements must also specify that the reductions must be additional; they must be a part of "the gap" used in BAAQMD's analysis to develop the threshold, and not elsewhere incorporated and counted into other portions of the AB 32 Scoping Plan. The reductions must also be real, verifiable, and permanent. The Guidelines should specify these requirements.**

59-7

Defining Consistency with AQP and CAP - The Guidelines do not adequately define the meaning of "consistency" with the Air Quality Plan or the Qualified Climate Action Plan. While measures will be required to reduce emissions, jurisdictions could still deem projects "consistent," if a plan purportedly does not rely on such a new source to contribute toward reductions. A new source may be deemed "consistent," but may operate outside the projects intended to effect greenhouse gas emission reductions. The emission reduction programs could remain unfunded, without a clear and required implementation mechanism. **The Guidelines must clarify the requirements for determining consistency with an Air Quality Plan (AQP) or Climate Action Plan (CAP) to prevent this mechanism's abuse as a loophole.**

59-8

All projects tiered from Plan-level CEQA documentation should incorporate control measures to be consistent with the AQP. The CAP mitigation measures must be enforceable, and the mitigation measures must be explicitly tied to required reductions. We suggest that the last sentence on page 5-4 calling for mitigation measures to be made into binding and enforceable policies be augmented with language at the end: "that will achieve the Plan's greenhouse gas reductions goals." **Significant additional clarification and conditioning is needed to the CAP Threshold description.**

4. Assessing and Mitigating Operational-Related Impacts

Land Use Context of Screening Chart - The operational-related screening level charts on pages 2-3 through 2-5 list a variety of land uses, and can be useful to indicate typical project sizes that would trigger the threshold. However, the Guidelines do not describe the land use context for which the screening levels indicate. Indirect source emissions, particularly vehicle emissions, can vary widely based on the local context of surrounding densities and mix of uses, and transit

59-9

accessibility. The Guidelines should specify the land use context that they were designed for so that the screening levels are not inappropriately applied to varying kinds of project settings.

The Draft Guidelines direct lead agencies to compare the proposed project with the Screening Criteria on page 3-2. While the Guidelines suggest that the screening criteria are a conservative indication of whether the project would generate impacts exceeding the threshold, there is no guidance as to what conservative means. We suggest further indication of the land use setting so this is clear.

Substantial Evidence Required When Deducting Pass-Bay Trips - The Draft Guidelines describe how Lead Agencies can deduct adjustments for pass-by trips from the URBEMIS model on page 3-5. The Guidelines indicate that the Lead Agency should discuss its reasoning, but a mere discussion is not enough. We suggest that Lead Agencies must "discuss and justify its reasoning with substantial evidence" for assuming that some of the project-generated vehicle trips would be considered pass-by trips.

59-10

Location-Specific Evidence Required When Calculating Energy & Water Impacts - The Draft Guidelines on page 3-9 advise how to calculate a project's energy and water usage. For the embedded energy in water, Lead Agencies are directed to use the average embedded energy in water conveyance for water usage for Northern California. In fact, there are significant variations by agency, with some agencies operating using a gravity-fed conveyance, and others relying primarily on energy-intensive pumping operations. The CEC average for Northern California should be used only if agency-specific information is unavailable. In addition, the Guidelines suggest that a project's usage be estimated by identifying the average water usage rate per household. In fact, many agencies' water usage varies greatly across land use type and city/zip code. Instead of a utility-wide average, Lead Agencies should base estimated water use on specific patterns associated with the land use type in the specific city or zip code.

59-11

Clarification and Evidence Required When Deducting Mitigations for Reducing VMT - The Draft Guidelines identify on pages 3-11 through 3-17 potential ranges of deductions for mitigating operational-related impacts, many from reducing greenhouse gases and criteria air pollutants by reducing vehicle miles traveled. However, the Guidelines do not caution that substantial evidence is required to justify a reduction, particularly a reduction that approaches the higher points on the range. The Guidelines also do not caution that the reductions are not purely additive; as mitigation measures are implemented, the effectiveness of each individual measure is lower, although the combined mitigation rises with declining incremental returns. Such guidance is critical to avoid Lead Agencies arbitrarily applying deductions that do not amount to adequate feasible mitigation, would represent double-counting, or that cannot be supported by substantial evidence.

59-12

While research on deductions for individual measures, such as high quality transit service and the effects of mixed use and neighborhood retail are potentially quantifiable, less is known about the combined effects of applying a daily parking charge, parking cash-out, and free transit passes. Research generally shows that the price elasticity is a much lower factor with regard to mode choice in comparison to service elasticity. For CEQA purposes, it should be held to greater scrutiny that providing free transit passes would always equate to a 25% trip reduction from the transit service reduction, though this might occur in transit-rich areas that also have priced parking.

As another example, a mitigation for "bike & pedestrian" improvements may qualify for up to a 9% deduction, and daily parking charges up to 25% reduction, and parking cash-out up to 12.5% reduction. With transit service mitigating up to 15%, and free transit passes mitigating an additional 3.75% (25% of 15%), an affordable housing project (4%) with local serving retail (2%), and complete streets (3%) could mitigate a combined 74.25% of vehicle trips from the ITE trip generation model, under the Proposed Guidelines.

59-12

Although the ITE trip generation model assumes an auto-oriented environment, and deductions are necessary, the Proposed Guidelines allow arbitrary and unsubstantiated deductions for the mitigation measures listed. Significantly more guidance is needed as to how the measures are to be applied in specific local land use settings, and when in combination with other mitigation measures. This guidance should caution that substantial evidence for each deduction is required, and such evidence must address the combined effect of measures. BAAQMD should assist in providing the basis for this evidence in conjunction with the development of the Indirect Source Rule so there is a more level playing field with regard to how trip deductions are applied.

Emissions Projections Should Consider Projected Length of Vehicle Trips - The Guidelines also do not account for the length of vehicle trips made to the project site, which is not considered in the ITE manual. The ITE manual is primarily to estimate trips and parking demand needs in an auto-oriented environment. The Guidelines should build on the trip generation estimates, and require an estimate of the average trip length, so projects can accurately estimate their impact on greenhouse gases and criteria pollutants.

59-13

Additionality for Recycling, Water, and Energy Conservation Measures - Mitigations must be in response to impacts assessed. If recycling, water, or energy conservation measures were integrated and effectively deducted at the front-end in assessing the impacts of a project, they should not be deducted as mitigations on the back-end.

59-14

Use of All Feasible Mitigation Measures - We urge clarification that all feasible mitigations must be pursued under the California Environmental Quality Act. We encourage incorporation of the following language: "If mitigation did not bring a project back within the threshold requirements, the project would be cumulatively significant and could be approved only with a Statement of Overriding Considerations and a showing that all feasible mitigation measures have been implemented."

59-15

5. Cumulative Impacts

The Thresholds of Significance Report identifies the high levels of total cancer risk as a result of cumulative toxic exposure. It is important that the guidelines reflect the severity of the health impacts caused by high levels of pollution in specific impacted communities within the Bay Area.

Necessity of Cumulative Impacts Analysis - The Draft Guidelines include language arbitrarily limiting the recommended level of analysis. They state that due to consideration of a project's individual emissions, and the level that they would be cumulatively considerable: "[i]n a sense, the project-level air quality impacts reflect a project's cumulative air quality impact as well. Therefore, additional analysis beyond project level analysis for assessing cumulative impacts is unnecessary." (p. 2-1). This language is unclear given the inclusion in the updated Draft

59-16

Guidelines of a cumulative impacts threshold, and the importance of adequately discussing cumulative impacts in CEQA review. We recommend eliminating these two sentences such that BAAQMD does not discourage lead agencies from assessing cumulative impacts.

Cumulatively Considerable Impacts Beyond 1,000 Feet - The Draft Guidelines recommend that all sources and receptors located within 1,000 foot radius of a proposed project be considered as the range of sources that are cumulatively considerable. Although one published study shows allergic reactions in mice dropping off to less significant levels at 500 – 1000 feet, there is still the potential for sources beyond 1,000 feet to generate cumulatively considerable impacts at the project site. For example, the plume of pollution from the Potrero Power Plant in San Francisco continues well beyond 1,000 feet of the source, and can be easily visually observed. Prevailing winds can also exacerbate this effect. Certain heavy-traffic areas or high-impact sources may also generate a cumulatively considerable impact even beyond 1,000 feet. We urge that the Guidelines clarify that for specific exceptionally high-polluting sources, impacts between 1,000 – 2,000 feet may need to be considered based on the modeled impacts of these sources.

59-17

Modeled Impacts at 250 ft. Increments - BAAQMD's presentations on the Guidelines suggested that impacts from sources would be modeled every 500 feet for cumulative consideration. However, between 500 feet and 1000 feet, the level of significance may be crossed in many areas. We urge that modeled impacts for health risk and particulate matter concentrations be provided at 250 foot increments, so that the impacts at 750 feet from the project are clear for Lead Agencies to assess.

59-18

Inclusion of Non-Permitted Sources - We would also like to ensure that in areas with several non-permitted sources, that these effects are considered as cumulative impacts. We request additional clarification on page 4-4 to show that non-permitted toxic sources will be included. BAAQMD should also assist Lead Agencies in acquiring and updating this information.

59-19

Particulate Standard - The Cumulative Local Community Risk and Hazard Threshold of 0.8 $\mu\text{g}/\text{m}^3$ standard for $\text{PM}_{2.5}$ pollution is to be commended. We consider this a significant improvement over the prior draft, and hope that this will help protect community health.

59-20

Applicability of Threshold - The addition of this cumulative impacts threshold is a significant improvement over the prior adopted Guidelines. We urge that it be adopted, and not be waived with a jurisdiction's adoption of a CRRP that may not be as health-protective or enforceable.

59-21

6. Construction-Related Impacts

Particulate Matter Threshold - The Thresholds for Construction-Related Criteria Air Pollutants for Particulate Matter are insufficient to protect public health. The screening chart identifies effectively no common urban use as triggering a threshold that would require mitigation for particulate matter. Construction equipment emits high amounts of fine diesel particulate matter, triggering asthma attacks, cardiovascular risk, and cancer. The Draft Guidelines would set 82 lbs per day for PM_{10} and 54 lbs per day for $\text{PM}_{2.5}$ as the Thresholds, but such emissions would likely cause exceedences in parts of the Bay Area for the $\text{PM}_{2.5}$ standard of 35 $\mu\text{g}/\text{m}^3$. However, the construction-related standard of .3 $\mu\text{g}/\text{m}^3$ in the revised Thresholds report may or may not be sufficient. We urge the adoption of an ambient particulate matter standard over a 1-hour averaging period to ensure that projects that may cause levels of pollution

59-22

that would trigger asthma attacks and cardiovascular health risks will be mitigated – averaging over an 8-hour period would be insufficient since construction-related pollution is typically emitted over short, intense periods.

Thresholds Needed for Clean Construction Equipment Mitigation- Use of best available control technology would be a cost effective way to address a major source of toxic risk in the priority communities. The District's research in the CARE program found that construction equipment is 29% of the weighted cancer risk in the priority communities, and in some communities such as Bayview-Hunters' Point, it is even higher. Use of retrofits and higher tier engines can cut up to 85% of the fine particulate matter emitted, so adoption of toxic best practices could potentially result in a 25% reduction in cancer risk in the priority communities. Air Resources Board studies comparing the costs and benefits of requiring higher tier engines and retrofits showed a **nine to one** ratio of health benefits and industry costs, demonstrating that cleaner diesel equipment is an extremely cost effective measure.

The Guidelines state that District staff is developing a screening level to indicate the size of a construction project that will trigger Local Community Risk and Hazards Thresholds. We urge inclusion in the Guidelines the use of Toxic Best Practices for clean construction equipment, particularly in the impacted communities. The "Gold Standard" developed by NRDC should be adopted as TBACT/TBP for new projects that could potentially increase ambient particulate matter or local community risk. In the impacted communities, all projects exceed unhealthy levels of air quality and cancer risk, and therefore all projects should be required to mitigate by use of TBACT/TBP. We also urge BAAQMD's quick adoption of a screening level that would indicate the size of a construction project that will trigger the thresholds. This screening level should take into consideration the cumulative risk by requiring all projects in the impacted communities utilizing 25 horsepower equipment operating at more than de minimus time per day to trigger the threshold.

At the Plan level, the Guidelines should also recommend the use of Toxic Best Practices for clean construction equipment, particularly in the impacted communities. This could be stated in the list of performance-based best management practices on pages 2-7, 2-8, and 5-6, and the Basic Construction Mitigation Measures on page 6-10. Additional Mitigation Measure #9 on page 6-12 is inadequate because it only applies to equipment of more than 50 horsepower, and calls for only a 45 %PM reduction. Particularly in the impacted communities, feasible mitigation of construction-related impacts should mean all equipment greater than 25 horsepower operating with BACT such as a cleaner engine or particulate filter, or using 100% biofuel.

Idling at Schools - Additionally, Best Practice number 6 includes reference to existing regulations on idling. This guideline should also reference the limit on idling at schools of 30 seconds, on both pages 2-8 and 5-6.

Phasing - Some construction projects may be so large as to generate significant impacts unless phased. Under "Additional Construction Mitigation Measures" on page 6-11, the Guidelines should indicate when Phasing would be required to reduce daily emissions and local concentrations of particulate matter below emissions thresholds.

Toxic Risk Threshold - The discussion of Diesel Particulate Matter on page 6-15 should discuss the asthma and cardiovascular impacts generated from diesel particulate matter. We request

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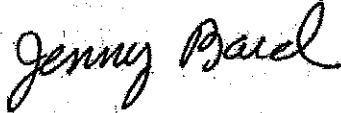
59-25

clarification that in BAAQMD recommending the same Threshold of Significance for project operations be applied to construction, that this means that the daily emissions that would result in a 10 in a million cancer risk to the community would be the Threshold of Significance for mitigating construction-related impacts related to toxic air contaminants.

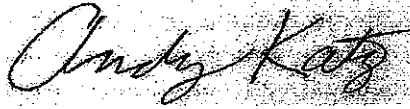
7. Conclusion

On behalf of the Bay Area Clean Air Task Force, thank you for your consideration.

Sincerely,



Jenny Bard
Co-Chair



Andy Katz
Co-Chair

Attachment 1

NRDC CEQA Standards for Clean Construction

All CEQA projects should meet the following standards for construction to minimize air quality, public health and climate impacts:

Construction Equipment

Equipment¹ greater than 25 horsepower must:

- (1) Meet current emission standards² *and*
- (2) Be equipped with Best Available Control Technology (BACT)³ for emissions reductions of PM and NOx, *or*
- (3) Use an alternative fuel.⁴

Diesel Trucks

On-road trucks used at construction sites, such as dump trucks, must:

- (1) Meet current emission standards, *or*
- (2) Be equipped with BACT⁵ for emissions reductions of PM and NOx, *and*
- (3) Any trucks hauling materials such as debris or fill, must be fully covered while operating off-site (i.e. in transit to or from the site).

Generators

Where access to the power grid is limited, on-site generators must:

- (1) Meet the equivalent current off-road standards for NOx, *and*
- (2) Meet a 0.01 gram per brake-horsepower-hour standard for PM, *or*
- (3) Be equipped with Best Available Control Technology (BACT) for emissions reductions of PM.

Special Precautions Near Sensitive Sites

All equipment operating on construction sites within 1,000 feet of a sensitive receptor site (such as schools, daycares, playgrounds and hospitals)⁶ would either:

- (1) Meet US EPA Tier IV emission standards *or*
- (2) Install ARB Verified "Level 3" controls (85% or better PM reductions), and
- (3) Notify each of those sites of the project, in writing, at least 30 days before construction activities begin.⁷

¹ Equipment refers to vehicles such as excavators, backhoes, bulldozers propelled by an off-road diesel internal combustion engine.

² These standards are described in Division 3 Chapter 9, Article 4, Section 2423(b)(1)(A) of Title 13 of the California Code of Regulations, as amended. An explanation of current and past engine standards can also be accessed at <http://www.dieselnet.com/standards/>. Currently all new equipment are meeting the US EPA Tier II standards and most equipment also meets Tier III standards (all 100HP to 750HP equipment). Note that Tier IV standards would automatically meet the BACT requirement.

³ Here BACT refers to the "Most effective verified diesel emission control strategy" (VDECS) which is a device, system or strategy that is verified pursuant to Division 3 Chapter 14 of Title 13 of the California Code of Regulations to achieve the highest level of pollution control from an off-road vehicle.

⁴ This could include 100% natural gas or biodiesel, which is a fuel comprised of mono-alkyl esters of long chain fatty acids derived from vegetable oils or animal fats, meeting the requirements of ASTM D 6751. However, biodiesel must be proven to be sourced from sustainable feedstocks including waste grease, fats or oil and under certain circumstances, farmed oils that can be proven to be sustainable.

⁵ Here BACT also refers to most effective VDECS as defined by the California Air Resources Board (CARB).

⁶ Sensitive sites are defined and described in the CARB Air Quality and Land Use Planning Guidelines, 2005; <http://www.arb.ca.gov/ch/landuse.htm>.

Recommendations to Limit Global Warming Pollution from Construction:

- (1) Prohibit all non-essential idling of equipment and vehicles onsite.
- (2) Use the lowest carbon fuels possible (such as biodiesel or other alternative fuels).
- (3) Electrify operations to the extent possible. Where access to the power grid is possible, this should be established instead of using stationary or mobile power generators. All cranes, forklifts and equipment that can be electrified, should be.
- (4) All constructed buildings should meet the Leadership in Energy and Environmental Design (LEED) Green Building Rating System™ including the use of locally sourced materials, where possible.⁸

⁷ Notification shall include the name of the project, location, extent (acreage, number of pieces of equipment operating and duration), any special considerations (such as contaminated waste removal or other hazards), and contact information for a community liaison who can answer any questions.

⁸ For information on LEED standards, see the U.S. Green Building Council:
<http://www.usgbc.org/DisplayPage.aspx?CategoryID=19>

Comment Letter #: 59

Date: October 26, 2009

From: Jenny Bard, Regional Air Quality Director, American Lung Association in California
and Andy Katz, Co-Chair, Bay Area Clean Air Task Force

Response to Comments:

59-1 See Master Response MR-3.

59-2 The Proposed Thresholds of Significance report (November 2, 2009), recommends a single community risk and hazards threshold for all areas in the Bay Area, including impacted communities. Staff agrees with several commenters that the problem of certain areas being disproportionately adversely impacted should be addressed as a cumulative impacts problem. Staff has revised the proposed thresholds to do so. Under staff's current proposal, areas that are disproportionately burdened with TAC emissions sources in the local vicinity will benefit from a cumulative analysis threshold that will require projects to evaluate the cumulative impact of all such sources within a 1,000 foot radius of the proposed project. This revised approach will provide a tool for lead agencies to carefully consider whether to site new sources or receptors in disproportionately burdened areas, without establishing different health risk standards for different segments of the population. In addition, the Air District believes that withdrawing the earlier, more stringent threshold, is also appropriate in light of using OEHHA's more conservative risk factors (substantially increasing estimated risk levels) and the addition of community risk reduction plans. Risk reduction plans provide a programmatic approach to the overall problem and can also address existing sources of risks and hazards and can require design standards of new development not always available through the CEQA process.

59-3 The updated CEQA Guidelines will provide a broad view of what Staff anticipates will be required in a Community Risk Reduction Plan (CRRP). Understanding that no such plans yet exist in the Bay Area, the Air District will initiate a public process to engage stakeholders in identifying steps and defining criteria for a CRRP. The public engagement process will work to answer the CRRP questions raised by the commenter.

59-4 Staff will consider including the suggested mitigation measure in the updated CEQA Guidelines.

59-5 The Air District will be providing tables with estimated calculations of community risk and hazards from all permitted sources and major roadways in the Bay Area. In the long term, it is our intention to include risk tables for magnet sources as well.

59-6 The thresholds summary table will be updated in the CEQA Guidelines to reflect the proposed plan-level thresholds in the *Proposed Thresholds of Significance* report (November 2, 2009).

59-7 The updated CEQA Guidelines will provide direction on criteria for developing a qualified climate action plan, including guidance on requirements for mitigation measures. See also master response MR-3.

59-8 The plan-level threshold in the updated CEQA Guidelines will refer users to the Air District's most recent Air Quality Plan for criteria on how a proposed plan should be consistent with the most recent Air Quality Plan. Since the Air District's Air Quality Plan is updated more frequently than the CEQA

Guidelines, it can better address changing needs and issues. The updated CEQA Guidelines will also provide more clarification on how proposed projects should determine consistency with a climate action plan.

- 59-9 The screening tables provided in the revised CEQA Guidelines are not thresholds of significance and will not, based on the screening table alone, trigger a mandatory EIR. Rather, they are just screening levels to minimize the need for full analysis in situations where BAAQMD has determined no significant air quality impact would occur because Air District staff have modeled the screening level projects under very conservative assumptions and have determined that such projects will not exceed the applicable thresholds of significance. Most projects will have characteristics, such as nearby transit and services, which will reduce estimated emissions and allow a larger project than indicated in the screening table to be less than significant.
- 59-10 Comment noted, Staff will consider revising language as suggested by commenter.
- 59-11 The updated CEQA Guidelines will provide direction on how lead agencies should calculate GHG emissions from indirect sources, including electricity use and water conveyance.
- 59-12 The mitigation measure tables in the CEQA Guidelines are intended to assist lead agencies in identifying and quantifying mitigation for their projects. It is the lead agency's responsibility to justify the mitigation reduction assumed for proposed projects including disclosure of calculation method and assumptions. Staff recognizes that quantifying emission reductions from mitigation measures in combination with one another could be a challenge. Staff will consider providing additional direction on quantifying mitigation reductions in the updated CEQA Guidelines.
- 59-13 Air District staff believes that using readily available modeling tools, such as URBEMIS, is adequate for estimating GHG emissions from vehicle trips in a proposed project.
- 59-14 Staff agrees with the commenter that project attributes, such as recycling or water and energy conservation, should not be considered mitigation measures.
- 59-15 Comment noted, Staff will consider adding the suggested language in the updated CEQA Guidelines.
- 59-16 The proposed thresholds of significance were developed with consideration to an air pollutant's cumulative impact. Rather than recommending thresholds for project related and cumulative impacts separately, the thresholds are based on cumulative impacts. The community risk and hazard thresholds recommend a separate cumulative threshold to ensure that the total of all directly emitted risk and hazard emissions in an area are not significantly adverse.
- 59-17 It is up to the lead agency to determine if the 1,000 foot radius line should be expanded to consider risks from stationary sources for siting a new receptor or source.
- 59-18 The Air District will provide screening tables of modeled impacts for health risk and particulate matter concentration at various distances from the source.

- 59-19 The screening tables that the Air District will provide will be modeling impacts for health risk and particulate matter concentrations from permitted sources and roadways, a non-permitted source. Staff is unclear to what other non-permitted sources the commenter is referring to.
- 59-20 The proposed threshold for construction of an annual average increase in PM_{2.5} emissions of 0.3 µg/m³ is based on the US EOA Significant Impact Level (SIL) for PM_{2.5}. The SIL is a threshold applied to individual facilities that apply for a permit to emit a regulated pollutant in an area that meets the national ambient air quality standards.
- 59-21 Comment noted and appreciated.
- 59-22 See comment response 59-2.
- 59-23 The Air District will consider adding NRDC's "Golden Standard" construction standards be recommended as mitigation measures. We will also consider recommending screening levels for construction projects that would trigger the threshold.
- 59-24 Staff will consider the commenter's suggestions for construction mitigation measures for plan-level construction impacts.
- 59-25 The updated CEQA Guidelines will discuss health risks attributed to exposure to diesel particulate matter. The updated CEQA Guidelines will clearly state that the community risk and hazard threshold for construction is the same one as the threshold for projects.



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October 26, 2009

Bay Area Air Quality Management District BAAQMD Board of Directors
Attn: Greg Tholan, Principal Planner
939 Ellis St.
San Francisco, CA 94109

Dear Bay Area Air Quality Management District Board of Directors:

Thank you for the opportunity to comment on the draft Bay Area Air Quality Management District's California Environmental Quality Act Guidelines ("Guidelines"). The City of Union City ("City") is in support of the District's effort to update their Guidelines but are concerned that the Guidelines may have unintended consequences that would impact current efforts of Bay Area cities to promote smart growth and infill development. In addition, the City is concerned that the timing of the implementation of the Guidelines will negatively impact projects for which an Environmental Impact Report is currently in process.

60-1

It is our understanding that the proposed methodology does not take into consideration any emission reduction features of a project before determining a project's level of significance. As such, projects that incorporate greenhouse gas emissions reduction features, such as the location of a project near transit or incorporation of Transportation Demand Management (TDM) strategies that may include the provision of transit passes, on-site car share, etc., are treated the same as projects that do not incorporate these measures. Instead, these reduction features are treated as mitigations, which would negate a project's ability to qualify for a categorical exemption. Rather than treat all projects the same, the proposed Guidelines should begin with the premise that the CEQA process should be minimized for projects consistent with achieving the region's smart growth goals.

60-2

It should also be noted that this methodology will have a detrimental impact on infill projects that previously qualified for a Categorical Exemption per Section 15332, *Infill Development Projects*. These types of projects are typically located in areas well served by transit and have the most opportunity to incorporate TDM strategies. However, these project features would not be taken into consideration when determining a project's level of significance. In addition, under the proposed Guidelines, the infill categorical

60-3

exemption could not be used for a mid-rise project with more than 90 units. These provisions could result in more infill projects being required to prepare a Negative Declaration or Mitigated Negative Declaration, which would add more cost and time to the process and uncertainty to the developer. For these reasons, it is anticipated that the Guidelines may fail to encourage development patterns essential to meeting the State's greenhouse gas emissions reduction goals.

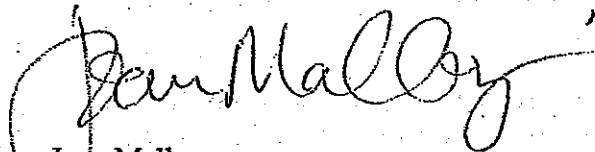
60-3

We are also concerned that there has been no discussion regarding a pipeline for projects that are currently in process. The City is currently processing an Environmental Impact Report (EIR) that is almost completed. The draft EIR was scheduled to be released in the next few months. To ensure the document's adequacy, the city requested the EIR consultant prepare a revised budget and scope that would address the proposed Thresholds. The additional scope added approximately \$48,000 to the budget and several additional weeks of delay to a project that is currently feeling the effects of the current economic crisis. On a related note, this project would accommodate high-density residential at our BART station, which is exactly what SB 375 is trying to encourage. To accommodate projects for which EIR's are currently being prepared, it is recommended that projects that have had a Notice of Preparation recorded for them be excluded from these requirements.

60-4

We appreciate your consideration of the issues raised in this correspondence and hope that you will consider them when adopting the final Guidelines.

Sincerely,



Joan Malloy
Economic & Community Development Director

Comment Letter #: 60

Date: October 26, 2009

From: Joan Malloy, Economic & Community Development Director, City of Union City

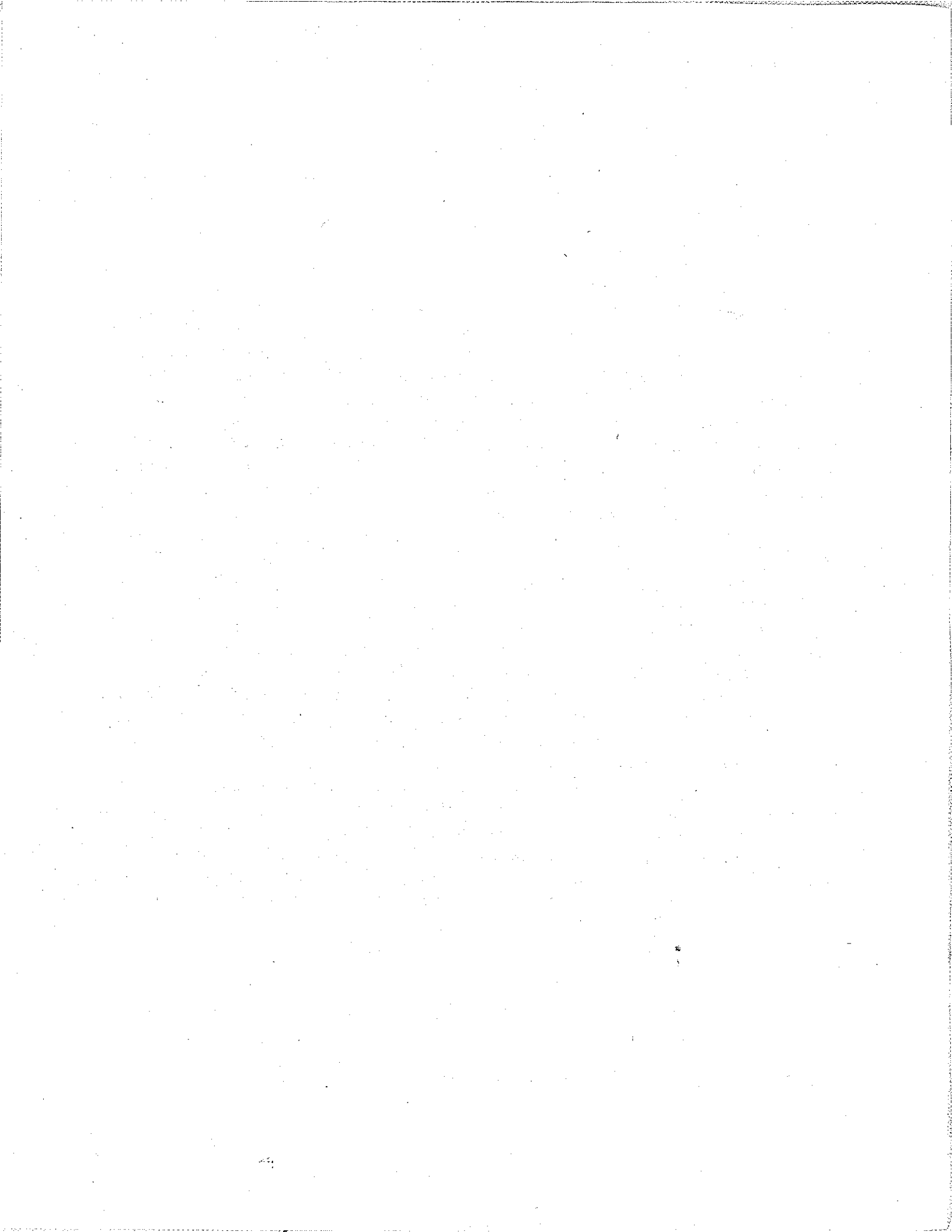
Response to Comments:

60-1 See Master Response MR-1.

60-2 The screening tables provided in the revised CEQA Guidelines are not thresholds of significance and will not, based on the screening table alone, trigger a mandatory EIR. Rather, they are just screening levels to minimize the need for full analysis in situations where BAAQMD has determined no significant air quality impact would occur because Air District staff have modeled the screening level projects under very conservative assumptions and have determined that such projects will not exceed the applicable thresholds of significance. Most projects will have characteristics, such as nearby transit and services, which will reduce estimated emissions and allow a larger project than indicated in the screening table to be less than significant. Well designed projects that incorporate recommended measures in the project proposal are not considered mitigated projects and may still be found less than significant and qualify for a categorical exemption.

60-3 See Master Response MR-2.

60-4 The District's proposed thresholds of significance will not be mandatory for use by other lead agencies in the Bay Area. Lead agencies may choose to apply the District's thresholds to determine the significance of projects before them, or they may determine that some other method of analysis would be more appropriate for their particular agency or for a particular project. The District cannot therefore adopt a specific "effective date" upon which the thresholds will become mandatory. For lead agencies with projects that are already under review when the proposed thresholds are adopted, it will be up to each individual agency to determine whether and when to apply the District's revised thresholds for those projects. If the lead agency finds it appropriate to apply the District's revised thresholds in its significance analysis for such projects, it may do so. If the lead agency finds that it would not be appropriate to apply the revised thresholds to projects already under review, it may use some other means to determine significance as long as the determination is supported by substantial evidence as required by CEQA. For these reasons, staff is not proposing an "effective date" for the proposed thresholds. For those jurisdictions choosing to use the District's recommended thresholds, the District will establish a date upon which we recommend the thresholds become effective.





Western States Petroleum Association
Credible Solutions • Responsive Service • Since 1907

Catherine H. Reheis-Boyd
Executive Vice-President and Chief Operating Officer

October 26, 2009

Mr. Jack Broadbent
Chief Executive Officer/Air Pollution Control Officer
Bay Area Air Quality Management District Office
939 Ellis Street
San Francisco, CA 94109

Dear Mr. Broadbent:

In September 2009, the Bay Area Air Quality Management District (BAAQMD or District) issued the California Environmental Quality Act (CEQA) Draft Air Quality Guidelines." Subsequently, on October 8, 2009, the District released amendments titled "Revised Draft Options and Justification Report, California Environmental Quality Act Thresholds of Significance." This letter provides the comments of the Western States Petroleum Association ("WSPA") on the BAAQMD CEQA Guidelines and Revised Draft Options.

WSPA is a non-profit trade organization representing twenty-seven companies that explore for, produce, refine, transport and market petroleum, petroleum products, natural gas and other energy products in California and five other western states. Our organization is dedicated to working toward ensuring that consumers continue to have reliable access to petroleum and petroleum products through policies that are socially, economically and environmentally responsible.

WSPA has a significant interest in the implementation of California's Global Warming Solutions Act of 2006 ("AB 32"). Our interest, as relevant to the Guidelines, is related to the manner in which the Guidelines attempt to evaluate and mitigate impacts from Greenhouse Gas (GHG) emissions pursuant to CEQA.

Unlike impacts from criteria pollutant emissions, there does not appear to be a scientific basis linking GHG emissions from a particular project to specific physical, localized environmental effects. Impacts from GHG emissions must be evaluated in a significantly larger context than most environmental impacts under CEQA.

This type of evaluation is further re-enforced in the Executive Summary of the Revised Draft Options which states in pertinent part... "BAAQMD publishes these Guidelines to assist local jurisdictions and agencies to comply with the requirements of CEQA regarding potentially adverse impacts to air quality. The primary purpose of the Guidelines is to provide a means to identify proposed local plans and development projects that may have a significant adverse effect on air quality, public health, attainment of state and national ambient air quality standards, and to provide recommendations to mitigate those impacts."

While the Proposed Amendments as presented generally reflect this unique reality, WSPA contends that to evaluate accurately an individual project's impacts on climate change, the project must be viewed in the context of the statewide reductions targeted under AB 32, as well as statewide GHG emissions.

WSPA believes that any CEQA Guidelines governing GHG emissions should recognize the importance of the AB 32 Scoping Plan adopted by the California Air Resources Board.

61-1

The Scoping Plan provides a blueprint for how the state will achieve the GHG reductions needed to meet the AB 32 mandate. Therefore, projects for sources within sectors covered by the GHG measures and reductions referenced in the Scoping Plan should be able to rely on those mandated measures and reductions when determining whether the projects result in a significant environmental impact pursuant to CEQA.

61-1

In its draft proposed amendments for CEQA GHG regulations, the Natural Resources Agency, in section 15093(d), acknowledges that given the unique nature of global climate change, lead agencies should have discretion to consider asserted local effects in the context of region-wide or statewide benefits.

WSPA believes that when evaluating project-specific GHG emissions in such broader context, local agencies must still base any determination of significant effects on substantial evidence. They do not have the discretion to burden individual projects with mitigation measures or conditions designed to achieve reductions greater than those required to mitigate such projects' asserted cumulative contribution to climate change.

61-2

Thus, in Section 1.2.3.1 of the Proposed Options, WSPA recommends it be amended as follows (proposed language underlined).

“Projects consistent with a qualified Climate Action Plan adopted by the local jurisdiction (or similar adopted policies, ordinances and programs) that include enforceable measures to reduce GHG emissions consistent with AB 32 goals or Executive Order S-03-05 targets would be considered less than significant.

“A lead agency may determine that a project's incremental contribution to a cumulative effect is not cumulatively considerable if the project will comply with the requirements in a previously approved plan or mitigation program. This includes, but is not limited to, water quality control plan, air quality attainment or maintenance plan, integrated waste management plan, habitat conservation plan, natural community conservation plan, plans or regulations for the reduction of greenhouse gas emissions which provides specific requirements that will avoid or substantially lessen the cumulative problem within the geographic area in which the project is located.

61-3

It also includes other state and/or federal mandates, in addition to the Global Warming Solutions Act of 2006, that, when implemented result in a net increase in energy efficiency or decrease in carbon intensity of the underlying economic activity or of the state's overall carbon footprint. Such plans or programs must be specified in law or adopted by the public agency with jurisdiction over the affected resources through a public review process to implement, interpret, or make specific the law enforced or administered by the public agency. When relying on a plan or program, the lead agency should explain how the particular requirements in the plan or program ensure that the project's incremental contribution to the cumulative effect is not cumulatively considerable.”

This language is consistent with Section 15064(h) (3) of the proposed CEQA Guidelines pertaining to greenhouse gases pending adoption at the California Natural Resources Agency.

The principle for this language is identical to that in the first paragraph of Section 1.2.3.1 which allows lead agencies to consider local “Climate Action Plans” as satisfying any significance threshold. The factors that constitute feasible mitigation for purposes of determining whether a project's GHG emissions should be required to go through the CEQA review process, should be evaluated based on several criteria.

These include the totality of the circumstances related to a particular project's or facility's or the State's overall increase in energy efficiency, or decrease in the carbon intensity of the underlying economic activity, or of the state's overall carbon footprint.

WSPA is very concerned with **Section 1.2.3.2 STATIONARY SOURCES** and the bright-line threshold of 10,000 MT CO₂ e/yr. The discussions that have taken place as part of the District's CEQA GHG Significance Threshold development process highlight a fundamental problem if one tries to define a numeric CEQA GHG significance threshold.

That is, lacking any substantial evidence (i.e., technical or scientific basis) for determining significance, attempts to define CEQA significance result in arbitrary, ill-conceived and untested definitions.

Given the nature of GHG emissions and global warming concerns, determining the "significance" under CEQA of emissions from a single project is an area of uncertainty. Moreover, a rule based solely on a project's overall emissions increase in numeric terms could have the counterproductive effect of driving highly desirable energy supply projects outside of the Bay Area.

This could create the further unintended consequence of causing global GHG emissions to rise as the distance between energy supply and delivery to consumers increases.

An imbalance between the location of energy supplies and the point of consumption increases GHG emissions due to transmission losses (in the electricity sector) and increased transportation activities (in the fuels sector).

Using a numerical significance threshold as currently proposed by District Staff to determine project significance would chill development of important local/state projects by adding another layer of costly mitigation that may be unnecessary and unjustified.

WSPA recognizes that the District needs to conduct CEQA analyses for proposed projects within its jurisdiction – and to do so in light of the implementation of AB 32. To this end, WSPA believes that, in determining whether a proposed project's GHG emissions may have a significant impact on climate change, the District as a lead agency for a project should consider the following principles:

- Whether the project complies with GHG emissions standards or requirements promulgated by CARB under AB 32 and/or SB 375, the District, or by other state agencies or commissions applicable to the source;
- Determination that a project does **not** have a significant impact on the climate if the project will meet applicable standards promulgated by CARB, Air District, or other state agencies or commissions; if no such standards currently are in effect, then the District may evaluate whether the project will result in a net increase in energy efficiency or decrease in the carbon intensity of the underlying economic activity or the state's overall carbon footprint; and,
- If the project results in a net improvement in energy efficiency or a net decrease in carbon intensity of the underlying economic activity or the state's overall carbon footprint, then the District may determine that the project does not have a significant impact on climate.

WSPA believes strongly that the approach outlined above is the appropriate and supportable approach as compared to the numeric, mass emissions bright-line threshold limit contemplated by District Staff, given the

G1-4

G1-5

nature of GHG emissions. This is also consistent with WSPA's proposed Section 1.2.3.1 language as discussed above.

1.3.2 GREENHOUSE GAS EMISSIONS

Staff recommends that plans, such as general plans or plans and programs developed in conformance with other state and/or federal mandates, in addition to the Global Warming Solutions Act of 2006, that, when implemented result in a net increase in energy efficiency or decrease in carbon intensity of the underlying economic activity or of the state's overall carbon footprint, be considered less than significant if they either meet specified GHG efficiency criteria or if the jurisdiction has adopted a qualified Climate Action Plan (or similar adopted policies, ordinances and programs) that includes feasible measures to reduce GHG emissions consistent with AB 32 goals and Executive Order S-03-05 targets.

61-6

4.2.3.2 SCIENTIFIC AND REGULATORY JUSTIFICATION

While the Scoping Plan establishes the policy intent to control numerous GHG sources through regulatory, incentive and market means, given the early phase of implementation and the level of control that local CEQA lead agencies have over numerous GHG sources, CEQA is an important and supporting tool in achieving GHG reductions overall in compliance with AB 32. In this spirit, BAAQMD is considering the adoption of thresholds of significance for GHG emissions for land use development projects. However, as the Scoping Plan is implemented, those activities should be considered in GHG significance evaluations so as to not upset the balance of the AB32 implementation.

61-7

In summary, just as a Community Action Plan acknowledges commitment to emission reduction targets, so do programs to achieve the AB32 Scoping Plan objectives. Sources that are under the jurisdiction of the state should not be subject to duplicative and overlapping local programs, something that is specifically precluded by AB32.

Because there are no "local" or "cumulative" impacts from GHGs that are not addressed in these regulatory strategies being adopted by ARB, there is no "significance" from these sources.

WSPA appreciates the opportunity to comment on the Proposed Amendments. If you have any questions, please contact me at this office or Michaelleen Mason of my staff at (916) 498-7753.

Sincerely,



Catherine Reheis-Boyd
Executive Vice President and Chief Operating Officer

cc: Jean Roggenkamp, Deputy Air Pollution Control Officer
Jeff McKay, Deputy Air Pollution Control Officer
Greg Tholen, Principal Planner
Michaelleen Mason
Dennis Bolt

Comment Letter #: 61

Date: October 26, 2009

From: Catherine Reheis-Boyd, Executive Vice President, Western States Petroleum Association

Response to Comments:

61-1 Staff agrees that no single project is likely to generate enough GHG emissions to noticeably change the local or global average temperature. However, GHG emissions contribute, on a cumulative basis, to the significant adverse environmental impacts of global climate change. The combination of GHG emissions from past, present, and future projects contribute substantially to the phenomenon of global climate change and its associated environmental impacts. When the incremental contribution of a project to this phenomenon is cumulatively considerable, the project will be significant for purposes of CEQA. Thus, as noted in the thresholds report, the thresholds proposed by Staff are all for determining whether a project's GHG emissions are cumulatively considerable and thus significant under CEQA.

Moreover, to the extent that this commenter is suggesting that GHG emissions should not be evaluated under CEQA, Staff strongly disagrees. GHG emissions leading to climate change have clear, significant environmental impacts, and must be evaluated when conducting any CEQA review of a project. The California State Legislature confirmed this fact when it passed SB 97, which directs OPR to develop CEQA guidelines for the evaluation of GHG emissions impacts.

61-2 Staff agrees. Staff's proposed GHG thresholds of significance are based on substantial evidence and the Air District's expertise and represent the level at which a project will have a cumulatively considerable impact on climate change, as is detailed in Staff's *Proposed Thresholds of Significance Report*, and documents and evidence cited and relied upon therein. Pursuant to the proposed guidelines and thresholds, if a project's GHG emissions are greater than the proposed threshold, the project would be required to mitigate emissions back down to below the threshold of significance, or else have an unmitigated significant impact. The proposed thresholds do not propose to impose mitigation requirements on projects such that they mitigate more than required to reduce emissions to below the level of significance.

61-3 Air District staff believe that the commenter's recommendation and staff's recommendation both define climate actions plans that must be consistent with State CEQA Guidelines Section 15064(h)(3) to allow a project to be considered less than significant.

61-4 See Master Response MR-3.

61-5 See Master Response MR-3.

61-6 The revised plan-level GHG threshold in the *Proposed Thresholds of Significance* report (November 2, 2009) reflects the commenter's suggestion. The revised plan-level GHG threshold recommends that if a proposed project is consistent with an adopted qualified climate action plan, or Sustainable Communities Strategy, it can be presumed that it will not have significant GHG emission impacts. In addition, for local governments that have not yet adopted a qualified climate action plan as defined by the CEQA Guidelines, they have the option to demonstrate that their collective set of climate action policies, ordinances, and other projects are consistent with AB 32.

61-7 As stated in the *Proposed Thresholds of Significance* report (November 2, 2009), the proposed GHG thresholds are interim thresholds and will be revisited when CARB develops a statewide GHG threshold. The Air District's proposed GHG thresholds are based on AB 32 GHG emission reduction goals and take into consideration emission reduction strategies outline in ARB's Scoping Plan. The *Proposed Thresholds of Significance* report provides an explanation on how the Scoping Plan was integrated into the GHG threshold development. See also Master Response MR-3.

#62



SAN FRANCISCO
Asthma Task Force

10/27/2009

Greg Tholen, Principal Planner
Bay Area Air Quality Management District
939 Ellis Street
San Francisco, CA 94109

RE: Proposed Revision to CEQA Guidelines for Air Quality Impacts

Dear Mr. Tholen:

The San Francisco Asthma Task Force was appointed by the Board of Supervisor to guide policy and budget that would promote a better quality of life for people with asthma in this City, in addition to preventing new asthma onset. We developed a strategic plan in 2003 and a report card to the community in 2008 (see www.sfgov.org/asthma). We have 15 voting members who represent a variety of advocates, residents affected by asthma, and health professionals who serve people with asthma. To this end, we are interested in land use planning that promote respiratory health.

In keeping with the Air District Board's directive to reduce cumulative impacts for disproportionately impacted communities, the Asthma Task Force fully supports the District's proposed CEQA Guidance inclusion of a defined threshold of significance for cumulative risk. However, in defining thresholds of significance for the risks and hazards of individual projects, the Asthma Task Force would like to see the September 2009 proposal for a Tiered Approach of more protective thresholds of significance for Impacted Communities introduced for public review by the District's Board. We believe there are significant merits to this approach, and their pros and cons deserve to be reviewed in the public setting.

We are fully in support of the District's first-time inclusion of Construction-Related Project-Level Thresholds of Significance, but we strongly assert that stronger measures are needed to protect communities who already bear a disproportionate amount of asthma and other respiratory disease burden. To this end, we would like all land use development in CARE communities to **require** Clean Construction Equipment standards, and anything less be considered a significant environmental impact.

62-1

Much of new land use development occurs in impacted communities, and the construction phase alone can last 5-10 years, allowing for a significant daily impact from construction equipment emissions. Use of best available control technology would be a cost effective way to address a

Advocates for Policies to Reduce Asthma's Impact



SAN FRANCISCO
Asthma Task Force

major source of toxic risk in the priority communities. The District's research in the CARE program found that construction equipment is 29% of the weighted cancer risk in the priority communities, and in some communities such as Bayview Hunters Point, it is even higher. Use of retrofits and higher tier engines can cut up to 85% of the fine particulate matter emitted, so adoption of toxic best practices could potentially result in a 25% reduction in cancer risk in the priority communities. Air Resources Board studies comparing the costs and benefits of requiring higher tier engines and retrofits showed a nine to one ratio of health benefits and industry costs, demonstrating that cleaner diesel equipment is an extremely cost effective measure.

Until Clean Construction Equipment is the required standard in Impacted Communities, these residents will continue to suffer disproportionate health impacts. Furthermore, there is no effective enforcement mechanism for monitoring the maximum daily emissions now included in the proposed CEQA thresholds.

We applaud your effort to reduce cumulative air pollution impacts on environmental justice communities in the Bay Area, which have already been well documented to be disproportionately impacted by multiple sources of air pollution (stationary, magnet, construction and mobile sources) and their associated health effects. Independently of the CEQA Guidelines update, we expect the Air Quality District to continue to develop both regulatory and other strategies that will reduce these cumulative impacts on the most highly impacted communities.

Thank you for consideration of our comment.

Sincerely,

Gloria Thornton

Gloria Thornton, Chairperson

Advocates for Policies to Reduce Asthma's Impact

Comment Letter #: 62

Date: October 27, 2009

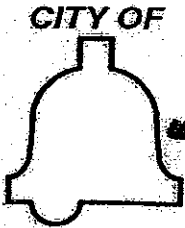
From: Gloria Thornton, San Francisco Asthma Task Force

Response to Comments:

62-1 The updated CEQA Guidelines will strongly recommend the commenter's suggestion as a mitigation measure for community risk and hazard. The Air District will also consider this suggestion for when criteria is defined for the Community Risk Reduction Plans. The updated CEQA Guidelines will provide a broad view of what Staff anticipates will be required in a Community Risk Reduction Plan (CRRP). Understanding that no such plans yet exist in the Bay Area, the Air District will initiate a public process to identify steps and define criteria for a CRRP. In addition, the commenter's subsequent comments regarding reducing emissions in impacted communities could serve as guidance in defining a CCRP. District Staff will consider these comments in the future CCRP development process.



#63



San Rafael

Mayor
Albert J. Boro

Council Members
Greg Brockbank
Damon Connolly
Barbara Heller
Cyr N. Miller

October 26, 2009

Greg Tholen, Principal Planner
Planning Rules & Research
Bay Area Air Quality Management District
939 Ellis Street, 6th floor
San Francisco, CA 94109

Re: CEQA Guidelines Update- Greenhouse Gas Emissions Thresholds Report and Draft Guidelines

Dear Mr. Tholen:

The City of San Rafael has completed a broad review of the Draft Thresholds Report and Draft Guidelines for addressing greenhouse gas emissions, which have been prepared by your agency (BAAQMD). These draft documents include recommendations for specific thresholds of significance that are proposed for assessing greenhouse gas emissions associated with construction-level and operation-level impacts, at both a plan-level and project-level.

First, we would like to commend the BAAQMD for the detailed, technical work and time in preparing these documents. The quantitative assessment of air quality is a technical task. The City of San Rafael, like most local municipalities is relying on the BAAQMD to provide us with guidance on how to address thresholds and model greenhouse gas emissions, as we do not have the technical expertise or resources. Further, while our staff has attended numerous workshops sponsored by BAAQMD, the State of California and planning organizations, until now, there has been little direction on what thresholds should be used and how to develop a model that quantitatively assesses emissions. Therefore, our review and comments on these documents is not technical but intentionally broad. The following is a summary of our concerns and comments regarding your draft documents:

63-1

1. Compliance with a Climate Change Action Plan should be established as a threshold of significance for assessing project-level, operational-related greenhouse gas emission impacts. Further, the term "Qualified Climate Change Action Plan" needs to be clearly defined. As currently drafted, compliance with such a plan is addressed in assessing plan-level greenhouse gas emission impacts only. What we understand is that little or no credit would be given for a specific project that is in compliance with an approved or adopted plan. Earlier this year, the City of San Rafael prepared and approved a Climate Change Action Plan. Our plan included an assessment of projecting greenhouse gas emissions using the model published by ICLEI- Local Governments for Sustainability. The assessment prepared

63-2

for this plan does not provide the level of quantitative information to use for project-level review and CEQA clearance to meet the mandate of Senate Bill 375. Therefore, a clear definition of a "Qualified" plan is critical in determining where we currently stand and where expanded or new modeling is necessary to meet this mandate. Further, providing a sample of a "Qualified" plan would be very useful to the local, Bay Area agencies.

63-2

2. The 'model' that is used for quantitatively assessing greenhouse gas emissions should be accessible and available for local agency use and easy application. In fact, we would recommend that, in addition to providing access to the quantitative model, a sample CEQA analysis be provided and a draft 'ordinance' be prepared to further guide and assist local, Bay Area agencies in complying with the SB 375 mandate. Since most local agencies do not have the resources, the technical expertise or the funds to start-from-scratch, providing a model template, a sample CEQA analysis and a 'model ordinance' would ensure a quicker response by local agencies and would result in a more consistent compliance with the mandate. This approach was taken by the State of California Department of Water Resources (DWR) in responding to Senate Bill 1881, which is a statewide mandate for local agencies to prepare and adopt a 'water-efficient landscape ordinance.' The DWR has prepared and published a draft 'model ordinance' to assist local agencies in preparing their own ordinance by a January 2010 deadline.

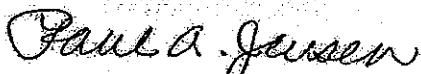
63-3

3. We are concerned that the draft documents do not appropriately or fairly address the assessment of project-level operational impacts for infill projects in urban areas. As you are likely aware, CEQA Guidelines Section 15332 provides a categorical exemption for urban infill projects on sites of up to five acres in size. The method for review that is presented in your draft documents do not provide credit for a project that proposes emission reduction measures, before calculating or determining the level of significance. This methodology makes it questionable if an infill exemption determination is possible on any project. In addition, the methodology that is used does not appear to credit a project's location, which could influence or result in reductions in greenhouse gas emissions. It is suggested that the methodology account for and incorporate the potential reduction of project-proposed measures (including project location) before calculating the level of significance.

63-4

Thank you again for the opportunity to comment on these draft documents. Should you have any questions or comments, please do not hesitate to contact me at (415) 485-5064 or Paul.Jensen@cityofsanrafael.org.

Sincerely,



Paul A. Jensen, AICP
CITY OF SAN RAFAEL
Planning Manager

cc: Bob Brown, Community Development Director
Kraig Tambornini, Senior Planner

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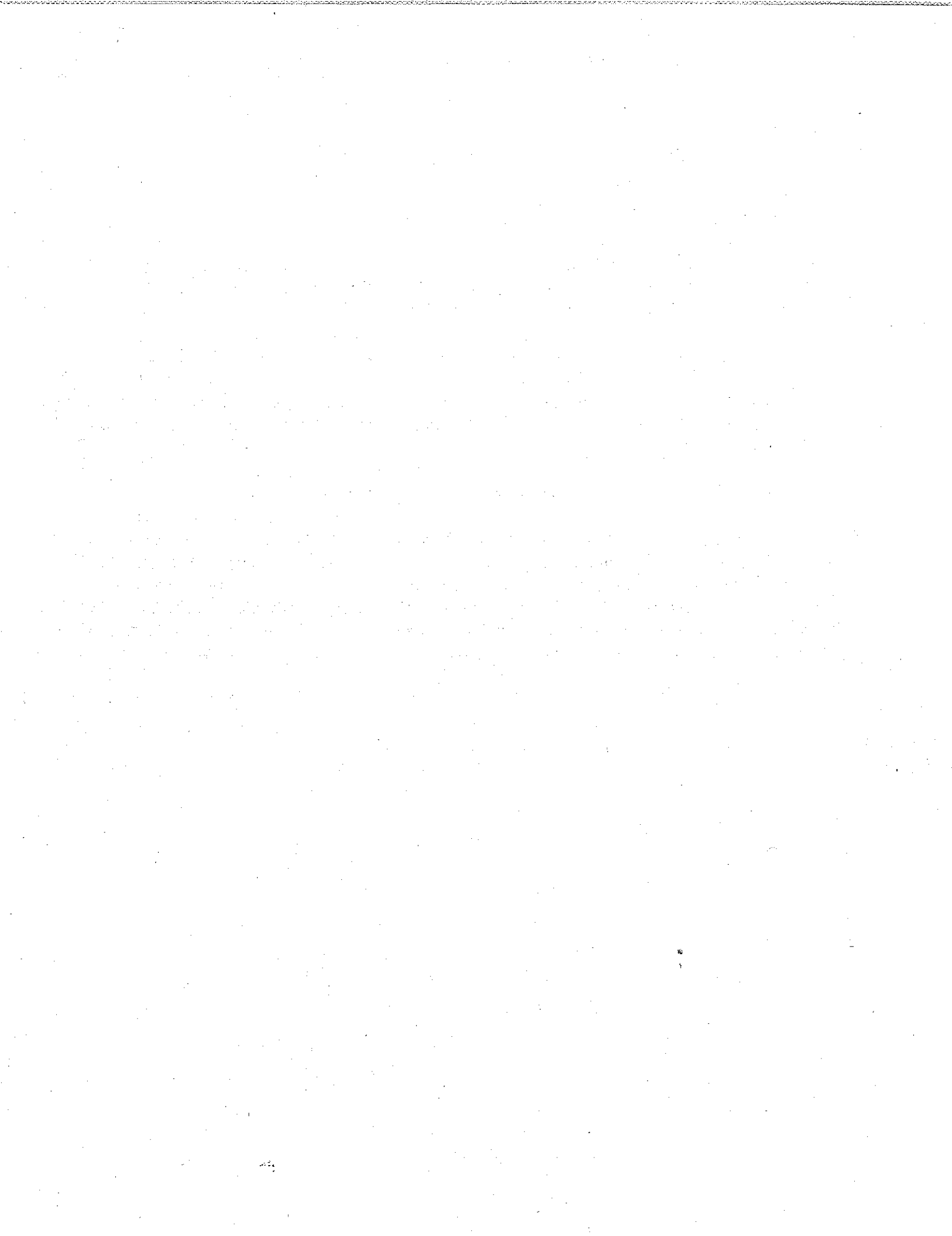
Comment Letter #: 63

Date: October 26, 2009

From: Paul A. Jensen, AICP, Planning Manager, City of San Rafael

Response to Comments:

- 63-1 In response to this and similar comments, Air District staff has worked to improve guidance quantifying GHG emissions. Air District staff is developing off-model tools to use in conjunction with the URBEMIS model. Air District staff will continue to refine the guidance. The Air District is continually working to enhance existing metrics to quantify community GHG emissions and climate action plan recommendations. Air District staff are prepared to assist local agencies prepare climate action plans.
- 63-2 The proposed thresholds of significance recommend that projects consistent with adopted qualified climate action plans be considered less than significant pursuant to the State CEQA Guidelines. Also see Master Response MR-5.
- 63-3 See comment response 63-1 and Master Response MR-5.
- 63-4 See Master Response MR-2. The revised CEQA Guidelines provide recommended methodologies that allow well-designed, efficient projects to take credit for reducing emissions compared to less efficient projects. In addition, projects located near transit and support services may be able to achieve even lower emission levels and possibly an impact finding of less than significant impacts to air quality. Well designed projects that incorporate recommended measures in the project proposal are not considered mitigated projects and may still be found less than significant and qualify for a categorical exemption.



#64

September 26, 2009

Greg Tholen
Principal Planner
Bay Area Air Quality Management District
939 Ellis Street
San Francisco, CA 94109

VIA ELECTRONIC MAIL

RE: Draft CEQA Air Quality Guidelines

Dear Mr. Tholen,

Citizens Against Pollution (CAP) is a Hayward based non-profit that has advocated for the health of the citizens of Hayward and the Bay ecosystem since our founding in 2007. CAP appreciates this chance to comment on the District's proposed CEQA air quality guidelines.

We would like to commend the District on its decision to include Greenhouse Gas (GHG) emissions in its assessment of whether a project under review complies with all CEQA requirements, and would like to bring to the District's attention what we feel is an important but unaddressed issue in the District's proposed CEQA guidelines; an assessment of the increase in the criteria pollutants PM and Ozone from a project's GHG emissions.

As demonstrated in the studies of Mark Z. Jacobson (Director, Atmosphere/Energy Program, Stanford University), locally emitted CO2 can create local CO2 domes which increase production of both PM and Ozone with the attending increase in local morbidity and mortality.

While the majority of the almost 900 source categories that the District inventories, do not singly, in and of themselves produce large enough quantities of GHG's to contribute significantly to the creation of a local CO2 dome, and the corresponding increase in PM and Ozone through the Jacobson Effect (JE), there are at least two class of projects that do; fossil fuel refineries and fossil fuel power plants. Indeed of the approximately 4,000 stationary source facilities the District inventories, the top 9 emitters of GHG's are fossil fuel refineries and fossil fuel power plants.

As an example of how significant a contribution to an increase in local GHG's a single fossil fuel power plant may be, the example of the proposed Russell City Energy Center (RCEC) may be useful. The RCEC is a proposed 600 Megawatt NG power plant currently seeking a Prevention of Significant Deterioration (PSD) permit from the District to be built in the city of Hayward.

The District's "Additional Statement of Basis for the Draft Federal PSD Permit" (Aug.

'09), proposes to permit RCEC to emit 11,604,000 lbs a day of CO₂e. The proposed PSD permit would permit 3,856,364,000 lbs (1,928,182 metric tons) of CO₂e every year.

This would be an increase in GHG emissions of over 10 percent of Alameda County's 2007 GHG emissions of 17,728,259 MT/year (Source Inventory of Bay Area GHGE, BAAQMD Dec. '08), and a more than 100 percent increase in Hayward's 2005 GHG emissions of 1,279,438 MT/year (City of Hayward Baseline Inventory Report, ICLEI June, '08).

CAP believes that projects within the jurisdiction of the District that singly emit such massive amounts of GHG's are required under CEQA to be assessed as to their likely significant contribution to the increase in local morbidity and mortality as a result of an increase in the criteria pollutants; PM and Ozone. We also believe that CEQA requires consideration by the District of the Jacobson Effect in its assessment of projects and plans that produce smaller quantities of GHG's, to determine if the cumulative impact would contribute to an increase of PM and Ozone.

64-1

We agree with the District that "The analysis to assess project-level air quality impacts should be as comprehensive and rigorous as possible." (draft CEQA Air Quality Guidelines, BAAQMD) and hope that the District will incorporate into its guidelines; consideration of the local impacts of locally emitted GHG's.

Sincerely,
Ernest Pacheco
Citizens Against Pollution
22650 Main St.
Hayward, CA 94541
Ph: (510) 677 8452
Email: VacationPombo@aol.com

Attachment A: On the Causal Link between CO₂ and Air Pollution Mortality

(Jacobson '08)

Attachment B: The Enhancement of Local Air Pollution by Urban CO₂ Domes

(Jacobson '09)

1 The enhancement of local air pollution by urban CO₂ 2 domes

3
4 Mark Z. Jacobson

5 Department of Civil and Environmental Engineering, Stanford University, Stanford, California
6 94305-4020, USA; Email: jacobson@stanford.edu; Tel: (650) 723-6836

7
8 *March 21, 2009*
9

10 Data suggest that domes of high CO₂ levels form over cities. The effects of such domes on local
11 temperatures and water vapor, and the resulting feedbacks to air pollution and health have never
12 been examined. Here, such effects are studied for Los Angeles and California as a whole. It is found
13 that local CO₂ emissions, in isolation, cause increases in local ozone and particulate matter. As such,
14 reducing locally-emitted CO₂ will reduce local air pollution mortality even if CO₂ in adjacent regions
15 is not controlled. This result contradicts the basis for all air pollution regulations worldwide, none of
16 which considers controlling local CO₂ based on its local health impacts. It also suggests that the
17 underlying assumption of the "cap and trade" policy, that CO₂ impacts are the same regardless of
18 where emissions occur, is incorrect.

19 20 1. Introduction

21 Although CO₂ is generally well-mixed in the atmosphere, data indicate that its mixing ratios are
22 higher in urban areas than in the background air, resulting in *urban CO₂ domes* (1-4). Measurements
23 in Phoenix, for example, indicate that peak CO₂ levels in the city center are 75% higher, mean levels
24 in the city center are 38-43% higher, and mean levels in the commercial sector are 23-30% higher
25 than in surrounding rural areas (1).

26 Many studies have examined the impact on air pollution of changes in global greenhouse
27 gases (5-17). However, no study has isolated the impact of locally-emitted CO₂ on local air

1 pollution, health, or climate, through the creation of CO₂ domes. The issue is important, since if only
2 changes in global-scale well-mixed CO₂ affect local air pollution, local air pollution due to CO₂ can
3 be reduced only by reducing CO₂ emissions on a large scale (nationally or internationally). However,
4 if locally-emitted CO₂ in isolation increases local air pollution, cities, counties, states, and small
5 countries can reduce air pollution health problems by reducing their own CO₂ emissions, regardless
6 of whether other air pollutants are reduced simultaneously.
7

8 **2. Methodology**

9 For this study, the nested global-through-urban 3-D model, GATOR-GCMOM was use to examine
10 the effects of locally-emitted CO₂ on local climate and air pollution on two scales, California as a
11 whole and the Los Angeles basin. The model and numerous comparisons with data have been
12 described in detail in publications over the past 16 years, including several recent ones (16-21).
13 Additional comparisons are shown here.

14 Three pairs of simulations were run: one pair nested from the globe to California for one year
15 and two pairs nested from the globe to California to Los Angeles, each for three months (Aug-Oct;
16 Feb-Apr). The resolutions of the global, California, and Los Angeles domains were 4° SN x 5° WE,
17 0.20° SN x 0.15° WE, and 0.45° SN x 0.05° WE, respectively. The global domain included 47 sigma-
18 pressure layers up to 0.22 hPa (≈60 km), with very high resolution (15 layers) in the bottom 1 km.
19 Such high vertical resolution was necessary to obtain the accurate ozone predictions shown in Fig. 1.
20 The nested regional domains included 35 layers exactly matching the global layers up to 65 hPa (≈18
21 km).

22 Each simulation pair consisted of a baseline simulation and a sensitivity simulation in which
23 only anthropogenic CO₂ emissions (emCO₂) were removed from the finest domain. Initial ambient
24 CO₂ was the same in all domains of both simulations and emCO₂ was the same in the parent domains
25 of both simulations. As such, all resulting differences were due solely to locally-emitted (in the
26 finest domain) CO₂.

27

1 3. Results

2 Figure 1 compares modeled O_3 , PM_{10} , and CH_3CHO from August 1-7 of the baseline (with $emCO_2$)
3 and sensitivity (no $emCO_2$) simulations from the Los Angeles domain with paired-in-time-and-space
4 data. The model was run without data assimilation or model spinup, thus the results indicate the
5 ability of the model to predict air pollution hour by hour at exact locations. The comparisons indicate
6 very good agreement with respect to ozone in particular. They also indicate that $emCO_2$ increased
7 O_3 , PM_{10} , and CH_3CHO almost immediately, during both day and night. The reasons for the
8 increases are examined further, first with respect to California, then Los Angeles.

9 Figure 2a compares annually-averaged modeled spatial differences in ambient CO_2 in
10 California obtained by subtracting no- $emCO_2$ results from the baseline results. The modeled CO_2
11 domes over Los Angeles, the San Francisco Bay Area, and parts of the Central Valley are evident
12 and consistent with expectations from the measurement studies previously discussed. The largest
13 annually-averaged CO_2 increase (5%, or 17.5 ppmv) was lower than observed CO_2 dome increases in
14 cities (1) since the resolution of the California domain was coarser than the resolution of
15 measurements. As shown shortly, an increase in model resolution for Los Angeles increases the
16 magnitude of the largest CO_2 increase and the resulting effects on air pollution. Whereas the
17 population-weighted (PW) and domain-averaged (DA) increases in surface CO_2 due to $emCO_2$ were
18 7.4 ppmv and 1.3 ppmv, respectively, the corresponding increases in column CO_2 were $6.0 g/m^2$ and
19 $1.53 g/m^2$, respectively, indicating that changes in column CO_2 were spread more horizontally than
20 were changes in surface CO_2 . This is because local $emCO_2$ starts mixing with the larger scale soon
21 after emissions, but the losses are quickly replaced with more local CO_2 emissions.

22 The local increases in CO_2 in California increased the PW air temperature by about 0.0063 K,
23 more than it changed the domain-averaged air temperature (+0.00046) (Fig. 2b). Thus, local CO_2
24 domes had greater temperature impacts where the CO_2 was emitted and where people lived than they
25 did on the domain average. This result holds true for the effects of $emCO_2$ on column water vapor
26 (Fig. 2c - PW: $+4.3 g/m^2$; DA: $+0.88 g/m^2$), ozone (Fig. 2d - PW: $+0.06 ppbv$; DA: $+0.0043 ppbv$),
27 $PM_{2.5}$ (Fig. 2f - PW: $+0.08 \mu g/m^3$; DA: $-0.0052 \mu g/m^3$), PAN (Fig. 2h - PW: $+0.002 ppbv$; DA: -

1 0.000005 ppbv) and particle nitrate (Fig. 2i – PW: +0.030 $\mu\text{g}/\text{m}^3$; DA: +0.00084 $\mu\text{g}/\text{m}^3$), among
2 many other parameters.

3 Figure 3 elucidates correlations between changes in local ambient CO_2 caused by changes in
4 emCO_2 and changes in other parameters. The figure shows that modeled temperatures, water vapor,
5 ozone, and $\text{PM}_{2.5}$ increased more in the annual average in grid cells with larger ambient CO_2
6 increases than in cells with smaller ambient CO_2 increases. In other words, increases in ozone and
7 $\text{PM}_{2.5}$ were correlated spatially with local CO_2 increases. Figure 2 further shows that increases in
8 ozone were correlated spatially with increases in temperature and water vapor, a result consistent
9 with (16), which found that higher temperature and water vapor increased ozone more in locations
10 where ozone was already high due to the temperature and water-vapor-dependence on chemical
11 reactions producing ozone.

12 The reasons for higher $\text{PM}_{2.5}$ resulting from higher CO_2 are more complex. Figure 2 shows
13 that $\text{PM}_{2.5}$ correlated slightly negatively ($R=0.017$) with increases in temperature but more strongly
14 positively ($R=0.23$) with increases in water vapor. Higher temperatures tended to decrease $\text{PM}_{2.5}$, in
15 part by increasing vapor pressures thus PM evaporation and in part by enhancing precipitation in
16 some locations. Some of the $\text{PM}_{2.5}$ decreases due to higher temperatures were offset by increases in
17 biogenic organic emissions due to higher temperatures and oxidation of such organics to organic
18 PM. But in California, biogenic emissions are much lower than the southeast U.S., so this factor was
19 not so significant. Some of the $\text{PM}_{2.5}$ decreases were also offset by slower winds caused by enhanced
20 boundary-layer stability from CO_2 . While higher temperatures slightly decreased $\text{PM}_{2.5}$, higher water
21 vapor due to emCO_2 increased $\text{PM}_{2.5}$ by increasing the liquid water content of aerosols, increasing
22 the dissolution of gases such as nitric acid and ammonia, forming more particle nitrate (Fig. 2i) and
23 ammonium. Also, higher ozone caused by higher water vapor increased oxidation rates of organic
24 gases to organic PM. Since $\text{PM}_{2.5}$ increased overall due to emCO_2 , the water vapor effect exceeded
25 the temperature effect.

26 Health effect rates (y) due to ozone and $\text{PM}_{2.5}$ in each model domain during each simulation
27 were determined from

1

$$2 \quad y = y_0 \sum_i \left\{ P_i \sum_t \left(1 - \exp \left[-\beta \times \max(x_{i,t} - x_{th}, 0) \right] \right) \right\} \quad (1)$$

3

4 where $x_{i,t}$ is the mixing ratio or concentration in grid cell i at time t , x_{th} is the threshold value below
 5 which no health effect occurs, β is the fractional increase in risk per unit x , y_0 is the baseline health
 6 effect rate, and P_i is the grid cell population. Table 1 provides values of P (summed over each
 7 domain), β , y_0 , and x_{th} .

8 Application of Equation 1 resulted in ~13 (6-19) additional ozone-related deaths/year due to
 9 local CO₂ emissions in California (Fig. 2e), or 0.3% above the baseline 4600 (2300-6900)
 10 deaths/year (Table 1). The higher particulate matter due to local CO₂ contributed another ~39 (13-
 11 60) deaths/year in California (Fig. 2g), 0.2% above the baseline death rate of 22,500 (5900-42,000)
 12 deaths/year. Changes in cancer due to emCO₂ were relatively small (Table 1).

13 Simulations for Los Angeles echo results for California as a whole but allow for a higher-
 14 resolution and more accurate picture of changes due to CO₂. The Feb-Apr panels in Fig. 4 indicate
 15 that the CO₂ dome that formed over Los Angeles peaked at about 34 ppmv, twice as high as over the
 16 coarser-resolution California domain. The column difference indicates a clear spreading of the dome
 17 over a larger area than the surface dome. In both Feb-Apr and Aug-Oct, emCO₂ enhanced PW ozone
 18 and PM_{2.5}, increasing mortality (Fig. 4, Table 1) and other health effects (Table 1). The causes of
 19 such increases, however, differed somewhat with season. From Feb-Apr, emCO₂ increased surface
 20 temperatures and water vapor over the Los Angeles basin (Fig. 4). This slightly enhanced ozone and
 21 PM_{2.5}, but the increase in the land-ocean temperature gradient also increased sea-breeze wind speeds,
 22 increasing resuspension of road and soil dust and moving particulate matter more to the eastern
 23 basin. From Aug-Oct, emCO₂ increased temperatures aloft, increasing the land-sea temperature
 24 gradient and wind speed aloft, increasing the flow of moisture from the ocean to land aloft,
 25 increasing water vapor and clouds over land, decreasing surface solar radiation, causing a net
 26 decrease in local ground temperatures and UV radiation but a net increase in water vapor at all

1 altitudes due to the vertical diffusion of water vapor aloft to the surface. The higher water vapor
2 triggered greater ozone formation and a higher relative humidity, which increased aerosol particle
3 swelling, allowing an increase in gas growth onto aerosols, and reduced particle evaporation. In sum,
4 the net effect of emCO_2 was to increase ozone and $\text{PM}_{2.5}$ and their corresponding health effects in
5 both seasons, increasing air pollution death rates in California and Los Angeles by about 50-100 per
6 year (Fig. 4, Table 1). Death rates for Los Angeles were similar or higher than those for California
7 due to the greater accuracy of higher resolution (Los Angeles) simulations, as shown in Table 2 of
8 (18); thus, these results are likely to be conservative for California as a whole.

9 The California mortality increase compares with a U.S. death rate increase of about 1000/yr
10 per 1 K temperature rise due to globally-emitted anthropogenic CO_2 , with about 300 deaths/yr
11 occurring in California (16), which has 12% of the U.S. population. The greater death rates in
12 California versus the rest of the U.S. are due to the fact that higher temperatures and water vapor due
13 to CO_2 enhance air pollution the most where it is already high, and California has more than half of
14 the top 10 most polluted cities in the U.S.

15

16 5. Implications

17 Worldwide, emissions of many pollutants (e.g., NO_x , HCs, CO, PM) that cause local air pollution
18 health problems are regulated. The few CO_2 emission regulations proposed to date have been
19 justified based on the large-scale climate effects that such emissions cause and the feedback of such
20 large-scale changes to sea levels, water supply, and global air pollution. However, no regulation of
21 CO_2 has been proposed based on the potential impact of locally emitted CO_2 on local air pollution as
22 such effects have been assumed not to exist (22). The result here suggests that reducing local CO_2
23 will reduce local air pollution mortality by 50-100 deaths/yr in California alone even if CO_2 in
24 adjacent regions is not controlled. Thus, CO_2 emission controls are justified on the same grounds that
25 NO_x , HC, CO, and PM emission regulations are justified. Results further imply that the assumption
26 behind the policy of "cap and trade," namely that CO_2 emissions in one location have the same
27 impact as CO_2 emissions in another, is incorrect, as CO_2 emissions in populated cities have

1 significantly larger impacts on health than do CO₂ emissions in unpopulated areas. As such,
2 implementation of CO₂ cap and trade, if done, should consider the location of emissions to avoid
3 additional health damage.

4

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- 22 30. Support came from the U.S. Environmental Protection Agency grant RD-83337101-O, NASA
23 grant NX07AN25G, and the NASA High-End Computing Program.
- 24
- 25

Figure Captions

1

2

3 **Figure 1.** (a) Paired-in-time-and-space comparisons of modeled baseline (solid lines), modeled no-
4 emCO_2 (dashed lines), and data (dots) for ozone, sub-10- μm particle mass, and acetaldehyde from
5 the Los Angeles domain for August 1-7, 2006. Data from (23).

6

7 **Figure 2.** Modeled annually averaged difference for several parameters when two simulations (with
8 and without emCO_2) were run. The numbers in parentheses are population-weighted changes.

9

10 **Figure 3.** Scatter plots of paired-in-space one-year-averaged changes between several parameter
11 pairs, obtained from all near-surface grid cells of the California domain. Also shown is an equation
12 for the linear fit through the data points in each case.

13

14 **Figure 4.** Same as Fig. 2., but for the Los Angeles domain and for Feb-Apr and Aug-Oct. Also
15 shown are scatter plots for Aug-Oct similar to those for Fig. 3.

16

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1 **Table 1.** Summary of locally-emitted CO₂'s (emCO₂) effects on cancer, ozone mortality, ozone
 2 hospitalization, ozone emergency-room (ER) visits, and particulate-matter mortality in California.
 3 Results are shown for the with-emCO₂ emissions simulation ("Base") and the difference between the
 4 base and no emCO₂ emissions simulations ("Base minus no-emCO₂") for California and Los
 5 Angeles. The domain summed populations in the Los Angeles and California domains were 17.268
 6 million and 35.35 million, respectively. All mixing ratios and concentrations are near-surface values
 7 weighted spatially by population. Los Angeles results were an average of Feb-Apr and Aug-Oct
 8 results.

	Annual base Calif.	Base minus no emCO ₂ Calif.	Annual Base LA	Base minus no emCO ₂ LA
Ozone ≥ 35 ppbv (ppbv)	47.4	+0.060	44.7	+0.12
PM _{2.5} (µg/m ³)	50.0	+0.08	36	+0.29
Formaldehyde (ppbv)	4.43	+0.0030	4.1	+0.054
Acetaldehyde (ppbv)	1.35	+0.0017	1.3	+0.021
1,3-Butadiene (ppbv)	0.11	-0.00024	0.23	+0.0020
Benzene (ppbv)	0.30	-0.00009	0.37	+0.0041
Cancer				
USEPA cancers/yr ⁺	44.1	0.016	22.0	+0.28
OEHHA cancers/yr ⁺	54.4	-0.038	37.8	+0.39
Ozone health effects				
High O ₃ deaths/yr*	6860	+19	2140	+20
Med. O ₃ deaths/yr*	4600	+13	1430	+14
Low O ₃ deaths/yr*	2300	+6	718	+7
O ₃ hospitalizations/yr*	26,300	+65	8270	+75
Ozone ER visits/yr*	23,200	+56	7320	+66
PM health effects				
High PM _{2.5} deaths/yr [^]	42,000	+60	16,220	+147
Medium PM _{2.5} deaths/yr [^]	22,500	+39	8500	+81
Low PM _{2.5} deaths/yr [^]	5900	+13	2200	+22

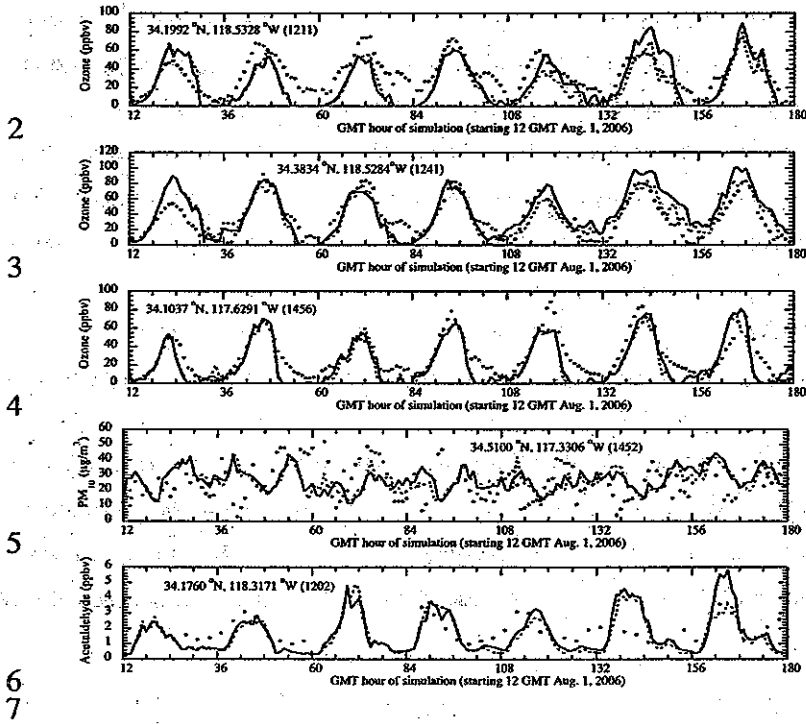
9 (+) USEPA and OEHHA cancers/yr were found by summing, over all model surface grid cells and the four carcinogens
 10 (formaldehyde, acetaldehyde, 1,3-butadiene, and benzene), the product of individual CUREs (cancer unit risk
 11 estimates=increased 70-year cancer risk per µg/m³ sustained concentration change), the mass concentration (µg/m³)
 12 (for baseline statistics) or mass concentration difference (for difference statistics) of the carcinogen, and the population
 13 in the cell, then dividing by the population of the model domain and by 70 yr. USEPA CUREs are 1.3x10⁻⁵
 14 (formaldehyde), 2.2x10⁻⁶ (acetaldehyde), 3.0x10⁻⁵ (butadiene), 5.0x10⁻⁶ (=average of 2.2x10⁻⁶ and 7.8x10⁻⁶) (benzene)
 15 (www.epa.gov/IRIS/). OEHHA CUREs are 6.0x10⁻⁶ (formaldehyde), 2.7x10⁻⁶ (acetaldehyde), 1.7x10⁻⁴ (butadiene),
 16 2.9x10⁻⁵ (benzene) (www.oehha.ca.gov/risk/ChemicalDB/index.asp).

1 (*) High, medium, and low deaths/yr, hospitalizations/yr, and emergency-room (ER) visits/yr due to short-term O₃
2 exposure were obtained from Equation 1, assuming a threshold of 35 ppbv (24). The baseline 2003 U.S. death rate (y₀)
3 was 833 deaths/yr per 100,000 (25). The baseline 2002 hospitalization rate due to respiratory problems was 1189 per
4 100,000 (26). The baseline 1999 all-age emergency-room visit rate for asthma was 732 per 100,000 (27). These rates
5 were assumed to be the same in each U.S. county, although they vary slightly by county. The fraction increases (β) in
6 the number of deaths from all causes due to ozone were 0.006, 0.004, and 0.002 per 10 ppbv increase in daily 1-hr
7 maximum ozone (28). These were multiplied by 1.33 to convert the risk associated with a 10 ppbv increase in 1-hr
8 maximum O₃ to that associated with a 10 ppbv increase in 8-hour average O₃ (24). The central value of the increased
9 risk of hospitalization due to respiratory disease was 1.65% per 10 ppbv increase in 1-hour maximum O₃ (2.19% per
10 10 ppbv increase in 8-hour average O₃), and that for all-age ER visits for asthma was 2.4% per 10 ppbv increase in 1-
11 hour O₃ (28) (3.2% per 10 ppbv increase in 8-hour O₃).

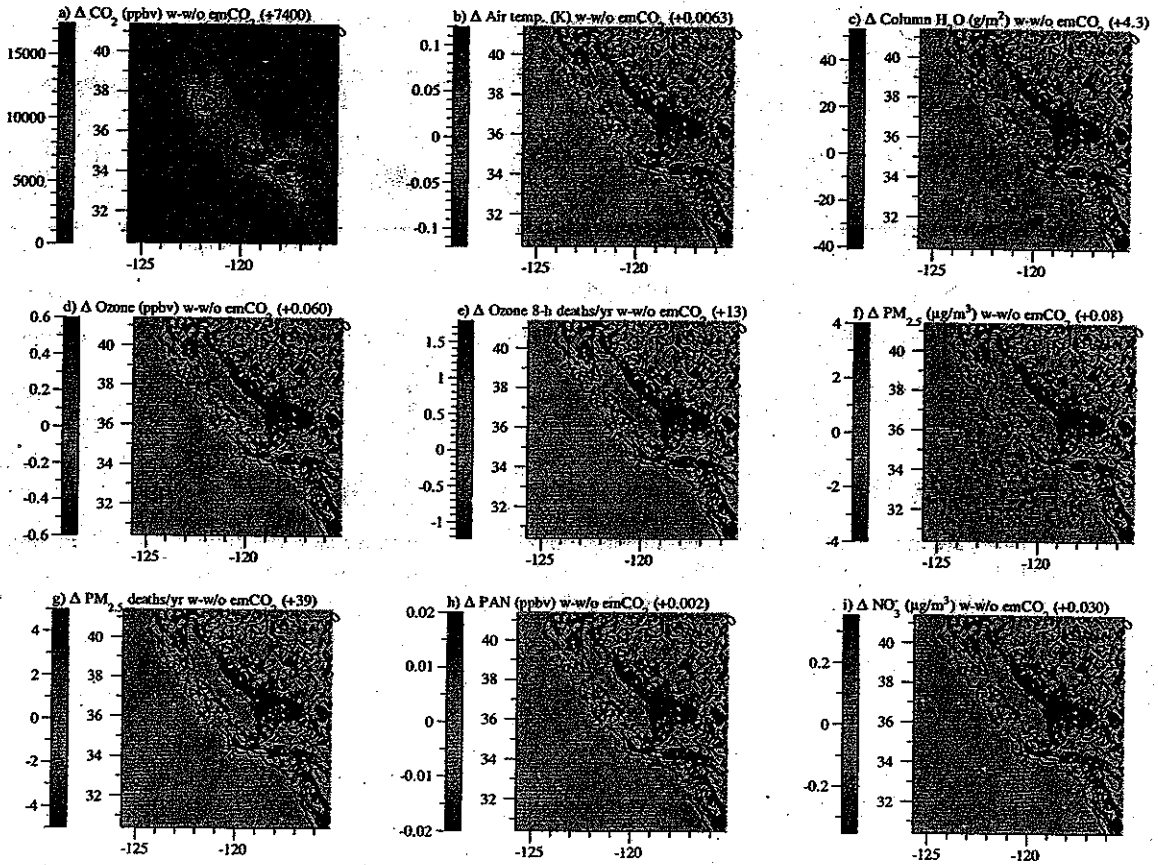
12 (^) The death rate due to long-term PM_{2.5} exposure was calculated from Equation 1. Reference (29) provides increased
13 death risks to those ≥30 years of 0.008 (high), 0.004 (medium), and 0.001 (low) per 1 μg/m³ PM_{2.5}>8 μg/m³ based on
14 1979-1983 data. From 0-8 μg/m³, the increased risks here were assumed =¼ those >8 μg/m³ to account for reduced
15 risk near zero PM_{2.5} (16). The all-cause 2003 U.S. death rate of those ≥30 years was 809.7 deaths/yr per 100,000 total
16 population.

17

1 **Figure 1**



1 **Figure 2**

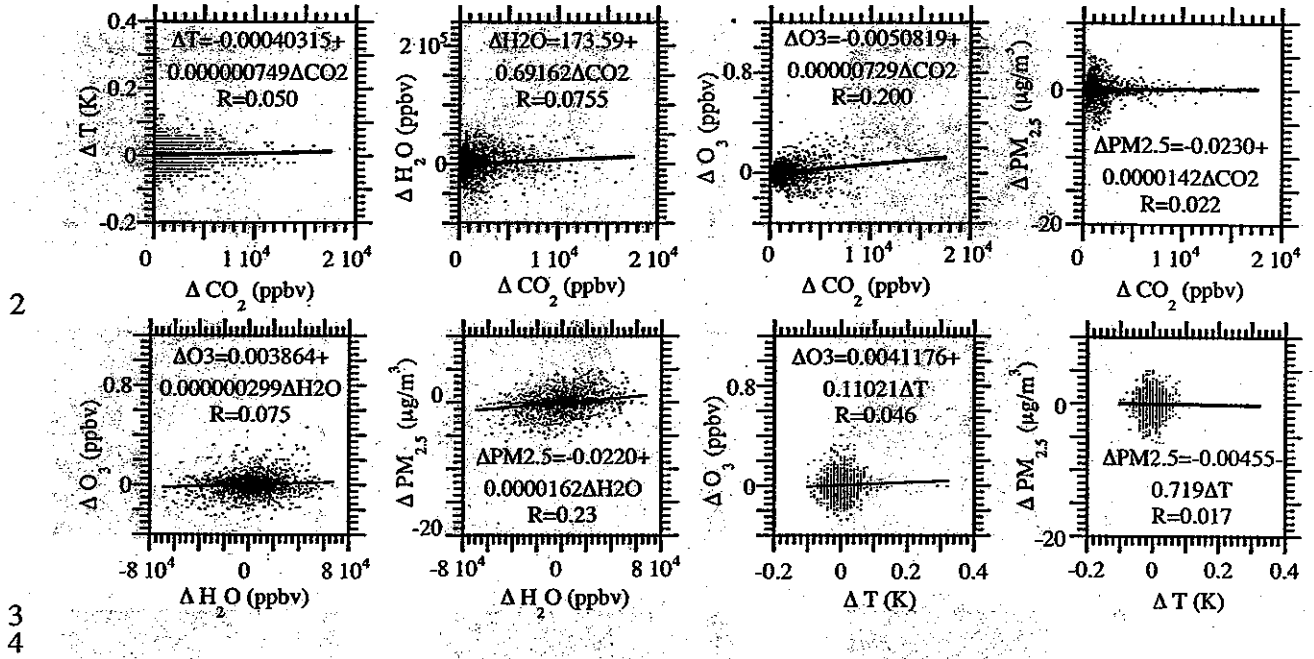


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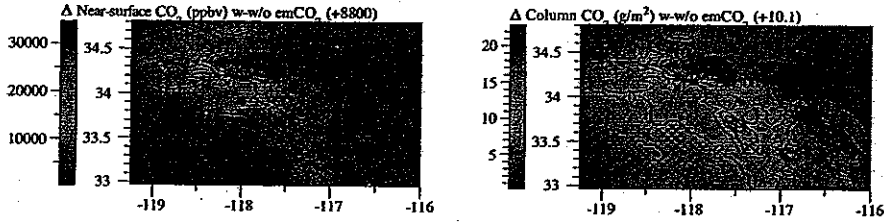
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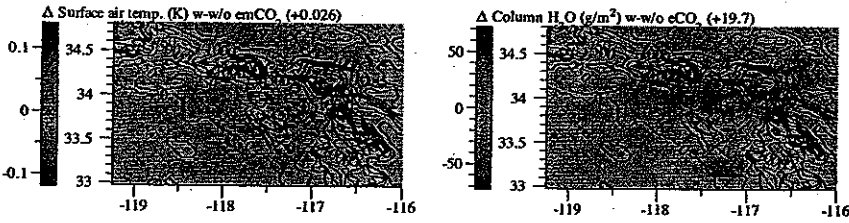
1 **Figure 3**



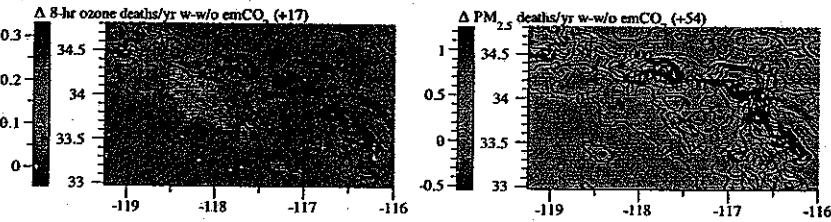
1 **Figure 4**
 2
 3 **February-April**



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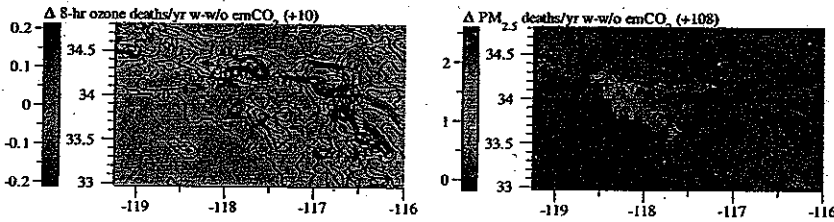


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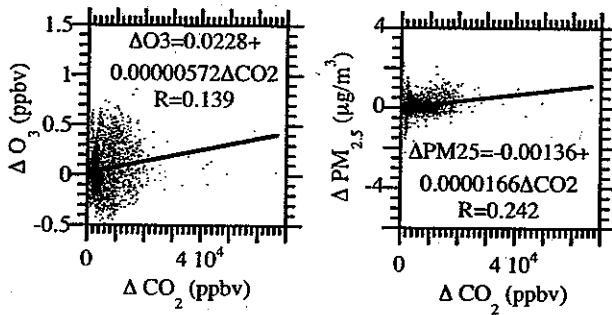
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7 **August-October**

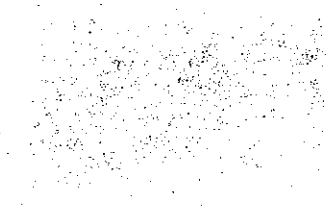
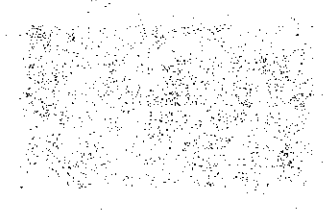
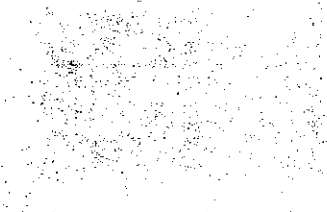
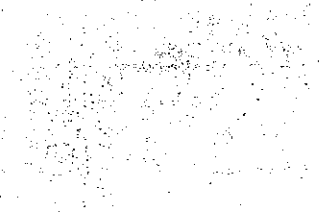
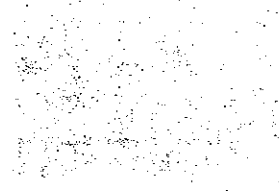
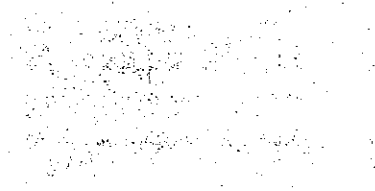


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On the causal link between carbon dioxide and air pollution mortality

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[1] Greenhouse gases and particle soot have been linked to enhanced sea-level, snowmelt, disease, heat stress, severe weather, and ocean acidification, but the effect of carbon dioxide (CO₂) on air pollution mortality has not been examined or quantified. Here, it is shown that increased water vapor and temperatures from higher CO₂ separately increase ozone more with higher ozone; thus, global warming may exacerbate ozone the most in already-polluted areas. A high-resolution global-regional model then found that CO₂ may increase U.S. annual air pollution deaths by about 1000 (350–1800) and cancers by 20–30 per 1 K rise in CO₂-induced temperature. About 40% of the additional deaths may be due to ozone and the rest, to particles, which increase due to CO₂-enhanced stability, humidity, and biogenic particle mass. An extrapolation by population could render 21,600 (7400–39,000) excess CO₂-caused annual pollution deaths worldwide, more than those from CO₂-enhanced storminess. Citation: Jacobson, M. Z. (2008), On the causal link between carbon dioxide and air pollution mortality, *Geophys. Res. Lett.*, 35, L03809, doi:10.1029/2007GL031101.

1. Introduction

[2] Because carbon dioxide's (CO₂'s) ambient mixing ratios are too low to affect human respiration directly, CO₂ has not been considered a classic air pollutant. Its effects on temperatures, though, affect meteorology, and both feed back to air pollution. Several studies have modeled the sensitivity of ozone to temperature [Sillman and Samson, 1995; Zhang et al., 1998] and the regional or global effects of climate change from all greenhouse gases on ozone [Thompson et al., 1989; Evans et al., 1998; Dvortsov and Solomon, 2001; Mickley et al., 2004; Stevenson et al., 2005; Brasseur et al., 2006; Murazaki and Hess, 2006; Steiner et al., 2006; Racherla and Adams, 2006] and aerosol particles [Aw and Kleeman, 2003; Liao et al., 2006; Unger et al., 2006]. Some studies have highlighted the effect of water vapor on chemistry [Evans et al., 1998; Dvortsov and Solomon, 2001; Stevenson et al., 2005; Steiner et al., 2006; Racherla and Adams, 2006; Aw and Kleeman, 2003]. However, none has isolated the effect of CO₂ alone on ozone, particles, or carcinogens, applied population and health data to the pollution changes, or examined the problem with a global-regional climate/air pollution model.

[3] Here, a box photochemistry calculation is first used to show how increases in water vapor and temperature inde-

pendently increase ozone more with high than low ozone. This analysis helps to explain the causal link between CO₂ and health in areas where most people live, as subsequently found in 3-D global-regional simulations.

2. Chemical Effects of CO₂ on Ozone

[4] The SMVGEAR II chemical solver was used first in box mode, without dilution or entrainment, to solve chemistry for 12 hours among 128 gases and 395 inorganic, organic, sulfur, chlorine, and bromine reactions (including 57 photoprocesses) (mostly given by Jacobson et al. [2007], also see the supplementary material of Jacobson [2007]). Cases with different initial NO_x and organic gas were run.

[5] Figure 1 shows the water-vapor (H₂O) and temperature-dependence of ozone under several ozone precursor combinations. For initial NO_x < 8 ppbv, ozone decreased with increasing H₂O. For initial NO_x > 80 ppbv and moderate initial NO_x with low organics, though, ozone increased with increasing H₂O, by up to 2.8 ppbv-O₃ per 1 ppthv-H₂O. Between these extremes, ozone increased with increasing H₂O at low H₂O and stayed constant or slightly decreased at high H₂O (see the auxiliary material).¹ Figure 1 also shows that, generally (but not always), increasing water vapor increased ozone more with higher ozone.

[6] Further, the more ozone present, the more temperature-dependent chemistry increases ozone (Figure 1), consistent with Sillman and Samson [1995] and Zhang et al. [1998]. The ozone increase (Δχ, ppbv) per 1 K change in temperature (ΔT) from all points in Figure 1 were fit to

$$\Delta\chi/\Delta T = -0.13034 - 0.0045585\chi + 0.00028643\chi^2 - 4.6893 \times 10^{-7}\chi^3 \quad (1)$$

where χ is ozone (ppbv) at 298.15 K (32–250 ppbv). A 1 K rise increased ozone by about 0.1 ppbv at 40 ppbv but 6.7 ppbv at 200 ppbv. Olszyna et al. [1997] reported an observed correlation in the rural southeast U.S. of 2.4 ppbv ozone per 1 K. If temperature-dependent chemistry alone were causing this increase, ozone would need to be about 115 ppbv (equation 1) in that study, but it was 30–90 ppbv. Thus, other factors not accounted for in Equation 1, such as H₂O increases (described above) and biogenic gas emission increases [e.g., Guenther et al., 1995], due to higher temperatures, may have caused the larger observed temperature-ozone correlation. Also, both temperature and ozone increase with sunlight, so all observed temperature-ozone correlations overestimate the magnitude of cause and effect.

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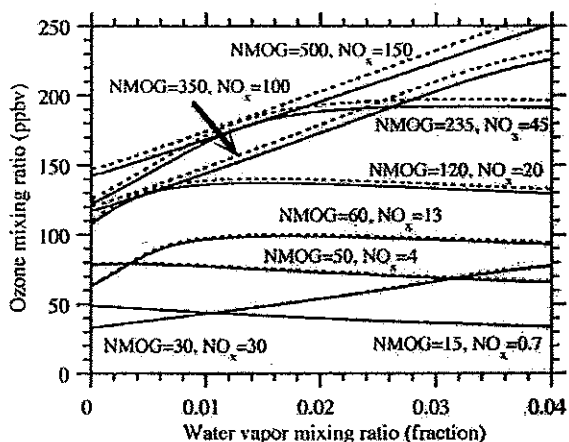


Figure 1. Mixing ratio of ozone and several other gases as a function of water vapor mixing ratio after 12 hours of a box-model chemistry-only simulation initialized at 0430 under several initial NO_x and nonmethane organic gas (NMOG) mixing ratio combinations (ppbv) (given in the figure) at 298.15 K (solid lines) and 299.15 K (dashed lines). The simulations assumed sinusoidally varying photolysis between 0600 and 1800.

3. Health Effects of CO_2 From Global-U.S. Simulations

[7] The chemistry used for Figure 1 was applied with emission, aerosol, cloud, meteorological, radiative, transport, and surface processes in the nested global-urban 3-D model, GATOR-GCMOM. The model (see auxiliary material) has been evaluated against U.S. gas, aerosol, meteorological, and radiative data extensively [e.g., Jacobson, 2001; Jacobson et al., 2004, 2007; Colella et al., 2005].

[8] Two global simulations ($4^\circ\text{-SN} \times 5^\circ\text{-WE}$) were run under present-day conditions. In the second, fossil-fuel CO_2 (fCO_2) ambient mixing ratios and emissions were set to preindustrial values. When U.S. temperatures were about 1 K higher in the present minus preindustrial- CO_2 global simulations, the U.S. regional domain ($0.5^\circ\text{S-N} \times 0.75^\circ\text{W-E}$) in each global simulation was turned on and initialized with global-domain data (including ambient CO_2). Global and regional domains were run another four months. Emissions of fCO_2 were included in the present-day but not preindustrial- CO_2 global- and U.S.-domain simulations.

[9] Figures 2 and S3 show differences between the present-day and preindustrial- CO_2 simulations. Figure 2a compares modeled with radiosonde (1958–2006) vertical temperature differences. The population-weighted near-surface temperature increase over land was 1.07 K (Table S4), which increased population-weighted H_2O by 1.28 pptv (Table S4) and U.S.-averaged H_2O by 1.1 pptv (Figure 2b). The observed 1961–1995 U.S. water vapor increase and positive correlation between temperature and H_2O [Gaffen and Ross, 1999] support the modeled H_2O increase with increasing temperatures.

[10] Figure 2c indicates that fCO_2 increased ozone by 0.12 ppbv in the U.S., 5 ppbv in Los Angeles, 1–5 ppbv in the southeast, and up to 2 ppbv along the northeast coast. In Los Angeles, the 0.75 K temperature increase (Figure 2a) and 1.3 pptv water vapor increase increased ozone through chemistry (Figure 1).

[11] In the southeast, 0.5–1 K temperature increases increased isoprene and monoterpenes (Figure S3a), reducing the relative humidity (Figure S3c) and cloud optical depth (Figure S3d), increasing ultraviolet radiation (Figure S3e), and enhancing ozone. The 0.5–2 ppbv/K ozone increase in Tennessee is just below the correlated estimate of 2.4 ppbv/K from Olszyna et al. [1997] as expected (section 2). Averaged over the U.S. domain, higher temperatures from fCO_2 increased biogenic soil NO_x , isoprene, monoterpene, and other organic carbon emissions by 6% (0.01 Tg/yr), 9% (0.47), 9.8% (0.15), and 8.9% (0.14), respectively. In the northeast, higher ozone due to higher temperatures was offset partly by higher cloud optical depth (Figure S3d) and lower ultraviolet radiation (Figure S3e), modestly increasing ozone.

[12] The population-weighted 8-hr ozone increase due to fCO_2 was +0.72 ppbv (Table 1), suggesting a greater increase over populated than less-populated areas. fCO_2 increased particles in populated areas (Tables 1 and S4) by warming the air more than the ground, increasing stability (as with radiosonde data-Figure 2a, ii), decreasing turbulence, shearing stress, and surface wind speed (Table S4 and Figure S3), reducing dispersion. Reduced dispersion and wind speed are consistent with Micklely et al. [2004] who correlated warmer temperatures with reduced cyclone activity. fCO_2 also increased isoprene and monoterpene emissions, thus secondary organic matter (SOM) (Table S4, Figures S3a and S3b); and increased relative humidity (Table S4) by increasing H_2O , swelling aerosol particles, increasing nitric acid and ammonia dissolution and the surface area for sulfuric acid and organic condensation. fCO_2 increased land precipitation, consistent in direction with observed trends [Intergovernmental Panel on Climate Change, 2001], increasing aerosol removal, but less than other processes increased aerosol concentrations.

[13] Health effect changes (Δy) due to ozone and $\text{PM}_{2.5}$ changes in each model cell were determined from [e.g., Ostro et al., 2006],

$$\Delta y = (1 - \exp[-\beta \Delta x]) y_0 P \quad (2)$$

where Δx is the simulation-averaged mixing ratio or concentration change in the cell, β is the fractional increase in risk per unit Δx , y_0 is the baseline health effect rate, and P is the cell population exposed to at least a minimum threshold. Table 1 and its footnote provide values of P , Δx , β , y_0 , and thresholds. Changes were summed over all cells and adjusted from a four-month to an annual average (Table 1, footnote).

[14] With this method, mortality increases due to modeled ozone and $\text{PM}_{2.5}$ from fCO_2 were 415 (207–620)/yr and 640 (160–1280)/yr, respectively, per 1.07 K (Table 1) or a total of near 1000 (350–4800) per 1.00 K (a 1.1% increase relative to the baseline death rate - Table 1), with about 40% due to ozone. A simple extrapolation from U.S. to world population (301.5 to 6600 million) gives 21,600 (7400–39,000) deaths/yr worldwide per 1 K due to fCO_2 above the baseline air pollution death rate (2.2 million/yr). The ozone portion of this (8,500 deaths/yr) is conservative compared with 15,500 deaths/yr, calculated from West et al. [2006] (= 30,000 deaths/yr from 1 ppbv ozone multiplied by the 2006:2030 population ratio (66:92) and the ozone

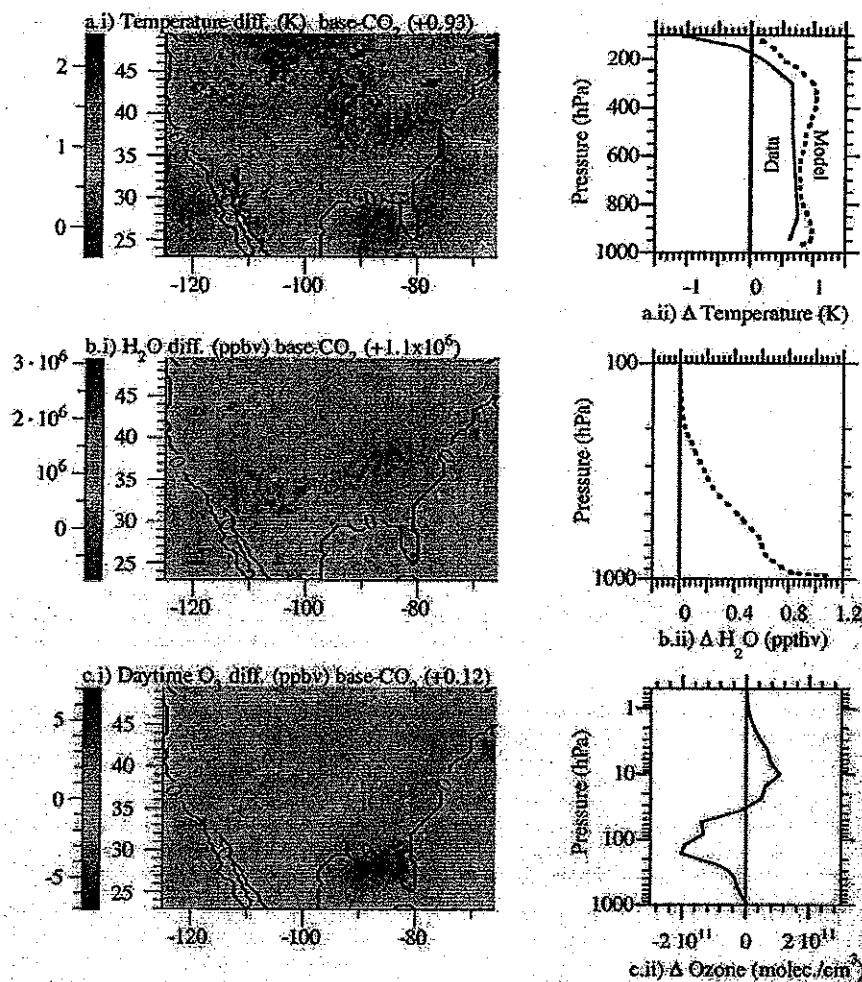


Figure 2. Four-month (mid-July to mid-November) domain-averaged near-surface and vertical-profile differences in (a) temperature, (b) water vapor, and (c) ozone between the present-day and preindustrial- CO_2 simulations. The domain-averaged (over land and water) change for each surface plot is given in parentheses. Also shown in Figure 2a (ii) is the 1958–2006 globally-averaged radiosonde temperature change [Thorne *et al.*, 2005], which is for reference only since the present simulations isolate the effects of CO_2 and do not examine all forcing agents.

change ratio (0.72:1.0). Remaining differences may be due to different thresholds used (35 ppbv here vs. 25 ppbv).

[15] One estimate of severe weather-related fatalities worldwide in the 1990s was 33,000/yr (Worldwatch Institute, *Unnatural disaster: The lesson of Katrina*, available at www.worldwatch.org/node/1822, 2005). A 1 K rise will increase this number, but less than 23,000/yr given that hurricane and tornado deaths have declined due to better warning systems (e.g., the deadliest hurricane since 1910 was over 30 years ago – Honduras, 1974, 10,000 deaths). Global warming will increase heat stress- and disease-related deaths as well, but by uncertain rates [e.g., Medina-Ramon and Schwartz, 2007].

[16] fCO_2 increased carcinogens, but the increase was small. Isoprene increases due to higher temperatures increased formaldehyde and acetaldehyde. Reduced dispersion increased exposure to these carcinogens and benzene and 1,3-butadiene.

[17] These simulations treated temperature effects on natural emissions but not power plant or vehicle emissions.

A sensitivity test was run examining the impact of 1 K on power plant energy demand and emissions. The resulting ozone (Figure S4) may cause 80 more U.S. deaths/yr. However, warmer winter temperatures will also decrease natural gas and vehicle emissions, and warmer summers will increase vehicle emissions [Rubin *et al.*, 2006; N. Motallebi *et al.*, manuscript in review, 2007]. The feedbacks of temperature to anthropogenic emissions must be studied more but are expected to be smaller than the other feedbacks examined here. Further uncertainties arise from model resolution, current and future emissions, numerical treatments, health data, and extrapolation of four-month results to a year, as detailed in the auxiliary material.

4. Effects of CO_2 on Stratospheric Ozone and UV Radiation

[18] Whereas, fCO_2 warms the surface and troposphere, it cools the stratosphere (Figure 2a, ii). Measurements indicate a 1%/yr (0.45 ppmv/decade) stratospheric water vapor

Table 1. Summary of CO₂'s Effects on Cancer, Ozone Mortality, Ozone Hospitalization, Ozone Emergency Room Visits, and Particulate-Matter Mortality^a

	Base	Base Minus No fCO ₂
Carcinogens		
Formaldehyde (ppbv)	3.61	+0.22
Acetaldehyde (ppbv)	2.28	+0.203
1,3-Butadiene (ppbv)	0.254	+0.00823
Benzene (ppbv)	0.479	+0.0207
USEPA cancers/yr ^b	389	+23
OEHHHA cancers/yr ^b	789	+33
Ozone		
8-hr ozone (ppbv) in areas ≥35 ppbv ^c	42.3	+0.724
Pop (mil.) exposed in areas ≥35 ppbv ^d	184.8	184.8
High ozone deaths/yr ^e	6230	620
Med. ozone deaths/yr ^e	4160	+415
Low ozone deaths/yr ^e	2080	+207
Ozone hospitalizations/yr ^e	24,100	+2400
Ozone ER visits/yr ^e	21,500	+2160
Particulate matter		
PM _{2.5} (μg/m ³) in areas > 0 μg/m ^{3f}	16.1	+0.065
Pop (mil.) exposed in areas ≥ 0 μg/m ³	301.5	301.5
High PM _{2.5} deaths/yr ^g	191,000	+1280
Medium PM _{2.5} deaths/yr ^g	97,000	+640
Low PM _{2.5} deaths/yr ^g	24,500	+160

^aResults are shown for the present-day ("Base") and present-day minus preindustrial ("no-fCO₂") 3-D simulations. All mixing ratios and concentrations are near-surface values averaged over four months (mid-July to mid-November) and weighted by population (population-weighted value is defined in the footnote to Table S4). Divide the last column by 1.07 K (the population-weighted CO₂-induced temperature change from Table S4) to obtain the health effect per 1 K.

^bUSEPA and OEHHHA cancers/yr were found by summing the product of individual CUREs (cancer unit risk estimates = increased 70-year cancer risk per μg/m³ sustained concentration change) by the population-weighted mixing ratio or mixing ratio difference of a carcinogen, by the population, and air density, over all carcinogens, then dividing by 70 yr. USEPA CUREs are 1.3 × 10⁻⁵ (formaldehyde), 2.2 × 10⁻⁶ (acetaldehyde), 3.0 × 10⁻⁵ (butadiene), 5.0 × 10⁻⁶ (= average of 2.2 × 10⁻⁶ and 7.8 × 10⁻⁶) (benzene) (www.epa.gov/IRIS/). OEHHHA CUREs are 6.0 × 10⁻⁶ (formaldehyde), 2.7 × 10⁻⁶ (acetaldehyde), 1.7 × 10⁻⁴ (butadiene), 2.9 × 10⁻⁵ (benzene) (www.oehha.ca.gov/risk/ChemicalDB/index.asp).

^c8-hr ozone ≥35 ppbv is the highest 8-hour-averaged ozone during each day, averaged over all days of the four-month simulation in areas where this value ≥35 ppbv in the base case. When base O₃ ≥ 35 ppbv and no-fCO₂ O₃ < 35 ppbv, the mixing ratio difference was base O₃ minus 35 ppbv.

^dThe 2007 population exposed to ≥35 ppbv O₃ is the population exposed to a four-month-averaged 8-hour averaged ozone mixing ratio above 35 ppbv and was determined from the base case.

^eHigh, medium, and low deaths/yr, hospitalizations/yr, and emergency-room (ER) visits/yr due to short-term O₃ exposure were obtained from Equation 2 applied to each model cell, summed over all cells. The baseline 2003 U.S. death rate (y₀) was 833 deaths/yr per 100,000 [Hoyert et al., 2006]. The baseline 2002 hospitalization rate due to respiratory problems was 1189 per 100,000 [Merrill and Elshausser, 2005]. The baseline 1999 all-age emergency-room visit rate for asthma was 732 per 100,000 [Mannino et al., 2002]. These rates were assumed to be the same in each U.S. county, although they vary slightly by county. The fraction increases (β) in the number of deaths from all causes due to ozone were 0.006, 0.004, and 0.002 per 10 ppbv increase in daily 1-hr maximum ozone [Ostro et al., 2006]. These were multiplied by 1.33 to convert the risk associated with 10 ppbv increase in 1-hr maximum O₃ to that associated with a 10 ppbv increase in 8-hour average O₃ [Thurston and Ito, 2001]. The central value of the increased risk of hospitalization due to respiratory disease was 1.65% per 10 ppbv increase in 1-hour maximum O₃ (2.19% per 10 ppbv increase in 8-hour average O₃), and that for all-age ER visits for asthma was 2.4% per 10 ppbv increase in 1-hour O₃ [Ostro et al., 2006] (3.2% per 10 ppbv increase in 8-hour O₃). All values were reduced by 45% to account for the mid-July to mid-November and year-around O₃ ≥ 35 ppbv ratio, obtained from detailed observations (H. Tran, personal communication, 2007).

^fThis is the simulated 24-hr PM_{2.5}, averaged over four months, in locations where PM_{2.5} ≥ 0 μg/m³.

^gThe death rate due to long-term PM_{2.5} exposure was calculated from Equation 2. Pope et al. [2002] provide increased death risks to those ≥30 years of 0.008 (high), 0.004 (medium), and 0.001 (low) per 1 μg/m³ PM_{2.5} > 8 μg/m³ based on 1979–1983 data. From 0–8 μg/m³, the increased risks were conservatively but arbitrarily assumed = 1/4 those > 8 μg/m³ to account for reduced risk near zero PM_{2.5}. Assuming a higher risk would strengthen the conclusion found here. The all-cause 2003 U.S. death rate of those ≥30 years was 809.7 deaths/yr per 100,000 total population. No scaling of results from the 4-month model period to the annual average was performed to be conservative, since PM_{2.5} concentrations from July–November are lower than in the annual average based on California data (H. Tran, personal communication, 2007).

increase from 1954–2000 [Rosenlof et al., 2001], but a slight lower-stratospheric decrease from 2001–2005 [Randel et al., 2006]. The simulations here, which accounted for chlorine and bromine gas and heterogeneous chemistry, found that the temperature and H₂O changes due to fCO₂ increased middle and upper-stratospheric ozone but decreased upper tropospheric and lower stratospheric (UTLS) ozone, where its column abundance is greater, causing a net U.S. column ozone loss of 2.7% (Figure 2c, ii, and Table S4). The UTLS ozone losses were due to increases in H₂O there (Figure 2b, ii), as indicated by Figure S2b and Dvortsov and Solomon [2001]. The upper- and middle-stratospheric gains can be explained by Figure S1, which shows that, at 25 km, stratospheric ozone decreases by 1.5% as H₂O increases by 1 ppmv. As temperature

decreases by 1.5 K, though, ozone increases by 3.6%, suggesting an overall ozone increase from H₂O and cooling. The ozone increase upon stratospheric cooling is due to reduced loss from O+O₃ [Evans et al., 1998]. Despite the column ozone loss due to fCO₂, surface UV hardly changed (Table S4) because fCO₂ increased cloud optical depth, offsetting UV increases from ozone loss.

5. Summary

[19] A climate-air pollution model showed by cause and effect that fossil-fuel CO₂ increases increase U.S. surface ozone, carcinogens, and particulate matter, thereby increasing death, asthma, hospitalization, and cancer rates. Increased water vapor and temperatures due to higher CO₂

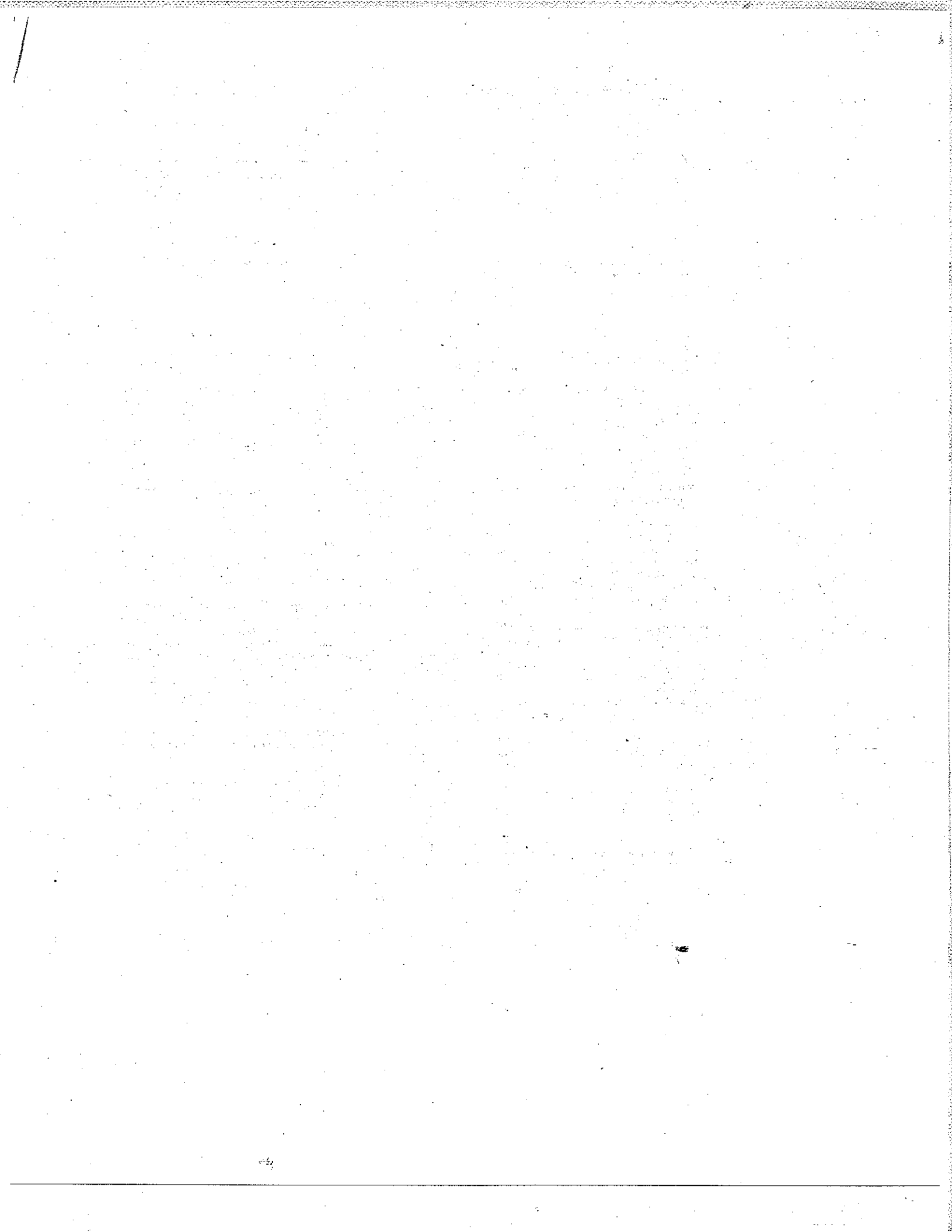
each increase ozone increasingly with increasing ozone. At low ozone, more water vapor decreases ozone slightly but higher temperatures increase biogenic emission in many areas, offsetting ozone decreases in such areas. CO₂ increases stability, the relative humidity, and biogenic particle mass thus PM_{2.5}. Finally, CO₂ decreases column ozone over the U.S. by increasing upper tropospheric/lower stratospheric water vapor.

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M. Z. Jacobson, Department of Civil and Environmental Engineering, Stanford University, Stanford, CA 94305-4020, USA. (jacobson@stanford.edu)



Comment Letter #: 64

Date: September 26, 2009

From: Ernest Pacheco, Citizens Against Pollution

Response to Comments:

- 64-1 Air District Staff would like to learn more about the air impact described in the commenter's letter before considering it for the updated CEQA Guidelines. Recognizing that Mark Jacobson's research is very recent and has not yet been fully vetted by the scientific community, Air District staff will follow research on and relating to the Jacobson Effect as noted by the commenter; and study whether it is feasible for lead agencies to assess the morbidity and mortality of increased criteria pollutants from GHG emissions.

#65



Department of Planning, Building and Code Enforcement
JOSEPH HORWEDEL, DIRECTOR

October 28, 2009

Mr. Greg Tholen
Principal Environmental Planner
Planning and Research Division
Bay Area Air Quality Management District
939 Ellis Street
San Francisco, CA 94109

Subject: City of San Jose Comments Concerning the Air District's Draft California Environmental Quality Act (CEQA) Guidelines

Dear Mr. Tholen,

The City of San Jose appreciates the opportunity to review the proposed update to the District's CEQA Guidelines and provide the following comments.

General Comments:

The City of San Jose shares the District's goals to improve regional and local air quality and to minimize greenhouse gas emissions consistent with AB 32 – the Global Warming Solutions Act. We are concerned, however, that in a number of instances, the proposed Guidelines will have unintended consequences and inhibit the City's attempts to focus growth in transit-rich urban infill locations. In many instances, thresholds are being lowered from existing levels or new standards set that will trigger Environmental Impact Reports (EIRs) due to a lack of feasible mitigation that will demonstrably reduce emissions below the new proposed emissions thresholds. By focusing on size rather than project performance, the new lowered thresholds will unfairly penalize large projects that are appropriately located and supported by transit, and still allow smaller, auto-oriented projects in more remote locations that result in more emissions on a per unit or per capita basis to avoid responsibility for mitigation. More specific comments and concerns are presented below.

05-1

I. Greenhouse Gas Emissions Thresholds of Significance and Screening Criteria

- A. The District should not establish a greenhouse gas emissions (GHG) standard on its own. The District should instead direct its resources to participate in the development of a statewide threshold for GHG. It is inappropriate for an individual air district to attempt to set standards for an emission category that is being addressed at a statewide, and potentially federal, level. Consistency across California should be sought rather than a patchwork of inconsistent standards adopted by each air district, recognizing that

05-2

CEQA is applied across the state, and that GHG is ultimately a cumulative impact issue for the state. If the District proceeds with its own GHG threshold, please consider the following two points. 65-2

1. The thresholds for daily emissions of criteria pollutants have gone down for reactive organic gases (ROG) and nitrogen oxides (NOx). With improved vehicle emissions, however, the screening levels in Table 2-2 generally appear higher than in the current guidelines. The screening levels for significant GHG in Table 2-3 are much lower than those for the criteria pollutants. The threshold for GHG could trigger completion of an EIR and force cities to adopt overriding considerations for some projects, including dense infill projects near transit, that otherwise would have no significant unavoidable impacts. 65-3
2. The GHG thresholds should include a sliding scale, so more projects can be captured and the emphasis is on mitigation to lower overall emissions. For instance, a project with X but less than Y emissions is expected to include best management practices. A project with greater than Y emissions but less than Z emissions is expected to apply best management practices and reduce overall emissions by XX percent. A project with over Z emissions would have significant emissions. A large project, whether it be mixed use near transit or single-family homes in a greenfield location, is going to be so far above the threshold that any study of the emissions may be a worthless exercise. City staff understands that the San Joaquin Valley Air Pollution Control District is preparing to adopt a performance based threshold requiring that projects achieve a certain percentage reduction over unmitigated levels. This approach should be considered by BAAQMD. 65-4

- B. Chapter 2 text discussing Land Use Projects does not mention tiering from a Climate Action Plan, as discussed on Page 5-2 (third paragraph in Section 5.2.2, Greenhouse Gases). The District should consider adding a reference to tiering using an adopted Clean Air Plan to this section. 65-5

II. Assessing and Mitigating Local Community Risk and Hazard Impacts

The Guidelines have expanded and refined the guidelines for assessing impacts from Toxic Air Contaminants (TACs) under the heading **Local Community Risk and Hazard Impacts**. The draft guidelines call for using overlay zones to identify risks to the community, including near freeways and high volume roadways. Questions and comments include:

- A. Page 5-5: Regarding Special Overlay Zones of 500 feet on each side of all freeways and high-volume roadways. Would the District revise this guideline to include an option for a jurisdiction to base Special Overlay Zones on actual conditions and air quality impacts? For example, due to meteorological conditions, risks from diesel 65-6

particulates near a highway are generally lower where the predominant wind conditions are across a roadway rather than parallel to it. Also, on some highways and high-volume roadways, truck traffic is a lower proportion of total traffic than in some assumptions used to develop the 500 foot zone. For San Jose's General Plan Update, the City may want to refine the overlay zones to reflect local conditions. City of San Jose staff would be interested in working with the District on a qualified Local Community Risk Reduction Plan. The District could add a reference to an acceptable methodology or models for refining the 500 foot zone.

65-6

B. Page 4-5. Will the District work with Caltrans on developing a program for additional tree planting adjacent to roadways? Coast redwoods do not fare particularly well on the valley floor in the South Bay without additional water. Will the District consider it a significant unavoidable impact if redwood or deodar cedar trees are not planted between the source of risk and livable structures?

65-7

C. Table 2-8 has some large screening distances, especially for painting/coating operations, given regulations for the emissions of volatile organic compounds. The asphalt batch plant screening distance also seems high. The City requests the District provide justifications for the screen distances in this table.

65-8

D. Siting new sensitive receptors in impacted communities will require Best Available Control Technology (T-BACT/TBP) measures. The District should recognize that most modern dwelling units do not have air intakes. The centralized heating/air conditioning (HVAC) recirculates air that "seeps" into the unit. Adding HVAC units may be costly and should be proven to have some desired benefit. What reduction does the District believe future project air quality assessments could consider for planting and maintaining tree zones between the source and receptors?

65-9

III. Assessing and Mitigating Plan-Level Impacts

Under the discussion of Operational Impacts on Page 5-2, the (General) Plan must show that the rate of increase in VMT or vehicle trips (VT) within the plan area is equal to or lower than the rate of increase in population within the proposed plan.

65-10

A. The VMT within the plan area may be different than the VMT calculated using the URBEMIS model as trips go into and out of the plan area (i.e., the City of San Jose). The District should clarify how to come up with the VMT number and/or if the plan area is defined more regionally than the Urban Service Area or Sphere of Influence.

The section on Greenhouse Gases lays out the contents of a Climate Action Plan and how it should be linked to the General Plan. Questions and comments on this section include:

65-11

B. Page 5-4: Once an updated General Plan is adopted by the City, would the process for comparing Service Population to 2020 GHG Projections in Table 5-1 be carried out for each General Plan Amendment or for each group of amendments considered by the City?

- C. The City will have challenges enforcing with private development some of the Best Management Practices (BMP) for construction emissions of greenhouse gases on Page 5-6. For example, the BMP calling for 15 percent alternative-fueled construction vehicles and local building materials of at least 10 percent, especially on smaller projects is difficult to enforce.

65-12

IV. Construction Related Impacts

- A. Section 6.2 and Screening Criteria in Table 2-6 (Page 2-11): The proposed screening criteria appear to penalize infill and mixed use development by requiring quantification of construction emissions for any demolition and for construction projects that include more than one land use type. The City recommends that the District add:

65-13

- Screening criteria for demolition that incorporates BAAQMD rules and BMPs (based on the size/amount of demolition); and
- A methodology which allows weighting of land use types for mixed use projects

- B. Page 6-17. Please clarify last sentence on the page. Is the intent that if a residential project is located in an area moderately likely to contain Naturally Occurring Asbestos and/or earth-moving is involved, the impact would be considered significant? Would the District add a list of possible mitigation measures that would reduce this impact to a less than significant level? Alternatively, is this being left up to the Lead Agency? For several residential infill projects in San Jose, soil has been removed to a depth of one to two feet in areas not covered by buildings or pavement and replaced with non-serpentine derived soil.

65-14

- C. Construction Emissions - is there a minimum size that basic control measures would apply (e.g., one acre)?

V. Odors.

The screening distances for odors (Table 2-8) have changed (or increased) greatly since the previous set of guidelines. What is the justification for this? Outside of Milpitas, have there been confirmed complaints within two miles regarding wastewater treatment plants, landfills, asphalt batch plants? Painting/coating operations are regulated by BAAQMD. One would think that if one could smell these painting operations at one mile, then the regulations are not working and the VOC emissions must be substantial. Painting operations could include small auto body shops -- is the District expecting the City would screen these out?

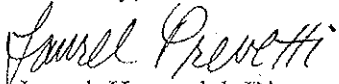
65-15

Again, we appreciate the opportunity to offer these comments and look forward to continuing to work with the District on achieving air quality improvements in the Bay Region, while accommodating growth consistent with AB32 and SB 375. Additionally, the City appreciates

Mr. Greg Tholen
October 28, 2009
Page 5 of 5

the District's responsiveness to City staff participation on the CARE Task Force and Cumulative Impacts Working Group, and the District's willingness to allow jurisdictions to prepare Local Community Risk Reduction Plans. If you have any questions regarding this letter, please contact Akoni Danielsen, Principal Planner, at (408) 535-7823 or at Akoni.Danielsen@sanjoseca.gov.

Sincerely,



JH
Joseph Horwedel, Director
Department of Planning, Building, Code Enforcement

Cc: Kerrie Romanow, City of San Jose Environmental Services Department

Comment Letter #: 65

Date: October 28, 2009

From: Joseph Horwedel, Director, Department of Planning, Building, Code Enforcement, City of San Jose

Response to Comments:

- 65-1 See Master Response MR-2.
- 65-2 Early on the Air District worked closely with the California Air Resources Board (CARB) to develop a statewide GHG threshold. However, it is our understanding that CARB's work on developing a statewide GHG threshold has been delayed or suspended. Given the increasing urgency to address the impacts of climate change, repeated calls for assistance from local Bay Area agencies on how to address climate change in CEQA analyses and the absence of direction from state agencies, the Air District feels it is appropriate and necessary to move forward with an interim CEQA threshold for GHG emissions. As stated in the *Proposed Thresholds of Significance* report (November 2, 2009), the proposed GHG thresholds are interim thresholds and will be revisited when CARB develops a statewide GHG threshold.
- 65-3 It may be true that the thresholds for GHG emissions could require (trigger) completion of an EIR before the thresholds for criteria pollutants would do so, including dense infill projects. However, infill development will inherit advantages of substantially reduced vehicle trips, and associated emissions, due proximity to nearby transit and support services more so than greenfield development without access to transit or nearby support services. Also see Master Response MR-2.
- 65-4 The commenter suggests as an alternative threshold a sliding-scale threshold that would not penalize large infill mixed use projects near transit. The proposed thresholds now include an efficiency threshold that will allow larger more efficient mixed use and infill projects. Also see Master Response MR-2.
- 65-5 The proposed GHG thresholds have been modified to consider a project consistent with a qualified climate action plan less than significant.
- 65-6 The proposed risk and hazard thresholds have been modified to allow overlay zone distances other than 500 feet along freeways and high-volume roadways. The modified distance must be based on district-approved modeling for the locations being considered for distances other than 500 feet.
- 65-7 The Air District has not yet contacted Caltrans regarding the planting of trees adjacent to roadways. Redwood and deodar cedar species have been found to be the most effective at removing fine particulate matter from the air; other species are also effective and are identified in the revised CEQA Guidelines. The effectiveness of trees in mitigating risk impacts is unknown but is considered feasible mitigation.
- 65-8 The screening distances are based on Air District rules and experience with enforcing odor complaints.
- 65-9 The Air District is no longer recommending toxic best practices in impacted communities. The proposed thresholds of significance now recommend development of community risk reduction plans.

- 65-10 The proposed thresholds of significance have been changed and now recommend that the plan's VMT or trip increase is less than or equal to the plan's projected population to be considered less than significant.
- 65-11 The efficiency threshold for plans is intended to apply to the entire plan as amended.
- 65-12 The proposed thresholds of significance no longer include a recommendation for best management practices of construction GHG emissions. However, the Air District encourages Lead Agencies to include best management practices as conditions of approvals for projects.
- 65-13 See Master Response MR-2. The revised CEQA Guidelines provide recommended methodologies that allow well-designed, efficient projects to take credit for reducing emissions compared to less efficient projects. In addition, projects located near transit and support services may be able to achieve even lower emission levels and possibly an impact finding of less than significant impacts to air quality. Well designed projects that incorporate recommended measures in the project proposal are not considered mitigated projects and may still be found less than significant and qualify for a categorical exemption.
- 65-14 The intent of the revised CEQA Guidelines regarding naturally occurring asbestos is that projects that propose disturbing the NOA should mitigate potential impacts of causing asbestos to become airborne. The commenter's example to replace NOA-bearing soil with non-serpentine derived soil may be appropriate mitigation. Air District staff will clarify this section of the revised Guidelines.
- 65-15 The screening distances for odors are not intended to act as thresholds. The odor threshold is complaint-based. The screening distances are based on Air District rules and experience with enforcing odor complaints.