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DOCKET
07-AFC-6
DATE Nov 10 2008
RECD. Nov 12 2008

STATE OF CALIFORNIA
State Energy Resources
Conservation and Development Commission

In the Matter of:	)	DOCKET NO: 07-AFC-6
CARLSBAD ENERGY CENTER PROJECT	)	DECLARATION OF WILLIAM ROSTOV IN SUPPORT OF THE CENTER FOR BIOLOGICAL DIVERSITY'S PETITION FOR ORDER DIRECTING RESPONSE TO DATA REQUESTS

I, William Rostov, declare:

1. I have personal knowledge of the following facts and can and will competently testify if called upon as a witness in this matter.

2. I am counsel for Intervenor Center for Biological Diversity in this matter.

3. Attached as Exhibit A is a true and correct copy of the Center for Biological Diversity's Data Requests to the CECP served on September 24, 2008.

4. Attached as Exhibit B is a true and correct copy of Carlsbad Energy Center Project (07-AFC-06) Objections to Center for Biological Diversity's Data Requests, Dated October 14, 2008.

5. If Applicant had not objected, its responses to the Data Requests would have been due on October 24, 2008.

6. Attached as Exhibit C is a true and correct copy of the Preliminary Draft Staff Proposal Recommended Approaches for Setting Interim Significance Thresholds for Greenhouse Gases under the California Environmental Quality Act, California Air Resources Board (Oct. 24, 2008).

DATED: November 10, 2008

_____

William B. Rostov
Earthjustice
Attorney for Center for Biological Diversity

EXHIBIT A

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CENTER FOR BIOLOGICAL DIVERSITY

STATE OF CALIFORNIA
State Energy Resources
Conservation and Development Commission

In the Matter of:	)	Docket No. 07-AFC-6
	)	
	)	CENTER FOR
APPLICATION FOR CERTIFICATION	)	BIOLOGICAL
of the CARLSBAD ENERGY CENTER	)	DIVERSITY'S DATA
PROJECT	)	REQUESTS TO THE CECP
	)	

Intervenor Center for Biological Diversity ("the Center") hereby submits this first set of Data Requests to the Carlsbad Energy Center Project ("CECP") pursuant to 20 Cal. Code Reg. § 1716(b). Any objections or statements of inability to comply with the request must be filed in writing with the Committee and with the Center within 10 days of receipt of this request. (20 Cal. Code Reg. § 1716(g))

Dated: September 26, 2008

William Rostov

William Rostov
Attorney for Intervenor Center for Biological Diversity

Technical Area: Air Quality

Background

The California Global Warming Solutions Act of 2006 (AB 32) and related Executive Orders have set aggressive goals for the State to significantly reduce its greenhouse gas emissions over the next several decades. This includes attention to emissions generated outside the state by power that is ultimately used in California. Yet the Applicant only partially analyzed certain greenhouse gas emissions from the new project.

1. Please provide a full greenhouse gas inventory of direct and indirect emissions sources from the project, including building materials, construction emissions, operational energy use, vehicle trips, water supply, and waste disposal.

2. Please estimate the amount of HFC, PFC, and SF_6 that will be emitted by the CECP.

3. Please discuss mitigation measures to prevent the release of HFC, PFC, and SF_6.

Background

The San Diego Air Pollution Control District noted in its October 17, 2007 information request that, "It is likely that the project may be operated continuously or intermittently on natural gas derived from imported liquefied natural gas (LNG)." The processes necessary to convert and transport LNG are very energy intensive and could significantly increase California's current emissions from domestic sources of natural gas.

1. Will the CECP use imported LNG?

2. If so, please estimate the amount of LNG the CECP will use on an annual basis.

3. What are the factors that will dictate "intermittent" or "continuous" use of LNG at the CECP?

4. Please identify the LNG terminal or terminals that will provide gas for the CECP. Please list the county or countries of origin of the LNG to be shipped to these terminal(s). Estimate the relative amount of LNG that will transported from each country of origin.

5. Please estimate the full lifecycle carbon footprint of the use of LNG, including the impacts of extraction, liquefaction, transportation, and regasification of the imported LNG to be used.

Background

Section 5.1 of the Application for Certification ("AFC") calculates certain greenhouse gas emissions from specific elements of the project (the new equipment and the existing Units 1, 2, and 3). The calculations estimate that the CECP will emit 8.50 x 10^5 metric tons of carbon dioxide equivalent emissions. In City Data Response 50, the Applicant concludes that the project will only lead to "a net increase in GHG emissions of approximately 2.08 x 10^5 metric tons per year of carbon dioxide equivalent GHGs" based on assumptions about the benefits of shutting down Units 1, 2, and 3. However, this calculation neglects several potentially significant sources of greenhouse gases from the project and seriously underestimates the actual emissions that could result from this project, while potentially overestimating the benefits of retiring Units 1, 2, and 3. Table 5.1B-20 of the AFC estimates the greenhouse gases from the to-be-retired Units 1, 2, and 3 "based on maximum 2-year annual average with a 10-year look back period."

1. Since the AFC lists several conditions under which the CECP may operate once online (i.e., base load, load following, daily cycling, full shutdown), please confirm that the calculations of greenhouse gas emissions from the new equipment are based on the project's maximum potential to emit.

2. Please provide the 2-year period relied upon to calculate emissions.

3. Please calculate greenhouse gases based on the most recent (current) 2-year average for each of these units, and for units 4 and 5. Please include the method used to calculate these emissions.

4. Please provide the breakdown of oil use versus natural gas use in these units over the past 2 years and the hours of use for each type of fuel. Also provide this information for units 4 and 5.

Background

Table 5.1B-12 of the AFC shows a significant decrease in NOx and SOx emissions from Units 1, 2, and 3 since 1995.

1. Please explain these decreases.

Background

The anticipated life expectancy of the proposed CECP is 40 years. Existing Units 1, 2, and 3 are already more than 50 years old, and Units 4 and 5 are over 30 years old.

1. Please provide an estimate of the remaining useful life of Units 1, 2, and 3, as well as Units 4 and 5, if the CECP were not constructed.

2. Would new permits be necessary in order to keep Units 1, 2, 3, 4, and 5 operating for this amount of time?

3. Please provide the annual hours of use for Units 1, 2, 3, 4, and 5 over each of the past 5 years (not the 5-year average). Also, please provide the annual capacity factor for each of the units over each of the past 5 years (not the 5-year average).

Background

The AFC states that one of the goals of the project is "meeting the expanding need for new, highly efficient, reliable electrical generating resources located in the load center of the San Diego region."

1. What is the reliability need of the area? (Please include a numerical answer that identifies the number of megawatts necessary to meet existing reliability).

2. If the CECP will provide more than the reliability needs of the region, please discuss the ways in which the excess capacity provided by the proposed project could foster economic or population growth, or the construction of additional housing, either directly or indirectly, in the surrounding environment and the impacts this growth may have on the environment including the potential increased emissions of greenhouse gases.

Background

The AFC does not appear to include analysis of an alternative that could meet the region's reliability needs with a smaller facility.

1. Please provide an analysis of this alternative including a calculation of the potential greenhouse gas emissions.

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STATE OF CALIFORNIA
State Energy Resources
Conservation and Development Commission

In the Matter of:	)	DOCKET NO: 07-AFC-6
CARLSBAD ENERGY CENTER PROJECT	)	PROOF OF SERVICE

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DECLARATION OF SERVICE

I, Jessie Baird, declare that on September 26, 2008, I deposited copies of the attached Center for Biological Diversity's Data Requests to the CECP, in the United States mail at Oakland, California, with first-class postage thereon fully prepaid and addressed to those identified on the Proof of Service list above.

OR

Transmission via electronic mail was consistent with the requirements of California Code of Regulations, title 20, sections 1209, 1209.5, and 1210. All electronic copies were sent to all those identified on the Proof of Service list above.

I declare under penalty of perjury that the foregoing is true and correct.

Jessie Baird

EXHIBIT B

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October 14, 2008

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Re: Carlsbad Energy Center Project (07-AFC-06)
Objections to Center for Biological Diversity's Data Requests

Dear Mr. Rostov:

Applicant Carlsbad Energy Center, LLC ("Applicant") received on or about September 26, 2008, Petitioner Center for Biological Diversity's ("Petitioner") data requests related to the Carlsbad Energy Center Project ("CECP"). Applicant objects to Petitioner's Data Requests on several grounds. First, Petitioner's data requests are untimely. Second, much of the information requested by Petitioner exceeds the scope of data and analysis required under the California Environmental Quality Act ("CEQA") and the California Global Warming Solutions Act ("AB 32"). Lastly, Applicant lacks jurisdiction to respond to Petitioner's questions implicating state policy on the need for electrical generating resources.

Applicant recognizes Petitioner's right to participate in the CECP proceedings, as well as Applicant's duty to respond to all timely and relevant data requests about CECP. (20 Cal. Code Reg. §§ 1207, 1716(b).) However, Applicant objects to Petitioner's late filing of data requests for CECP. Under the California Energy Commission's ("CEC") regulations, all requests for information shall be submitted no later than 180 days from the date the CEC determines an application for certification ("AFC") is complete, unless the CEC committee conducting the AFC proceedings allows requests for information at a later time for good cause. (20 Cal. Code Reg. § 1716(e).) The CEC found that the CECP AFC was complete or "data adequate" on October 31, 2007. Therefore, all requests for information from the CEC or other parties to the

CECP AFC proceedings were required to be filed before May 2008, except for good cause.[1] Petitioner's delay in intervening in the CECP proceeding – almost ten months after the CECP AFC was complete – is not good cause for Petitioner to issue its data requests after the six-month regulatory period for requesting information has passed.

Applicant also objects to Petitioner's data requests on the grounds that Applicant has already provided sufficient information on CECP's impact on air quality to comply with the Warren-Alquist Act, CEQA,[2] and AB 32. Following the enactment of AB 32, Senate Bill 97 amended CEQA, requiring the Office of Planning and Research ("OPR") to prepare guidelines for the mitigation of greenhouse gas emissions or the effects of greenhouse gas emissions under CEQA. (Pub. Res. Code § 21083.05.) These guidelines are not expected to be adopted before 2010. In the interim, OPR has published an advisory on CEQA compliance and greenhouse gas emissions and their effects. (OPR Technical Advisory, "CEQA and Climate Change," June 19, 2008.) While the CECP AFC was prepared and submitted prior to OPR issuing its advisory, Applicant has nevertheless satisfied its responsibilities under CEQA, as outlined by OPR.

While there are not currently defined thresholds of significance for greenhouse gas emissions, OPR states that CEQA requires that emissions be disclosed and mitigated to the extent feasible when the lead agency determines that a project contributes to a significant, cumulative climate change impact. (Id. at p.4.) Consequently, "lead agencies should make a good-faith effort, based on available information, to calculate, model, or estimate the amount of CO_2 and other GHG emissions from a project, including the emissions associated with vehicular traffic, energy consumption, water usage and construction activities." (*Id.* at p.5.) Applicant has made a good-faith effort to provide the CEC with all available information on the CECP's greenhouse gas emissions. The CEC has not requested any additional information from

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[1] Applicant received 112 data requests from the CEC within four months of the CECP AFC being accepted as data adequate. The CEC issued 16 additional data requests on May 6, 2008 and August 29, 2008, after the end of the standard 180-day period, that pertained to issues arising after the AFC was deemed data adequate, namely the Interconnection Facilities Study completed by Cal-ISO on June 4, 2008 and the inclusion of oil tank removal and remediation at the project site within the scope of the CECP, at the City of Carlsbad's request. Applicant has also responded to issues of concern and data requests that the City of Carlsbad filed in October 2007 and January 2008.

[2] The CEC's power plant site certification program is a certified state regulatory program under CEQA. (14 Cal. Code Reg. § 15251(j).)

Applicant regarding CECP's greenhouse gas emissions and is proceeding with its evaluation of the CECP's potential environmental impacts, including those related to climate change.

Lastly, Applicant objects to several of the data requests, because the information requested falls within the purview of the CEC, as the state's primary energy policy and planning agency.[3] Applicant is a private electricity generator and does not have jurisdiction to address electricity reliability requirements for the San Diego region.

It is not Applicant's intention to shirk its responsibility to timely respond to data requests from the Petitioner. However, it is not reasonable for Petitioner, having intervened in the CECP proceedings late in the CEC certification process, to serve data requests on Applicant the same month that the CEC anticipates issuing a Preliminary Staff Assessment for the CECP. Responding to these data requests, however, would do little to further Petitioner's interest in "ensuring the California Energy Commission complies with California Environmental Quality Act," (Center for Biological Diversity's Petition for Intervention, Aug. 28, 2008), which the CEC will be doing as part of its normal processing of the CECP AFC.

With these objections, Applicant has no further intent to respond to the Petitioner's data requests at this time. Should CEC staff or the CEC CECP assigned committee, disagree with this position or request Applicant to address certain specific requests propounded by Petitioner, then Applicant would consider these requests in good faith.

Very truly yours,

John McKinsey

John A. McKinsey

cc: Proof of Service, 07-AFC-06

---

[3] The CEC outlines its role and major responsibilities at http://www.energy.ca.gov/commission/index.html.

BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT COMMISSION OF THE STATE OF CALIFORNIA

APPLICATION FOR CERTIFICATION FOR THE *CARLSBAD ENERGY CENTER PROJECT*	Docket No. 07-AFC-6 PROOF OF SERVICE (Revised 9/10/2008)

Carlsbad Energy Center Project (07-AFC-6)
Letters of Support – Supervisor Slater-Price & South Vista Communities

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DECLARATION OF SERVICE

I, Elizabeth Hecox, declare that on October 14, 2008, I deposited copies of the attached document in the United States mail at Sacramento, California, with first-class postage thereon fully prepaid and addressed to those identified on the Proof of Service list above.

OR

Transmission via electronic mail was consistent with the requirements of California Code of Regulations, title 20, sections 1209, 1209.5, and 1210. All electronic copies were sent to all those identified on the Proof of Service list above.

I declare under penalty of perjury that the foregoing is true and correct.

Elizabeth Hecox

Elizabeth Hecox

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COMMENTS:

EXHIBIT C

California Air Resources Board

Preliminary Draft Staff Proposal

Recommended Approaches for Setting Interim Significance Thresholds for Greenhouse Gases under the California Environmental Quality Act

Released: October 24, 2008

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DOCUMENT AVAILABILITY

Electronic copies of this document and related materials can be found at: http://www.arb.ca.gov/cc/localgov/ceqa/ceqa.htm. Alternatively, paper copies may be obtained from the Board's Public Information Office, 1001 I Street, 1st Floor, Visitors and Environmental Services Center, Sacramento, California, 95814, (916) 322-2990.

For individuals with sensory disabilities, this document is available in Braille, large print, audiocassette or computer disk. Please contact ARB's Disability Coordinator at (916) 323-4916 by voice or through the California Relay Services at 711, to place your request for disability services. If you are a person with limited English and would like to request interpreter services, please contact ARB's Bilingual Manager at (916) 323-7053.

DISCLAIMER

This preliminary draft proposal has been reviewed by the staff of the Air Resources Board and approved for publication. Approval does not signify that the contents necessarily reflect the views and policies of the Air Resources Board, nor does mention of trade names or commercial products constitute endorsement or recommendation of use.

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Reviewed and approved for distribution by: Lynn M. Terry, Deputy Executive Officer

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ATTACHMENT A: PRELIMINARY DRAFT PROPOSAL FOR INDUSTRIAL PROJECTS

ATTACHMENT B: PRELIMINARY DRAFT PROPOSAL FOR RESIDENTIAL AND COMMERCIAL PROJECTS

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INTRODUCTION

Climate change is one of the most serious environmental problems facing the world, the United States, and California today. In this State, climate change already is impacting our coastlines, water supplies, agriculture, and public health, and putting millions of acres of forested land at increased risk of fire. These adverse effects will only increase in number and intensity if we do not promptly and substantially reduce pollution of the atmosphere with greenhouse gases (GHGs).

California law provides that climate change is an environmental effect subject to the California Environmental Quality Act (CEQA).[1] Lead agencies therefore are obligated to determine whether a project's climate change-related effects may be significant, requiring preparation of an Environmental Impact Report,[2] and to impose feasible mitigation to substantially lessen any significant effects.[3] Determining significance, however, can be a challenging task. Accordingly, the Governor's Office of Planning and Research in its June 2008 Technical Advisory, "CEQA and Climate Change,"[4] asked the Air Resources Board (ARB) to make recommendations for GHG-related thresholds of significance – identifiable benchmarks or standards that assist lead agencies in the significance determination.[5]

With this Staff Proposal, ARB staff is taking the first step toward developing recommended statewide interim thresholds of significance for GHGs that may be adopted by local agencies for their own use. The task that ARB staff is undertaking is, however, a limited one. Staff will not attempt to address every type of project that may be subject to CEQA, but instead will focus on common project types that, collectively, are responsible for substantial GHG emissions – specifically, industrial, residential, and commercial projects.[6] ARB staff believes that thresholds in these important sectors will advance our climate objectives, streamline project review, and encourage consistency and uniformity in the CEQA analysis of GHG emissions throughout the State.

Staff intends to make its final recommendations on thresholds in early 2009, in order to harmonize with OPR's timeline for issuing draft CEQA guidelines addressing GHG emissions[7] and to provide much needed guidance to lead agencies in the near term.

Public, stakeholder, and local lead agency participation is essential to the success of this project. ARB staff believes that the comment and feedback it receives, along with

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[1] Senate Bill 97, Public Resources Code, § 21083.05.
[2] California Code of Regulations, tit. 14, § 15064, subd. (f)(1).
[3] Id., § 15021, subd. (a)(2).
[4] See: http://opr.ca.gov/download.php?dl=ceqa/pdfs/june08-ceqa.pdf
[5] Id., § 15064.7, subd. (a).
[6] The collective greenhouse gas emissions from the industrial, residential and commercial sectors, together with the transportation sector, represent approximately 80% of the statewide greenhouse gas emissions inventory in 2004.
[7] See Senate Bill 97, Public Resources Code § 21083.05 (providing that draft guidelines are due June 1, 2009).

additional data and analyses, can form a body of evidence that lead agencies may rely on in adopting thresholds of significance consistent with ARB staff's recommendations.

Because the schedule is expedited, staff's recommendations must necessarily be interim and subject to review and revision as more information becomes available.[8]

BACKGROUND

Significance Under CEQA

A significant effect on the environment means a substantial, or potentially substantial, change in the environment caused directly or indirectly by the project.[9] The incremental effect of a project can be significant when it is cumulatively considerable – that is, when the effect is added to that of other past, present, and reasonably foreseeable probable future projects that also contribute to the problem.[10]

To streamline and facilitate consistency in the significance determination, the CEQA Guidelines[11] encourage agencies "to develop and publish thresholds of significance that the agency uses in the determination of the significance of environmental effects."[12] A threshold of significance is an identifiable quantitative, qualitative or performance level that marks the division between an impact that is significant and one that is not. A threshold of significance gives rise to a presumption, which can be rebutted by evidence that the threshold should not apply to a particular project.

Thresholds of significance must be supported by "substantial evidence." This does not mean that there is one best threshold. In CEQA, substantial evidence "means enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached."[13]

Climate Change and GHG Thresholds of Significance

"The capacity of the environment is limited, and it is the intent of the Legislature that the government of the state take immediate steps to identify any critical thresholds for the health and safety of the people of the state and take all coordinated actions necessary to prevent such thresholds being reached."[14] But where should a threshold of significance be set for GHG emissions and climate change? This question can be answered only after considering the nature of the environmental problem.

---

[8] ARB staff intends to monitor the implementation of thresholds that are adopted as a result of this process for effectiveness. In the same time frame as the update of the AB 32 Scoping Plan, staff intends to revisit its recommendations and to modify them if necessary.
[9] California Code of Regulations, title 14, §§ 15064, subd. (d), 15382.
[10] *Id.*, § 15355, subd. (b).
[11] Id., § 15000, et. seq.
[12] *Id.*, § 15064.7, subd. (a).
[13] *Id.*, § 15384, subd. (a).
[14] Public Resources Code, § 21000, subd. (d).

There is a scientific consensus that human activities, chief among them the burning of fossil fuels, profoundly affect the world's climate by increasing the atmospheric concentration of GHG beyond natural levels. Contributing additional GHG pollution to the atmosphere leads to higher global average temperatures, changes to climate, and adverse environmental impacts here in California and around the world.[15] Climate change, caused by "collectively significant projects taking place over a period of time[,]"[16] is a quintessential cumulative impact.

The experts tell us that an additional increase in global average temperatures of just 2 degrees Celsius (3.6 degrees Fahrenheit) is very likely dangerous.[17] With a 2 degree Celsius increase, disastrous effects become likely, including more extreme and more frequent severe weather, more wildfires, greater frequency of droughts and floods, rapid and higher sea level rise, and increased habitat destruction and extinctions.[18] These environmental effects will undoubtedly lead to serious economic, political, and national security disruptions.

In order to reduce the risk of dangerous climate change, we must stabilize atmospheric levels of GHGes at approximately 450 parts per million (ppm) by mid-century.[19] We are fast approaching this limit. Since the beginning of the industrial era, atmospheric concentrations of carbon dioxide, the primary GHG, have climbed to their highest point in the last half-million years, increasing from just under 300 ppm at the turn of the last century, to over 380 ppm today, and rising at about 2 ppm per year.[20]

In response to the challenge of climate change, California has taken a leadership role by committing to reduce its GHG emissions to 1990 levels by 2020 (about a thirty percent reduction in business-as-usual emissions in 2020) and to eighty percent below 1990 levels by 2050.[21] The latter target is consistent with the scientific consensus of the reductions needed to stabilize atmospheric levels of GHGs at 450 ppm by mid-century. Assembly Bill 32, the Global Warming Solutions Act of 2006, codifies the 2020 reduction

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[15] There is a large body of authoritative sources on the causes and current and projected impacts of climate change. An extended discussion of climate change is beyond the scope of this Staff Proposal. For additional information, ARB recommends the Fourth Assessment Report by the Intergovernmental Panel on Climate Change (IPCC) and, in particular, the IPCC's "Frequently Asked Questions," available at: http://www.ipcc.ch/pdf/assessment-report/ar4/wg1/ar4-wg1-faqs.pdf and the 2006 California Climate Action Team's Report to the Governor and Legislature, available at: http://www.climatechange.ca.gov/climate_action_team/reports/index.html.

[16] See California Code of Regulations, tit. 14, § 15355, subd. (b).

[17] See IPCC 4th Assessment Report, Working Group II, Summary for Policymakers, Figure 2, available at: http://www.ipcc.ch/graphics/graphics/ar4-wg2/jpg/spm2.jpg (chart showing global impacts at various temperature increases); California Climate Change Center, Our Changing Climate: Assessing the Risks to California (2008) at p. 15, available at http://www.energy.ca.gov/2006publications/CEC-500-2006-077/CEC-500-2006-077.PDF (chart showing impacts in California at various temperature increases.)

[18] *Id.*

[19] See IPCC 4th Assessment Report, Working Group III, Summary for Policymakers at p. 17, available at http://www.ipcc.ch/pdf/assessment-report/ar4/wg3/ar4-wg3-spm.pdf.

[20] IPPC 4th Assessment Report, Working Group I, Figure FAQ 2.1, available at: http://www.ipcc.ch/graphics/graphics/ar4-wg1/jpg/faq-2-1-fig-1.jpg.

[21] Executive Order S-03-05

target and charges ARB with development of a Scoping Plan to map out how the State will achieve this target, including regulatory, voluntary, and market-based mechanisms beginning in 2012.[22]

There is strong need, however, to aggressively address GHG emissions right now. The pollution we contribute to the atmosphere today will continue to have climate impacts for years, decades, and, in some cases, millennia to come. And the longer we delay in addressing the problem, the more we risk being unable to meet our climate objective. CEQA provides a mechanism that is independent of AB 32 through which lead agencies can begin immediately to reduce the climate change-related impacts of the projects that come before them.

What Type of Threshold is Appropriate?

Some have suggested that because of the need for urgent action and the uncertainty of the precise "tipping point" for dangerous climate change, any contribution of GHGs to the atmosphere may be significant – a so-called "zero threshold."

ARB staff believes that for the project types under consideration, non-zero thresholds can be supported by substantial evidence. ARB staff believes that zero thresholds are not mandated in light of the fact that (1) some level of emissions in the near term and at mid-century is still consistent with climate stabilization and (2) current and anticipated regulations and programs apart from CEQA (e.g., AB 32, the Pavley vehicle regulations, the Renewable Portfolio Standard, the California Solar Initiative, and the commitment to net-zero-energy buildings by 2020 (residential) and 2030 (commercial)) will proliferate and increasingly will reduce the GHG contributions of past, present, and future projects.

But 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 staff believes that the preliminary interim approaches outlined in this Staff Proposal are consistent with these objectives.

RECOMMENDED THRESHOLDS – CONCEPTUAL APPROACH

ARB staff believes that different GHG thresholds of significance may apply to projects in different sectors. Two primary reasons that sector-specific thresholds are appropriate are: (1) some sectors contribute more substantially to the problem, and therefore should have a greater obligation for emissions reductions, and, (2) looking forward, there are differing levels of emissions reductions expected from different sectors in order to meet California's climate objectives. We also believe that different types of thresholds – quantitative, qualitative, and performance-based – can apply to different sectors under the premise that the sectors can and must be treated separately given the state of the science and data. A sector-specific approach is consistent with ARB's

[22] Health and Safety Code, § 38500, et. seq.

Proposed Scoping Plan. Consequently, the Staff Proposal takes different, although harmonious, approaches to setting thresholds for different sectors.

The attached flowcharts describe ARB staff's preliminary interim threshold concepts for two important sectors: industrial projects (**Attachment A**) and residential and commercial projects (**Attachment B**). The objective is to develop thresholds for projects in these sectors that will result in a substantial portion of the GHG emissions from new projects being subject to CEQA's mitigation requirement, consistent with a lead agency's obligation to "avoid or minimize environmental damage where feasible."[23] ARB staff is working on a proposal for an interim approach for thresholds for transportation projects and large dairies. Electricity generation is another sector where clarity is needed in the near term. The California Energy Commission (CEC) recently began a public process for identifying an approach for assessing the significance of GHG emissions from power plant projects. CEC staff anticipates concluding that work in Spring 2009.[24]

ARB staff's proposed recommendations for GHG thresholds address projects for which local agencies are typically the CEQA lead agency. In addition to the CEC, other State agencies also serve as lead agencies under CEQA. ARB is coordinating with these State agencies on their approaches to thresholds of significance.

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[23] California Code of Regulations, title 14, § 15021.

[24] The CEC adopted an Order Instituting Informational Proceeding on October 8, 2008 to address GHG emissions in power plant licensing cases: http://www.energy.ca.gov/ghg_powerplants/notices/2008-10-06_PROPOSED_GHG_CEQA_OII.PDF.

REQUEST FOR PUBLIC COMMENT

ARB staff believes that the concepts in this Staff Proposal can be further developed into interim thresholds of significance. However, staff recognizes that additional analyses and data are needed to fill in some of the blanks, and to understand how the thresholds will operate in the real world.

Comments on all aspects of the Staff Proposal are encouraged. In particular, ARB seeks the active participation of local lead agencies. Staff has identified a few questions to solicit public comment, but this list is not exhaustive.

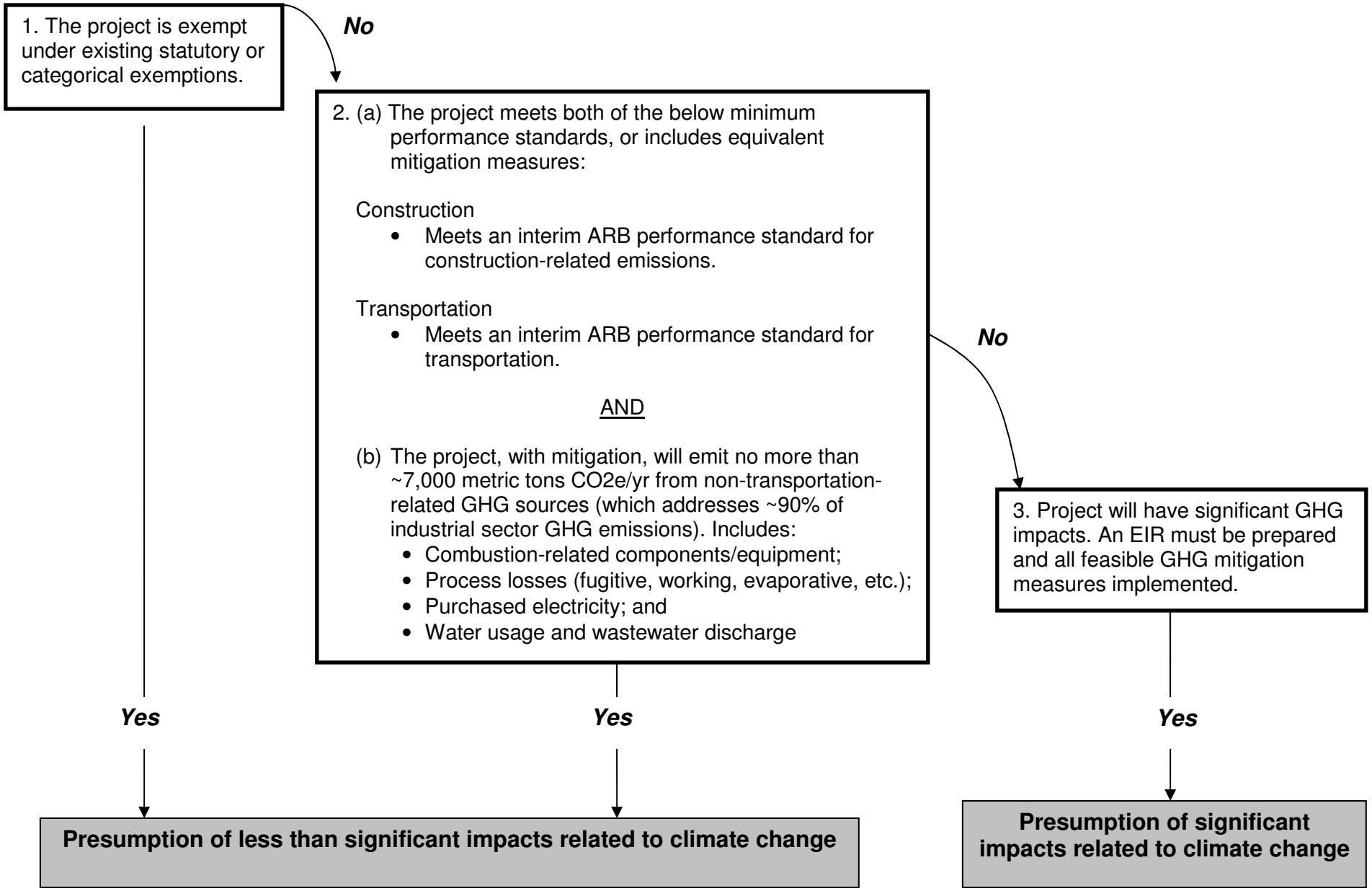
- Will the recommended approaches have any unintended consequences, for example, encouraging the piecemealing of projects?

- As set out in the attachments to the Staff Proposal, staff proposes to define certain performance standards (*e.g.*, for energy efficiency) by referencing or compiling lists from existing local, State or national standards. For some sub-sources of GHG emissions (*e.g.*, construction, transportation, waste), ARB staff has not identified reference standards. How should the performance standards for these sub-sources be defined?

- Are any of the industrial, residential, or commercial project types eligible for categorical exemptions likely to contribute more significantly to climate change than staff's preliminary analysis indicates?

- For residential and commercial projects, staff has proposed that the GHG emissions of some projects that meet GHG performance standards might under some circumstances still be considered cumulatively considerable and therefore significant. What types of projects might still have significant climate change-related impacts?

ATTACHMENT A
Preliminary Draft Proposal for Industrial Projects



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Preliminary Draft Proposal for Industrial Projects

Introduction

CEQA guidelines provide that thresholds of significance can be qualitative, quantitative, or in the form of performance standards. ARB staff's objective is to develop a threshold of significance that will result in the vast majority (~90% statewide) of the greenhouse gas (GHG) emissions from new industrial projects being subject to CEQA's requirement to impose feasible mitigation. ARB staff believes this can be accomplished with a threshold that allows small projects to be considered insignificant. ARB staff used existing data for the industrial sector to derive a proposed hybrid threshold. The threshold consists of a quantitative threshold of 7,000 metric tons of CO2 equivalent per year (MTCO2e/year) for operational emissions (excluding transportation), and performance standards for construction and transportation emissions.

The goal of this effort is to provide for the mitigation of GHG emissions from industrial projects on a statewide level. Over time, implementation of AB 32 will reduce or mitigate GHG emissions from industrial sources. Once such requirements are in place, they could become the performance standard for industrial projects for CEQA purposes. ARB staff intends to pursue this approach in conjunction with development of the regulatory requirements for industrial sources in the Proposed AB 32 Scoping Plan. Staff is proposing the use of a quantitative significance threshold at least until such time that performance standards, such AB 32 regulatory requirements, are in place to ensure mitigation of significant impacts of GHG emissions from projects in the industrial sector.

The performance standards are largely self explanatory and similar to the approaches proposed for residential and commercial projects. The method for deriving the quantitative aspect of the threshold warrants further explanation.

Technical foundation for proposed quantitative aspect of the threshold

Based on the available data, ARB staff found that for the industrial sector, small projects – defined as the portion of new projects that, when viewed collectively, were responsible for only a relatively small amount of emissions – could be allowed to proceed without requiring additional mitigation under CEQA. The question for ARB staff was what line divides these small projects from the rest of the projects that should undergo mitigation to achieve the larger environmental objective.

ARB decided to construct a representative small project and to estimate that project's expected emissions. First, ARB considered the common sub-sources of GHG emissions in the industrial sector. The four main broad emission categories and their approximate statewide contribution to GHG emissions from industrial facilities other than power plants are:

Category	MMTCO2e/year	Percent (%)
Combustion processes	70	63 %
Process Losses (evaporative, fugitive, working, etc.)	15	13 %
Purchased Electricity	18	17 %
Water Use and Wastewater Treatment	7	7 %

As the table indicates, GHG emissions from industrial sources are dominated by combustion emissions. To ensure that significant industrial emissions would be captured by the proposed threshold, ARB staff evaluated industrial boilers because they are a very common piece of equipment, are essential in many energy-intensive industries, and are a top contributor to industrial combustion emissions.

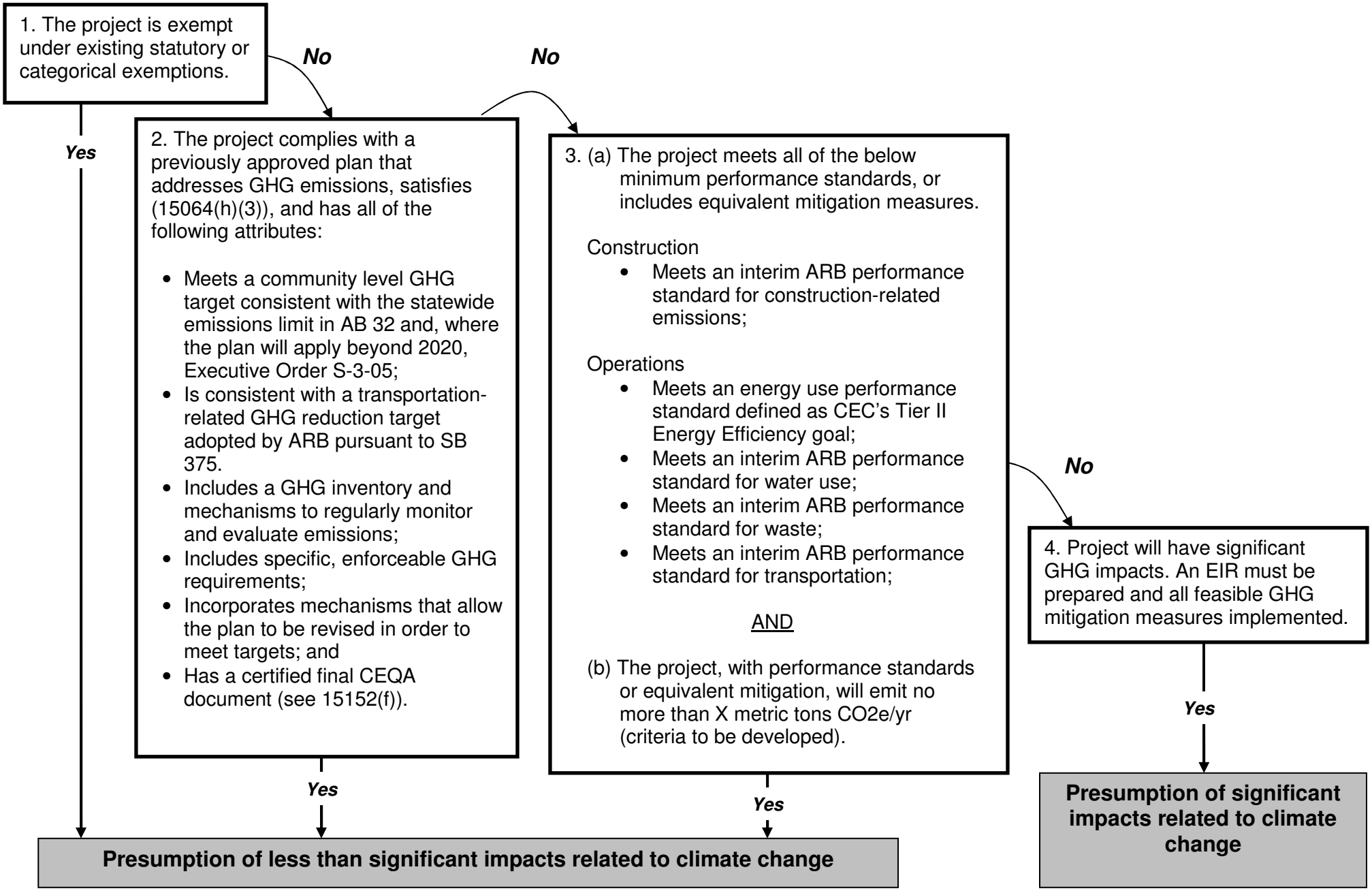
A recent comprehensive survey of industrial boilers by Oak Ridge National Laboratory[25] found that boilers with an input capacity of 10 MMBtu/hr or greater correspond to 93 percent of total industrial boiler input capacity. Based on this data, ARB staff used a natural gas boiler input capacity benchmark of 10 MMBtu/hr which equates to emissions of 4,660 MTCO2e/yr. This capacity benchmark defines a significant combustion source.

As shown in the above table, combustion processes account for 63 percent of the statewide GHG emissions from industrial facilities. Process losses, purchased electricity, and water use and water treatment account for the remaining 27 percent of emissions. Staff applied these proportions to the benchmark combustion emissions estimate (4,660 MTCO2e/yr). The result is an overall emissions estimate of approximately 7,000 MTCO2e/yr for a representative small project that accounts for the four main categories in the table above.

Based on the available data, staff believes that the 7,000 MTCO2e/year benchmark can be used to effectively mitigate industrial projects with significant GHG emissions.

[25] Characterization of the U.S. Industrial/Commercial Boiler Population, Energy, and Environmental Analysis, Inc. submitted to Oak Ridge National Laboratory, available at:: http://ww.eea-inc.com/natgas_reports/BoilersFinal.pdf.

ATTACHMENT B
Preliminary Draft Proposal for Residential and Commercial Projects



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Preliminary Draft Proposal for Residential and Commercial Projects

Introduction

CEQA guidelines provide that thresholds of significance can be qualitative, quantitative, or in the form of performance standards. ARB staff's objective is to develop a threshold for residential and commercial projects that will substantially reduce the greenhouse gas (GHG) emissions from new projects and streamline the permitting of carbon-efficient projects. To achieve this, staff's preliminary recommendation is to develop a threshold based on clear and stringent performance standards.

Performance standards will address the five major emission sub-sources for the sector: energy use, transportation, water use, waste, and construction. For the energy use performance standard, staff recommends reliance on the California Energy Commission's (CEC) Tier II Energy Efficiency standards for solar energy incentive programs. These standards are consistent with what is needed to meet the state's goal of zero net energy buildings and are continuously updated to reflect energy efficiency best practices. For the remaining sub-sources (water, waste, etc.), staff intends to compile benchmark performance standards as part of its final threshold recommendation. Projects may alternatively incorporate mitigation equivalent to these performance standards.

Staff recognizes that a substantial body of measures to address GHG emissions exists through programs like LEED, GreenPoint Rated, and the California Green Building Code. As work on performance standards moves forward, staff intends to make use of these projects.

In addition, staff proposes that a presumption of non-significance apply only to projects whose total net emissions, after meeting the performance standards or equivalent, are below a specified level. Staff proposes to develop this emissions level as part of its final threshold recommendation.

Discussion of Flow Chart

Box 1: In general, categorical exemptions will continue to apply.

Based on its preliminary analysis, ARB staff believes that projects described in CEQA's categorical and statutory exemption provisions (Articles 18 and 19 of the California Code of Regulations, title 14) will not interfere with achieving the objective to minimize emissions from new projects in this sector. GHG emissions from residential and commercial projects that are described in the categorical exemption language appear to be relatively small from a GHG perspective. For example, staff's preliminary analysis indicates that emissions from a project qualifying for the statutory infill project exemption (Cal. Code Regs., tit. 14, § 15195) will emit approximately 1,600 metric tons (MT)CO2e/yr. Staff believes

such infill projects represent some of the largest projects described in the exemption provisions. ARB staff expects to provide additional analyses to support a lead agency's determination that the GHG impact of these project types is less than significant. Staff invites the public and stakeholders to provide further evidence on the application of categorical exemptions to residential and commercial projects.

Box 2: If GHGs are adequately addressed at the programmatic level, the impact of certain individual projects can be found to be insignificant.

As OPR noted in its June 2008 Technical Advisory:

> CEQA can be a more effective tool for greenhouse gas emissions analysis and mitigation if it is supported and supplemented by sound development policies and practices that will reduce greenhouse gas emissions on a broad planning scale and that can provide the basis for a programmatic approach to project-specific CEQA analysis and mitigation…. For local government lead agencies, adoption of general plan policies and certification of general plan EIRs that analyze broad jurisdiction-wide impacts of greenhouse gas emissions can be part of an effective strategy for addressing cumulative impacts and for streamlining later project-specific CEQA reviews.

ARB staff encourages local agencies to take advantage of a programmatic approach to address climate change, consistent with existing law.

If a project complies with the requirements of a previously adopted GHG emission reduction plan or mitigation program that satisfies California Code of Regulations, title 14, section 15064(h)(3), and includes the attributes specified in that provision and Box 2, the lead agency may determine that the project's GHG impacts are less than significant with no further analysis required. Examples of plans that may satisfy this provision include Climate Action Plans incorporated into General Plans that have inventories, an emissions target, suites of specific and enforceable measures to reach that target, monitoring and reporting, and mechanisms to revise the plan to stay on target. Moreover, a prior EIR that "adequately addressed" climate change may be used for tiering purposes. (See Cal. Code Regs. tit. 14, § 15152.)

Box 3: Projects that meet performance standards, or include equivalent mitigation, can be found to be insignificant.

The threshold incorporates performance standards requiring carbon efficiency for each major sub-source of emissions from projects in these sectors. Provided they are set at a sufficiently stringent level, performance standards will dramatically reduce GHG emissions and promote a transition toward zero and low emission projects. In most cases, ARB staff expects that performance

standards will need to reach beyond current State mandates by a substantial amount, given that GHG emission reduction goals have not yet been adequately incorporated into State programs. Staff anticipates that performance standards will become more stringent over time.

ARB staff has identified the California Energy Commission's Tier II Energy Efficiency goals as an appropriate performance standard for energy use. Under State law, the CEC is required to establish eligibility criteria, conditions for incentives, and rating standards to qualify for ratepayer-funded solar energy system incentives in California. As part of this effort, the CEC establishes energy efficiency standards for homes and commercial structures, and requires new buildings to exceed current building standards by meeting Tier Energy Efficiency goals. CEC's Tier II Energy Efficiency goals will continue to be updated to achieve energy efficiency best practices, and are consistent with what is needed to meet the California Public Utilities Commission Strategic Plan goals of zero net energy buildings. Currently, the CEC's proposed guidelines for the solar energy incentive program recommend a Tier II goal for residential and commercial projects of a 30 percent reduction in building combined space heating, cooling, and water heating energy compared to the 2008 Title 24 Standards.[26]

For the remaining sub-sources, staff intends to compile benchmark performance standards as part of its final threshold recommendation. ARB staff believes that existing progressive green building standards provide a starting point for performance standards for transportation, water use, waste, and construction-related emissions. Existing green building rating systems like LEED, GreenPoint Rated, the California Green Building Code, and others, contain examples of measures that are likely to result in substantial GHG emission reductions from residential and commercial projects. The key to this approach will be identifying effective GHG reduction measures within these systems. ARB staff would like input from the public and stakeholders on appropriate performance standards for these sub-sources. Performance standards that already exist and have been proven to be effective – at the local, State, national or international level – are preferable.

Under staff's proposed approach, lead agencies would be allowed to find that a project's mitigation is "equivalent" to identified performance standards, thereby allowing for cost-effective and innovative approaches to reducing GHG emissions.

Staff believes that under some circumstances, projects that meet performance standards or include equivalent mitigation measures will have impacts that may still be cumulatively considerable and therefore significant. For this reason, staff recommends that, in addition to meeting performance standards or including

[26] Guidelines for California's Solar Electric Incentive Program Pursuant to Senate Bill 1 - SECOND EDITION - Draft Guidelines can be found at: http://www.energy.ca.gov/2008publications/CEC-300-2008-007/CEC-300-2008-007-D.PDF

equivalent mitigation measures, a project must also emit no more than “X” MTCO2e/yr. Criteria for determining this emissions level have yet to be defined. ARB requests public and stakeholder input on what types of projects might still have significant climate change-related impacts.

Box 4: Presumption of significant impacts.

If a project cannot meet the requirements in the previous boxes, it should be presumed to have significant impacts related to climate change. The lead agency must then prepare an EIR, or other appropriate document, and implement all feasible GHG mitigation measures.

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STATE OF CALIFORNIA
State Energy Resources
Conservation and Development Commission

In the Matter of:	)	DOCKET NO: 07-AFC-6
CARLSBAD ENERGY CENTER PROJECT	)	MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF THE CENTER FOR BIOLOGICAL DIVERSITY'S PETITION FOR ORDER DIRECTING RESPONSE TO DATA REQUESTS

INTRODUCTION

Intervenor Center for Biological Diversity (the "Center") hereby submits the following points and authorities in support of its Petition for Order Directing Response to Data Requests.

The Center served a set of data requests to develop a more complete picture of the Carlsbad Energy Center Project's ("Project" or "CECP") greenhouse gas emissions. (Declaration of William Rostov ("Rostov Decl.") Exhibit A.) Applicant Carlsbad Energy Center, LLC ("Applicant") refused to provide any information to the Center. (Rostov Decl. Exh. B.) The Center petitions the Siting Committee ("Committee") to issue an order directing Applicant to answer the Center's data requests.

ARGUMENT

The Committee should direct Applicant to answer all of the Center's data requests, because Applicant's objections are meritless. Applicant's timeliness argument ignores the specific facts of the proceeding. The proceeding is in a relatively early stage even though a year has passed since the AFC was deemed complete. The Committee has outlined the delay in the proceeding: "The matter has not progressed in the time projected in the Committee Schedule where by the Preliminary Staff Assessment was to be filed in April 2008 and the Final Staff Assessment in May 2008. We are now in October and do not have either document." (Committee Order Re: Status Reports, Oct. 14, 2008.)

Applicant acknowledges that the Center is allowed to file data requests that have a good cause basis after the first 180 days of the proceeding has elapsed, but nonetheless makes a timeliness objection. *See* 20 Cal. Code Reg. § 1716(e) (committee can allow data requests "for good cause shown"). Applicant urges the Committee to adopt a bright line rule that any Intervenor who intervenes after 180 days have elapsed in a proceeding automatically does not have good cause to request information. (Rostov Decl. Exh. B at 2.) Applicant argues that the Center's "delay in intervening in the CECP proceeding – almost ten months after the CECP AFC was complete – is not good cause for Petitioner to issue its data requests after the six-month regulatory period for requesting information has passed." (*Id*.) If Applicant's proposed rule were accepted, it would make the good cause exception to 20 Cal. Code Reg. § 1716(e) meaningless.

The Center has good cause for its data requests, because within the context of the schedule in this case, the data requests were timely. The timeliness of data requests should be considered in relation to the issuance of the Preliminary Staff Assessment ("PSDA"). In a

proceeding that is exactly on schedule, the 180-day period typically extends fifteen days after the filing of the PSA. (Public Participation in the Siting Process: Practice And Procedure Guide, CEC (Dec. 2006) at 46.) In this case, if the Applicant would have answered the Center's data requests without objection, the answers would have been provided almost a month before the new projected date for the release of the Preliminary Staff Assessment ("PSA").[1] Moreover, Applicant's timeliness objection is inconsistent with its own actions. Applicant filed a major amendment to the AFC on July 25, 2008, almost three months after the initial 180-day period expired. This amendment necessitated additional data requests after the 180 day period.[2] (*See* City of Carlsbad's Status Report #2 at 2-3.) In addition, it is more judicially efficient to develop relevant information before the hearings. The Center, as an Intervenor, has the right to explore the basis for the Applicant's greenhouse gas estimates at the hearings on the Application. The hearings will be more efficient if available information is provided at an earlier date in response to data requests.

The Center also has good cause for its data requests, because the data requests were designed to provide a complete set of data on the potential greenhouse gas emissions from the Project. The Air Resources Board recently summarized the legal effect of adding additional greenhouse gases to the atmosphere:

> There is a scientific consensus that human activities, chief among them the burning of fossil fuels, profoundly affect the world's climate by increasing the atmospheric concentration of GHG beyond natural levels. Contributing additional GHG pollution to the atmosphere leads to higher global average temperatures, changes to climate, and adverse environmental impacts here in California and around the world. Climate change,

[1] Applicant's responses were due October 24, 2008. (Rostov Decl. ¶5.) When the Center served its data requests, no date was set for the PSA. The Staff subsequently stated that the PSA would be released on November 21, 2008. (Staff Status Report 2, October 24, 2008.)

[2] It is interesting to note that Applicant has selectively used this timeliness objection. On October 21, 2008, Applicant responded to some of the CEC Staff data requests that were served on behalf of the City of Carlsbad. (*See* CECP Data Responses, Set 3A.) Those data requests were filed a week before the Center's.

caused by 'collectively significant projects taking place over a period of time,' is a quintessential cumulative impact.[3]

As part of its CEQA analysis, the Energy Commission must assess the greenhouse gas emissions and provide a full assessment of the Project's emissions sources. (Office of Planning and Research Technical Advisory, "CEQA and Climate Change," June 19, 2008 at 5) ("Lead agencies should determine whether greenhouse gases may be generated by a proposed project, and if so, quantify or estimate the GHG emissions by type and source.") After reviewing the docket and the applicant's responses to previous data requests, the Center found that Applicant provided incomplete information on the impacts of its Project, especially with respect to its greenhouse gas emissions. The Center's data requests seek information concerning emissions estimates and assumptions made by the applicant, clarification on the anticipated use of LNG at the project and its impacts on climate change, and how the project will meet Applicant's goal of meeting the "expanding need" for electrical generation in the San Diego area.

Moreover, providing responses to these requests is not burdensome or prejudicial to Applicant. While a few of Petitioner's requests require some additional analyses of the project's impacts, most require either a 'yes' or 'no' or simply the provision of data used in making certain assumptions. For example, one data request simply requested the two year time period in a ten year range that Applicant used to calculate greenhouse gas emissions. (Rostov Decl. Exh. A p. 3 Request No. 2.)

Applicant's objection that it has provided sufficient information on greenhouses gas emissions makes little sense on its face. Applicant concludes that the greenhouse gas

[3] Preliminary Draft Staff Proposal Recommended Approaches for Setting Interim Significance Thresholds for Greenhouse Gases under the California Environmental Quality Act, California Air Resources Board (Oct. 24, 2008)at 3 (citing the IPCC 4th Assessment Report, Working Group II, Summary for Policymakers, Figure 2 and 14 Cal. Code Regs. ("CEQA Guidelines") § 15355(b)) (attached as Exh. C to Rostov Decl.)

information that it provided was sufficient, because the CEC Staff did not request additional information about the Applicant's greenhouse gas emissions. (Rostov Decl. Exh B. at 2-3). Applicant's position would defeat the purpose of having a proceeding that involves parties other than the CEC Staff. Moreover, "any party may request from the applicant any information reasonably available to the applicant which is relevant to the notice or application proceedings or reasonably necessary to make any decision on the notice or application." 20 Cal. Code Regs. § 1716(b). All of the information requested by the Center is relevant because it is related to information already provided by the Applicant. In addition, information requested about greenhouse gas emissions is "reasonably necessary" for the Energy Commission to perform a legally adequate CEQA analysis of the Project's potential effects on global warming.

Applicant's reference to the lack of a threshold of significance for greenhouse gases also makes little sense. Thresholds of significance are designed to provide a cut-off for when environmental analysis is not necessary. 14 Cal. Code Regs. § 15064.7(a). The proposed power plant will be a major emitter of greenhouse gases. It is inconceivable that any threshold of significance would find that the Project's greenhouse gases emissions would not have a cumulative significant impact on global warming. The Air Resources Board recently proposed a threshold of 7,000 tons of carbon dioxide equivalent for industrial sources (Rostov Decl. Exh. C.) and the Center is advocating for a "zero" threshold as the most scientifically defensible in a variety of contexts. The data requests are designed to provide a full estimate of the greenhouse gas emissions from the Project.[4] Even if some theoretically high threshold was created, the

[4] Requiring the consideration of all reasonably foreseeable GHG emissions caused by the project, including emissions occurring outside California, such as the emissions from the use of LNG, is consistent with current CEQA law. Under CEQA, "effects" or "impacts" include "[i]ndirect or secondary effects which are caused by the project and are later in time or farther removed in distance, but are still reasonably foreseeable." CEQA Guidelines § 15358(a). "[I]ndirect or secondary effects may include . . . related effects on air and water and other natural systems,

responses to the data requests would still be needed to determine on which side of the threshold the Project fell.

Finally, Applicant makes a meritless jurisdictional argument on a subset of data requests regarding electric reliability. Applicant objects to two questions regarding electric reliability arguing that "the information requested is within the purview of the CEC, as the state's primary energy policy and planning agency. Applicant is a private electricity generator and does not have jurisdiction to address electricity reliability requirements for the San Diego region." (Rostov Decl. Exh. B at 3.) This is an odd objection since one of the goals of the project is "meeting the expanding need for new, highly efficient, reliable electrical generating resources located in the load center of the San Diego region." (AFC Executive Summary at 1-3.) With this objection, the Applicant is essentially arguing that it should not be required to provide information related to one of the goals of the Project. Applicant's objection is inconsistent with 20 Cal. Code Reg. section 1716(b), because the information requested is related to its application. In addition, this objection implies that Applicant does not possess information to show that its Project meets its own goals. If this is the case, Applicant can respond to the data request stating as much.

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including ecosystems." *Id.* With regard to emissions generated outside California, CEQA already provides that "[a]ny emissions or discharges that would have a significant effect on the environment in the State of California are subject to CEQA where a California public agency has authority over the emissions or discharges." Guidelines § 15277.

CONCLUSION

For the foregoing reasons, the Center requests that the Committee make a finding that the Center's data requests are based on good cause and order Applicant to respond to all of the Center's data requests.

DATED: November 10, 2008

_____

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Earthjustice
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STATE OF CALIFORNIA
State Energy Resources
Conservation and Development Commission

In the Matter of:	)	DOCKET NO: 07-AFC-6
CARLSBAD ENERGY CENTER PROJECT	)	CENTER FOR BIOLOGICAL DIVERSITY'S PETITION FOR ORDER DIRECTING RESPONSE TO DATA REQUESTS

Intervenor Center for Biological Diversity (the "Center") hereby petitions for an order directing Applicant Carlsbad Energy Center, LLC ("Applicant" or "CECP") to respond to the Center's Data Requests to CECP. (Exhibit A to the Declaration of William Rostov). The Applicant objected to each data request propounded by the Center. The Center requests that the Energy Commission find that the Center has good cause for its set of data requests served upon the Applicant.

The petition is made pursuant to 20 Cal. Code Regs § 1716(g) and is timely filed within 30 days of receipt of Applicant's objections. This petition is made on the ground(s) that:

1) The Center has good cause for filing its data requests.

2) The information is reasonably available to the applicant and is reasonably necessary to make decisions related to the application. Specifically, this information is relevant for environmental analysis pursuant to California Environmental Quality Act.

This Petition is based on the pleadings and records on file in this proceeding and the following:

1) The Attached Memorandum of Points and Authorities.

2) The Declaration of William Rostov in Support of the Petition.

DATED: November 10, 2008

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William B. Rostov
Earthjustice
Attorney for Center for Biological Diversity