BY EMAIL (CEQA.GHG@opr.ca.gov) AND U.S. MAIL

February 2, 2009

Office of Planning and Research

State of California

P.O. Box 3022

Sacramento, CA 95812-3044

RE: Guidelines for Determining Significance of GHG Emissions Impacts for Residential Development

Dear Sirs:

The Endangered Habitats League (EHL) respectfully submits the following thoughts on the methods to be used to develop thresholds to assess whether the emissions of climate change-inducing gases (GHG emissions) are potentially significant in conducting environmental review of residential development projects under the California Environmental Quality Act (CEQA). As explained below, EHL believes that OPR should encourage in the Guidelines the development of a *per capita* GHG emissions impact threshold, because it is the only fair and effective manner to assess the significance of impacts. Although the discussion below concentrates on residential development, we believe the *per capita* approach should be used whenever feasible.

In addressing this question, it must be borne in mind that only a *very small percentage* of residential development entitlement applications require the development of a full-blown Environmental Impact Report. Even where impacts are determined to be potentially significant, they almost always proceed on the basis of a mitigated negative declaration after conditions have been imposed to mitigate these impacts.

Consequently, the practical outcome of setting a low threshold for a particular impact is not whether an expensive and time consuming EIR must be prepared, but whether *some* sort of mitigation should be imposed as a condition of project approval. Conversely, the practical effect of imposing a relatively higher absolute threshold would be that a larger number of projects will pass through without any consideration of mitigation at all, regardless of how feasible mitigation might be. Thus, as a purely practical matter, this question of thresholds should turn not only on the absolute significance of the impact in question, but also on the availability of mitigation options that can feasibly be imposed as a condition of project approval.

Regarding the absolute impact on GHG emissions of various types of development, much, if not most, of rural residential development applications are for subdivisions with an unusually high carbon footprint when considered on a per capita basis. As the extensive empirical data in the a May 2008

Brookings Institution study[1] make abundantly clear, a single residence's carbon footprint depends on its physical configuration, its location relative to transit and shopping and job centers, its consumption of water for landscaping, its energy needs for climate control, and other factors. Multifamily housing or single family housing in more dense configurations near existing development, in milder coastal climates, and near transit and jobs, is much more likely to have a substantially smaller carbon footprint than large-lot "rural subdivision" development. To the extent these typical "backcountry" subdivisions are created for reasons other than agricultural development or to support another aspect of the rural economy, the counterproductive GHG emissions impacts of such development must be recognized and accounted for at both a direct and cumulative level.

Conversely, multi-unit projects located near transit and job centers with a dense configuration, and with lower levels of per capita water and energy consumption needs are more likely to be solution-oriented from a per-capita GHG emissions standpoint. Mitigation measures imposed under CEQA on such projects would therefore be, on a per capita basis, less effective than if imposed on the "backcountry" subdivisions. They are *already* GHG-efficient. But under the absolute project-level GHG emissions thresholds, such as the 900-ton annual threshold suggested by some organizations like CAPCOA, [2] the former "backcountry" type projects would escape *any* analysis or mitigation obligation under CEQA. And the latter, more efficient (albeit larger) projects would be perversely and unfairly saddled with *additional* mitigation obligations.

This "no good deed goes unpunished" approach could not be more unfair or ineffective. To understand why, it is worth remembering just what the "typical" subdivision looks like in most of the State. Subdivisions larger than 50 units—the CAPCOA threshold-- are relatively rare, making it likely that the vast majority of projects' GHG emissions would be completely unaddressed under CEQA. And the smaller subdivisions that typically are approved for development in the County are large-lot, auto-dependent, water-intensive rural estate-lot type developments—projects that likely create some of the highest per capita carbon footprints. Yet these developments—the ones that most cry out for some kind of accountability for their GHG impacts-- would be deemed "insignificant" under CEQA under an absolute emissions thresholds approach.

OPR proposes to permit individual projects to avoid a determination of significance for GHG impacts if they are consistent "with a previously approved plan or mitigation program for the reduction or sequestration of greenhouse gas emissions, which plan or program provides specific requirements that will avoid or substantially lessen the potential impacts of the project." There is nothing inherently

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[1] Brown, Southworth & Sarzynski, "Shrinking the Carbon Footprint of Metropolitan America" (Metropolitan Policy Program at Brookings (May 2008) http://www.brookings.edu/reports/2008/~/media/Files/rc/reports/2008/05_carbon_footprint_sarzynski/carbonfootprint_report.pdf

[2] Specifically, CAPCOA indicates that a residential project emitting more than 900 metric tons/year of greenhouse gases would have a significant impact. See CAPCOA Study at 43. This is equivalent to about 50 units of "typical" residential development.

wrong with this approach, *provided the approved plan or mitigation program properly accounts for the per capita or per household GHG impact of the individual project seeking approval*.

For example, an approved Sustainable Communities Strategy under SB 375 might contain a variety of development types within a region, much of which is inherently GHG efficient, but also containing some GHG inefficient development on a per household basis. If the plan or program *itself* contains some mitigation mechanism to address this project's relatively high per household GHG contribution, then consistency with the plan should also mitigate project impacts. But if such a project in effect "rides on the coattails" of the benefits provided by other development in the plan, then the project's cumulative contribution should still be deemed significant.

In sum, EHL strongly urges OPR to adopt a per-capita or, alternatively, a per household GHG emissions threshold of significance that would apply *regardless* of the size of a residential development project. On an interim basis, such a threshold could be calculated by a formula based on the extent to which the following factors deviate from a statewide or county-wide quantitative norms or reductions goals: (1) lot size, (2) size of building footprint, (3) expected water consumption, and (4) per household VMT calculations based on ITE-based trip generation rate times the distance from the nearest city. The greater the amount of deviation above these norms or goals, the greater would be the mitigation obligation to reach a level of insignificance.

Mitigation, in turn, could take several forms. One option would be to allow the applicant to prove that specific project design features or unique circumstances overcome the strong presumption of GHG emissions significance resulting from a score that deviates above the norm. Another approach would be to require a combination of project approval conditions (e.g., installation of renewable energy sources, implementation of energy efficiency measures, xeriscape landscaping and/or water consumption limitations) and/or the imposition of emissions offset charges to account for that portion of emissions where mitigation is not feasible on-site, e.g. expected VMT. Consistent with most local jurisdictions' current practice, such measures could be implemented as part of the mitigated negative declaration process already commonly in use.

EHL is aware that development of such a formula would not be simple or easy. But it is feasible. And because the alternative is to render GHG emissions analysis in the CEQA process essentially irrelevant for most residential development, EHL believes that lead agencies really have no defensible choice but to implement per capita significance thresholds

Thank you for your attention to this critical issue.

Sincerely,

Michael D. Fitts

Staff Attorney