ASSOCIATION OF ENVIRONMENTAL PROFESSIONALS

April 7, 2017

California Air Resources Board
1001 "I" Street
Sacramento, CA 95814
via electronic submittal:
http://www.arb.ca.gov/cc/scopingplan/scopingplan.htm

Subject: Comments on CARB's January 20, 2017, *Draft 2017 Climate Change Scoping Plan Update, The Proposed Strategy for Achieving California's 2030 Greenhouse Gas Target.*

On behalf of the Association of Environmental Professionals (AEP), Climate Change Committee, we appreciate the opportunity to provide comments on the January 20, 2017, *Draft 2017 Climate Change Scoping Plan Update, The Proposed Strategy for Achieving California's 2030 Greenhouse Gas Target* (Draft 2017 Scoping Plan Update).

AEP is a non-profit organization of California's environmental professionals. AEP's Climate Change Committee (Committee) members are actively involved in supporting California cities and counties in the evaluation of greenhouse gas (GHG) emissions impacts for new development subject to the California Environmental Quality Act (CEQA), preparing communitywide GHG emissions inventories and forecasts and developing and implementing Climate Action Plans (CAPs). The update to the Scoping Plan to address the 2030 target in Senate Bill 32 (SB 32) and Executive Order B-30-15 is of great interest to the Committee and our CEQA and climate action planning work with California cities and counties, especially as it relates to local target setting and CEQA significance thresholds. The Committee supports CARB in its challenging work to establish a working framework for achieving the next milestone in GHG reductions for California. The Committee published two white papers in 2015 and 2016 (http://califaep.org/climate-change) that examine in detail the challenges for both CEQA practice and local climate action planning related to post-2020 GHG reduction targets. Many of us are already engage in developing local CAPs that include post-2020 GHG reduction goals.

AEP's Climate Change Committee has the following key comments on the Draft 2017 Scoping Plan Update. A discussion of these key comments follows this list:

1. Methodology, assumptions, and data within the Pathways model should be made publicly available.

2. Describe how Statewide GHG reduction measures will affect existing development vs. new development separately.
3. The 2017 Scoping Plan should include a Measure to establish a Statewide GHG Offset Program to Assist CEQA Lead Agencies in mitigating the potential increase in GHG emissions generated by new land use projects.

We applaud the efforts by CARB in developing a statewide framework for continuing to reducing GHG emissions in the post-2020 timeframe.

Make all methodologies, assumptions, and data publicly available.

All the methodologies, assumptions and data used to forecast GHG emissions and GHG reductions should be transparent and publicly available. Textual narrative in the Draft 2017 Scoping Plan Update and Appendices should be provided. Excel-based or database documentation of all calculations should also be provided to the public. This data should identify, for example, all of the following:

- The GHG sectors that are included in the target setting for local plans;
- The population assumptions used to derive the per capita figures; and
- The Pathways inventory results disaggregated for transportation energy consumption for marine, aircraft, rail, and on-road sources (passenger vehicles and trucks).

Describe how statewide GHG reduction measures will affect existing development vs. new development separately.

To date, the 2008 Scoping Plan continues to be the primary resource lead agencies use to establish defensible GHG emissions thresholds under CEQA. Recent CEQA case law in the *Center for Center For Biological Diversity, et al. v. California Department of Fish and Wildlife (The Newhall Land and Farming Company, Real Party in Interest) (2015) 62 Cal.4th 204* established the principle that CEQA GHG thresholds used for the evaluation of new development can be based on statewide GHG emissions reduction targets provided there is substantial evidence explaining the relationship between the statewide reduction target and the threshold used for evaluation of new development. One of the keys in establishing that relationship is the availability and transparency of the data and assumptions underpinning the state's inventory, forecast, and plan for GHG reductions statewide and in particular how state GHG reduction strategies apply to new development vs. existing development. Furthermore, when conducting local climate action plans, it is critical to understand accurately how statewide measures will affect local development and to do so, one must understand how each statewide measure affects existing vs. new development as well. It is unclear whether or not the per capita goals identified in the Scoping Plan Local Action Scenarios Workshop Presentation meets the requirements of the Newhall Ranch case. Rather than identifying specific local targets for climate action plans, the Committee requests that the *2030 Target Scoping Plan Update* explicitly identify the effect of each measure on existing and new development separately in order to provide necessary information to support climate action plan development and new GHG thresholds used for CEQA.

Establish a Statewide Accredited GHG Offset ProGram

The Draft 2030 Target Scoping Plan, on page 136, identifies that there are recent examples of land use development that have designed the project to achieve zero net additional GHG emissions. The Draft 2017 Scoping Plan goes on to say that "CARB believes that achieving a no net increase in GHG emissions is the correct overall objective…" However, the example project cited in the 2017 Scoping Plan, *Newhall Ranch Resource Management and Development Plan and Spineflower Conservation Plan* (November 2016), was only able to achieve a net zero emissions by requiring purchase of GHG emissions offsets, such as those purchased on the Climate Action Reserve. However, the Climate Action Reserve project list is not limited to projects in California and includes projects throughout North America. Based on the thresholds used for CEQA analyses, to mitigate project-level impacts, only GHG emissions offsets programs in California should be applicable. Air Districts and the California Air Pollution Control Officer's Association (CAPCOA) have tried to establish a working GHG emissions offset program (e.g., GHG Rx); however, there is currently limited availability of GHG emissions offset credits; and therefore, it does not provide a viable source of offsets for project-level GHG emissions mitigation.

In order to create transparency in how GHG emissions offset would be used for CEQA projects, CARB should establish a statewide accredited GHG offset program that can be used to reduce local GHG emissions impacts. The statewide GHG offset programs would require a reasonable assurance to the developer and the public that the reductions are cost-effective, real, surplus, and permanent. The cost of such a program should account for the number of years the project is responsible for mitigating. Project level offset programs should account for declining emissions over time due to other regulatory programs in order to ensure that nexus requirements are met.

If nearly every CEQA project that has a net increase in GHG emissions was required to participate in an offset program, it is possible that sufficient offsets programs may not be available in a local air district, or possibly in California, to fully mitigate development project impacts in perpetuity unless CARB allocates funding for offset programs to regional air district (local offset programs) or statewide (e.g., California offset programs, such as mitigation banking for carbon sequestration in natural lands).

Project-Level GHG Thresholds.

AEP's Climate Change Committee would like to clarify that a zero net additional GHG threshold is a "No Impact" threshold (i.e., a level by which a project would not contribute to the GHG impact at all) and not a "Less Than Significant" threshold. We appreciate that CARB included caveats regarding the potential infeasibility of a threshold based on a no net increase in emissions (page 136). However, the examples provided by CARB and this statement imply that a "zero net increase" goal for new development projects is an appropriate CEQA threshold even if it is only applicable for some projects. This is simply incorrect, as evidenced in the Governor's Office of Planning and Research's Final Statement of Reasons for Senate Bill 97 revisions to the CEQA Guidelines in December 2010.[1] To comply with CEQA, individual projects are required to mitigate a fair share of the impact, which a net zero threshold would likely exceed. The complex GHG regulatory structure results in development-related sectors being subject, directly or indirectly, to

[1] "AB32, and regulations implementing that statute, will require reductions in emissions from certain sectors in the economy, but do not preclude new emissions. Moreover, as explained in the Initial Statement of Reasons, the proposed amendments do not establish a zero emissions threshold of significance because proposed amendments do not establish a zero emissions threshold of significance because ―there is no one molecule rule' in CEQA."

multiple overlapping regulations, such as fuel efficiency standards, energy efficiency standards, low carbon fuel standards, and Cap and Trade. This makes determining responsibility for emissions and developing fair share calculations problematic. The 2017 Scoping Plan Update promotes direct investment in local building retrofit programs as a good GHG mitigation measure option but recent studies show that these can have poor cost-effectiveness depending on the type of retrofit and climate zone. Cost effective onsite mitigation measures are preferred because the future homeowners or building tenants will receive a return on their investment in the form of savings on their energy bills. Otherwise, the full cost of the measure is applied to owners and tenants. A no net increase threshold could also preclude use of CEQA Categorical Exemptions and Negative Declarations.

The Climate Change Committee is of the opinion that “Less than Significant” CEQA thresholds can be established that relate statewide GHG reduction targets appropriately to new projects that are greater than zero. It is a fundamental principle under CEQA that new projects cannot be required to mitigate impacts that they did not create. The statewide targets for 2020 and 2030 (and even 2050) are not zero GHG emissions; this is evidence that a zero threshold cannot be legally applied as a significance threshold under CEQA. CEQA thresholds in use to date have been related to the 2020 statewide reduction targets in AB 32. The Committee developed 2030 CEQA threshold concepts in its 2015 and 2016 white papers that are based on the 2030 reduction target in SB 32. Similar thresholds could eventually be used based on 2050 targets for projects with a 2050 horizon. We urge CARB to make it clear that a zero net additional threshold is not a “Less than Significant” threshold, but rather a “No Impact” Threshold.

Sincerely,

AEP Climate Change Committee

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Chris Gray (WRCOG)
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Dave Mitchell (Mitchell Air Quality Consulting)
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NOTE: The Opinions expressed herein are those of the individual members of the Committee and not the firms or organizations they represent.