



# SPUR

SAN FRANCISCO  
PLANNING + URBAN RESEARCH  
ASSOCIATION

654 Mission Street  
San Francisco, California  
94105

415.781.8726 t  
415.781.7291 f

[www.spur.org](http://www.spur.org)

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December 13, 2010

Brad Wagenknecht, Chair, and Members of the Board  
Jack Broadbent, Executive Officer  
Bay Area Air Quality Management District  
939 Ellis St.  
San Francisco, CA 94109

Re: CEQA Guidelines For Community Risks and Hazards

Dear Chair Wagenknecht, Board Members, and Executive Officer Broadbent:

SPUR, the San Francisco Planning and Urban Research Association, appreciates the opportunity to comment on the community risk and hazard CEQA thresholds of significance for new receptors, as adopted by the Air District on June 2. We also thank Air District staff for their time and willingness to meet with us to explore these issues and discuss our concerns over the last few weeks.

SPUR is a member-supported nonprofit organization that promotes good planning and good government in the Bay Area through research, education and advocacy. We are dedicated to reducing sprawl, and to creating great urban places served by transit. For decades we have campaigned for San Francisco and the region to build enough jobs and housing at all income levels to accommodate population growth and support a thriving economy within our existing urbanized footprint. As you know, transit-oriented infill development and a compact growth pattern are essential to achieving our climate protection goals, including our targets under SB 375.

A recent SPUR study of climate mitigation strategies<sup>1</sup> found that regional compact land use—specifically, ABAG’s “Focused Growth” scenario—was one of the most cost-effective and significant policy tools our region could use to minimize future carbon emissions. There are public health, open space and habitat, transit sustainability, economic savings, and other co-benefits to such a growth pattern. We can all agree that infill development is a key strategy to achieve these ends. Indeed, BAAQMD’s new CEQA guidelines for greenhouse gas thresholds recognize this fact.

Infill development is harder to permit and build than greenfield development for several reasons, including the potential for neighborhood opposition, CEQA analysis that penalizes proximity to existing traffic congestion, and the often higher costs of working with smaller parcel sizes, more complex building typologies and higher land costs. In general, we need to do more to remove policy and regulatory barriers to infill, in order to achieve our compact development goals. CEQA compliance especially is already a major hurdle for good infill projects, and we believe BAAQMD’s new Community Risk and Hazard CEQA thresholds have caused such an outcry because they create a new hurdle, without much helpful mitigation guidance.

<sup>1</sup> “Critical Cooling,” SPUR 2009. [http://www.spur.org/publications/library/report/critical\\_cooling](http://www.spur.org/publications/library/report/critical_cooling)

We recognize and appreciate that the Air District has worked for years to identify areas that are of special concern because of high concentrations of toxic air contaminants (TAC)—and that the Air District has a long history of using regulation to significantly improve air quality in the Bay Area. Nonetheless, the Bay Area, which on the whole enjoys better air quality than many parts of California, still does not meet state standards for ozone or PM 2.5, or federal 24-hour standards for PM 2.5. Some communities within the region are subject to an especially high burden of toxic air contaminants and particulate matter from a combination of ambient, stationary, and mobile sources. In light of this, and the direct correlation of PM 2.5 exposure to adverse health effects including excess cancer risk and premature death, SPUR agrees that some places in our region with significantly deteriorated air quality may be inappropriate locations for sensitive receptors.

We acknowledge the Community Air Risk Evaluation (CARE) program is working to identify and prioritize hot spots within these areas for targeting mitigation and pollution control measures to the greatest extent possible. This will continue to be essential, because of course the Community Risk and Hazard thresholds—indeed, anything to do with CEQA—will do little to take care of *existing* sensitive receptors susceptible to TAC and PM 2.5 hot spots. Because CEQA is not a substitute for good planning, as you know, we support the many other ways that BAAQMD is working to improve region-wide air quality planning, including working with MTC and ABAG to conduct air quality analysis and environmental review for Priority Development Areas and Station Area Plans.

Despite BAAQMD's history of securing air quality improvements in our region, and the logical step you have taken to update outdated CEQA guidelines, we have several concerns with your approach and process for addressing future toxic air contaminant exposure problems through the thresholds of significance that will go into effect in January. The most significant of our concerns is that the guidelines as presented create what may be unnecessary hurdles for good, healthy infill projects, while doing nothing to decrease the emissions from existing sources.

## **Recommendations**

We hope the below-listed recommendations will help achieve the goals of better air quality, protecting residents from poor air quality, and ensuring that good infill projects are able to move forward. We generally support staff's recommendation to delay implementation of the risk and hazard thresholds until May 2011 to accommodate these and other changes. However, we understand that some cities are using these thresholds and screening tables already. If the effective date is postponed, we urge you to affirm that the new guidelines will not be used by BAAQMD, and are not meant to be used by lead agencies conducting CEQA analysis in the interim.

### **1. BAAQMD should provide lead agencies with extremely clear language on the appropriate use of screening tables, and improve the terminology used to characterize projects moving through the screening process.**

We recognize that the screening tables were intended as a tool to expedite those project that clearly will not be subject to significant TAC exposure, not to impede "normal" projects that will require some level of additional analysis. In practice, however, that is not how the screening tables are perceived. Any member of the public can access screening tables on BAAQMD's website to determine if a project will or will not pass initial screening. The initial

screening process captures many more projects than those that will ultimately require mitigation. Use of even yes/no terminology<sup>2</sup>, or the phrase “does not pass”, in screening may cause people to think a project has “failed” when really it simply requires a more detailed analysis. This may empower project opponents to use screening failures as a basis for arguing for preparation of EIRs, even where the subsequent detailed analysis indicates that TAC exposure will not be significant. For circumstances where subsequent detailed analysis *does* identify a significant TAC exposure, the prior public disclosure of the screening “failure” may make it more difficult to present both the “problem” (existing TAC emissions) and the “solution” (effective measures to reduce TAC exposure) simultaneously.

We support transparency and we know that NIMBYs will find other ways to fight projects even in the absence of BAAQMD screening tools. However, we urge you to label screening tools, and how they are to be used, more clearly, and not to characterize in any way the need for further analysis as a black and white, yes or no question. We suggest perhaps, “further analysis needed” and “no further analysis needed.”

**2. Where appropriate, BAAQMD should work with lead agencies on a project-specific basis to adjust models to be more reflective of site-specific air quality conditions, and establish a clear process for providing this technical support. BAAQMD should also create a transparent process for identifying and correcting errors discovered in the screening tools.**

BAAQMD’s screening tables contain some information that could lead to inaccurate assumptions, analysis, and determination about the air quality at a receptor site. Such information could include outdated emissions information, omissions of the pinpoint location of a source within a large site, or the assumption that emergency sources that operate occasionally instead operate continuously (such as backup generators). These assumptions may cause lead agencies to overestimate the degree to which a particular source is a true hazard, and may lead to unnecessary or inappropriate requirements for additional analysis and mitigations, and/or loss of potential infill housing. We understand that some of the screening tables contain errors and technical problems, and support staff’s proposal to review and update the tables over the next several months.

It would be useful for BAAQMD to offer a clear process for technical support and help lead agencies adjust models or assumptions to reflect an accurate picture of risk for projects that are required to do detailed further analysis. We also urge you to create a process by which members of the public, including project sponsors, can in the future request timely review and if necessary, correction of screening table data that appear questionable. In addition, the modeling methods and underlying data should be clearly presented and available to the public and the model should be reproducible by one skilled in the art, as is required when presenting substantial evidence to support CEQA documents. This will allow for public quality control of the BAAQMD models and will result in more accurate and helpful tools.

**3. BAAQMD should develop and adopt a clear set of mitigation strategies to address operating impacts of projects, and allow their modeled outcome to be included as a step in the screening process.**

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<sup>2</sup> As used in for example, Figure 2 on page 9 of “Recommended Methods for Screening and Modeling Local Risks and Hazards,” [http://www.baaqmd.gov/~media/Files/Planning%20and%20Research/CEQA/BAAQMD\\_CEQA\\_Modeling\\_Approach\\_May\\_2010.ashx](http://www.baaqmd.gov/~media/Files/Planning%20and%20Research/CEQA/BAAQMD_CEQA_Modeling_Approach_May_2010.ashx); BAAQMD, May 2010.

We recommend that BAAQMD identify measures to avoid or mitigate impacts that could be applied at the end of the screening process to allow a project to arrive at an appropriate CEQA declaration. These mitigations must be realistic and feasible for highly urbanized areas.

The lack of clear, acceptable avoidance and mitigation strategies to address operating impacts is problematic for infill housing and mixed-use developments. It may force a project sponsor to complete an EIR rather than qualify for a CEQA infill exemption or a mitigated negative declaration, particularly given the low legal standard for requiring an EIR. While large projects may be able to handle this burden, it is potentially a “deal killer” for small to mid-sized projects and affordable housing projects, because the cost (several hundreds of thousands of dollars) and time (often several years) to complete EIRs for even small projects is enormous. It also increases the likelihood projects will be disapproved, because jurisdictions uncertain about appropriate mitigation may choose what they perceive to be the legally conservative course of finding impacts to be unmitigable, thus requiring the Planning Commission or City Council of the permitting jurisdiction to adopt findings of overriding consideration to approve the project notwithstanding unmitigated health risk. Even if such findings are adopted, a conservative finding that a project *may* expose its residents to unmitigable health risks will impact disclosure obligations, insurance, and marketability. Perhaps most troubling, at this point in the approval process, the public will have no way of knowing whether the project is affected by a true hazard, or if the hazards could be sufficiently mitigated. This will cause unnecessary confusion and delay.

Upon completing secondary analysis when required by the screening process—and where appropriate, with model adjustments and technical support from BAAQMD—projects that can avoid hazards should qualify for exemptions, and those that can mitigate hazards according to BAAQMD-approved mitigation strategies should qualify for mitigated negative declarations. While we recognize that not every project will pass for every use, it is paramount that the BAAQMD methods not impede development in large swaths of infill properties.

**5. BAAQMD should complete and keep current an approved list of construction mitigation measures and best available control technologies/BMPs, and should not apply identical, conservative operating thresholds to short term, construction-related TAC.**

Under the proposed thresholds, project sponsors may need to conduct a health risk assessment when construction is undertaken within 300 ft of a residence. In urbanized areas such as San Francisco, almost every construction project is within 300 ft of a residence. This is a very clear penalty for infill projects that will not apply to greenfield projects. Health risk assessments cost approximately \$12,000 - \$15,000, and even a completed risk assessment will not necessarily identify how to mitigate the impacts of construction, and will often result in a finding of significant impacts. This would come with additional expense, and would force the preparation of an EIR, even if the operational thresholds for the project are not exceeded, or could be mitigated to a less than significant level.

We recommend that BAAQMD go back and fundamentally change its CEQA guidance for construction-related emissions. In particular, due to the overly conservative nature of construction risk assessments forced by the lack of meteorological data in dense urban areas, risk assessments that are being conducted are speculative, rather than based on sound science. A CEQA standard of review must be based on scientifically defensible thresholds. BAAQMD could set up defensible construction thresholds based on a set of Best Management Practices, similar to how construction dust was managed under the previous CEQA guidelines.

**6. BAAQMD should make funding more widely available for localities to create CRRPs, especially in jurisdictions overlaying CARE communities, create a CRRP “template”, and provide significant technical support for jurisdictions that lack the expertise or tools to develop them.**

The easiest way for infill projects to comply with BAAQMD’s new CEQA guidelines is for their permitting jurisdiction to complete an approved Community Risk Reduction Plan (CRRP), and for the project to comply with the CRRP’s terms. In theory, CRRPs allow local jurisdictions to reduce risk community-wide through enforceable measures. This is a superior idea because it will also reduce risk for sensitive receptors that already exist and may be exposed to hazards. In practice, however, only two cities in the entire Bay Area are working on CRRPs – San Francisco and San Jose. While these are being completed, which could take several more months, no project can avail itself of this option.

Many cities will not have the expertise, resources, or staff to ever complete CRRPs. More problematically, some cities could *choose* not to develop CRRPs or to indefinitely delay their completion, in order to make new development harder, especially affordable housing. As a region, we already do not produce enough affordable housing to meet our needs. We should not be making it easier for a local jurisdiction to use CEQA to exclude new housing more than it already does.

We are concerned that CRRPs are optional. To speed their adoption, the Air District could provide grants to jurisdictions who want to complete them, provide a template or technical support where requested, or even step in and work with local jurisdictions to draft them if they don’t complete one by a certain date. The Air District should at least provide a CRRP “template” and support for jurisdictions within CARE communities, because the CRRP is a unique tool for improving equity by alleviating cumulative impacts for all receptors. When reviewing or providing guidance for CRRPs and community development guidelines, BAAQMD should explore how to encourage local jurisdictions to establish an option where, to reduce impacts to a less than significant level, a project could pay for its fair share of a mitigation measure that would reduce cumulative impacts and community wide risks. These payments could scale according to the project size. The CRRPs should include mitigation of construction risk as well as operational risk.

A secondary problem with CRRPs exists. In highly urbanized areas, such as San Francisco, Oakland, and San Jose, cumulative risk thresholds are already exceeded. It is unclear what alternative yet defensible thresholds communities might propose for BAAQMD to “qualify” these locally-approved plans, if risk thresholds are already exceeded. BAAQMD should work with local jurisdictions to help design CRRPs that will be considered acceptable even if CEQA thresholds are not achieved, and provide guidance to these jurisdictions on how to handle individual projects where every project will exceed CRRP thresholds for the foreseeable future.

## **Conclusion**

SPUR supports growth of the Bay Area in a healthy and sustainable way. We support BAAQMD’s effort to update CEQA guidelines, although we believe strongly that CEQA is not a substitute or even a good tool for planning. Neither is it an equitable, proactive approach to solving air quality problems. We encourage and support the Air District’s work to reduce region-wide and hot spot risks through regulation of stationary sources and through measures identified in the groundbreaking, recently adopted multi-pollutant Clean Air Plan.

In general, SPUR would like to see the Bay Area's regional agencies, including BAAQMD, take a more coordinated and fine-grained approach to planning for regional growth and protecting environmental quality. One of the ways that BAAQMD can lead is by improving its CEQA guidelines to be less penalizing to healthy infill projects that help meet our regional aspirations to house our people and not exacerbate sprawl. Working through the Joint Policy Committee to ensure that the region's first Sustainable Communities Strategy also improves air quality, especially in CARE communities, would be another helpful policy approach. We strongly support BAAQMD's work with MTC and ABAG to create EIRs for FOCUS Priority Development Areas and Station Area Plans, that would effectively create CRRPs for the region's priority infill sites.

Lately, local jurisdictions have been handed down a lot of guidance from regional agencies that are focused on single issues, which creates confusion around competing goals. In practice, a lot of what is framed as guidance acts like regulation to local governments who can't offer a defensible, alternative strategy. While BAAQMD's attempt to solve for TAC and PM 2.5, MTC's attempt to solve for reducing personal vehicle travel, ABAG's attempt to solve for compact land use, and BCDC's attempt to solve sea level are all important for our region's future, certain of these efforts will actually discourage infill and transit-oriented development. We need a fine-grained analysis and better agency coordination to ensure that we achieve regional goals for livability and sustainability in a coordinated way. Most importantly, we must not intentionally plan to optimize for a single issue, because we have many development and conservation goals. We don't want to make them harder to achieve, or at worst, accidentally force more development into sprawl. True regional planning through the Joint Policy Committee is the way we should achieve this goal, and we strongly encourage BAAQMD's participation in that process.

We appreciate your consideration of our comments and recommendations.

Sincerely,

A handwritten signature in black ink, appearing to be 'LT' followed by a long horizontal stroke.

Laura Tam  
Sustainable Development Policy Director

CC: Henry Hilken