



May 21, 2008

Land Use Subgroup of the Climate Action Team
Panama Bartholomy
California Energy Commission
1516 Ninth Street
Sacramento, CA 95814

Submitted electronically to: pbarthol@energy.state.ca.us

Re: Comments to the LUSCAT submission to CARB Scoping Plan on Local Government, Land Use, and Transportation

To Panama Bartholomy and members of the Land Use Subgroup of the Climate Action Team,

Thank you for your work on the LUSCAT report, and for this opportunity to submit comments. I am submitting these comments on behalf of the Center for Biological Diversity, a non-profit conservation organization with over 40,000 members in California and throughout the western United States.

The 6-day public comment period for this report is inadequate.

I can certainly appreciate the effort it must have taken to coordinate the interests of the sixteen state agencies that officially comprise the Land Use Subgroup, and I understand that you previously accepted comments from various interested organizations, agencies, elected officials, and offices. However, the report was not made available to the public for review until last week, and a six-day comment period (including the day of the public meeting) for an 83-page policy proposal of this complexity and import is terribly inadequate. This is particularly frustrating in light of the fact that the draft has been largely completed since April 4, when it was submitted to ARB as recommendations for the Scoping Plan. If the Land Use Subgroup is serious about engaging the public and soliciting input beyond the relatively small group of agencies and organizations that have the capacity to engage in committee processes, then it will require more than a single meeting and a six-day comment period.

The report seems deliberately lacking in specific, concrete measures.

If I correctly understand the structure of the report, Chapter 4 “Sector Strategies” contains the summary of the GHG reduction measures that LUSCAT recommended for possible inclusion in the Scoping Plan. However, this chapter contains almost no specific, concrete measures. Instead, for almost every identified opportunity for GHG reductions, the report recommends the creation or continuation of a process to develop such measures. For example, on page 57,

“LUSCAT recommends creation of a stakeholder partnership process to analyze and prioritize the key policies necessary to assist and empower regional and local agencies [to] reach the regional targets developed.” On pages 60 and 61, “LUSCAT recommends the State consider the appropriateness of the following strategies...Consider developing a package of programs and resources targeted at rural community assistance.” This theme is repeated throughout the chapter.

This is frustrating, since Chapter 2 of the LUSCAT report describes the problems and challenges of land use in some detail, and provides an overview of some of the potential solutions, but the strategies chapter seems deliberately to avoid identifying specific measures, or even providing examples to clarify the scope or form of such measures. Furthermore, although it seems exceedingly difficult to evaluate the potential GHG reductions and monetary costs of such inconclusive recommendations, ARB staff have implied that they are considering concrete proposals for quantitative reductions from the land use sector. Therefore, it seems that we are waiting for the Draft Scoping Plan in order to see concrete descriptions of the measures.

The report fails to adequately explain its comments regarding CEQA.

I would also like to offer some specific comments regarding the report’s statements on the role of CEQA in infill development. I am very supportive of efforts to overcome obstacles to infill development, and I am well aware of the instances in which opponents to a project have used CEQA to obstruct infill development, but there are some statements in the report that fail to adequately define the situation or indicate potential solutions. The worst of these is on page 38, “The inappropriate use of the CEQA process thwarts more than facilitates residential infill development.” This minimal statement risks being misunderstood as an indictment of CEQA merely as a problem, rather than as a critical law for environmental protection, and could be misconstrued as indicating a need for some amendment to the law, rather than specific measures to overcome specific obstacles. Furthermore, in light of the report’s paucity of concrete measures to reduce greenhouse gas emissions, it is somewhat ironic that the report would impugn an existing legal mechanism available for reducing emissions from new development.

Rather than rely on anecdotal criticisms of CEQA, the report should propose specific measures that promote infill while still safeguarding our environment. This issue was addressed in *Smart Infill*, the 2002 white paper by the Greenbelt Alliance. (I would be happy to provide you a copy if you do not have this paper already. However, considering the list of names and organizations in Appendix B of the LUSCAT report, I would hope that you have previously been provided all of these ideas as well as the paper itself.) The Greenbelt Alliance paper, on page 46, describes the use of CEQA block infill development: “Environmental review is important but isn’t appropriate when used solely to delay a project that isn’t causing undue environmental impact. NIMBY opponents often use these pieces of environmental legislation to slow or stop development. For example, neighbors sued BRIDGE Housing over the adequacy of environmental review for its award-winning Strobridge Court project at the Castro Valley BART station. The court backed BRIDGE, and then the opponents appealed to the State Supreme Court, where BRIDGE also won. However, the delay had raised costs greatly for the developer.” The

Greenbelt Alliance paper then provides a specific measure for addressing this obstacle, “However, CEQA exists for a good reason—to help protect the environment—and if used well does not need to impede infill development projects. One way cities can help defuse the risk of CEQA lawsuits is to prepare “tiered EIRs” on Specific Area Plans. Such an EIR anticipates the problems that would result from certain types and intensities of development, lifts the burden of environmental review from individual projects, and helps address the cumulative effects of multiple projects in geographic proximity.”

More examples of specific measures to encourage and facilitate infill.

Further review of the Greenbelt Alliance paper highlights the lack of specific measures in the LUSCAT report. For examples, I would refer you to the Greenbelt Alliance paper’s recommendations for reducing obstacles to infill as part of the environmental review, the permitting process, and neighbour opposition. For example, Section 8: Streamlining Permitting Processes (page 38) lists: “1. Set a time limit on permit processing, requiring staffs to process applications within a set period of time. 2. Assign specific staff to shepherd each infill project through the approvals process. Conduct staff and commissioner training to be sure everyone is up-to-date on guidelines, requirements, and procedures. 3. Carry out pre-application reviews with developers concerning potential projects. 4. Adopt clear procedures for review, to eliminate uncertainty about what both the city and developers should expect. 5. Establish “as-of-right” zoning under which developers that meet zoning requirements are allowed to build without lengthy hearings to obtain a conditional use permit or a general plan amendment. 6. Reduce environmental review requirements for individual infill projects by preparing EIRs on Specific Plans for infill areas. 7. Reduce design review uncertainties by establishing clear urban design guidelines, again often in conjunction with Specific Plans, that can let developers, neighbors, planners, and design review committees know what features are expected.” Section 9: Working Constructively with Neighbors (page 39) offers the following specific measures: “1. Require developers to meet with neighbors before submitting plans for a project. Often designs can be changed to meet neighbor concerns, and neighbors later do not feel like they’ve been “blindsided” with the development proposal. 2. Prepare Specific Plans in which residents have an opportunity to prepare a vision for their community and influence design guidelines for infill development. 3. Organize small meetings between developers and key neighborhood leaders to develop buy-in before holding general public meetings or workshops. 4. Encourage community development corporations (CDCs), which have a strong neighborhood base, to undertake infill development. 5. Promote intensive infill development on sites with few neighbors nearby, such as former industrial areas, downtown parcels, or along arterial strips. 6. Ensure that infill development provides attractive new amenities for a neighborhood, such as shops, cafes, restaurants, dry cleaners, child care centers, parks, community gardens, restored ecological features, pedestrian friendly street designs, and attractive public spaces. Neighbors may then be less likely to oppose infill.”

One would hope and expect that the various committee processes recommended in the report would eventually consider concrete proposals such as those in the above paragraph. However, including such specific and concrete proposals in the report would have been highly

beneficial in illustrating the scope and potential value of the recommendations. It also would have provided a platform for the development of the programs and regulations referred to in the report.

Thank you for your consideration. Please contact me if you have any questions.

Sincerely,
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