

AIR RESOURCES BOARD RELEASES PROPOSED DRAFT OF CEQA GUIDANCE ON GREENHOUSE GAS EMISSIONS

On Friday, October 24, the California Air Resources Board staff released a draft and preliminary proposal for determining whether the emissions related to proposed new projects are significant impacts under CEQA. There is a public workshop in Sacramento on Monday morning. A copy of the preliminary draft proposal from CARB staff, and information on the Monday workshop, are available on CARB's website at <http://www.arb.ca.gov/cc/localgov/ceqa/ceqa.htm>. The following is a brief summary of the proposal as released today; as this summary indicates, the proposal is conceptual in several respects, and some of the specific performance standards have not yet been proposed.

- 1) CEQA's categorical exemptions for certain types of projects should continue to apply, including the exemption for certain infill residential projects. In other words, the fact that an otherwise-exempt project results in some greenhouse gas emissions would not defeat the use of categorical exemptions.
- 2) the threshold for determining whether a project's emissions are significant (and thus whether an environmental impact report is required, rather than a negative declaration) is not zero emissions, but must be a stringent performance based threshold to meet the requirements of AB 32, the Global Warming Solutions Act.
- 3) CARB staff propose different but related thresholds for industrial projects and for commercial and residential projects.
- 4) for residential and commercial projects, the proposed steps in determining whether there is a significant impact requiring an EIR are as follows:
 - a) does a CEQA exemption apply? if so, there is no significant impact.
 - b) is the project consistent with adopted greenhouse gas emissions reduction plan for which an EIR was certified, and which is determined by ARB to satisfy SB 375? if so, there is no significant impact (this step cannot be used until such plans pursuant to SB 375 exist, SB 375 was just enacted this year, such plans are likely at least a couple of years away).
 - c) does the project meet specific performance standards, yet to be developed, for several categories of emissions, including construction emissions, building energy use, water use, solid waste, and transportation, AND does the project emit no more than a certain amount of metric tons of carbon equivalents per year. If so, there is no significant impact.
 - d) if a project cannot meet these requirements, the impact would be presumed significant, an EIR would be required, and the project must implement all feasible mitigation.

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- 5) The building energy use standards are proposed to be California Energy Commission Tier II standards, which generally require a reduction in energy usage of 30 per cent beyond Title 24 building code requirements.
- 6) Lead agencies in the CEQA process (typically cities and counties) could impose "equivalent" mitigation requirements, and find that a project's emissions are less than significant on that basis.

This is a preliminary draft proposal, and the staff report does not indicate the time period during which CARB will accept public and agency comments. The report describes the comment process as "expedited" however.

If you have any questions regarding this alert, please contact:

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