

# LAND USE & NATURAL RESOURCES

CLIENT ALERT

APRIL 14, 2009

## OFFICE OF PLANNING AND RESEARCH TRANSMITS DRAFT CEQA GUIDELINES ON GREENHOUSE GAS EMISSIONS TO THE RESOURCES AGENCY FOR CERTIFICATION AND ADOPTION

The Governor's Office of Planning and Research, which is charged with developing guidelines for the mitigation of greenhouse gas emissions under the California Environmental Quality Act, has acted in advance of the July 2009 deadline set forth in the Senate Bill 97 to transmit draft CEQA Guidelines on Greenhouse Gas Emissions to the Resources Agency. Per SB 97, the Resources Agency must certify and adopt these Guidelines on or before January 1, 2010. The Resources Agency will now begin a formal rulemaking process, which will include public hearings and additional opportunities for public comment.

OPR issued a preliminary discussion draft on January 29, 2009, and then held workshops and took public comments on the discussion drafts over the last few months. The Draft Greenhouse Gas Guidelines are generally similar to the discussion draft but include the several important revisions and clarifications. Some of the notable aspects of the Draft Guidelines include the following:

- Generally, the draft Guidelines seek to apply CEQA's existing basic rules for impact analysis to the topic of greenhouse gas emissions, specifying in several instances, for example, that determinations on greenhouse gas emissions must be supported by substantial evidence, just like other CEQA determinations.
- The biggest change from the January proposal is a new proposed Guideline 15183.5, setting forth specific provisions on tiering and streamlining review of GHG issues.
- OPR proposes to amend the Guideline to provide that lead agencies may determine that a project's incremental contribution to a cumulative effect is not considerable if the project complies with a previously adopted plan that includes specific requirements to reduce the cumulative impact in question. The types of plans that can serve as the basis for this finding include a broad category of "plans or regulations for the reduction of greenhouse gas emissions." (proposed amendment to Guideline 15064)
- A new Guideline is proposed to provide guidance on determining the significance of impacts resulting from a project's greenhouse gas emissions. This guideline also refers to the compliance for plan approach, and indicates that lead agencies have discretion to determine which type of methodology to use to evaluate greenhouse gas emissions, given that such methodologies are evolving. (proposed Guideline 15064.4)
- The draft would amend the Guideline on mitigation measures to provide general guidance on mitigation of the impacts of a project's greenhouse gas emissions. (proposed Guideline 15126.4). The earlier draft would have required agencies to consider "all feasible" mitigation measures, a stricter standard than is applied to other impacts in CEQA. The revised proposal deletes the word "all."
- Guideline 15130 on cumulative impacts is proposed to be revised to include greenhouse gas reduction plans in the types of plans that can be considered in preparing a cumulative impact analysis based on the summary of projections approach. Proposed new subsection 15130(f) would require EIRs to evaluate greenhouse gas emissions of a project when the incremental contribution of those emissions may be cumulatively considerable. This replaces the earlier draft's reference to assessment of cumulative GHG impacts using a list of projects.

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- The draft Guidelines would specify that a project-level EIR does not need to evaluate greenhouse gas emissions if the project is consistent with a local plan that adequately addresses the issue, and an EIR was prepared for that plan (proposed Guideline 15152(i)).
- The draft proposes to strengthen the provisions of Appendix F specifying how EIRs should evaluate energy conservation. A reference in the earlier draft of amendments to Appendix F which referred to "life-cycle" energy use was deleted on the basis that the term is subject to different interpretations and would create confusion rather than clarity.
- The draft Guidelines would also add general questions on greenhouse gas emissions to the Appendix G checklist that is used to determine whether impacts are significant, and whether a negative declaration or EIR should be prepared.
- Appendix G is also proposed for amendment concerning two other topics - forestry and traffic. Forestry is added as a checklist topic. On traffic, though the earlier proposed amendments to Appendix G deleted references to the use of Level of Service as a methodology, the revised draft now includes more general language that includes a reference to Level of Service standards.

The draft Guidelines can be found on the OPR website at [www.opr.ca.gov](http://www.opr.ca.gov).

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