

LAND USE & NATURAL RESOURCES

CLIENT ALERT

JANUARY 8, 2009

OFFICE OF PLANNING AND RESEARCH ISSUES PRELIMINARY DRAFT OF CEQA GUIDELINES ON GREENHOUSE GAS EMISSIONS

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 issued a preliminary discussion draft of those proposed guidelines. OPR is planning to hold workshops on these proposals in Los Angeles (January 22) and in Sacramento (January 26). Property owners and developers and public agencies should carefully review the proposals and consider participating in the informal workshops to provide comments to OPR, as the preliminary proposals will serve as the basis for a later rulemaking process to formally amend the CEQA Guidelines.

Under Senate Bill 97, adopted in 2007, OPR is charged with developing guidelines for the mitigation of greenhouse gas emissions, and transmitting those proposed guidelines to the Resources Agency. SB 97 requires OPR to present draft guidelines to the Resources Agency by July 2009, and requires guidelines to be formally adopted on or before January 1, 2010. Some of the notable aspects of this discussion draft include the following:

- Generally, the proposed 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.
- Amending the Guidelines provisions that allow agencies to determine whether impacts are significant based on "compliance with plan" findings, to specify that projects may determine that their contribution to the cumulative impact of climate change is reduced to a less than significant level by compliance with climate action plans or statewide greenhouse gas mitigation plans. This provision references the plans that will be prepared pursuant to SB 375 as one basis for a compliance for plan finding. (SB 375 was the significant bill passed in 2008 to tie greenhouse gas emissions and land use planning together, through the regional transportation planning process). (proposed amendment to Guideline 15064(h)(3)).
- A new Guideline proposed to provide guidance on determining the significance of impacts resulting from a project's greenhouse gas emissions. This guidelines 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)
- Amending 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).
- Specifying 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)).
- Adding 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.
- Strengthening the provisions of Appendix F specifying how EIRs should evaluate energy conservation

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The draft guidelines do not propose a particular threshold of significance to be applied in determining whether a project's contribution to global climate change is significant, but they provide rules that lead agencies may apply in exercising their discretion to determine significance. The California Air Resources Board has been considering a proposed threshold for commercial and residential land use developments and is expected to adopt some sort of guidance document in the first few months of this year. Lead agencies and project applicants will need to consider both the new CEQA Guidelines and the Air Resources Board's thresholds, when adopted in evaluating how to address greenhouse gas emissions in CEQA documents.

In addition to the proposed Guideline changes on greenhouse gas emissions, the discussion draft also includes a number of other proposed changes to clarify various provisions of the CEQA Guidelines.

The discussion draft of the proposed Guidelines can be found on the OPR website at : http://opr.ca.gov/ceqa/pdfs/Workshop_Announcement.pdf

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

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