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# Greenhouse Gas and Climate Change Impacts: CEQA Practice Tips

The analysis of climate change impacts under CEQA has rapidly evolved over the last several years. For this reason and others, nearly every challenge to an environmental impact report today features an attack on the EIR's analysis of greenhouse gas emissions.

Fortunately, amendments to the CEQA Guidelines and recent court decisions have provided environmental professionals and practitioners some useful guidance. This post discusses the relevant Guidelines sections and offers three practice tips based on case law addressing climate change impacts.

**CEQA Guidelines on Greenhouse Gas Emissions**

Amendments to the CEQA Guidelines adopted in 2010 outline how to analyze a project's contribution to greenhouse gas emission levels, though the amendments do not establish any specific significance thresholds for greenhouse gas impacts. That is, they don't answer the key question: How much emission of greenhouse gases should be considered significant?

The Guidelines do, however, provide some help:

- A lead agency should make a good-faith effort, based to the extent possible on scientific and factual data, to **describe, calculate, or estimate the amount of greenhouse gas emissions** resulting from a project.
- A lead agency has the discretion to decide for each project whether to use a model or methodology to **quantify** greenhouse gas emissions resulting from a project, and/or rely on a **qualitative** analysis or performance based standards.
- In **assessing the significance of impacts** from greenhouse gas emissions on the environment, the lead agency should consider (1) the extent to which the project may affect emissions levels, (2) whether project emissions exceed the applicable threshold of significance, and (3) the extent to which the project complies with regulations or requirements adopted to implement statewide, regional, or local plans to reduce greenhouse gas emissions.
- Lead agencies must consider "feasible means" of **mitigating the significant effects** of greenhouse gas emissions. The Guidelines list a number of types of measures a lead agency "may include" in a mitigation program.

Guidelines §§ 15064.4, 15126.4(c).

**Significance Thresholds**

Various types of significance thresholds for measuring climate change impacts are acceptable under CEQA. Local climate action plans can form the basis for significance thresholds, or public agencies instead can rely on thresholds of significance developed by a regional air quality management district. Another option is for an EIR to assess whether a project will significantly hinder or delay California's ability to meet greenhouse gas reduction targets established by AB 32, the Global Warming Solutions Act of 2006. Under AB 32, the state committed to reducing its greenhouse gas emissions to their 1990 level by 2020. This leads to the first "practice tip."

***Practice Tip #1:***

If Using AB 32 Reduction Targets as a Significance Threshold, Calculate Baseline Emissions and Compare Project Emissions.

To make sense of this advice, consider a decision issued last year, *Friends of Oroville v. City of Oroville*, 219 Cal. App. 4th 832 (2013). The project was replacement of an existing Wal-Mart store with a Wal-Mart "supercenter" of nearly twice the size. The EIR correctly analyzed the project's greenhouse gas emissions consistent with the instructions in the Guidelines.

There were no local plans or regional air district significance thresholds available, so the city assessed greenhouse gas emissions based on whether the project would significantly hinder or delay California's ability to meet reduction targets established by AB 32. Applying this significance threshold, the EIR calculated that emissions from the new store would amount to about .003 percent of California's 2004 greenhouse gas emissions. The EIR concluded, in light of how small that figure was, that the project's contribution to the state's greenhouse gas emissions was less than significant.

The court had no problem with the significance threshold (reduction targets under AB 32), but concluded the EIR had misapplied it.

The court contrasted the EIR's approach with that taken in *Citizens for Responsible Equitable Environmental Development v. City of Chula Vista*, 197 Cal. App. 4th 327 (2011), which featured the replacement of a Target store with a larger Target store. That EIR calculated and compared (1) existing store emissions, (2) proposed store emissions under "business as usual" projections, and (3) proposed store emissions with energy saving measures incorporated.

In contrast, the *Friends of Oroville* EIR suffered from two serious flaws. First, the court found the comparison of the project's greenhouse gas emissions to the entire state's emissions "meaningless." The relevant comparison instead was whether emissions were significant relative to the AB 32 standard of reducing emissions (by about 30 percent) from 2020 business as usual levels. Second, the EIR needed to calculate greenhouse gas emissions from the existing store and then estimate the quantitative or qualitative effect of the project's mitigation measures on the emissions added by the new store.

In sum, where there was no local climate action plan and the regional air quality management district had not adopted any greenhouse gas thresholds of significance, the court looked approvingly to a threshold of significance based on a comparison with "business as usual" projections. In similar circumstances, public agencies would be well advised to follow a comparable methodology.

***Practice Tip #2:***

Mitigation for Greenhouse Gas Emissions Cannot Simply Require that a Future Plan Include Undefined and Untested Mitigation Measures.

In *Communities for a Better Environment v. City of Richmond*, 184 Cal. App. 4th 70 (2010), an EIR for replacements and upgrades to a major refinery determined the project's greenhouse gas emissions likely would have a significant effect on the environment and would require mitigation. The EIR required submission of a future mitigation plan designed to achieve no net increase in greenhouse gas emissions. In preparing its mitigation plan, the project applicant would be required to inventory emissions and look for ways to implement reductions. It then would need to "consider implementation of measures that achieve [greenhouse gas] reductions including, but not limited to," several candidate mitigation measures identified in the EIR.

The court rejected this approach, saying the mitigation program merely proposed a "generalized goal" of no net increase in greenhouse gas emissions. The EIR set out possible mitigation measures that were "nonexclusive, undefined, untested and of unknown efficacy." That was not enough for the court: Under these conditions, a public agency cannot wait until after the CEQA process is complete to prepare a plan for future mitigation.

Importantly, there was no evidence before the city indicating the proposed mitigation measures would achieve no net increase in greenhouse gas emissions, or even that a mitigation program could be devised that would meet such a standard. Keeping this in mind, EIRs that rely on a future plan for greenhouse gas mitigation should be accompanied by concrete evidence showing the mitigation program can accomplish the stated goal.

***Practice Tip #3:***

Adoption of New Significance Thresholds for Greenhouse Gas Emissions Generally Does Not Require Preparation of a Supplemental EIR.

For the first time in a published opinion, a court last year considered whether, subsequent to certification of an EIR, a regional air quality management district's adoption of new significance thresholds for greenhouse gas emissions constituted "new information" that triggered the need for a supplemental EIR. *Concerned Dublin Citizens v. City of Dublin*, 214 Cal. App. 4th 1301 (2013). The court ruled it did not.

In *Concerned Dublin Citizens*, the City of Dublin certified a program EIR for a transit center specific plan in 2002. The EIR did not address climate change, though it did consider air quality impacts from other pollutants. Almost a decade later, the City relied on the program EIR to approve development of a specific site within the transit center.

Petitioners claimed supplemental environmental review was required because the Bay Area Air Quality Management District had adopted thresholds of significance for greenhouse gas emissions in 2010. CEQA requires preparation of a supplemental EIR if "new information, which was not known and could not have been known at the time the EIR was certified as complete, becomes available." Pub. Res. Code § 21166. The court ruled that information about climate change has been broadly known for some time and therefore that information could have been addressed in the 2002 EIR.

The court's decision makes clear that the adoption of new significance thresholds for greenhouse gas emissions generally does not constitute "new information" requiring preparation of a supplemental EIR.

**Conclusion**

Although analyzing climate change impacts under CEQA will remain challenging, the recent decisions discussed here provide greater clarity to public agencies, environmental professionals, and practitioners interested in ensuring an EIR's analysis is done right.

This post is adapted from a presentation the author made on March 25, 2014, at the annual meeting of the California Association of Environmental Professionals.

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