

Faulty Greenhouse Gas Analysis Sinks EIR

An environmental impact report must not only identify a proper significance threshold for a project's greenhouse gas (GHG) emissions; it must then correctly apply that threshold. The EIR for a Wal-Mart Supercenter failed this test in [Friends of Oroville v. City of Oroville](#), No. 070448 (3rd Dist., Aug. 19, 2013).

Wal-Mart proposed to replace an existing Wal-Mart store with a Supercenter. The EIR determined that the proper significance threshold for the project was whether the project would significantly hinder or delay California's attainment of the reduction targets contained in AB 32, the Global Warming Solutions Act of 2006. Applying this significance threshold, the EIR calculated that the project's GHG emissions would constitute only .0003 percent of California's 2004 GHG emissions, identified a list of mitigation measures, and concluded that the project's environmental impacts from GHG emissions would be less than significant.

While this threshold was appropriate, the court found, it was incorrectly applied. Citing, as a model, the GHG analysis approved in *Citizens for Responsible Equitable Environmental Development v. City of Chula Vista*, 197 Cal. App. 4th 327 (2011), the court found the Wal-Mart EIR deficient for two reasons.

First, the EIR employed a "meaningless" comparison of the project's GHG emissions to those of the entire State of California. The relevant question, the court said, was whether the project's emissions were significant in light of the threshold-of-significance standard of Assembly Bill 32, which seeks to cut projected 2020 emissions levels by 20%.

Second, the EIR should have calculated the *net* increase in GHG emissions from the proposed Supercenter over those of the Wal-Mart store it would replace, and then "quantitatively or qualitatively" estimated the effect of the project's mitigation measures on GHG emissions. "These calculations were done in *Citizens*," the court said, and "[s]uch calculations or estimates, or a reasonable equivalent, must be done here."

The court rejected Wal-Mart's argument that the project was consistent with AB 32 because its mitigation measures were drawn from the California Air Resources Board's AB 32 "Scoping Plan." The court pointed out that 68% of the project's GHG emissions would come from motor vehicles and that the Scoping Plan provided no transportation-related measures applicable to the project. The court likewise rejected Wal-Mart's claim that the EIR's traffic analysis showed the Supercenter would reduce vehicle trips, finding the EIR's conclusions on this issue to be "speculative and contradictory."

This case suggests that in areas of California in which the regional air district has not adopted GHG thresholds of significance, courts will continue to look to the *Citizens* case as a model for adequate analysis of GHG impacts. The case also highlights the importance of a logically reasoned and internally consistent EIR.

Authors



Julie Jones

Partner

JJones@perkinscoie.com [415.344.7108](tel:415.344.7108)

Blog series

California Land Use & Development Law Report

California Land Use & Development Law Report offers insights into legal issues relating to development and use of land and federal, state and local permitting and approval processes. [View posts by topic.](#) [Subscribe ?](#)

[View the blog](#)