San Diego Daily Transcript
San Diego's Business Daily

CEQA and climate change: Is your EIR defensible?

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October 30, 2007

Last year global warming was a topic of movies, magazines, newspapers and legislation but not, for the most part, of California Environmental Quality Act environmental impact reports.

Development projects generate greenhouse gases (GHGs) that contribute to climate change both directly and indirectly, primarily from vehicular trips to and from the site, and electricity consumption. However, quantification of those emissions is difficult, the effectiveness of mitigation is uncertain, and any individual projects' contribution to the global problem is extremely small. As a result, the topic historically has been considered too speculative for analysis, if it was considered at all.

Today, almost any environmental impact report (EIR) that does not discuss climate change is vulnerable to attack. Individual projects' emissions of GHGs have not increased over the past year, nor has the speculative nature of the projects' individual contributions changed. Rather, the impetus for the current move to include climate change analysis in EIRs prepared under the California Environmental Quality Act (CEQA) was the decision by the California Attorney General's office, on behalf of the state, to submit comment letters and file lawsuits challenging

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EIRs that do not discuss, or discuss adequately (in the Attorney General's opinion), the impacts of global warming from the project, or impose a host of mitigation measures.

The Attorney General's office argues that the climate change analysis is required by the California Global Warming Solutions Act, otherwise known as AB 32, which was adopted by the state Legislature in 2006. AB 32 requires the California Air Resources Board (CARB) to set regulations for the mandatory reporting of GHG emissions, determine what GHG emissions were in 1990, and adopt regulations to meet this emissions limitation.

The Attorney General's position is that AB 32 is an "adopted air quality plan" requiring the state to reduce GHG emissions to 1990 levels by 2020. Any project that adds to emissions conflicts with the goal of reducing those emissions, according to the Attorney General. Projects that conflict with or obstruct implementation of an "applicable air quality plan" should analyze that conflict in an EIR. This argument is based on Appendix G of the State CEQA Guidelines, which lists one factor for determining if an air quality impact is significant the consideration of whether the project would conflict with or otherwise obstruct implementation of an air quality plan.

The CEQA Guidelines do not expressly require analysis of climate change, and AB 32 does not state that CEQA documents must include such discussion. Partially for that reason, the California Chamber of Commerce and several California companies and labor unions submitted a letter to Gov. Arnold Schwarzenegger and others requesting legislation clarifying that "CEQA is not the appropriate vehicle for addressing climate change concerns."

Given that CEQA generally requires EIRs to identify and analyze *any* significant impacts of a project, and mitigate those impacts where feasible by implementing measures or project alternatives to lessen the otherwise significant environmental effect, however, most CEQA practitioners now believe that CEQA review should discuss a project's GHG emissions and resulting cli-

mate change impacts. Any EIR today that ignores climate change is vulnerable to a challenge that could result in years of delay and hundreds of thousands of dollars in costs.

While the Attorney General's office has thus far focused on general plan amendments and large-scale individual projects, its actions have established a framework that can be used by project opponents to attack any project, no matter how small. It also increases the number of projects requiring an EIR rather than a more streamlined mitigated negative declaration, increasing projects' costs and processing time.

Determining that an EIR should analyze climate change does not solve the question of how to do it. There is of yet no established method by which to determine a project's impacts on climate change. The approaches to CEQA analysis of climate change is in its infancy, and varies widely from agency to agency. There is no established basis for concluding that the amount of emissions is less than significant, or that with mitigation measures the project commits to implement it will be mitigated to a less than significant level. CARB is not expected to provide its regulatory guidelines on standards of significant until next January. Until that time, it is up to each agency to develop its own significance threshold.

Most agencies focus their EIRs' climate change analysis on AB 32. The discussion ranges from a determination that the issue is too speculative and there is nothing to analyze, to, at the other extreme, a conclusion that any emission is cumulatively considerable, and thus all feasible mitigation measures must be imposed. Some agencies attempt to quantify a project's GHG emissions using existing air emission calculators for criteria pollutants. Others provide more of a qualitative discussion, concluding that determining the project's impacts would be too speculative for further analysis. Or, the EIR discusses the project's emissions and imposes mitigation, then concludes that the project's contribution to global warming would be cumulatively considerable and thus its impact is significant and unavoidable.

To avoid a CEQA challenge to their EIRs, lead agencies are well-advised to disclose the potential for climate change impacts from GHG emissions, include an analysis grounded in the project facts and available quantitative and qualitative information, determine the significance of the impacts and impose feasible mitigation.

Soon climate change will be an established part of most EIRs, and the forthcoming guidance from CARB will help EIR preparers better understand how to best address the issue. Until then, each lead agency is on its own to best determine how to prepare a defensible climate change discussion.

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