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About Allen Matkins

Allen Matkins Leck Gamble Mallory & Natsis LLP is a California law firm with over 240 attorneys practicing out of seven offices in Orange County, Los Angeles, Century City, Del Mar Heights, San Diego, San Francisco and Walnut Creek. The firm's broad based areas of focus include corporate, real estate, construction, real estate finance, business litigation, employment and labor law, taxation, land use, bankruptcy and creditors' rights, and environmental. [more...](#)

Climate Change Alert

Three Recent Trial Court Decisions Differ On The Need To Address Climate Change Under CEQA

As lead agencies and project applicants struggle with how best to address climate change under the California Environmental Quality Act ("CEQA"), a steady stream of trial court decisions may provide some guidance until appellate courts and the Office of Planning and research ("OPR") provide greater direction. Summarized below are three recent decisions that take different approaches.

KEY RECOMMENDATION

Given the most recent court cases and agency trends, include analyses of potential project impacts on global climate change in CEQA documents.

1. Riverside Court Rejects Environmental Impact Report for Failure to Make "Meaningful Attempt" To Analyze Climate Change Impacts

In *Center for Biological Diversity et al. v. City of Desert Hot Springs, et al.*, No. RIC 464585 (Riverside County Sup. Ct., Aug. 6, 2008), the court invalidated an Environmental Impact Report ("EIR") for failure to make a meaningful attempt to analyze a project's effects on global climate change. Finding that California has recognized the importance of combating global warming, the court rejected an argument that analysis of global warming impacts for a new development project would be speculative. The City argued that an analysis of climate change impacts was not required in the project EIR, as the analysis would be speculative since regulatory agencies have not provided sufficient guidance, framework, or analytic tools or methodologies for conducting climate change analyses in CEQA documents. While acknowledging that a "too speculative" finding is theoretically possible, the court found that the EIR did not make a meaningful attempt to analyze climate change issues before concluding that the analysis was speculative.

In reality, this was a very easy decision for the court. The CEQA Guidelines give clear direction on this issue and that guidance was not followed by the lead agency. Under Section 15145 of these Guidelines it states that: "if, after thorough investigation, a lead agency finds that a particular impact is too speculative for evaluating, the agency should note its conclusion and terminate discussion of the impact." In this case, the lead agency did not complete a thorough investigation before concluding that such an analysis would be speculative. This decision does not stand for the proposition that a finding of "too speculative" will not survive legal challenge. Rather, it stands for the proposition that if a lead agency reaches such a conclusion it should only be after a thorough investigation and analysis.

2. Los Angeles Court Rules a Program Environmental Assessment Fundamentally Flawed For Failing To Examine Global Warming Impacts

In *Natural Resources Defense Council, Inc et al. v. Inland Energy, et al.*, No. BS 110792 (Los Angeles County Sup. Ct., July 28, 2008) the court set aside the certification of a Program Environmental Assessment ("PEA") because the PEA failed to fully identify the project's effects on global warming, failed to adequately analyze or quantify the project's contribution to such effects, and, as a result, failed to consider mitigation measures. Although the PEA did discuss carbon dioxide, it failed to address any other greenhouse gas emissions, deferring such discussion for later project specific consideration. The court held that deferral to a later environmental review was not legally permissible and, thus, the failure to address the full scope of greenhouse gas emissions in the PEA was inadequate under CEQA.

3. Los Angeles Court Concludes That No Analysis of Climate Change Is Required Under CEQA For Individual Projects

In *Westfield, LLC, et al. v. City of Arcadia et al.*, No. BS 108937, (Los Angeles County Sup. Ct., July 23, 2008) the court held that no analysis of climate change was required in an EIR prepared for shopping center project. In reaching this conclusion the court relied on a statement by the South Coast Air Quality Management District that no individual development project will have significant climate changing impacts. Additionally, the court stated that greenhouse emissions are global in impact, that a project's emissions would not be measurable on a global scale, and that any global warming impact of greenhouse gases emissions in California is the State's responsibility and beyond the scope of an EIR. Finally, the court also concluded that a cumulative impact analysis of such emissions is also not required. The petitioner argued that the EIR should have analyzed the cumulative impact on climate change of a project's greenhouse gas emissions coupled with all other such emissions. The court disagreed and held that a cumulative impact analysis is required only when two or more individual project effects are being analyzed together. Since the petitioner did not identify any other specific project, the cumulative analysis in the EIR was deemed adequate without examination of emissions of greenhouse gases from other projects. This holding begs the question of what other projects should be considered when doing a cumulative impacts analysis for a project. Typically, the cumulative projects assessed are limited to projects in the general vicinity of the proposed project. Given the scope of global warming the other potential cumulative projects could arguably extend to all such projects throughout the state and, perhaps, beyond.

Concluding Thoughts

The holdings in *Center for Biological Diversity and Natural Resources Defense Council* will doubtless be cited in both judicial and administrative forums by advocates for consideration in CEQA documents of project-related climate change impacts. So too will the superior court's holding in *Westfield* be cited as authority for the proposition that local impacts on a global phenomenon cannot and should not be assessed through the CEQA process. Allen Matkins will continue to keep its clients and friends informed as the courts, the state, cities and counties, and developers and the environmental community wrestle with the difficult issues arising from development in this era of global climate change. In the meantime, although the regulated community still awaits the

formal guidelines on addressing climate change impacts in CEQA documents required of SB 97, including a discussion of potential project cumulative impacts on global climate change in CEQA documents is likely to be the safer course for most projects.

For additional direction, see the guidance recently issued by both the [Office of Planning and Research](#) and the [California Air Resources Board](#).

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