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Allen Matkins

Land Use Alert



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## OPR Submits Proposed Greenhouse Gas CEQA Guidelines to the Resources Agency and Starts the Rulemaking Clock

On April 13, 2009, the Governor's Office of Planning and Research (OPR) submitted to the California Secretary for Natural Resources proposed amendments to the CEQA Guidelines for greenhouse gas (GHG) emissions. The [proposed amendments](#) seek to address GHG emissions on a small and large scale. The Resources Agency now has eight months to certify and adopt the Guidelines proposed by OPR in a formal rulemaking procedure. After the new Guidelines are adopted, they will affect how lead and responsible agencies analyze proposed development in California.

**These proposed amendments represent an important milestone, but much remains to be resolved on the vexing issue of how to adequately treat the issue of GHG emissions under CEQA.** Still to be decided is how to determine whether a proposed project's GHG emissions are "significant" or "cumulatively considerable." OPR's proposed amendment offers little new guidance on this point. It is a critical issue because without guidance on significance thresholds, it is very difficult to know how much project-specific mitigation for GHG emissions is enough.

### "Significance criteria" tackled

The proposed amendments do take a stab at addressing the significance criteria issue. For example, OPR suggests adding a new section, CEQA Guidelines § 15064.4, to assist agencies in determining the

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**Renewable Energy  
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Los Angeles, CA 90071

This seminar will cover the various mechanisms available for financing renewable energy projects, including debt, equity, tax credit financing, and other options financing.

Panelists to include:

- **Martin Kurtovich**  
Chairman, Energy Solutions Company
- **Paul Obispo**  
Allen Matkins Lead Partner, Malloy & Nelson LLP
- **Gay Shevitz**  
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significance of GHG emissions. As proposed, the new Guideline section would allow agencies the discretion to determine whether a quantitative or qualitative analysis is best for a particular project. Importantly, however, little guidance is offered on the crucial next step in this assessment process – how to determine whether the project's estimated GHG emissions are significant or cumulatively considerable.

### **Mitigation and cumulative impacts**

Guidelines §§ 15126.4 and 15130, which address mitigation measures and cumulative impacts respectively, would also be amended. In the proposed revision, GHG mitigation measures are referenced in general terms, but no specific measures are championed by OPR. The proposed revision to the cumulative impact discussion requirement (§ 15130) simply directs agencies to analyze GHG emissions in an EIR when a project's incremental contribution of emissions may be cumulatively considerable. This restates the law, but begs the ultimate question of when emissions are cumulatively considerable.

### **Tiering encouraged**

OPR does propose a Guideline section that would encourage agencies to tier and streamline the GHG emissions analysis in certain cases. Section 15183.5 permits programmatic GHG analysis and later project-specific tiering, as well as the preparation of GHG Reduction Plans. Compliance with such plans can support a determination that a project's cumulative effect is not cumulatively considerable, according to proposed § 15183.5(b).

### **Environmental Check List amendments**

In addition, the amendments propose revisions to Appendix F of the CEQA Guidelines, which focuses on Energy Conservation, and Appendix G, which includes the sample Environmental Checklist Form. OPR would amend the Checklist to include the following questions: would the project generate GHG emissions, either directly or indirectly, that may have a significant impact on the environment? And, would the project conflict with any

applicable plan, policy or regulation of an agency adopted for the purpose of reducing the emissions of GHG? For CEQA review purposes, these are the legally relevant questions, but how to adequately answer them is still very much up in the air.

Now that OPR has transferred its proposed amendments to the Resources Agency, the formal rulemaking process begins. Senate Bill 97, codified at Public Resources Code § 21083.05, directs the Resources Agency to certify and adopt GHG guidelines on or before January 1, 2010. If you are interested in following or participating in the process as it moves forward, we can help. There will be opportunities in the coming months to submit comments, criticisms, suggestions, or meet with key personnel in helping to shape the final outcome of these proposed new CEQA Guidelines. Please contact us for more information.

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