

RW & G E-ALERT**CLIMATE CHANGE****January 2008****SB 97 Requires Analysis of the Effects of Greenhouse Gases under CEQA**

Last year, the Legislature adopted Assembly Bill 32, the "Global Warming Solutions Act," which requires the California Air Resources Board to develop and adopt regulations requiring the reduction in greenhouse emissions from a range of sources. Subsequently, Attorney General Jerry Brown sued several jurisdictions for failing to analyze the impacts of greenhouse gases as part of the environmental review process mandated by the California Environmental Quality Act "CEQA." These cases were eventually settled, but ambiguity remained as to the responsibility of public agencies to address greenhouse gases under CEQA.

Against this backdrop, the Legislature adopted Senate Bill 97 ("SB 97") in 2007 as part of its annual cycle of budget standoff and compromise. SB 97 "2007 Statutes, Ch. 185" acknowledges that local agencies must analyze the environmental impact of greenhouse gases under CEQA. The bill requires the State Office of Planning and Research "OPR" to develop CEQA guidelines "for the mitigation of greenhouse gas emissions or the effects of greenhouse gas emissions as required by this division." The wording of the statute implies that CEQA currently requires a discussion of greenhouse gas emissions in environmental documentation.

OPR has until July 1, 2009 to draft the new greenhouse gas guidelines, and the State Resources Agency will thereafter have until January 1, 2010 to certify and adopt the regulations prepared by OPR. OPR has only just begun the drafting process and is currently seeking informal public input from all interested parties. Local agencies will also have an opportunity to submit comments once the Resources Agency initiates the formal rulemaking process. In the meantime, OPR has stated that it may issue an interim "technical advisory" to guide agencies before the final regulations are issued.

The challenge for public agencies will be how to address potential greenhouse gas impacts before OPR issues the new guidelines. Recognizing this difficulty, SB 97 provided a limited immunity for EIRs and other environmental documents drafted before 2010 that do not analyze greenhouse gases. But, the immunity afforded by SB 97 is extremely narrow and applies only to certain state transportation and disaster preparedness projects. Thus, local agencies must still address greenhouse gases in environmental documents, even before OPR releases its guidelines.

Although OPR will eventually provide both informal and formal guidance on how to mitigate the impacts of greenhouse gases, it has indicated that it will likely not develop statewide thresholds of significance to determine the impact of greenhouse gas emissions from a particular project. Again, this leaves the task of developing appropriate threshold levels as a matter of local agency initiative.

The Climate Change Practice Group at Richards, Watson & Gershon is prepared to assist local agencies to integrate the analysis of greenhouse gases into the CEQA process. Our lawyers can assist in the preparation of comments to OPR and the development of local thresholds of significance, in order to provide a coordinated approach in this rapidly changing field.

FOR ADVICE FROM RW&G CONCERNING GREENHOUSE GASES AND CEQA, PLEASE CONTACT NORM DUPONT AT NDUPONT@RWGLAW.COM OR ALEXANDER ABBE AT AABBE@RWGLAW.COM OR ANY OF THE LAWYERS IN THE FIRM'S [CLIMATE CHANGE PRACTICE GROUP](#).

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