

# **CLIMATE CHANGE AND THE CALIFORNIA ENVIRONMENTAL QUALITY ACT**

**DECEMBER 7, 2007**

**PREPARED FOR THE AB 32 & CEQA FORUM**

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November 2, 2007

## I. Introduction

With the passage last year of AB 32, the California Global Warming Solutions Act, claims are now commonly being raised that when preparing an environmental impact report pursuant to the California Environmental Quality Act, agencies must evaluate a land use project's contribution to global climate change. AB 32 broke new ground by committing California to reduce greenhouse gas emissions back to 1990 levels and establishing a multi-year regulatory process, spearheaded by the California Air Resources Board, to achieve those emissions reductions.

AB 32 does not reference CEQA, nor do either of the Executive Orders recently issued by Governor Schwarzenegger with respect to greenhouse gas emissions, Order S-3-05 (addressing greenhouse gas emissions reduction targets) and S-01-07 (addressing lower fuel emissions requirements). AB 32 does contain legislative findings regarding the risks and potential impacts of global warming on California's environment. Based on these findings, some argue that lead agencies must conduct some level of environmental review of a project's potential to have a significant impact on California's environment due to emissions of greenhouse gases. As a result, most EIRs currently underway on projects and plans being considered by lead agencies are including some evaluation, discussion and disclosure of greenhouse gas emissions and/or climate change issues.

Such an evaluation places lead agencies in a difficult position because CARB and other air quality regulatory agencies have not issued any guidance that agencies can follow in evaluating how land use developments contribute to climate change. While there are some established methodologies and mitigation measures for stationary source emissions, there is no such accepted methodology for evaluating how land use projects may contribute to climate change via mobile source emissions, primarily from the cars and trucks driving to and from the development. In particular, there is no guidance on how to determine whether a project's potential contribution to climate change is significant. Such guidance may be provided in the future, pursuant to Senate Bill 97, which was adopted in August 2007 and directs the Office of Planning and Research and the Resources Agency to adopt CEQA Guidelines for the mitigation of greenhouse gas emissions, by 2010 (See Exhibit E attached).

Further, while there is a general consensus that climate change is occurring and a consensus that human activity contributes to some (likely substantial) degree, the consensus does not extend much beyond that (popular opinion notwithstanding). In particular, there is not yet a

