

## **Brown's Actions Seed Green Awareness in Land Use** Legislation and Lawsuits Force Consideration of Global Warming

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SAN FRANCISCO - New laws and threats of litigation can sometimes have a remarkable capacity to focus attention on a subject.

That seems to be the case with developers, landowners and local government officials regarding climate change. Recently passed legislation coupled with formal actions, including the filing of lawsuits, by Attorney General Jerry Brown and environmentalists to force consideration of global warming appear to be responsible for a huge increase in official awareness of the issue, as reflected in environmental reports and planning documents.

The moves by Brown and the advocacy groups "got all the cities, counties and project proponents to sit up and look at this issue much more closely," said Costa Mesa attorney Susan Hori of Manatt Phelps & Phillips.

She said her firm, which represents private companies building a variety of projects, now routinely recommends that environmental analyses of the developments incorporate climate change impacts.

The trend appears to be taking off.

Data recently compiled by Gov. Schwarzenegger's administration suggests a major surge in the number of projects statewide that have included at least some acknowledgement of global warming in their formal documents, such as environmental impact reports, required by the California Environmental Quality Act.

Since it began looking in April, the governor's Office of Planning and Research, which acts as something of a clearinghouse for the paperwork, has identified more than 80 reports referencing climate change. That's about 5 percent of the documents submitted this year and officials believe the figure will only rise.

For 2006, the office identified only two reports mentioning greenhouse emissions, although there could have been others.

The office has also singled out cities and counties the length of the state that have developed innovative plans to combat greenhouse emissions locally.

"It's about time, huh?" said Joshua Tree attorney Kassia Siegel, who represents the Center for Biological Diversity. The environmental group has been particularly aggressive on the issue, filing five lawsuits so far challenging CEQA documents for failing to adequately consider global warming.

She said the development was significant because CEQA is "one of our most important tools for looking at solutions to global warming at the state and local level."

Passed in 1970, CEQA requires analysis of environmental impacts, and possible ways of reducing the harm, posed by a host of projects and plans. Those reviews are commonly carried out by a public agency, such as a city or a county. In the case of private projects, the often substantial costs are generally picked up by the developer or landowner proposing the venture.

While CEQA pre-dates more recent state laws such as last year's AB 32, which mandates future reductions in carbon dioxide and other climate-changing gases, and a 2002 measure requiring similar emissions cuts from cars. Environmentalists and Brown, however, have argued that CEQA requires studying and possibly reducing greenhouse emissions from currently planned developments.

Although Brown's efforts have been criticized by some as premature, officials in his office have argued the process of evaluating climate-changing pollution should not wait until the other laws are fully implemented. Waiting, the argument goes, would simply make cuts required by such legislation as AB 32 even more difficult to achieve.



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Brown, expanding on efforts launched by his predecessor Bill Lockyer, has aggressively seized the issue. His office has filed formal comments - a potential precursor to litigation - criticizing the adequacy of climate change analysis for more than a dozen projects and plans, ranging from refinery expansions to large-scale land use and transportation planning blueprints.

Brown also startled planning officials when he sued San Bernardino County in April for allegedly failing to analyze global warming impacts of the county's general plan. *People v. County of San Bernardino*, CIVSS-0700329.

The case settled in August when San Bernardino officials agreed to take a number of steps, including documenting the county's sources of greenhouse gases and drawing up a plan to reduce the emissions.

Brown, without filing a lawsuit, last month also struck a deal with ConocoPhillips Co. in which the refiner pledged to curtail the greenhouse impact of a new fuel production project in Contra Costa County.

Clifford Rechtschaffen, a special assistant to Brown on climate change, said the fact that scores of projects now include a mention of climate change in their environmental reports "is a significant change in the right direction" over the past several months.

"I think, without being unduly boastful, the activities of our office, as well as the Center for Biological Diversity, which has been the leader among environmental groups, has really changed the dynamic," Rechtschaffen said. "People realize you have to do this."

Attorneys for developers and public agencies echoed that thought.

Anyone with a project that would either generate significant amounts of greenhouse gases, or that would attract a lot of traffic "has to really consider including that kind of analysis in their documents," said David Farabee of Pillsbury Winthrop Shaw Pittman in San Francisco, who generally represents corporate clients on air quality matters. He cited the actions of Brown and the environmental groups as a major motivating factor.

The documents submitted so far, even if they address the issue, do so in a variety of ways. Some projects include a relatively cursory analysis and then assert that the issue is too speculative to warrant a further look.

Others, such as a draft environmental impact report on a proposed giant Wal-Mart store in Suisun City go much further. That document, prepared on the city's behalf, estimates total emissions at more than 19,500 tons per year and calls them "significant and unavoidable," even after efforts are made to reduce them.

James Moose of Sacramento's Remy, Thomas, Moose & Manley, advised the city in its development of the report. He said the analysis represented a conservative legal approach.

"Wal-Mart [environmental impact reports] are maybe 95 percent certain to be litigated," Moose said. "You just don't take any chances with them."

Another factor generating the new analyses of climate change in environmental reports was the Legislature's passage earlier this year of Senate Bill 97. The measure, adopted at the end of a budget impasse partly generated by Republican dissatisfaction over Brown's efforts, requires the Office of Planning and Research to develop new guidelines governing greenhouse emissions determinations under CEQA.

Rechtschaffen said the passage of the law removed any doubt that CEQA requires evaluation of greenhouse emissions.

With the passage of that law, "we really will see an exponential increase in the number of people addressing [climate change] in their documents," said the office's director, Cynthia Bryant.

She said the guidelines, which are due by July 1, 2009, should also be helpful in the ongoing litigation.

Some courts have already started tackling the issue.

In August, for instance, Los Angeles County Superior Court Judge Dzintra Janavs concluded that an environmental report that included an analysis of potential effects on water supplies available to an industrial park properly determined the issue was too speculative for further analysis. *Santa Clarita Oak Conservancy v. City of Santa Clarita*, BS084677.

"Each court is going through what we're going to have to go through," she said. "Hopefully, we'll get the guidelines done quickly enough that we can help inform the courts and maybe we can all stay on the same page."

Despite progress in getting the issue considered by planners and developers, more needs to be done to actually reduce climate-changing pollution, said environmentalist lawyer Siegel. The next step, she suggested, was to get more of them to adopt measures actually cutting the project's carbon impacts.

"We still have a lot further to go," she said. "At the end of the day, we need to see mitigation measures adopted and we need to see things change."

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