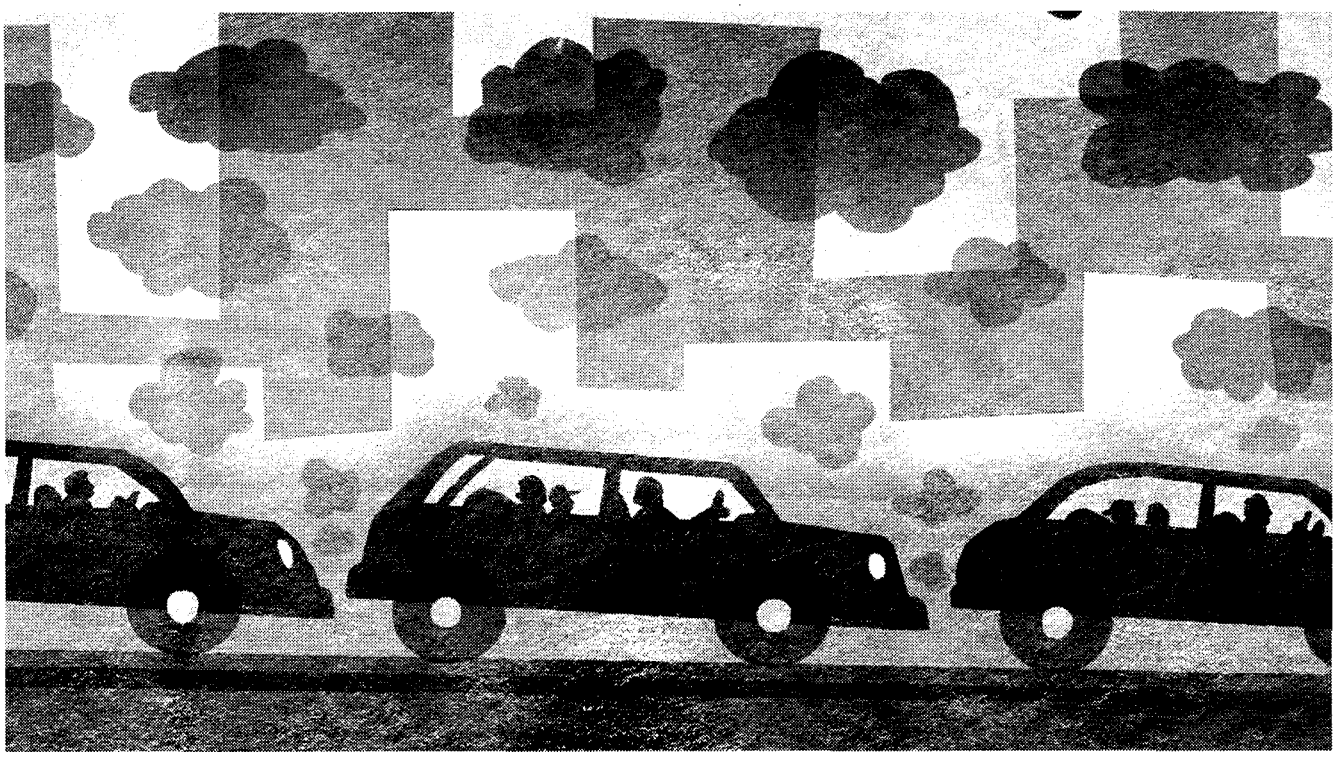

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This summer, the Legislature settled the question of whether greenhouse gas emissions fall under CEQA's purview by passing SB 97, which requires the Office of Planning and Research to prepare guidelines for the mitigation of greenhouse gas emissions under CEQA. However, the circumstances under which an agency must find a project's greenhouse gas emissions to be a significant environmental impact — and therefore mitigate and reduce these emissions — remains an open question.

While the emissions created by individual projects like Black Bench may seem like little more than a drop in an overflowing greenhouse gas emissions bucket, it is exactly these types of business-as-usual projects that, when viewed collectively, significantly contribute to global warming. As a problem fueled by many individual contributions, the impact of a project's greenhouse gas emissions on global warming is precisely the kind of cumulative impacts analysis CEQA requires agencies to conduct.

As aptly noted by Judge Patricia Wald (formerly of the D.C. Circuit) in a 1990 dissent in the analogous NEPA context, recently quoted with approval by a unanimous 9th Circuit in *Center for Biological Diversity v. NHTSA*, "we cannot afford to ignore even modest contributions to global warming. If global warming is the result of the cumulative contributions of myriad sources, any one modest in itself, is there not a danger of losing the forest by closing our eyes to the felling of the individual trees?" This is why the center has been working hard and resorting to litigation, to convince agencies to fully consider, reduce and mitigate the greenhouse gas emissions of the projects they approve.

An analysis of greenhouse gas emissions under CEQA does not stop a project. Rather, a finding that these emissions are a cumulatively significant impact requires that the agency approving the project analyze alternatives and adopt all feasible mitigation measures that would reduce greenhouse gas emissions.

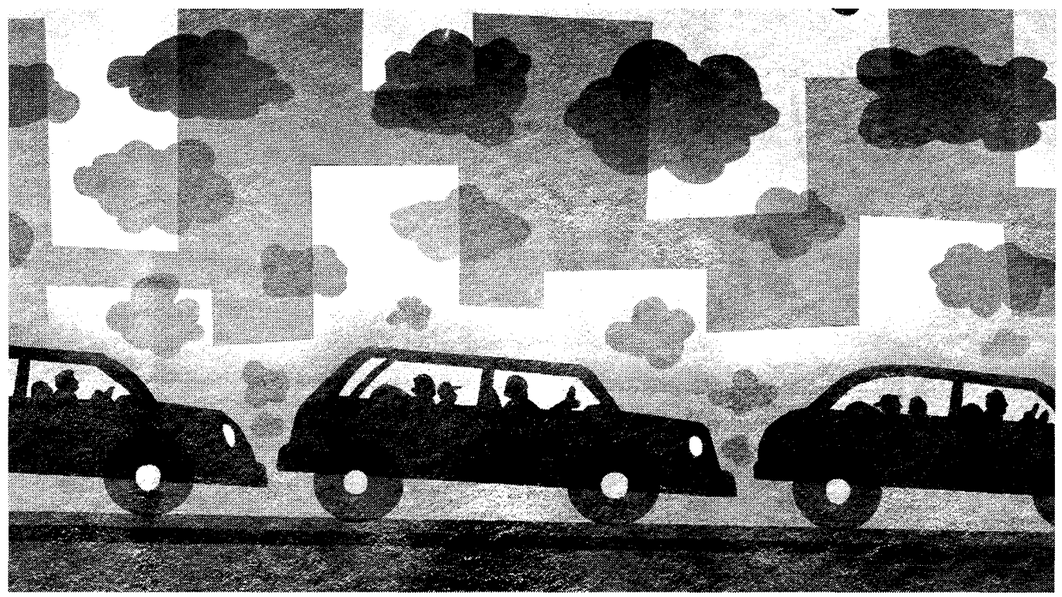
In the case of Black Bench, the center requested that the city look at measures to reduce the emissions generated by the project, such as the use of on-site solar panels and construction of energy-efficient buildings. Many of the measures proposed by the center are a win-win solution. They are cost-effective, would make the project more marketable and would have a positive economic impact.

For example, homes with solar panels are now reported to be selling faster than those without. These panels require local labor to install and the money saved on energy bills then circulates in the local economy. By refusing to acknowledge the greenhouse gas impacts of the Black Bench project, the city foreclosed any consideration of the many opportunities to improve the project and reduce its carbon footprint.

CEQA is an important tool to help meet the challenge of stabilizing our climate and achieving the emission reductions set by AB 32 and Executive Order S-03-05. We will not achieve the deep cuts required by these critical and ambitious targets if we allow new growth to follow an unchecked business-as-usual model. There is simply no legitimate reason to continue to approve projects that would have produced fewer emissions had feasible mitigation and project alternatives been adopted.

Matt Vespa is a staff attorney in the San Francisco office of the Center for Biological Diversity. He works in the center's climate, air and energy program.

GREENHOUSE GAS GUZZLING



By Matt Vespa

Climate change is upon us and occurring sooner and stronger than predicted even a few years ago. In September, Arctic sea ice plummeted to a record-low level not anticipated by most climate models until 2050, leading scientists to predict that the Arctic could be ice-free in the summer by 2030. The atmospheric concentration of carbon dioxide, the leading contributor to global warming, has increased from a pre-industrial value of about 280 parts per million (ppm) to 381 ppm in 2006, a level that has not been exceeded in at least the past 650,000 years. At current growth rates, atmospheric concentrations of carbon dioxide would likely exceed 650 ppm by the end of the century, resulting in impacts to California that include the loss of up to 90 percent of the Sierra snowpack and a 55 percent increase in the risk of large wildfires.

Unmitigated greenhouse gas emissions could commit one-third of the Earth's plants and animals to extinction by 2050, with particularly vulnerable creatures like polar bears and coral reefs among the first to go. While some changes to the climate are now inevitable, in order to avoid the most drastic consequences of global warming and a potential "tipping point" (whereupon ecological changes become dramatically more rapid and uncontrollable) scientists tell us that carbon dioxide concentrations must be stabilized at about 450 ppm.

According to leading climatologists, just 10 more years of business-as-usual global emissions will make it difficult, if not impossible, to keep atmospheric levels below 450 ppm. In addition, stabilizing carbon dioxide levels at 450 ppm requires developed countries to slash emissions by at least 80 percent below 1990 levels by 2050, a target set by Gov. Arnold Schwarzenegger in Executive Order S-03-05. Just reducing emissions to 1990 levels by 2020, as mandated by California's Global Warming Solutions Act (AB 32), requires an emission reduction of 25 percent.

Reducing carbon dioxide levels to 80 percent below 1990 levels is a challenging task that will require action on all fronts. While decisive action at the international, federal and state levels is essential to meet this challenge, we must also take advantage of the countless opportunities that exist on the local level to curtail the growth of greenhouse gas emissions. With federal leadership on climate change virtually nonexistent and implementation of state regulation through AB 32 still years in the making, local land-use approvals present one of the most important forums to address greenhouse gas emissions.

While the emissions created by individual developments may seem like little more than a drop in the bucket, it is exactly these types of business-as-usual projects that significantly contribute to global warming.

Even when federal and state regulation is ultimately in place, examining additional opportunities to reduce emissions at the project level — which may not have been captured by higher-level regulation — ensures that new sources of emissions are kept as low as possible.

For these reasons, the Center for Biological Diversity brought an action under the California Environmental Quality Act against the city of Banning for its failure to analyze the impacts of greenhouse gas emissions stemming from its approval of a proposed 1,500 home development, referred to as Black Bench, located far from the urbanized area of the city and generating over 15,000 daily vehicle trips.

CEQA requires state and local agencies to analyze and disclose all potentially significant environmental impacts of their discretionary project approvals. Where impacts are determined to be significant, they must be mitigated to the extent feasible. *Center for Biological Diversity v. City of Banning* is currently before the Riverside County Superior Court and is the first case to squarely address the question of whether an analysis of the impacts of a project's greenhouse gas emissions is within the scope of CEQA review. Although *City of Banning* has not yet been decided, environmental impact reports are already examining potential greenhouse gas impacts with greater frequency. Attorney General Jerry Brown has already settled with the County of San Bernardino and ConocoPhillips on similar claims.

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