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LAW ALERT

BAY AREA AIR DISTRICT ADOPTS NEW GUIDELINES FOR GREENHOUSE GASES AND HEALTH RISK; MORE PROJECTS LIKELY TO REQUIRE AIR QUALITY ANALYSIS

Modest commercial projects, multifamily housing with as few as 78 units, and all housing projects within 1,000 feet of freeways in the nine-county Bay Area may be required to complete additional air quality analysis as a result of Air Quality Guidelines adopted on June 2, 2010, by the Bay Area Air Quality Management District (BAAQMD). The Guidelines contain new criteria for analyzing the air quality impacts of development projects under the California Environmental Quality Act (CEQA), in particular related to greenhouse gas (GHG) emissions and the health risks of projects located near sources of toxic air contaminants and fine particulate matter.

Background. The purpose of BAAQMD's Guidelines is to provide a framework for local agencies in the nine-county Bay Area to analyze the air quality impacts of development projects and to determine if developments may have significant air quality impacts. The last set of Guidelines, adopted in 1999, primarily analyzed air pollutants such as ozone (so-called "criteria pollutants") that exceed national standards in the Bay Area. In response to regional, state, and national concerns about climate change, the Guidelines' scope has now been expanded to include GHG emissions. The Guidelines also consider the health risks caused by toxic air contaminants and fine particulate matter to projects located near freeways and other issues, such as odors.

Analyzing Projects. The new Guidelines, which are very detailed, suggest a four-step

process for analyzing development projects, described here for GHG emissions:

- Compare the project with screening thresholds in the Guidelines to determine if further analysis is needed. For instance, townhouse developments larger than 78 units and discount stores larger than 20,000 sq. ft. require additional GHG analysis. If the project is smaller than the screening thresholds, then no further analysis is need. The screening thresholds are lower for GHG emissions than for any other pollutant.
- If further analysis is needed, quantify GHG emissions based on established methods. BAAQMD has provided access to a standard model called URBEMIS along with adjustments for infill, "green" buildings, etc.
- Compare the results with "thresholds of significance" established by BAAQMD. If a project generates less than 1,100 metric tons (MT) of GHG, or less than 4.6 MT per person, then it is considered to have a less-than-significant impact. If the project complies with a "qualified GHG reduction strategy" prepared in compliance with the BAAQMD Guidelines and the State CEQA Guidelines, it may also be considered to have a less-than-significant impact.
- If the project does not meet these standards, attempt to apply mitigation measures to reduce emissions. BAAQMD has provided a lengthy list of mitigation measures online. If the standards cannot be met even with mitigation, then an EIR must be done.

The District has established a similar process for health risk assessments for residences, schools, and other sensitive uses located within 1,000 feet of a freeway, for criteria air pollutants such as ozone, for construction impacts, and for other air quality impacts.

Analyzing Programs. The Guidelines provide a higher threshold of significance for the projected GHG emissions associated with general plans: 6.6 MT per person. Since this threshold is nearly 50% higher than the project threshold of 4.6 MT per person, it may provide an incentive for local agencies to incorporate “qualified GHG reduction strategies” into their general plans. Projects in those jurisdictions will be able to avoid analyzing GHG emissions during CEQA review by complying with general plans that were based on the more generous emissions allowances.

Effects on Project Review. The Guidelines apply only within the nine-county Bay Area but may be of broader interest because no other governmental agency has provided such a detailed and legally defensible roadmap for analyzing the GHG impacts of proposed development. Even within the Bay Area, local agencies are not required to use the District’s Guidelines when analyzing air quality impacts. However, because the Guidelines are based on extensive analysis and careful literature reviews, agencies using them will have substantial support for their GHG and air quality analysis.

Projects that in the past required only minimal air quality review may need to undergo a more extensive analysis. Previously, air quality analysis was required for multifamily housing projects with more than 510 units and discount stores larger than 87,000 sq. ft. GHG analysis will now be required for multifamily projects with as few

as 78 units and discount stores larger than 20,000 sq. ft. Other residential projects may be located within 1,000 feet of a freeway and require a health risk assessment. Many of these smaller projects have in the past qualified for the “infill development” exemption (CEQA Guidelines Section 15332), which requires a finding that the project has no air quality impacts. Developers and local agencies intending to use the exemption should complete the air quality analysis at an early date to incorporate GHG-reduction measures into the project.

Effective Date. The Guidelines, except for health risks to receptors, became effective upon adoption on June 2, 2010. The thresholds for health risks to receptors (including residences within 1,000 feet of a freeway) do not become effective until January 1, 2011. It is the District’s policy that the new thresholds apply only to projects where a Notice of Preparation (a notice that an EIR is being prepared) is issued, or environmental analysis is begun, on or after the effective date.

However, agencies may wish to consider using the Guidelines, even if not required, to provide additional support for their conclusions regarding air quality in environmental documents.

The District has provided a website with the Guidelines, health risk screening tables, and numerous other resources at:
<http://www.baaqmd.gov/Divisions/Planning-and-Research/CEQA-GUIDELINES/updated-CEQA-Guidelines.aspx>.

For more information, please contact Josh Mukhopadhyay, Rafael Yaquian, Barbara Kautz, or any other Goldfarb & Lipman attorney at (510) 836-6336.

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