

BURNS, MARLENE

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**From:** Ramirez, Gregg  
**Sent:** Tuesday, February 04, 2014 10:26 AM  
**To:** Burns, Marlene  
**Cc:** Wisneski, Brenda  
**Subject:** FW: Newport Beach Land Use Element Amendment Advisory Committee; Meeting on Tuesday, February 4 at 2:30 PM; "Reduce Greenhouse Gas Emissions"  
**Attachments:** 020414 Section 15064.4 Greenhouse Gas Emissions color scan.pdf  
  
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**From:** Paul Watkins [<mailto:paul@lawfriend.com>]  
**Sent:** Tuesday, February 04, 2014 9:48 AM  
**To:** Ramirez, Gregg  
**Cc:** Wisneski, Brenda; Brandt, Kim  
**Subject:** Newport Beach Land Use Element Amendment Advisory Committee; Meeting on Tuesday, February 4 at 2:30 PM; "Reduce Greenhouse Gas Emissions"

Hi Gregg:

A few of the Goals and Policies in the proposed amended Land Use Element require that the City "**reduce greenhouse gas emissions**". (Please see Policies LU 1.X [Environmental Health], LU 3.2 [Growth and Change], LU X.X3 [Sustainable Sites and Land Development], LU X.X6 [Orange County Sustainable Communities Strategy], etc.)

I sense that the Committee may be a bit frustrated by the State-based requirement that the City "reduce greenhouse gas emissions" but we don't seem to have a good roadmap as to how we accomplish the mandated reduction. I think the Committee is concerned that if our General Plan simply falls into lockstep with State-based requirements that are undefined or ill-defined, the City opens itself to challenges and lawsuits where a less-than-innocent plaintiff may claim that a project should be denied because it doesn't "reduce greenhouse gas emissions". As you know, these lawsuits cost our City's taxpayers and the project developers enormous legal fees and they may delay or disqualify meritorious projects.

So the question becomes: can we provide a roadmap in our General Plan amendments which complies with the State-based requirement that the City "reduce greenhouse gas emissions" while providing our decision makers with language to help them reach good decisions while discouraging frivolous and expensive litigation.

I believe Mr. Tucker has suggested that as projects are evaluated by our City policymakers, we apply a test to the reduction of greenhouse gas emissions "on a Citywide basis".

Woodie's helpful Memo of February 3 appears to discount the legality of the "Citywide basis" test.

However, Woodie's Memo does allude to a possible roadmap for determining if a project "reduces greenhouse gas emissions". The roadmap is found in CEQA Guidelines Section 15064.4(b) which became effective on March 18, 2010. A copy of that Section is attached.

Section 15064.4(b) appears to offer cities (i.e., "lead agencies") a 3-step test which I believe we might incorporate into our sustainability General Plan amendments in order to guide our decision makers when they determine whether a project before them "reduces greenhouse gas emissions".

Based on this Section, may I propose that we add clarity to the murky language mandating that we "reduce greenhouse gas emissions" by revising (for example) Policy LU 1.X (Environmental Health) to read as follows (the proposed revised language is in **bold** typing):

**"Promote sustainable land use and development practices that minimize the use of non-renewable resources and reduce greenhouse gas emissions by evaluating the following for a project within the City: (1) a reduction of emissions as compared to the existing environmental setting for the project and/or Citywide, (2) whether the project emissions exceed a threshold of significance that the City reasonably determines applies to the project, and (3) the extent to which the project complies with any regulations or requirements adopted by the City through a public review process which reduce or mitigate the project's incremental contribution of greenhouse gas emissions."**

No, this roadmap language is not perfect; however, the language provides badly needed guidance to our City officials in reaching the State-based required determination that a particular project "reduces greenhouse gas emissions."

On a final note, our City's decision makers should not overlook that fact that a proposed project that will emit significant levels of greenhouse gases may still be considered to be an "acceptable" project if the specific economic, legal, social, technological, or other benefits, including Citywide or Statewide environmental benefits, of a proposed project outweigh the unavoidable adverse environmental effects. (CEQA Guidelines Section 15093 [Statement of Overriding Considerations])

Thanks for considering my point of view.

Best regards,  
Paul

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Title 14. Natural Resources  
Division 6. Resources Agency  
Chapter 3. Guidelines for Implementation of the California Environmental Quality Act  
Article 5. Preliminary Review of Projects and Conduct of Initial Study

§15064.4. Determining the Significance of Impacts from Greenhouse Gas Emissions.

(a) The determination of the significance of greenhouse gas emissions calls for a careful judgment by the lead agency consistent with the provisions in section 15064. A lead agency should make a good-faith effort, based to the extent possible on scientific and factual data, to describe, calculate or estimate the amount of greenhouse gas emissions resulting from a project. A lead agency shall have discretion to determine, in the context of a particular project, whether to:

(1) Use a model or methodology to quantify greenhouse gas emissions resulting from a project, and which model or methodology to use. The lead agency has discretion to select the model or methodology it considers most appropriate provided it supports its decision with substantial evidence. The lead agency should explain the limitations of the particular model or methodology selected for use; and/or

(2) Rely on a qualitative analysis or performance based standards.

(b) A lead agency should consider the following factors, among others, when assessing the significance of impacts from greenhouse gas emissions on the environment:

(1) The extent to which the project may increase or reduce greenhouse gas emissions as compared to the existing environmental setting;

(2) Whether the project emissions exceed a threshold of significance that the lead agency determines applies to the project.

(3) The extent to which the project complies with regulations or requirements adopted to implement a statewide, regional, or local plan for the reduction or mitigation of greenhouse gas emissions. Such requirements must be adopted by the relevant public agency through a public review process and must reduce or mitigate the project's incremental contribution of greenhouse gas emissions. If there is substantial evidence that the possible effects of a particular project are still cumulatively considerable notwithstanding compliance with the adopted regulations or requirements, an EIR must be prepared for the project.

Note: Authority cited: Sections 21083, 21083.05, Public Resources Code. Reference: Sections 21001, 21002, 21003, 21065, 21068, 21080, 21082, 21082.1, 21082.2, 21083.05, 21100, Pub. Resources Code; *Eureka Citizens for Responsible Govt. v. City of Eureka* (2007) 147 Cal.App.4th 357; *Mejia v. City of Los Angeles* (2005) 130 Cal.App.4th 322; *Protect the Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal.App.4th 1099; *Communities for a*

Better Environment v. California Resources Agency (2002) 103 Cal.App.4th 98; Berkeley Keep  
Jets Over the Bay Com. v. Board of Port Comm. (2001) 91 Cal.App.4th 1344; and City of Irvine  
v. Irvine Citizens Against Overdevelopment (1994) 25 Cal.App.4th 868.