



Greenhouse Gas Emissions Analysis: Court Finds Expert State Agency Data Not Good Enough

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On September 28, 2018, the Fourth District Court of Appeal in *Golden Door Properties, LLC v. County of San Diego (Golden Door)* invalidated the County of San Diego's recommended efficiency metric for analyzing the significance of greenhouse gas emissions. The County's efficiency metric relied on statewide data developed by the California Air Resources Board. The Court of Appeal found that without additional analysis explaining why statewide data is relevant to projects proposed in the County, a local agency's use of the metric was improper for purposes of complying with the California Environmental Quality Act (CEQA). In the short term, this ruling will likely spur more local agencies to shoulder the heavy burden and risk of developing specially tailored greenhouse gas emissions significance thresholds.

The *Golden Door* decision arose out of the second phase of litigation challenging the County's Climate Action Plan. While separately rewriting the Climate Action Plan in accordance with the trial court's prior decision, the County published a guidance for assessing climate change impacts under CEQA. The guidance recommended an efficiency metric for assessing the significance of greenhouse gas emissions. Petitioners then filed a lawsuit challenging the guidance.

The Court of Appeal held that the guidance was not supported by substantial evidence because it relied on statewide data without explaining how the data applied to projects within the County and did not distinguish among project types. The Court also concluded that the guidance amounted to an unlawful generally applicable threshold of significance as it was not formally adopted through an ordinance, resolution, rule, or regulation developed through a public review process.

To a certain degree, the *Golden Door* Court applied existing law. Three years ago, in *Center for Biological Diversity v. Department of Fish and Wildlife* (S217763), the California Supreme Court invalidated the Newhall

Ranch Environmental Impact Report (EIR) because it assumed, without evidentiary support, that the magnitude of emissions reductions the California Air Resources Board determined was necessary economy-wide likewise applied to the Newhall Ranch project. The *Golden Door* decision takes this logic a step further, requiring agencies proposing generally applicable greenhouse gas emissions thresholds of significance to substantiate the use of any statewide information in terms of its relevance by project type and project location.