

# *CEQA Handbook for Bioenergy and Wood Products Businesses*

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**CLERE**

California Law Empowering Renewable Energy

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# *Acknowledgments*

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# *SUMMARY OF TOPICS*

Part One: CEQA and Wood Biomass Use in Bioenergy or Wood Products

Part Two: CEQA: Environmental Review Basics

Part Three: In the Weeds with CEQA and Wood Products/Bioenergy

Part Four: When Other Laws Intersect with CEQA: NEPA and Tribal Law

Part Five: Potential New CEQA Exemptions for Wood Products/Bioenergy

# Introduction to CEQA and Woody Biomass Use

*CEQA and Woody Biomass Utilization in California*

- Definition of CEQA and its Importance
- Significance for Bioenergy and Wood Products Businesses
- Overview of Wood Biomass Types and Uses
- Challenging CEQA Hurdles for Forest Biomass Wood Utilization
- Creating the Foundation for CEQA Success
- Seek Public Funding for CEQA Support

# *INTRODUCTION TO CEQA AND ENVIRONMENTAL REVIEW*

*THE KEY LAW FOR ENVIRONMENTAL REVIEW*

- Definition and purpose of CEQA
- Determining CEQA Applicability
- Understanding CEQA Exemptions both Categorical and Statutory
- Initial Study and Negative Declarations
- Environmental Impact Report Process (EIR)

# *Important Case Law Relating to Exemptions*

## **Class 32 Exemption (Infill Development)**

### *United Neighborhoods for Los Angeles v. City of Los Angeles (2023)*

- Rejection of Class 32 exemption for hotel project
- Importance of consistency with general plan policies
- Consideration of affordable housing preservation

### *Pacific Palisades Residents Assn., Inc. v. City of Los Angeles (2023)*

- Upholding of Class 32 exemption for eldercare facility
- Interpretation of "urban" areas for infill projects
- Importance of general plan policy compliance

## **Class 1 Exemption (Existing Facilities)**

### *Arcadians for Environmental Preservation v. City of Arcadia (2023)*

- Upholding of Class 1 exemption for single-family home expansion
- Rejection of unusual circumstances and cumulative impacts exceptions
- Importance of concrete evidence for cumulative impacts

### *Anderson v. County of Santa Barbara (2023)*

- Application of Class 1 exemption to enforce public right of way
- Rejection of CEQA as a defense against law enforcement
- Distinction between enforcement and larger project planning

## **Other Categorical Exemptions**

### *Coalition for Historical Integrity v. City of San Buenaventura (2023)*

- Upholding of "common sense" exemption for statue relocation
- Interpretation of "historical resource" under CEQA

### *Historic Architecture Alliance v. City of Laguna Beach (2023)*

- Application of Class 31 exemption for historical resource rehabilitation
- Standard of review for consistency with Secretary of Interior's Standards
- Rejection of "fair argument" standard for categorical exemptions

# *Novel Uses of CEQA Categorical Exemptions*

## CEQA Exemption 15329 (Cogeneration Projects at Existing Facilities):

- Novel applications include distributed biomass Combined Heat and Power microgrid systems and brownfield redevelopment projects with cogeneration equipment, provided they meet emission, noise, and environmental criteria
- Careful analysis of "unusual circumstances" is required, especially for brownfield sites, to ensure no significant environmental effects that would necessitate a more thorough review

## CEQA Exemption 15330 (Minor Actions for Hazardous Waste Cleanup):

- Innovative use for small-scale biomass utilization projects in regions where contaminated dry biomass accumulation increases wildfire risk or contributes to environmental hazards like GHG emissions or soil erosion
- Applicable to small facilities converting liability biomass into biochar or energy as part of ecological restoration efforts, adhering to strict environmental standards

## CEQA Exemption 15332 (In-Fill Development Projects):

- Potential application to biomass projects in cities of any size, including small cities in relatively rural regions, on sites up to five acres that meet all exemption criteria
- Requires generating substantial evidence on each required element of the exemption, including consistency with general plan and zoning, urban surroundings, and absence of significant **environmental effects**

# IN THE WEEDS WITH CEQA : WOOD PRODUCTS AND BIOENERGY

## CRITICAL ENVIRONMENTAL ISSUES FOR BIOMASS PROJECTS

- Top 5 Environmental Considerations for Biomass Projects
  1. Air Quality and Greenhouse Gas Emissions
  2. Water Resources and Quality
  3. Biological Resources and Habitat
  4. Traffic and Transportation
  5. Noise and Aesthetics
- Special Issue Highlight One : Emerging Technologies and Criteria Pollutant Emissions
- Special Issue Highlight Two: Greenhouse Gas Emissions (Climate) Impact Analysis
- Special Issue Highlight Three: Feedstock Sources and reliance on Previously Produced Environmental Review ( CaVTP )



# Special Area Highlight One: Emerging Technologies and Criteria Pollutant Emissions

## Emerging Biomass Conversion Technologies

- Pyrolysis and gasification offer alternatives to traditional combustion, producing syngas, hydrogen, renewable natural gas, bio-oil, and biochar
- Syngas can be directly combusted or further processed for use in engines, turbines, fuel cells, or converted to hydrogen and renewable natural gas
- Bio-oil production through pyrolysis can be refined into diesel, kerosene, and aviation fuels
- Biochar, a byproduct of pyrolysis, serves as a soil amendment and carbon sequestration medium
- Ongoing development of fuel cells and linear generators for use with refined biomass-derived fuels

## Criteria Pollutant Emissions

- Pyrolysis and gasification generally produce fewer criteria pollutants per ton of biomass compared to traditional wood combustion facilities
- Advanced air pollution control systems, such as ceramic catalytic filtration with ammonia injection, can reduce NO<sub>x</sub> by up to 90% and PM by over 95%
- Emerging technologies like fuel cells and linear generators have potential for near-zero emissions when using purified biomass-derived fuels
- Biochar production through controlled pyrolysis offers reduced emissions compared to open pile burning of excess woody biomass
- Integration of Combined Capture and Storage (CCS) for CO<sub>2</sub> is being developed to further reduce greenhouse gas emissions from biomass facilities

# Special Area Highlight Two: Greenhouse Gas Emissions (Climate) Impact Analysis

## GHG Impact Assessment

- GHGs have long atmospheric lifetimes and global effects on climate
- CEQA analysis focuses on significant emissions generation and conflicts with reduction plans

## Emissions Quantification

- Identify and quantify all operational GHG sources (point, area, and mobile)
- Compare emissions to established thresholds (e.g., 1,100 MT CO<sub>2</sub>e/year, 10,000 MT CO<sub>2</sub>e/year)

## Compliance with Regulations

- Demonstrate consistency with local permitting requirements and land use plans
- Show compliance with state regulations (e.g., CARB's Scoping Plan, Cap-and-Trade program)

## Mitigation Strategies

- Implement feasible mitigation measures if thresholds are exceeded
- Consider project characteristics and location in assessment

## Significance Determination

- Compare mitigated emissions to applicable thresholds
- Assess potential conflicts with GHG reduction plans, policies, or regulations

# Important Case Law related to Climate Impacts

## *Center for Biological Diversity v. California Department of Fish and Wildlife (2015)*

- Criticized "business as usual" (BAU) reduction metric
- Emphasized need for substantial evidence linking project-specific reductions to state goals
- Suggested alternative assessment methods: local GHG reduction plans, air district thresholds, state regulatory compliance

## *Golden Door I (2018) and Golden Door II (2020)*

- Invalidated use of statewide data for local GHG thresholds
- Emphasized need for county-specific metrics
- Criticized reliance on unverified or foreign carbon offsets

## *Cleveland National Forest Foundation v. San Diego Association of Governments (2017)*

- Addressed alignment with 2050 GHG reduction target (Executive Order S-03-05)
- Ruled target not legally binding, but scientifically valid
- Stressed importance of adapting to evolving climate science and policies

## *Tsakopoulos Investments v. County of Sacramento (2023)*

- Upheld sector-specific GHG thresholds derived from regional data
- Highlighted importance of tailoring thresholds to local conditions

# Special Issue Highlight Three: Feedstock Sources and Reliance on Previously Produced Environmental Review: CALVTP

- CALVTP streamlines environmental review for vegetation treatment projects, covering 20+ million acres of fire-prone land in California
- The Program EIR for CALVTP provides a framework for assessing environmental impacts and mitigation measures for individual projects
- As of April 2024, 91 CALVTP projects were approved and 47 were in progress, demonstrating its effectiveness in expediting vegetation treatments
- CALVTP can benefit bioenergy and wood product businesses by providing standard practices, mitigation measures, and quicker access to forest resources
- For biomass projects, using CALVTP documentation can help address feedstock sourcing impacts and streamline the permitting process

## *WHEN OTHER LAWS INTERACT WITH CEQA: NEPA AND TRIBAL LAW*

### *Navigating the Legal Landscape of Multi Jurisdictional Law*

- Joint CEQA and NEPA Documents is governed by Article 14, Sec 15220 15229 of the CEQA Guidelines
- When Joint Documents apply :
  - Biomass Projects Utilizing Federal Grants
  - Projects on federal lands with state funding
- Tribal Lands and CEQA, Tribal Projects that Require NEPA, and CEQA that Protects Tribal Cultural Resources Near Tribal Lands
- New Case that could have significant impact on NEPA

# Important Case That Impacts NEPA Work

## Marin Audubon Society v. Federal Aviation Administration

The D.C. Circuit Court of Appeals vacated a plan by the FAA and National Park Service regulating tourist flights over national parks near San Francisco. The court held that the agencies acted arbitrarily by using existing flights under interim operating authority as the baseline for their environmental analysis, effectively enshrining the status quo without evaluating the environmental impacts. Notably, in a 2-1 decision, the majority also ruled that the White House Council on Environmental Quality (CEQ) lacks authority to issue binding regulations for implementing the National Environmental Policy Act (NEPA), potentially upending nearly 50 years of administrative practice. This unexpected ruling has significant implications for federal environmental reviews and has prompted the Biden Administration to seek an en banc review.

# *Tribal Lands and CEQA*

## **Tribal Lands and CEQA : When does it apply?**

- Tribal sovereignty exempts federally recognized tribes from CEQA on their lands, with exceptions for certain non-tribal projects.
- MOUs often govern cooperation between tribes and non-tribal entities for environmental and cultural resource management.
- Joint ventures on tribal lands (e.g., energy projects, casinos) require compliance with tribal laws and specific agreements.

## **Tribal Projects that Require NEPA**

- NEPA compliance required for most activities on American Indian and Alaska Native trust or restricted lands
- Projects needing NEPA review include infrastructure development, permit applications, realty transactions, and environmental restoration

## **Protecting Tribal Cultural Resources Near Tribal Lands**

- CEQA requires tribal consultation for projects on non-tribal lands to protect tribal cultural resources, with specific timelines and procedures
- Consultation aims to identify and mitigate impacts on significant tribal cultural resources, with preference for avoidance and preservation

# *POTENTIAL NEW CEQA EXEMPTIONS FOR BIOENERGY OR WOOD PRODUCTS*

## *PART FIVE*

- CEQA Practice needs to evolve to address forest wild fire risks
- Comparison of "business as usual" vs. active forest management
- Role of bioenergy and wood products businesses in forest management
- Need for CEQA to reflect current realities of forest health and wild fire risks



# *JOINT INSTITUTE'S RECOMMENDATIONS (NOVEMBER 2020)*

## Proposed amendment to CEQA Guidelines Section 15126.4(c)(3)

“Off-site measures, including offsets, which are not otherwise required to mitigate a project’s emissions, which demonstrate quantifiable benefit, including but not limited to those that may initially be carbon positive, but over time provide carbon reduction benefit. Any offsets used should be consistent with the goals of AB 32, but do not necessarily need to be the same as compliance grade credits under the Cap-and-Trade program.”

# *ANALYSIS OF JOINT INSTITUTE'S RECOMMENDATIONS*

- OPR's role in Guidelines revisions
- Limitations on creating new law through Guidelines;  
Consistency with existing statutes and case law
- Legislative Action
- Potential for OPR technical advisory as an alternative

# *GOLDEN DOOR CASE AND RECENT DEVELOPMENTS*

- Interpretation of Golden Door decisions
- Tsakopoulos Investments, LLC v. County of Sacramento (2023)
- CARB statement in 2022 Scoping Plan: “do not use compliance credits in voluntary markets”
- Potential for clarification on local development project mitigation

# *OTHER POTENTIAL AMENDMENTS OR ADDITIONS*

- Brown fields development; stream lining
- Addressing baseline conditions for brownfield redevelopment
- Energy efficiency and CEQA Checklist (Appendix F)
- Potential project modifications to support CEQA compliance
- CARB future use of offsite mitigation credits within Cap and Trade program

# *WOOD UTILIZATION COMMITTEE CEQA AMENDMENT PROPOSAL 2024*

## **Streamline CEQA for Certain Wood Utilization Facilities**

*The Administration will amend the CEQA guidelines to create a categorical exemption for projects that utilize forest biomass waste located on properties zoned as industrial and outside zones of extreme air quality nonattainment.*



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# QUESTIONS?

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