

Using California's EIA Law to Compel Mitigation of GHG Emissions



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Outline

Advocates for the Environment

California Environmental Quality Act

AEnv Warehouse Project

Settlement

Mitigation of Warehouse GHG Impacts

Project Goals

Voluntary Carbon Market



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*A non-profit law firm
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Advocates for the Environment

Small, non-profit environmental Los Angeles law firm founded in 2011

- Focus on climate-change litigation
- We sue on our own behalf and represent clients, typically citizen's groups and other non-profits

Lead counsel on CEQA lawsuits against some of California's largest housing projects

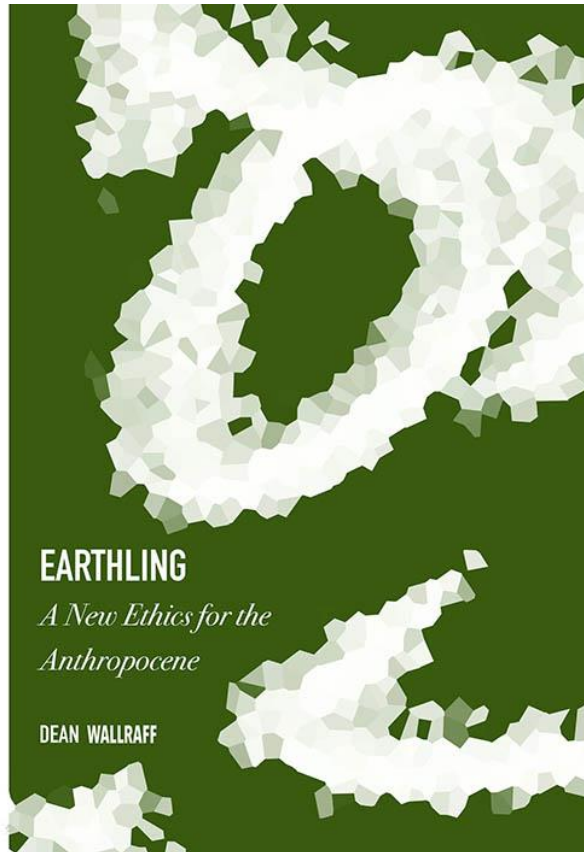
- Newhall Ranch
- Centennial
- Those two cases resulted in net-zero settlements



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Earthling



Focused on the ethical issues implicated by climate change: our ethical responsibilities to

- Non-human animals
- Future generations

Also covers climate change in general:

- Science, politics, economics, law, policy

Available from Amazon or from the publisher: ethicspress.com in the UK

Also subscribe to my substack: climate-ethics.net



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CEQA Basics

California Environmental Quality Act

California EIA statute that requires Environmental Impact Report (EIR) for projects that may have significant environmental impacts.

EIR must determine whether the Project's GHG impacts are significant.

CEQA is Strong

- CEQA requires all feasible mitigation for significant impacts.
- CEQA has broad standing requirements, allowing NGOs to enforce via lawsuits.
- CEQA applies to most projects undertaken by state or local agencies.
- California law provides attorney's fees to prevailing petitioners but not to prevailing respondents.



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Advocates' Warehouse Project

GHG emissions are analyzed in most EIRs and MNDs

Our process

- Choose applicable projects – look for large warehouses
- Analyze EIR or MND GHG section – significant or not
 - If not significant, can we attack the significance finding?
 - If significant, is the agency requiring full mitigation of GHG impacts?
- Send in comment letter to exhaust administrative remedies.
- If project is approved by Planning Commission, administrative appeal to City Council or Board of Supervisors.
- File CEQA lawsuit after project is approved.
- Most projects settle somewhere along the way.
 - But there are some cases we choose to litigate in order to obtain a ruling from the Court of Appeal on an important issue.



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CEQA Warehouse Settlement Terms

Settlement goal is for the project to be net-zero, but there are obstacles to this.

- Often the only feasible mitigation for the large GHG impacts of these warehouse projects is the purchase of carbon offsets in the voluntary carbon market.
- We will trade offsets for increased solar energy or electric vehicle charging stations at a ratio of 1.5:1.
- There is a practical cap of \$600,000 for our settlement demands: if we demand more than this, the developer would prefer litigation to settlement.

The agency (city or county) is usually not a party to the settlement.



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Mitigation Measures for Warehouse GHGs

Local on-the-ground projects like retrofitting homes for energy efficiency

- The best EJ mitigation
- But who would do the work, and what would it cost?

Semi-local like adding solar panels or EV charging stations in the vicinity of the project

- Some local benefits, but less effective as GHG mitigation

World-wide voluntary carbon market

- Probably no local benefits
- Some projects aren't effective
- But carbon offsets are fungible and available at a wide variety of price points.



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Project Goals

Tactical goal for our settlement and litigation:

- Reduce the Project's GHG emissions as much as possible

Strategic goals for our litigation:

- Pushing developers toward net-zero projects, where they don't need to worry that their CEQA GHG analysis will be set aside by the courts;
- Pushing local-agency planners toward
 - requiring more robust and correct GHG analysis in CEQA documents
 - requiring more mitigation of GHG impacts.

We're thinking about lobbying for a net-zero significance standard in a favorable city or county.

- We've just started to see carbon offsets as mitigation measures in EIRs.



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Voluntary Carbon Market 1

Our warehouse settlements rely mostly on mitigating the Warehouses' GHG impacts through the purchase of offsets on the voluntary carbon market.

Offsets are purchased from a project that is certified on a registry, such as the UN's Clean Development Mechanism.

- A one-ton offset guarantees that one metric tonne of CO₂ equivalent will be removed from the atmosphere, or the emission of one tonne of GHGs will be avoided.
- Additionality is an important requirement: that the removal or avoidance would not occur in the absence of the offset

We have obtained over \$30 million in offset purchases through our settlements.

- The VCM has contributed about \$10 billion to mitigating climate change.



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Voluntary Carbon Market 2

Example projects

- Cookstoves to replace wood burning in Africa
- Reforestation in South America

Objections to VCM:

- “License to pollute”
- No local benefits
- Projects that have not performed well

But

- The money that has been raised is globally significant.
- The registries are being more careful about certifying projects.
- Paris Agreement Article 6 is helping standardize carbon markets.
- Markets are more efficient in allocating resources than command and control regulations.



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Warehouses Increase Pollution

“Air pollution impacts from warehousing in the United States uncovered with satellite data.” Nature Communications 15, Article number 6006 (2024)

- <https://www.nature.com/articles/s41467-024-50000-0>
- “we show that the nearly 150,000 warehouses in the U.S. worsen local traffic-related air pollution with an average near-warehouse NO₂ enhancement of nearly 20% and are disproportionately located in marginalized and minoritized communities.”

“Warehouses, Pollution and Social Disparities,” a study by University of Redlands and People’s Collective for Environmental Justice.

- https://earthjustice.org/wp-content/uploads/warehouse_research_report_4.15.2021.pdf
- Contains many maps correlating pollution with warehouse density in Southern California.

“The average percentile for traffic across census tracts with warehouses is 67% compared to the state average of 50%.”



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Let's continue the conversation!

Message me your questions or comments in the IAIA26 app.

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