



**POLICY AMENDMENT ON  
REVIEW OF LAND USE PROJECTS UNDER  
CEQA**

**PCAPCD Board Meeting  
August 12<sup>th</sup>, 2021**



# OVERVIEW

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- Background
  - ✓ “Review of Land Use Projects under CEQA” existing Policy
- Rationale
  - ✓ Recent Court Ruling of Golden Door Properties, LLC, v. County of San Diego
- Proposed Amendment
  - ✓ Recommended changes on GHG Offsite Mitigation Measure



# BACKGROUND

## “REVIEW OF LAND USE PROJECTS UNDER CEQA” EXISTING POLICY





# BOARD ACTIONS ON CEQA REVIEW POLICY

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- October 13, 2016 – “Review of Land Use Projects under CEQA” Policy (CEQA Review Policy) approved
- October 12, 2017 - CEQA Cost-Effectiveness for Land Use Mitigation and CEQA Review Policy Amendment approved



# CONTENT OF EXISTING CEQA REVIEW POLICY

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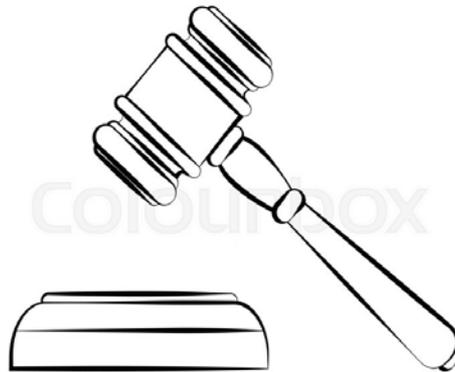
- Recommendation of District CEQA thresholds of significance for lead agencies
  - ✓ criteria pollutants and GHG emissions
- Review principles used by District staff to review and comment on environmental documents
  - ✓ offsite mitigation measures for criteria pollutants and GHG
- Continued update on the District's CEQA Handbook



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# **RATIONALE**

## **RECENT COURT RULING ON GOLDEN DOOR PROPERTIES CASE**





# GOLDEN DOOR PROPERTIES, LLC. V. COUNTY OF SAN DIEGO

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- In June of 2020 the Fourth Appellate District of California decided a significant case impacting the future of the use of offset credit mechanisms to mitigate GHG emissions from land use projects.
- The case involved the County of San Diego's Climate Action Plan, which was required to be developed pursuant to the County's 2011 General Plan update.



## GOLDEN DOOR PROPERTIES (CONT.)

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- The County's CAP Supplemental Environmental Impact Report (SEIR) included a mitigation measure, M-GHG-1,
  - ✓ applied to projects involving an amendment to the General Plan
  - ✓ allowed to use offsets to mitigate GHG emissions
- The Court held that M-GHG-1 does not comply with CEQA because
  - ✓ did not satisfy its self-imposed requirement that offsets meet the same standards as CARB offset protocols,
  - ✓ did not require offsets to be additional, and
  - ✓ afforded too much discretion to county staff in determining the feasibility and locations from which applicants could provide offsets.



# M-GHG-1 APPLICABILITY

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- The Court found that M-GHG-1 was:
  - ✓ not approved through a rulemaking,
  - ✓ failed to require that protocols used under its program were real, genuine, verifiable, enforceable and additional, and
  - ✓ failed to include other significant restrictions (such as geographical limits or setting total reductions that could be met with offsite mitigation).
- The Court uses aspects of the CARB Cap and Trade Offset program as a basis for finding that the mitigation measure was unenforceable and illegally deferred mitigation under a slew of cases.



## M-GHG-1 APPLICABILITY (CONT.)

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- The Court never directly states that CEQA itself requires CARB credits to be used, rather the County used this comparison in its justification.
- While many who read this case may take away that the only true way to ensure CEQA compliance would be to purchase Cap and Trade credits, the Decision falls short from explicitly requiring such action.



# ADDITIONALITY REQUIREMENTS

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- The Court points out that additionality is part of CARB Cap and Trade Offset Program.
- Court cites CEQA Section 15126.4 (c)(3), which states:
  - (c) Mitigation Measures Related to Greenhouse Gas Emissions. Consistent with section 15126.4(a), lead agencies shall consider feasible means, supported by substantial evidence and subject to monitoring or reporting, of mitigating the significant effects of greenhouse gas emissions. Measures to mitigate the significant effects of greenhouse gas emissions may include, among others:
    - (3) Off-site measures, including offsets that are not otherwise required, to mitigate a project's emissions
- Court does not argue that CEQA itself requires additionality through this provision.
- Court states that County could have met additionality requirements if it had required use of its Appendix that included protocols, rather than making use of the list optional.



# DEFERRAL

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- M-GHG-1 states:
  - ✓ the source of the credits come from a “reputable” registry and that the issuance of credits be consistent with the CARB Cap and Trade Offset program,
  - ✓ the credits must derive from a project that is as close as possible to the project with financial feasibility, and
  - ✓ the County Director would consider and approve credits.
- Court found these requirements were too vague and subjective. Court strongly emphasizes that lead agencies should describe how offset credits must be developed with, and indeed the court repeats the term “objective standards” 145 times within the case.
- recognition that there is nothing inherently wrong with delegating determinations under CEQA



## CONCLUSION

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- It is not necessary that all land use projects now would need carbon offset credits under the CARB Cap and Trade Offset program.
- The Court reiterated many times the importance of the use of objective criteria for future credit review process.
  - ✓ Developing straight forward protocols and performance objectives could be done without going to the level of stringency demanded by CARB for its Cap and Trade Offset Program.
- Note that under CARB regulations credits developed under the Cap and Trade Offset Program can be developed by a broad array of entities, but they can only be sold to entities in the capped sector or Voluntary Associated Entities.



# **PROPOSED AMENDMENT**

## **RECOMMENDED CHANGES ON GHG OFFSITE MITIGATION**





# OBJECTIVES

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- Update the recommendation on the review principle for GHG offsite mitigation based on takeaway from Golden Door case
- Assist lead agencies to implement a GHG offsite mitigation measure when it is considered
- Focus on updating review principles for GHG Offsite Mitigation only



# GHG

## OFFSITE MITIGATION CHANGES

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- How to implement an offsite mitigation measure for GHG impacts:
  - ✓ develop a general program for offsite mitigation options review and analysis
  - ✓ establish criteria for offsite mitigation implementation
  - ✓ provide an independent review process to ensure GHG reductions
- Options for developers to implement GHG offsite mitigation:
  - ✓ conduct offsite projects within Placer County
  - ✓ purchase local or California-only carbon credits through experienced vendors or recognized carbon credit registries



# PUBLIC OUTREACH

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- Preliminary draft amendment review by local jurisdictions from 5/17 to 6/4/2021
- Public review from 6/17 to 7/19/2021
  - ✓ Public workshop on 6/28/2021
  - ✓ 3 comments received
- Board review and proposed approval on 8/12/2021



## RECOMMENDATION

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- Staff recommends approval of the amendment on “Review of Land Use Projects under CEQA” Policy.
- The amendments will guide staff to assist local jurisdictions to develop thorough mitigation programs to mitigate GHG emissions from land use projects.