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Greenhouse Gas Mitigation Measure Allowing Purchase of Offset Credits Fails to Comply With CEQA

While a number of court decisions have considered how CEQA lead agencies should assess the significance of a project's greenhouse gas emissions, few have examined mitigation measures for those impacts. In *Golden Door Properties, LLC v. County of San Diego,* 50 Cal. App. 5th 467 (2020), the Fourth District Court of Appeal issued the first published decision on the use of purchased offset credits to mitigate GHG emissions. The court concluded the mitigation measure was inadequate because it did not ensure that offset credits would result in emissions reductions that would be genuine, quantifiable, additional and verifiable. It also faulted the measure because it gave the County planning director authority to approve a project's use of particular offset credits without providing clear, objective standards to guide those determinations.

Background. The *Golden Door* case arose from San Diego County's approval of a climate action plan along with guidelines for determining the significance of greenhouse gas impacts. The key issue in the case was whether a GHG mitigation measure in the SEIR for the climate action plan complied with CEQA. That measure, GHG-1, was designed to mitigate the GHG impacts of pending projects requiring general plan amendments which had not been included in the climate action plan's emissions inventory. Measure GHG-1 required that those projects mitigate GHG impacts through onsite design features and, if those onsite reductions were not sufficient to provide full mitigation, they could use offsite mitigation, including purchasing GHG offset credits. The measure allowed identification of the specific offset credits to be used for a project to be deferred until after the project was approved and gave the County planning director discretion to determine the acceptability of the proposed offset credit program. **Mitigation measure GHG-1 found legally inadequate**. The CEQA Guidelines allow the details of a mitigation measure to be fleshed out after a project is approved when it is impractical or infeasible to specify the details during the environmental review process if the agency adopts specific performance standards for mitigation and also identifies the types of actions that can feasibly achieve that standard. The question for the court was whether the standards in GHG-1 were sufficient to ensure that offset credits approved by the County would be effective. The County asserted that GHG-1 provides for effective mitigation because it mirrors California's AB 32 compliant cap and trade program, which is designed to ensure that offset credits are real, additional, quantifiable, permanent, verifiable, and enforceable. The court found, however, that GHG-1 was significantly different from the AB 32 compliant cap and trade program in several critical respects. First, GHG-1 required that offset credits be purchased from California Air Resources Board-approved offset project registries, but it did not require that offset projects use CARB-approved protocols which ensure offset credits accurately and reliably represent actual emissions reductions. The court also concluded that offsets generated outside California, which might qualify as mitigation under GHG-1, might not be genuine, verifiable and enforceable. Equally important, the court found that GHG-1 did not incorporate the requirement that offsets used to satisfy cap and trade requirements be *additional* to any greenhouse gas emission reduction that would otherwise be required by law. Finally, the court ruled that GHG-1 was deficient because it did not specify an objective performance standard, but rather left it to the planning director's unhampered discretion to determine whether particular offsets would be sufficient to achieve the measure's mitigation goals -- no net increase in emissions in comparison with projections for the general plan update, or net zero GHG emissions. **The court's discussion of adequate GHG mitigation measures.** It is notable that, while not central to its decision, the court indicated support for one of the Climate Action Plan's measures under which the County may make "direct investments in local projects to offset carbon emissions." A direct investment project is created when the County takes a specific action that reduces, avoids or sequesters GHG emissions, such as weatherization and tree planting projects. Direct investment projects must (1) comply with protocols approved by the California Air Resources Board, the California Air Pollution Control Officers Association or the San Diego County Air Pollution Control District which received public review prior to adoption; and (2) yield GHG reductions that are additional to reductions that would not otherwise occur. In addition, an independent, qualified third-party must verify the GHG reduction achieved. Similarly, the court appeared to endorse the approach taken by the Newhall Ranch Resource Management and Development Plan, approved by the Department of Fish & Wildlife. That plan listed specific GHG reduction measures that must be implemented within the project itself; identified prototypical offsite direct reduction and sequestration activities the developer would implement; and required that any reduction or elimination of emissions be additional. While the Newhall Plan also allowed some use of purchased offset credits, the plan required at least 68 percent of the reductions be achieved in California and at least 80 percent be achieved in the United States. The Plan further required that if the lead agency determined offsets to be noncompliant with performance standards, permitting for the project would be suspended until the standards are met. The contrast between the measure that the court rejected and the measures that the court cited with approval may provide useful guidance to practitioners and project proponents exploring ways to reduce GHG emissions in a manner that will pass legal muster. Read a detailed legal analysis of the court's discussion of issues relating to greenhouse gas emissions.