WHEN IS IT DEFENSIBLE TO MITIGATE CEQA GHG EMISSIONS IMPACTS WITH GHG CREDITS?

AGENDA

- Craig Ebert – President of the Climate Action Reserve
- Dave Vintze – Planning Manager at BAAQMD
- Marc Campopiano, Esq. – Partner at Latham and Watkins

CLIMATE FORWARD

"When is it Defensible to Mitigate CEQA GHG Emissions Impacts with GHG Credits?"

Craig Ebert, President

AEP Annual Conference I March 26, 2019

ALWAYS!!!!

Climate Action Reserve: a nonprofit dedicated to market based solutions to climate change

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GHG Accounting Experts

- Pioneered standardized GHG accounting, leading to robust, reliable, and transparent compliance and voluntary carbon markets
- 78% of North American offset credits used by companies and individual in 2017 in the voluntary market* are issued by the Reserve
- Design innovative GHG accounting frameworks that are user-friendly, and financially feasible

Beyond Carbon Offsets

- **Climate Forward**
- Climate Impact Score
- GHG policy consulting
  - Mexico
  - Ontario
  - Quebec
  - World Bank, USDA, USAID
  - California agencies, and more

CLIMATE ACTION RESERVE

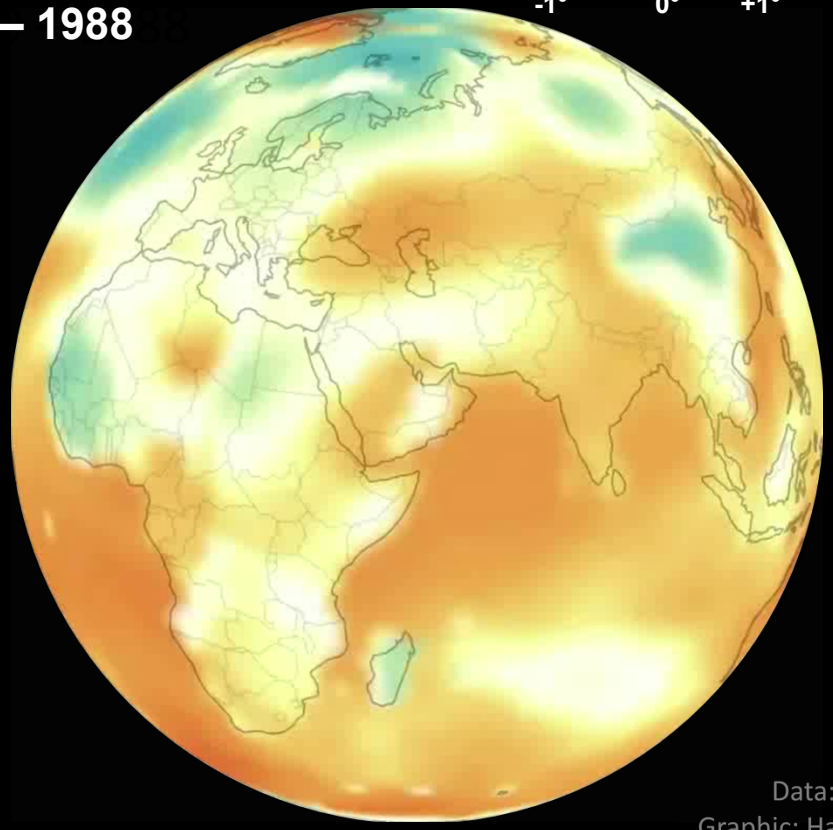
**Ecosystem Marketplace 2018 data*

Global Temperature Anomaly

1901 – 2000 baseline (°F)

-1° 0° +1° +2.5° +5°

1959 – 1988



1988 – 2017

Data: NASA/GISS
Graphic: Harry Stevens/Axios

Strategies for reducing GHGs

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- Maximize reductions onsite
- Offsite options include:
  - Offset credits
  - LCFS credits
  - Ex ante credits—Climate Forward

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A new market option to accelerate climate action

Basic rationale for Climate Forward

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You created the GHG emissions, you should be responsible for mitigating those GHG emissions!

Accelerating climate mitigation solutions: **Climate Forward**

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Enables companies to invest now in emissions reduction projects with high environmental integrity to mitigate future emissions

- **Credits recognized today to address future impacts**

Expands the scope and scale of feasible climate action across the economy

- **Enormous potential for diverse, creative climate solutions**

Issues Forecasted Mitigation Units (FMU) to projects that follow Reserve-approved methodologies

- **1 FMU = one metric ton of anticipated CO_2e reduction, to counter anticipated GHG emissions**

Tracks FMUs and project activities in a publicly accessible database

- **A registry of forward-looking GHG reductions to balance against forward-looking GHG impacts**

Climate Forward audience

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Companies and organizations mitigating future emissions	Examples of future mitigation needs
• Companies seeking CEQA compliance	• New manufacturing facility
• Any new investment creating GHGs	• New data center
• Not appropriate for addressing current emissions in a compliance program ○ e.g., cap-and-trade	• New retail complex
	• New residential/commercial developments
• Not appropriate for any company or organization mitigating historical emissions ○ Cannot mitigate past emissions with future actions	• New transportation projects

How does it work?

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- Methodologies are proposed by a third party
  - Any credible mitigation concept is acceptable
  - CAR evaluates to ensure conservative recognition of credits and approves methodology
- Project proponent (company) invests in project consistent with approved methodology
- Once project is up and running, CAR requires a confirmation body to confirm whether the project is performing according to methodology
- Initial credits (Forecasted Mitigation Units, or FMUs) are issued, typically within first year or so of operation

How does it work (continued)?

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- Project proponent does not have to continue to monitor
  - CEQA often does not require it
- Ongoing monitoring is encouraged, however, to earn back additional FMUs
  - Additional credits may be available given initial conservative issuance of FMUs
  - After initial issuance, Monitoring and Verification (M&V) approach is similar to offsets, i.e., ex post recognition
- Crediting period is methodology specific
- Public registry tracks transaction of credits in a transparent, accessible system

Voluntary transition to ex-post credit issuance

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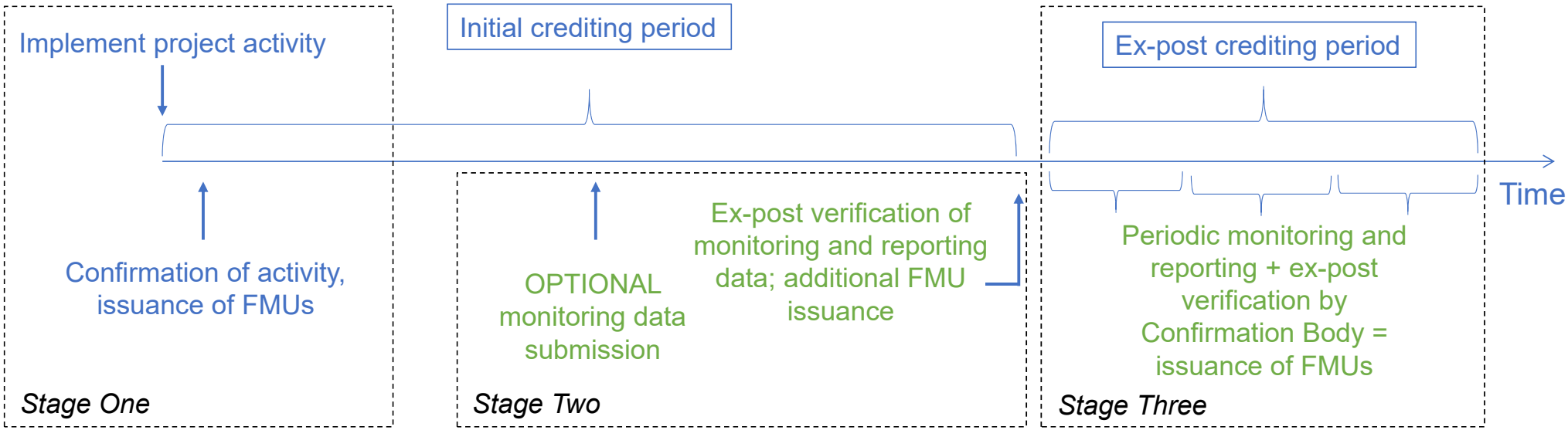
- After completion of ex-ante crediting period, **projects may opt to receive ex-post FMUs** upon project renewal and ongoing monitoring, reporting, and verification
- Projects that opt-in to the voluntary incentive program are eligible for this option



Key objectives of Climate Forward

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- Help unlock local investment opportunities
- Encourage projects with co-benefits, including health benefits
- Generate additional carbon credits not readily accessible through existing programs
- Seek methodologies with broad geographic applicability

ACCELERATE CLIMATE ACTION NOW—WE ARE OUT OF TIME!

How to take Climate Forward action

CLIMATE FORWARD

1) **DECIDE** to mitigate your future emissions
2) **VIEW** program documents available online at http://www.climateactionreserve.org/climate-forward/
3) **DEVELOP & SUBMIT** innovative methodologies across multiple sectors
4) **INVEST** in projects now. Contact the Reserve to explore and be connected with project opportunities
5) **SIGN UP** for our monthly newsletter to stay up to date on program news by emailing info@climateforward.org

Thank you!

CLIMATE FORWARD

Contact us any time at:
info@climateforward.org

2019 AEP Conference

Waves of Change and Fields of Opportunity

BAY AREA AIR QUALITY MANAGEMENT DISTRICT

When is it Defensible to Mitigate CEQA GHG Impacts with GHG Credits

March 26, 2019

Dave Vintze
Air Quality Planning Manager
Bay Area Air Quality Management District

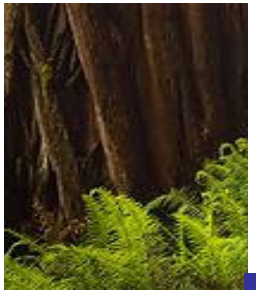
§ 21000. LEGISLATIVE INTENT OF CEQA

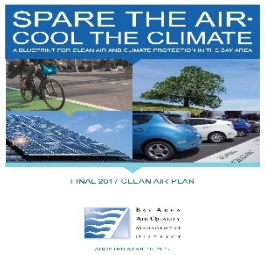
The Legislature finds and declares as follows:
(a) The maintenance of a quality environment for the people of this state now and in the future is a matter of statewide concern.
(b) It is necessary to provide a high-quality environment that at all times is healthful and pleasing to the senses and intellect of man.
(c) There is a need to understand the relationship between the maintenance of high-quality ecological systems and the general welfare of the people of the state, including their enjoyment of the natural resources of the state.
(d) The capacity of the environment is limited, and it is the intent of the Legislature that the government of the state take immediate steps to identify any critical thresholds for the health and safety of the people of the state and take all coordinated actions necessary to prevent such thresholds being reached……..

And -

A fundamental mandate of CEQA is that "public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental effects of the project" (PRC Sections 21002, 21081).

As statutorily defined, "'Feasible' means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors." (PRC Section 21061.1)





2050 Vision

Where we live and work: Buildings

- By 2050 the buildings in which we live, work, learn, shop and socialize will be energy efficient; they will be heated, cooled and powered by renewable energy

How and where we travel: Transportation

- By 2050 the transportation sector will be transformed. We will travel by a combination of electric vehicles, both shared and privately-owned; autonomous, electric-powered public transit fleets offering both fixed-route and flexible-route service; with a large share of trips by bicycle, walking and transit.

What we produce: Sustainable Production

- By 2050 the Bay Area economy will be powered by clean, renewable electricity. The region will be a leading incubator and producer of clean energy technologies, and Bay Area industry will lead the world in the carbon-efficiency of our products.

What we consume: Conscientious Consumption

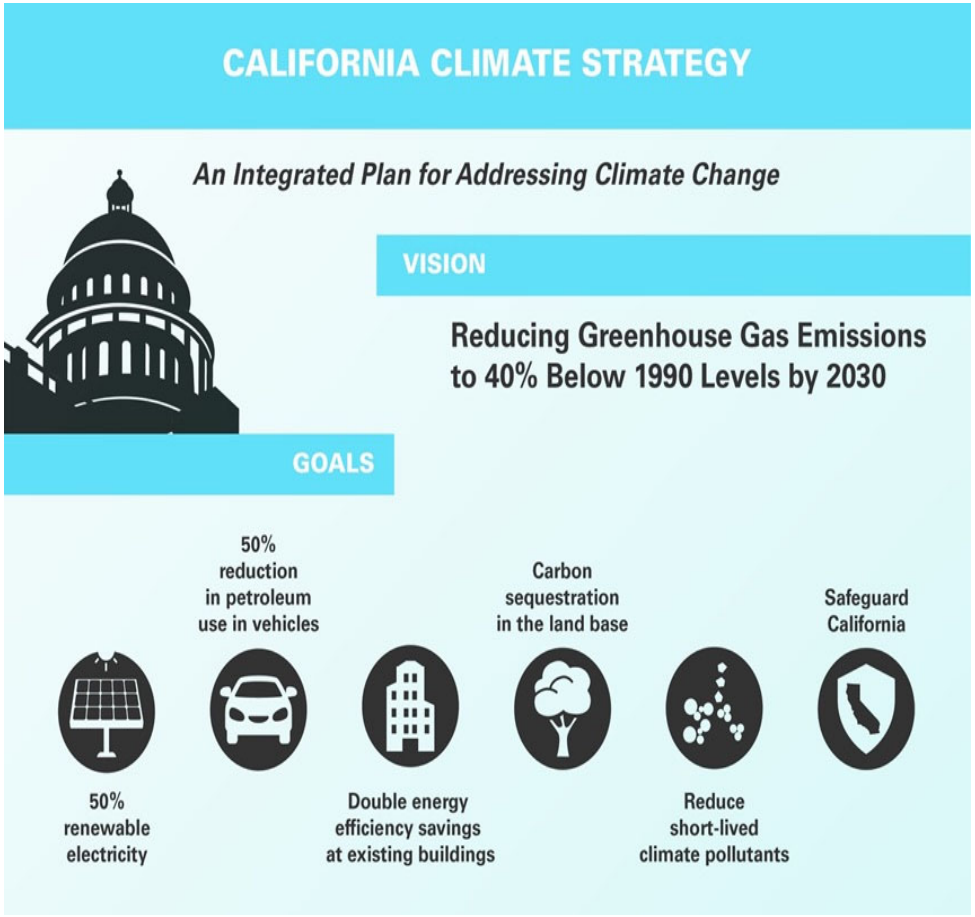
- By 2050 Bay Area residents will need to develop a low-carbon lifestyle. We will greatly reduce our person GHG consumption by driving electric vehicles, living in zero net-energy homes, eating low-carbon foods, and purchasing goods and services with low carbon content. Waste will be re-used and recycled, and all organic waste will be composted and put to productive use.

State Climate Stabilization Goals & Strategies

- EO S-03-05 80% below 1990 levels by 2050
- EO B-55-18 Carbon Neutrality by 2045
- 2017 Scoping Plan
- SB 375
- SB 32
- SB 350
- Mobile Source Strategy
- Natural and Working Lands
- Short Lived Climate Pollutant Plan
- Renewable Portfolio Standard
- Low Carbon Fuel Standard
- Freight Action Plan
- AB398
- AB617

(Partial list, see Appendix H of the 2017 Scoping Plan for a more comprehensive list)

State Government



Individuals/Business/NGOs, etc

Issues to Consider When Using Offsets

- May not be consistent with the threshold of significance being used by project for GHG impacts
- May undermine CEQA requirements for alternatives analysis
- Does not support behavior change
- May prevent delay of new technology implementation
- Ethical and Environmental Justice concerns
- Governments duty to protect public good
- Atmosphere belongs to everyone
- Does not reduce GHGs, Zero Sum Game

When Should Offsets be Considered for CEQA GHG Mitigation

- After a project has demonstrated consistency with the statewide climate stabilization plan, air quality plan, and sustainable communities strategy.
- After a thorough alternatives analysis for the project
- After evaluating opportunities to reduce the GHG emissions in the local community through an offsite mitigation program
- When developed from projects in California
- When developed per rigorous protocols that address:
  - Real
  - Additional/Surplus
  - Quantifiable
  - Verified/validated
  - Enforceable
  - Permanent

BAY AREA AIR QUALITY MANAGEMENT DISTRICT

Thank you!

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Overview of Discussion

1. CARB's 2017 Scoping Plan Update: CEQA Implications for GHG Analyses and Mitigation

2. CEQA and GHG Offsets

3. What's Next?
   - Evolving guidance and political goals
   - Net zero GHG / sustainable development (agencies, institutional campuses, land use projects)

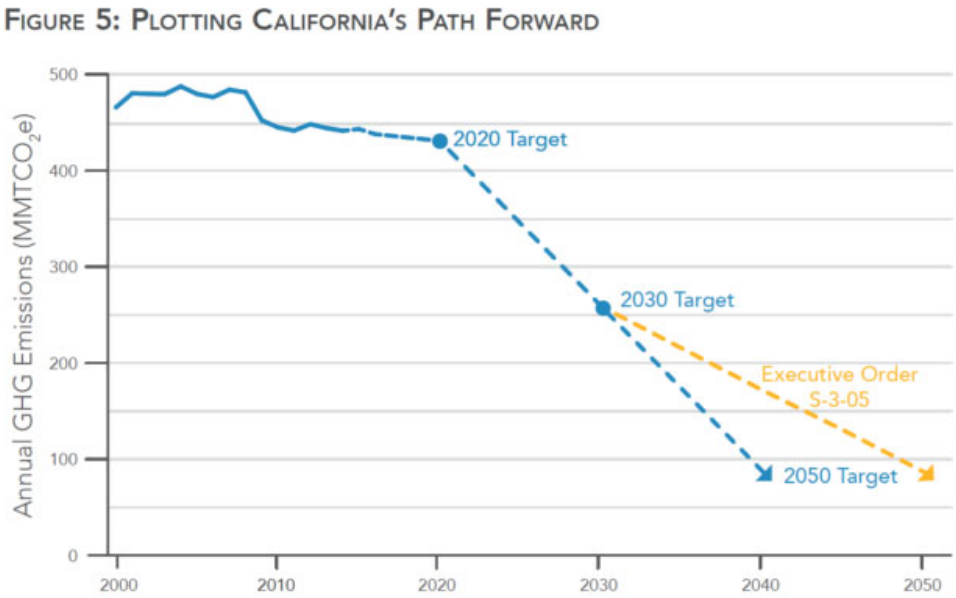
SB 32: Ambitious Climate Target for 2030

- SB 32 codified California's goal of reducing GHG emissions to **40% below 1990 levels by 2030**.

Per capita GHG emissions must fall off a cliff after 2020.

1990: 15 metric tons of CO_2-equivalent ($MTCO_2$-e)

2050: below 2 $MTCO_2$-e



CARB's 2017 Scoping Plan Update

- Prior versions of Scoping Plan avoided CEQA's role in addressing climate change.
- CARB's 2017 Scoping Plan Update recommends **local agencies** cut GHG emissions from the land use sector in **4 key ways**:

1. Local climate action plans with rigorous 2030 and 2050 targets
2. Greater VMT reductions – Even Beyond SB 375 Goals
3. CEQA Significance Thresholds
4. GHG Mitigation Strategies

1. Local Climate Action Plans

- ARB recommended per capita statewide targets for local agencies to consider:
  - 2030: Maximum of 6 metric tons CO2e
  - 2050: Maximum of 2 metric tons of CO2e

- ARB recommends that local governments should consider adopting local climate action plans to meet goals and facilitate CEQA review.

2. Greater VMT Reductions

- The Scoping Plan is clear that compliance with the VMT reduction targets in the current RTP/SCSs will not be enough to achieve the state's climate targets

- ARB recommends that local governments consider policies to reduce VMT, even beyond SB 375 targets

3. Significance Thresholds for CEQA Projects

If no local climate action plan:

- ARB advises that "[a]chieving **no net additional increase in GHG emissions**, and no contribution to GHG impacts, is an appropriate overall objective for new development."

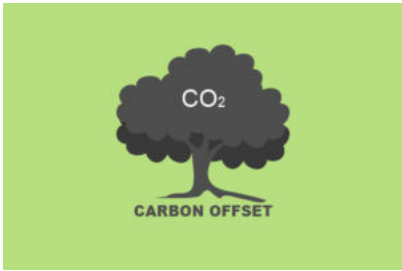
- ARB recognizes that lead agencies can develop non-zero GHG significance thresholds.

4. GHG Mitigation Strategies for CEQA Projects

- Prioritize onsite measures that reduce emissions, especially from VMT, with co-benefits

- Local or regional direct investments in building retrofits, EV charging stations, etc.

- "Where further project design or regional investments are infeasible or not proven to be effective, **it may be appropriate and feasible to mitigate project emissions through purchasing and retiring carbon credits.**"
  - Offsets purchased from recognized carbon registries.



CEQA Guidelines Allow Use of GHG Offsets

CEQA Guidelines Section 151370(e): "Compensating for the impact by replacing or providing substitute resources or environments…"

CEQA Guidelines Section 15126.4(c)(3)-(4): A project's GHG emissions can be reduced by:

- "[o]ff-site measures, **including offsets that are not otherwise required**" and
- "[m]easures that sequester greenhouse gases."

Natural Resources Agency Guidance

Final Statement of Reasons (2009):

- Offsets are consistent with the existing CEQA Guidelines § 15370(e) definition of "mitigation," which allows compensating for the impact by replacing or providing substitute resources or environments.

- Agency cited to initial Scoping Plan that offsets can "describes offsets as way to provide regulated entities a source of low-cost emission reductions, and … encourage the spread of clean, efficient technology within and outside California"

AB 900 Projects

- Under AB 900, certain CEQA streamlining benefits were provided to "environmental leadership" projects that met certain conditions.
- No net additional GHG emissions.
- CARB certification of GHG reduction strategy is required; thus, CARB previously approved use of offsets in the AB 900 context.
- To date, many AB 900 projects have relied heavily on purchasing carbon offsets to achieve carbon neutrality.

Court Upheld Offset Protocols (Cap-and-Trade Program)

The California Court of Appeals upheld the use of offsets to implement the Cap-and-Trade program and the additionality of the offsets. *Our Children's Earth Foundation v. California Air Resources Board*, 234 Cal. App. 4th 870 (2015).

Although not in CEQA context, demonstrates judicial support for use of offsets as a GHG mitigation strategy under a different regulatory regime (Cap-and-Trade).

Locational Guidance for Offsets

- Scoping Plan establishes clear preference for onsite and local measures that achieve co-benefits before turning to offsets
  - Aligns with 2008 SCAQMD draft GHG guidance
- Some local climate plans include locational commitments
- On the other hand:
  - CEQA Guidelines Section 15126.4(c)(3) does not impose a locational requirement
  - Not all AB 900 projects include a locational commitment

What's Next?

- What is the focus: global climate change or local/ state reductions?
  - CEQA Guidelines 15370(e) – What is the "replacing or providing substitute resources"
- SB 32 and extension of Cap-and-Trade was politically challenging even with Democratic super-majority, in part from political pressure to:
  - Achieve local "co-benefits"
  - Address environmental justice concerns
  - Minimize offsets as Cap-and-Trade compliance option

Guidance is Evolving

- Scoping Plan recommends onsite and local measures before pursuing offsets
- CARB's focus on VMT/transportation reductions
- AB 197 directs CARB to prioritize direct reductions at large stationary sources
- Community groups / local agencies may prefer local reductions → local benefits/investments

Growing Trend: Sustainable Development

- Growing trend driven by voluntary commitments, litigation incentives and regulatory pressure for "net zero GHG" or some level of sustainable development:
  - Municipalities or local agencies
  - Institutional projects (hospitals, universities, signature buildings)
  - Corporate campuses
  - Land use development (stadiums, mixed-use projects)

QUESTIONS

QUESTIONS

- Should the Legislature weigh in the location of offsets for CEQA?
  - Example: AB 734 – Oakland Sports and Mixed-Use Project: "…In no event shall offset credits be used from a project located outside the United States."

QUESTIONS

- If Carbon Offsets are required to be located within the jurisdiction where their projects are being built, is there a potential for double-counting emissions reductions?
  - e.g., City of San Diego and County of San Diego taking account for the same VMT or energy reduction?

QUESTIONS

- Do the use of carbon offsets from out of state or country impose additional health impacts on local disadvantaged communities?
- In light of AB 617, is there a proximity issue of a proposed project and a disadvantaged community where credits should not be allowed?

QUESTIONS

- Is there a difference between Carbon Offsets (ex-post) v. Forecasted Mitigation Units (FMUs) (ex-ante) under Climate Forward?
  - Can you retire Ex-ante Offsets like you can Ex-post Offsets?
  - What is the standard life of an offset?
  - How do you reduce risk (e.g., bankruptcies, forest fires, etc.) ?

QUESTIONS

- What is the cost difference ($/MT) of a Carbon Credit/Offset?
  - World
  - United States
  - California
  - Specific to a County? (e.g., San Diego)
- Are there currently existing voluntary credits within San Diego County? Within the State of California?
- Will Carbon Forward's protocols add cost to offsets?