

# Offsets and CEQA: Mitigating Impacts via Offsite Credits

Special Topics Webinar



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October 16, 2013

# Agenda



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Moderated by Joel Levin- Vice President for Business Development, Climate Action Reserve

- Introduction to using offsets in the CEQA context

Katy Young, General Counsel, Climate Action Reserve

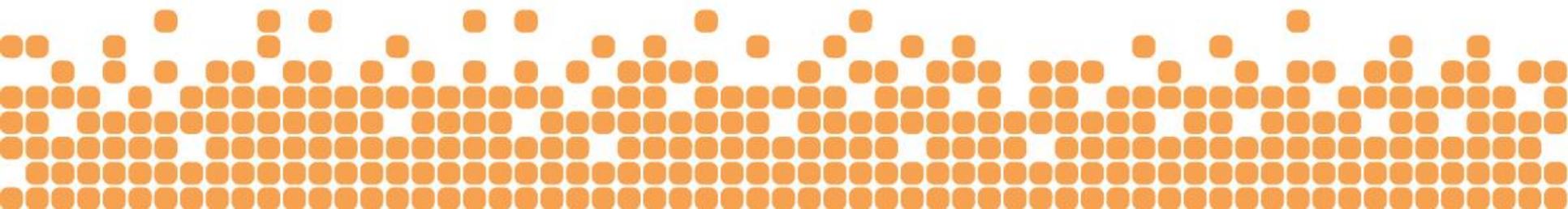
- Overview of recent relevant case law

Bill Sloan, Partner, Morrison & Foerster LLP

- A parallel path: localized crediting of reductions via Air Districts

David Vintze, Air Quality Planning Manager, Bay Area Air Quality Management District

- Q&A session

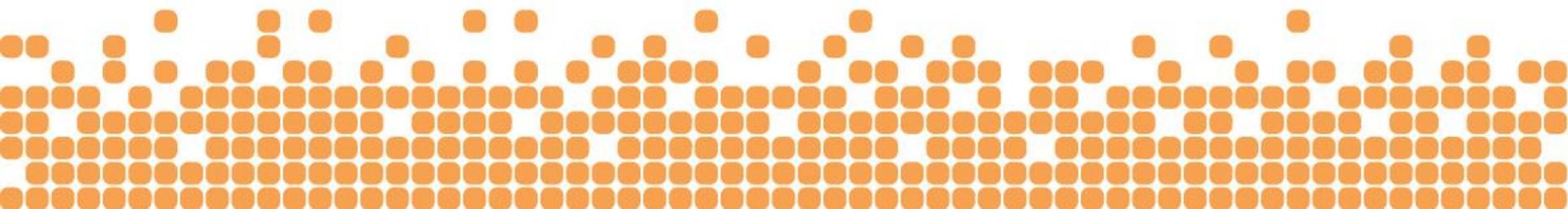




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Introduction

# USING OFFSETS IN THE CEQA CONTEXT

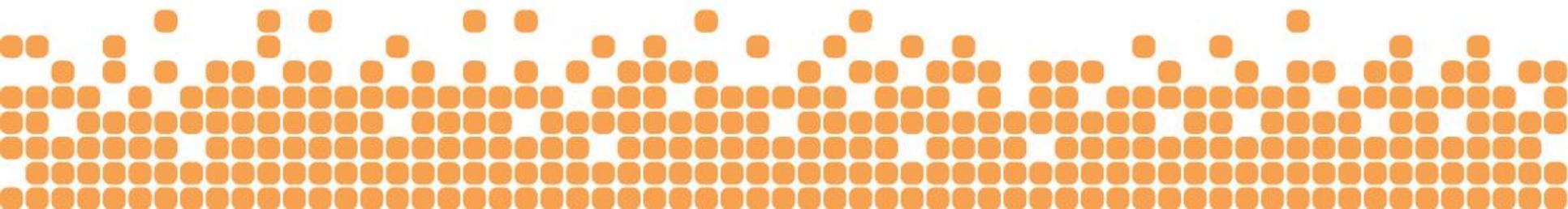




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# CEQA: What it requires

- The California Environmental Quality Act (CEQA) is a California statute that requires state and local agencies to identify the significant environmental impacts of their actions and to avoid or mitigate those impacts, if feasible.
  - What this means: Projects (both plans and physical development) that require discretionary approval from a state and/or local public agency(ies) must comply with CEQA's provisions.
- Where a project identifies potentially significant Air Quality / Climate Change impacts, the project proponent must mitigate GHG impacts to less-than-significant levels to the extent feasible.

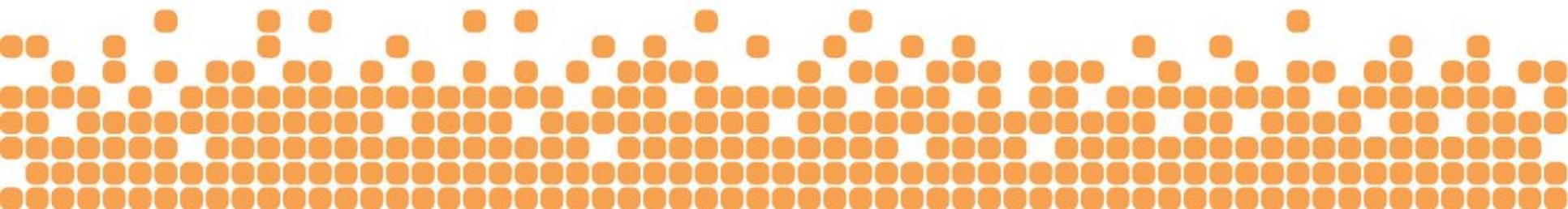


# CEQA: What the CEQA regulations say



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- In the context of Air Quality / Climate Change impacts, the CEQA guidelines provide several recommended mitigation options for mitigating GHG impacts, including offsets:
  - “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” (CEQA Guidelines §15126.4(c)(3))
- This is the extent of the formal CEQA guidance relating to offsets.

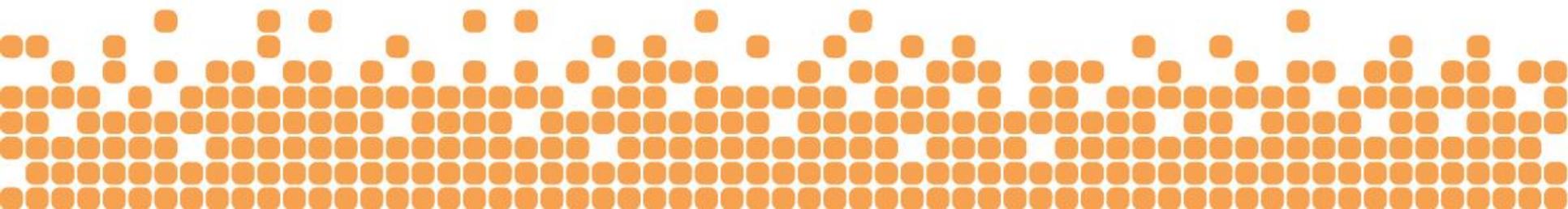


# The implications of the lack of specificity in the Regs



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- If you're going to use offsets, make sure they're real, additional, permanent, verifiable, and enforceable
  - The requirement that only “offsets that are not otherwise required” are suitable mitigation means that they must be additional.
  - Not all offset protocols are created equal – some are more additional than others.
  - Make sure to do your diligence
    - SF Superior Court recently held that ARB's four compliance protocols and early action protocols (developed by the Climate Action Reserve) are additional and satisfy the requirements of AB 32.

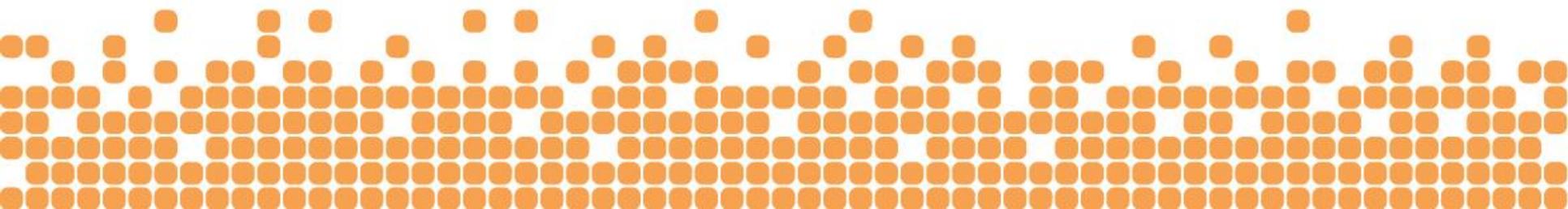


# Benefits of using offsets as GHG mitigation



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- They're often less expensive than reducing emissions at the source or locally
- There are plenty of high-quality, reasonably priced offsets available on the Reserve's system (non-compliance credits are selling in the \$2-4 range)
- Can provide good publicity for a project developer (i.e., "As part of our shopping mall development approval, we're helping preserve forestland in Northern California.")
- Given recent case law affirming offsets' environmental integrity, they're relatively safe from a litigation standpoint.
  - *Citizens Climate Lobby v. ARB* (CGC-12-519554)

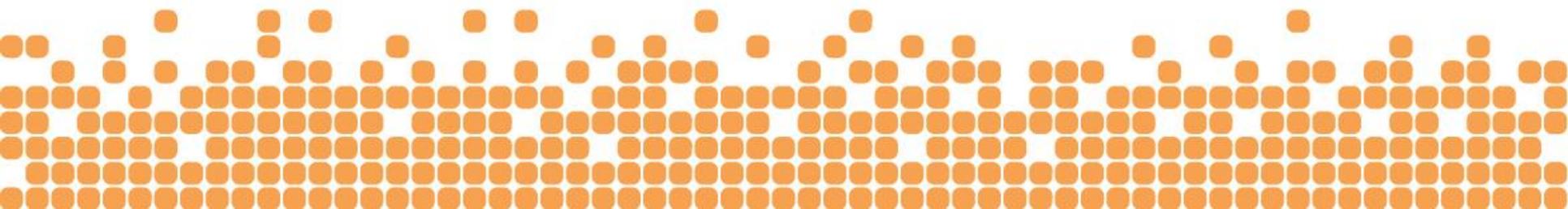


# Does it matter where your offset credits come from?



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- YES! In a system where the public can sue a project developer to challenge the mitigation plan, buyers need to understand what they are buying.
  - Buyers need to conduct due diligence on the verifier and OPR and should only buy from established Registries.
- The careful work of the OPR in scrutinizing projects helps to protect buyers from a court challenge later



# Reserve Protocols

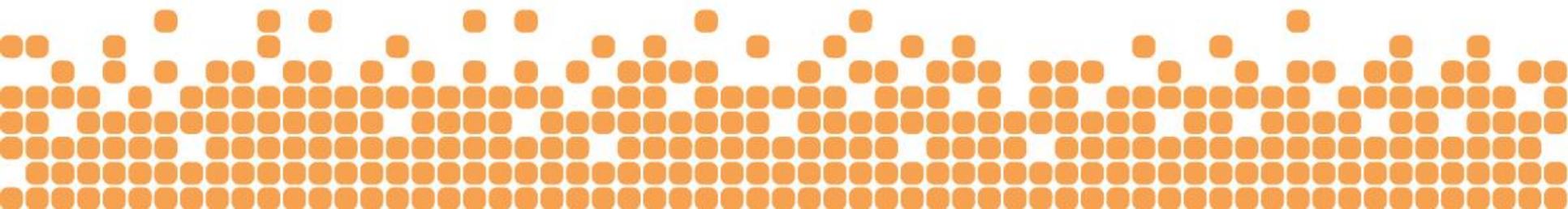


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- Forestry (Reforestation, Improved Forest Management, Avoided Conversion)
- Urban Forestry
- Livestock Methane Capture
- Ozone Depleting Substances (US)
- Landfill Gas Capture
- Organic Waste Digestion
- Coal Mine Methane
- Nitric Acid Production
- Organic Waste Composting
- Rice Cultivation
- Nitrogen Management
- International: Mexico Livestock and Landfill; Article 5 ODS

Compliance  
Eligible

Protocols Under Development: Grasslands and Mexico Forestry

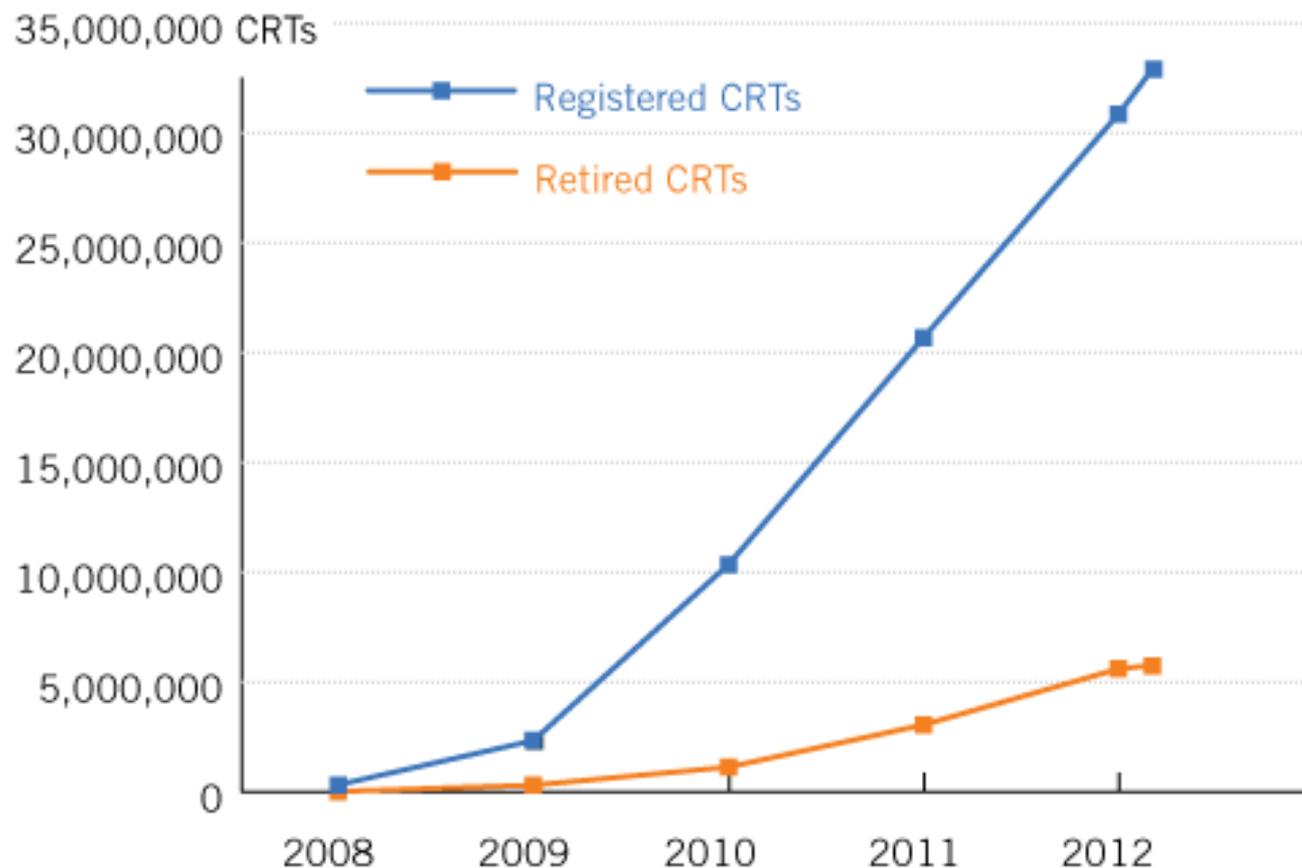


# REGISTERED AND RETIRED CARBON OFFSETS IN THE CLIMATE ACTION RESERVE PROGRAM

From 2008 through February 2013, the Climate Action Reserve registered 32,876,824 Climate Reserve Tonnes (CRTs) and retired 5,728,871 CRTs.



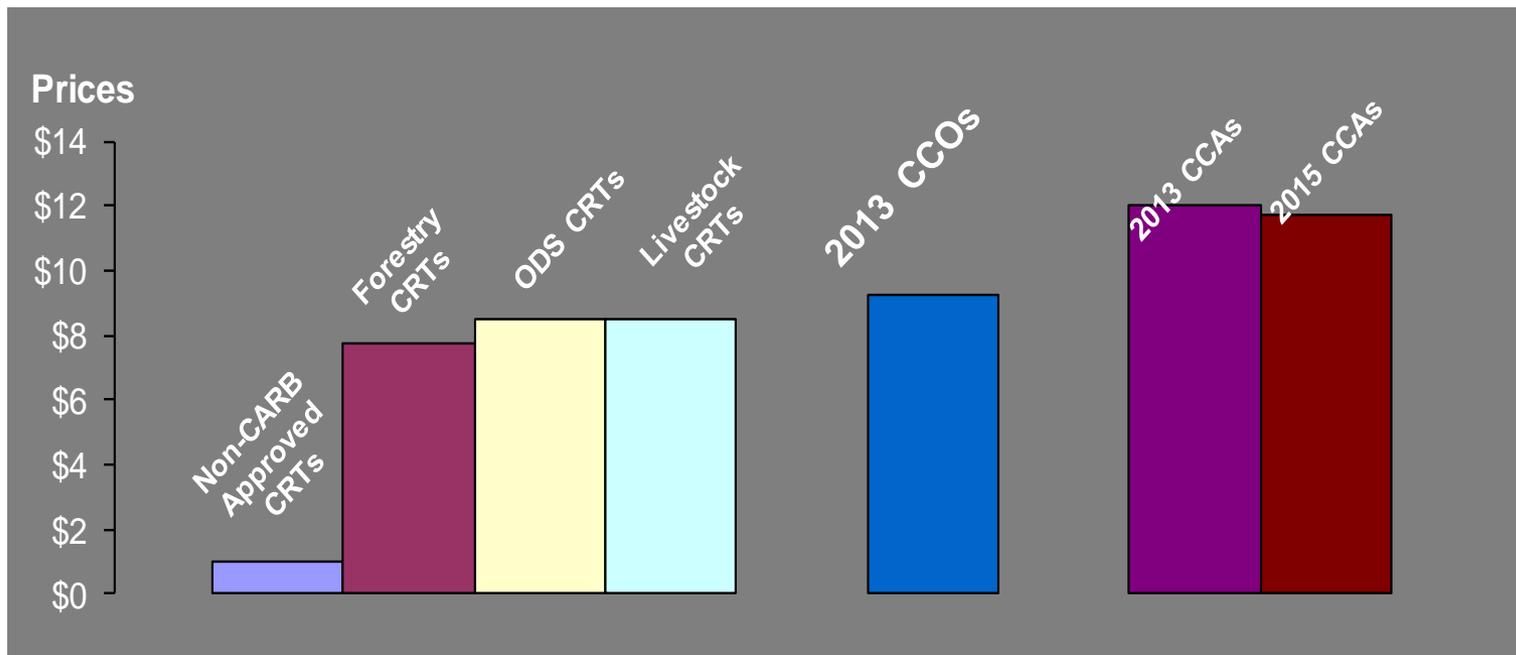
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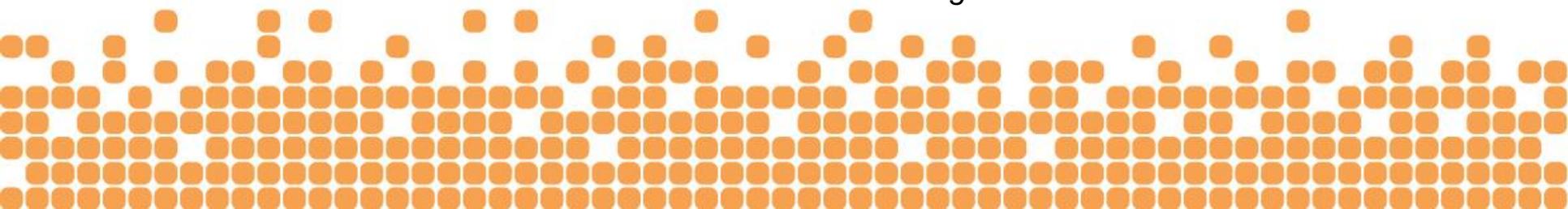
# Pricing for California Compliance Instruments



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Source: BGC Environmental Brokerage Services

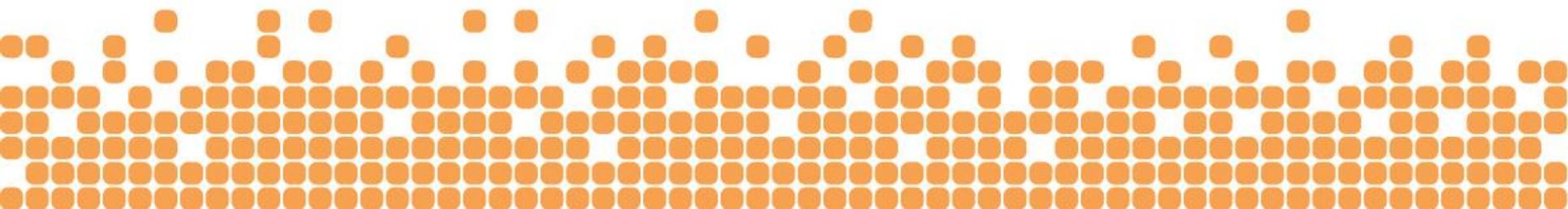


# How to use offsets for CEQA compliance



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- CEQA analysis quantifies the proposed project's GHG impacts
- Lead agency imposes offsets as mitigation of GHG impacts as part of project approval process (should include details such as number and source of offsets)
- Project proponent buys appropriate number from a Registry and “retires” those credits
- Public disclosure on the Registry's website may be part of the Agency's mitigation requirement and helps to ensure transparency





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# CONTACT:

**KATY YOUNG**

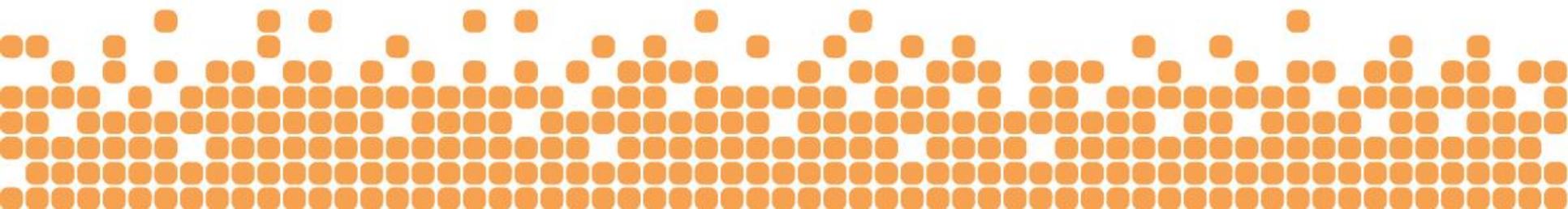
**KYOUNG@CLIMATEACTIONRESERVE.ORG**

**213-542-0292**

**MAIN**

**WWW.CLIMATEACTIONRESERVE.ORG**

**213-891-1444**



# CEQA Mitigation Setting the Stage for a Massive Carbon Offset Market

October 16, 2013

Presented By William M. Sloan

# CEQA—A BIG Player

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- For just the first 6 months of 2013, CEQAnet database reports:
  - 4,401 CEQA-related actions, and
  - 153 Environmental Impact Reports
- Not a comprehensive total of all CEQA activity in the state

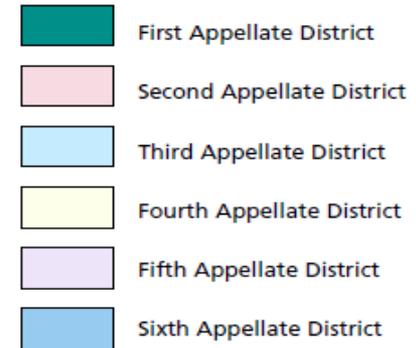
# CEQA Guidelines Section 15064.4

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- (a) . . . A lead agency should make a good-faith effort, based to the extent possible on scientific and factual data, to describe, calculate or estimate the amount of greenhouse gas emissions resulting from a project. A lead agency shall have discretion to determine, in the context of a particular project, whether to:
  - (1) Use a model or methodology to quantify greenhouse gas emissions . . . ; and/or
  - (2) Rely on a qualitative analysis or performance based standards.
  
- (b) A lead agency should consider the following factors, among others, when assessing the significance of impacts from greenhouse gas emissions on the environment:
  - (1) The extent to which the project may increase or reduce greenhouse gas emissions as compared to the existing environmental setting;
  - (2) Whether the project emissions exceed a threshold of significance that the lead agency determines applies to the project;
  - (3) The extent to which the project complies with regulations or requirements adopted to implement a statewide, regional, or local plan for the reduction or mitigation of greenhouse gas emissions. Such requirements must be adopted by the relevant public agency through a public review process and must reduce or mitigate the project's incremental contribution of greenhouse gas emissions. . . .

# Citizens For Responsible Equitable Environmental Development (CREED) v. City of Chula Vista

- Court of Appeal decision on June 10, 2011
- Target Store in Chula Vista
- Fourth Appellate District



# CREED v. City of Chula Vista

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- “[U]nder the new guidelines, lead agencies are allowed to decide what threshold of significance it will apply to a project. Here, the City properly exercised its discretion to utilize compliance with Assembly Bill No. 32 (2005-2006 Reg. Sess.) as the threshold.”

# CREED v. City of Chula Vista

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- “Assembly Bill No. 32 (2005-2006 Reg. Sess.) sets a target of reducing greenhouse gas emissions to 2000 levels by 2010 and 1990 levels by 2020. The Air Quality Assessment estimated that to reach 2000 levels by 2010 required 11 percent below business as usual emissions and **to reach 1990 levels by 2020 required 25 percent below business as usual emissions.** The Air Quality Assessment then established a target of 20 percent below business as usual as the appropriate standard, and not the 25 percent below business as usual that would be needed to be consistent with the estimate for reaching 1990 levels by 2020, stating that this is ‘an appropriate midpoint between the 2010 and 2020 targets set forth in AB 32 considering the timeframe for Project operations is within these dates.’”

# CREED v. City of Chula Vista

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- “[T]he Air Quality Assessment ultimately concluded that, with implementation of emission reduction programs, the Project would reduce greenhouse gas emissions by 29 percent by 2020. This is 4 percent more than the Assembly Bill No. 32 (2005-2006 Reg. Sess.) goal of 25 percent.”

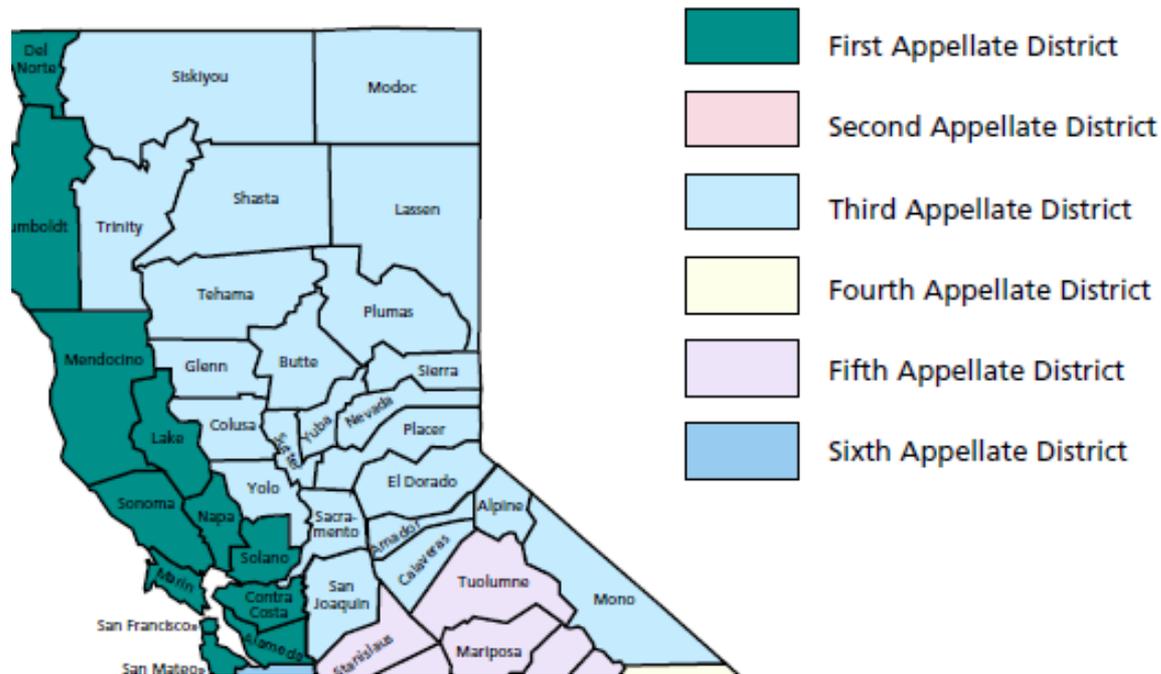
# CREED v. City of Chula Vista

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- “The Air Quality Assessment listed the operational emissions for ‘business as usual’ for the existing Target store and the proposed store at 8,280 metric tons per year and 10,337 metric tons per year, respectively. Thus, under ‘business as usual’ the proposed Target store would increase greenhouse gas emissions by 2,057 metric tons. However, through the implementation of energy saving measures, the operational greenhouse gas emissions for the proposed store are reduced to 7,381 metric tons per year, or 2,956 metric tons less than ‘business as usual.’ This amounts to a 29 percent reduction from business as usual.”

# Friends of Oroville v. City of Oroville

- Court of Appeal decision on August 19, 2013
- Wal-Mart store in Oroville
- Third Appellate District



# Friends of Oroville v. City of Oroville

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- “The City properly adopted Assembly Bill 32’s reduction targets for GHG emissions as the threshold-of-significance standard in determining whether the Project’s GHG emissions constituted a significant environmental impact.”
- “[T]he City misapplied the Assembly Bill 32 threshold-of-significance standard in two related ways: (1) by applying a meaningless, relative number to determine insignificant impact; and (2) by failing to ascertain the existing Wal-Mart’s GHG emissions, and the impact on GHG emissions from the Project’s mitigation measures.”

# Friends of Oroville v. City of Oroville

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- “The relevant question to be addressed in the EIR is not the relative amount of GHG emitted by the Project when compared with California’s GHG emissions, but whether the Project’s GHG emissions should be considered significant in light of the threshold-of-significance standard of Assembly Bill 32, which seeks to cut about 30 percent from business-as-usual emission levels projected for 2020, or about 10 percent from 2010 levels.”

# Friends of Oroville v. City of Oroville

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- “[T]he City misapplied the Assembly Bill 32 threshold-of-significance standard by failing to calculate the GHG emissions for the existing Wal-Mart and **failing to quantitatively or qualitatively ascertain or estimate the effect of the Project’s mitigation measures on GHG emissions**”
- **“Such calculations and estimates, or a reasonable equivalent, must be done here.”**

# Takeaways

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- Trend towards “Doing the Math”
  - A lead agency should make a good-faith effort, based to the extent possible on scientific and factual data, to describe, calculate or estimate the amount of greenhouse gas emissions resulting from a project
- Rely on a “Qualitative Analysis” at your own peril!
- Ascertain or estimate the effect of the Project’s mitigation measures on GHG emissions
- Thresholds
  - 1990 levels by 2020?
  - 80 percent below 1990 levels by 2050? (Executive Order #S-3-05)

# Thank You!

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**William M. Sloan**

Partner, Environment and Energy Group

Chair, Climate Change Practice

**Morrison & Foerster LLP**

(415) 268-7209

[wsloan@mof.com](mailto:wsloan@mof.com)



# Offsets as CEQA Mitigation

**General Information Webinar**

October 2013

Dave Vintze  
Air Quality Planning Manager

# Background

- **Regional air pollution control agency**

- Created in 1955
- Jurisdiction spanning 9 Bay Area counties
- 22 member Board of Directors
- Public Health Agency

- **Programs to reduce air pollution**

- Stationary source permitting and regulations
- CARE program
- Climate Protection program
- Incentive programs to reduce vehicular emissions
- Local and regional agency collaboration

California Air Districts





# Effects of Climate Change

- Increased Temperatures
  - Increased Emissions from stationary and mobile sources
  - Increased ozone concentrations
  - Greater heat island effect in urban areas
  - Greater distribution of pests, more application of pesticides
  - Smaller snow pack, early melt off, more energy/reservoirs needed
- Increased frequency and intensity of wildfires
  - Increased particulate matter concentrations
  - Increased emissions from firefighting activities
- Sea level rise
  - Public & private infrastructure protection
  - Construction of sea walls, levees

A photograph of a lush forest with tall trees and green ferns in the foreground, serving as a background for the top half of the slide.

# Offsets as Mitigation

## Basic Concept

- Offsets/offsite mitigation/development impact fees
- Project has a potentially significant impact or required in CAP
- Not possible to entirely mitigate on-site or through project alternative
- Should be considered an “All Feasible Measure”
- Must bear a reasonable relationship to the impact being mitigated
- Offsite/offsets cannot be from projects that are otherwise required by law
- Reductions must be real, surplus, additional, verifiable, enforceable
- Not an all or nothing strategy
- Commonly seen in practice to address other impact areas (species habitat, water quality, traffic, and criteria air pollutants)



# Examples of Offsets or Offsite Mitigation

- Air District ERC/offsite programs for criteria pollutants
- SJVUAPCD Indirect Source Rule (criteria pollutants)
- Attorney General / Conoco Phillips settlement
- Purchase offsets from existing registry (CAR)
- Sebastopol MND
- Sonoma County Composing Facility DEIR



# Implementation Strategies

## Climate Action Plan Approach

- Include offsite/offset strategy in CAP
- Create a local offset program (e.g. home energy retrofit)
- Develop guidance/methodology/protocols/verification procedures
- Identify GHG reduction projects to fund

## CEQA Approach

- Need to establish GHG threshold
- Identify GHG reduction projects to fund
- Develop performance standards
- Make part of project conditions of approval/MMRP
- Still have to address local impacts and environmental justice issues



# CAPCOA GHG Rx

**Mission Statement:** *Our mission is to provide a trusted source of high quality California-based greenhouse gas credits to keep investments, jobs, and benefits in-state, through an Exchange with integrity, transparency, low transaction costs, and exceptional customer service.*

**Objectives:** *To provide a secure, low-cost, high quality, greenhouse gas exchange for credits created in California. Financial resources invested in-state will help create local jobs and realize needed air pollution co-benefits from projects in California.*



# CAPCOA Rx

## Background & Purpose

- Developed to provide a low cost, secure platform which supports the exchange of locally generated, high quality GHG emission reduction credits
- Credits are derived from voluntary projects in CA
- Implemented by “Participating Districts”
- Ensure that credits are real, quantified, validated (verified), permanent, enforceable, additional/surplus



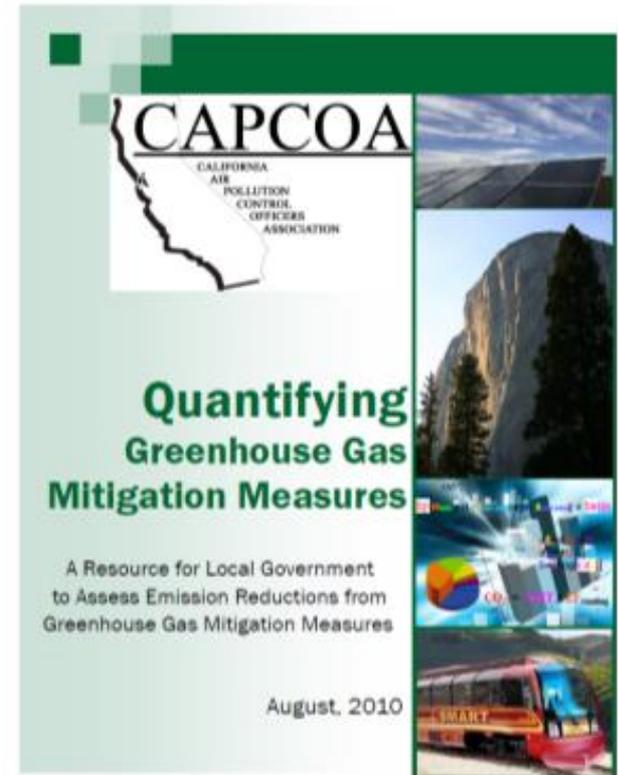
# CAPCOA GHG Rx

- Protocol (or case by case) establishes requirements
- Baseline and reductions calculated
- Reductions validated
- Permit or other enforceable mechanism
- Credits issued and listed on GHG Rx
- Transactions recorded



# Tools & Resources

- CEQA & Climate Change
- GHG Mitigation Quantification Report
- Methodology exists to quantify GHG reductions
- CAR/ACR protocols
- ARB offset protocols



# Questions?



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