

EXPLANATION OF “STREAMLINING” CEQA REVIEW USING CLIMATE ACTION PLAN

(Notes prepared by Kevin Bundy, Shute, Mihaly & Weinberger, July 29, 2019)

The relevant reference is to CEQA Guidelines section 15183.5. (The “CEQA Guidelines” are state regulations that implement CEQA.)

Section 15183.5 allows an agency to prepare a “plan for the reduction of greenhouse gas emissions” (which most jurisdictions now call a “CAP”). If the plan meets the specific requirements of the section—which include establishing a level of greenhouse gas emissions that won’t be “significant” and specifying measures that, if implemented on a project-by-project basis, would achieve that level—then the agency can “streamline” CEQA review of the climate impacts of later projects that incorporate those measures.

Put simply, if an agency adopts a CAP that identifies specific measures that can achieve a specified level of greenhouse gas emissions, it may be able to skip detailed disclosure and review of the climate impacts of later projects that promise to incorporate those specific measures.

We discussed the Preliminary Draft’s shortcomings at pages 15-23 of our letter on the Preliminary Draft. Page 23 specifically mentions the plan’s failure to meet the requirements of 15183.5.

There’s one major court case on this section (*Mission Bay Alliance v. Office of Community Investment and Infrastructure* (2016) 6 Cal.App.5th 160), involving the Golden State Warriors’ new arena in San Francisco. This was a fairly major project involving extensive redevelopment, construction, and transportation emissions. The EIR for the project said detailed analysis was unnecessary because the project would comply with specific measures in San Francisco’s CAP. The court found that this was sufficient, and that the EIR did not even need to quantify the project’s overall greenhouse gas emissions. San Francisco’s CAP is generally regarded as pretty good. **But the case creates a real danger that courts and agencies might overlook the impacts of later projects based on compliance with an inadequate CAP.**

CEQA 15183.5

(b) Plans for the Reduction of Greenhouse Gas Emissions. Public agencies may choose to analyze and mitigate significant greenhouse gas emissions in a plan for the reduction of greenhouse gas emissions or similar document. A plan to reduce greenhouse gas emissions may be used in a cumulative impacts analysis as set forth below.

Pursuant to sections 15064(h)(3) and 15130(d), a lead agency may determine that a project’s incremental contribution to a cumulative effect is not cumulatively

considerable if the project complies with the requirements in a previously adopted plan or mitigation program under specified circumstances.

- (1) Plan Elements. A plan for the reduction of greenhouse gas emissions should:
 - (A) Quantify greenhouse gas emissions, both existing and projected over a specified time period, resulting from activities within a defined geographic area;
 - (B) Establish a level, based on substantial evidence, below which the contribution to greenhouse gas emissions from activities covered by the plan would not be cumulatively considerable;
 - (C) Identify and analyze the greenhouse gas emissions resulting from specific actions or categories of actions anticipated within the geographic area;
 - (D) Specify measures or a group of measures, including performance standards, that substantial evidence demonstrates, if implemented on a project-by-project basis, would collectively achieve the specified emissions level;
 - (E) Establish a mechanism to monitor the plan's progress toward achieving the level and to require amendment if the plan is not achieving specified levels;
 - (F) Be adopted in a public process following environmental review.

- (2) Use with Later Activities. A plan for the reduction of greenhouse gas emissions, once adopted following certification of an EIR or adoption of an environmental document, may be used in the cumulative impacts analysis of later projects. An environmental document that relies on a greenhouse gas reduction plan for a cumulative impacts analysis must identify those requirements specified in the plan that apply to the project, and, if those requirements are not otherwise binding and enforceable, incorporate those requirements as mitigation measures applicable to the project. If there is substantial evidence that the effects of a particular project may be cumulatively considerable notwithstanding the project's compliance with the specified requirements in the plan for the reduction of greenhouse gas emissions, an EIR must be prepared for the project.