

## Fourth Appellate District Rejects “Net-Zero” Greenhouse Gas Mitigation Measures

*Elfin Forest Harmony Grove Town Council v. County of San Diego*  
2021 Cal. App. Unpub. LEXIS 6474

California’s Fourth Appellate District continues to hold San Diego County to a high standard for “net zero” greenhouse gas (GHG) mitigation measures under CEQA. Previously, in 2020, the same court decided *Golden Door Properties, LLC. v. County of San Diego* (2020) 50 Cal.App.5th 467, which invalidated the county’s climate action plan and mitigation measures that allowed projects to mitigate emissions by purchasing carbon offsets originating outside of the county. In a more recent unpublished decision, *Elfin Forest Harmony Grove Town Council v. County of San Diego*, 2021 Cal. App. Unpub. LEXIS 6474, the court reached the same result, despite that the net-zero offsets appeared to have been designed to meet the *Golden Door* standard.

*Elfin Forest* involved a residential and mixed-use development project in a rural part of the county. The draft EIR identified potentially significant impacts from GHG emissions during both construction and operating phases. As mitigation, the county adopted two measures which required the applicant to purchase and retire GHG credits to reduce net emissions to zero. While the measures were expressly required to be “real, permanent, quantifiable, verifiable, and enforceable,” the court nonetheless found that they lacked objective criteria and protocols for ensuring that mitigation actually occurred, consistent with CEQA section 21081.6(b) and Guidelines sections 15126.4(a)(2), (c). The court also held that the measures vested the planning director with too much discretion to approve GHG offset programs, thus improperly deferring mitigation.

As in *Golden Door*, however, the court offered some guidance for what CEQA-complaint GHG mitigation measures might look like. The court appeared to endorse mitigation that (a) requires the use of CARB-approved registries or registries meeting the requirements of California Health & Safety Code section 38562(d)(1), and (b) incorporates CARB-approved protocols to ensure that GHG reductions are quantified and verifiable.

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