

Appendix G: Applicability Analysis for California Environmental Quality Act

The California Environmental Quality Act (CEQA) is a state law that requires public agencies to consider the environmental impacts of certain projects they undertake or approve. For projects that are subject to CEQA, the statute imposes specific legal requirements that agencies must follow before carrying out or approving the project. This appendix evaluates whether CEQA applies to this project – the Community Emissions Reduction Plan (CERP) for East Oakland. As explained in more detail later in this discussion, Bay Area Air Quality Management District (Air District) staff have reviewed all aspects of the CERP and determined that it is exempt from CEQA, for multiple reasons.

First, as an overall matter, the CERP is being adopted to benefit the environment and the health of residents of the East Oakland community, and all of the action items within the CERP support this goal. Therefore, adoption of the CERP is exempt from CEQA review under CEQA Guidelines Section 15308 – Actions by Regulatory Agencies for Protection of the Environment. This exemption applies to actions taken by regulatory agencies, as authorized by law, to “assure the maintenance, restoration, enhancement, or protection of the environment.” The Air District is a regulatory agency charged with the protection of air quality in its jurisdiction. Because the goal of the CERP is to protect air quality and public health, its adoption fits within the category of actions subject to this exemption. This same exemption would also apply to each of the individual strategies within the CERP that involve actions by the Air District.

Second, all of the individual strategies and actions set forth in the CERP would be exempt if they were implemented on their own, apart from adoption of the CERP. For example:

Strategies that would either not cause any physical changes to the environment or involve such minimal physical changes that it can be seen with certainty that there is no possibility that the proposed project may have a significant adverse effect on the environment fall within the common sense exemption in CEQA Guidelines section 15061(b)(3). Examples include actions that involve encouraging local governments to establish vegetative buffer zones (Urban Greening actions 1.1, 2.1 and 3.1), advocating for the City of Oakland to modify its zoning or land use regulations (Built Environment and Land Use actions 3.2 through 3.5), and developing model policies or ordinances for possible future adoption by other entities (Transportation and Mobile Sources action 1.1).

Strategies that call for feasibility and planning studies are exempt under Public Resources Code section 21150 and CEQA Guidelines section 15262 (“A project involving only feasibility or planning studies for possible future actions which the agency . . . has not approved, adopted, or funded does not require the preparation of an EIR or negative declaration but does require consideration of environmental factors.”). Examples include exploring the feasibility of expanding the Air District’s existing Air Filtration Program to supply air filtration units to Head Starts (Built Environment and Land Use action 1.1), studying the feasibility of policies to address the impacts of large warehouses and other types of business that are “magnets” for heavy duty truck trips (Transportation and Mobile Sources action 1.1), participating in the development of a planning study focusing on improving transit on Foothill Boulevard (Transportation and Mobile Sources action 2.2), and studying the efficacy of street sweeping to

evaluate the areas in greatest need for sweeping (Transportation and Mobile Sources action 5.1).

Strategies that would result only in the modification of existing facilities or the construction of new minor facilities are exempt under CEQA Guidelines sections 15301 (“Existing Facilities”; class 1) and 15303 (“New Construction or Conversion of Small Structures”; class 3). These strategies include the installation of air filters and monitoring equipment, and the installation of bus boarding islands or bus bulbs to improve rider boarding safety and access.

Strategies that call for information collection, inspections, enforcement, education, and workplace regulations are exempt under CEQA Guidelines sections 15306 (“Information Collection”; class 6), 15309 (“Inspections”; class 9), 15321 (“Enforcement Actions by Regulatory Agencies”; class 21), 15322 (“Educational or Training Programs Involving No Physical Changes”; class 22), and 15324 (“Regulations of Working Conditions”). These categorical exemptions would exempt CERP strategies that include activities like air quality monitoring or other data collection, performance inspections or compliance checks, certain enforcement actions involving permit enforcement or revocation, development of webpages or community outreach campaigns, gathering information about potential fundings sources, and changes to Air District staffing or coordination practices.

The Air District also considered the strategies included in the CERP that will involve undertaking rulemaking activities to address specific air quality concerns. These rulemakings include proceedings to further reduce public health impacts from fugitive dust, to improve implementation of rules to reduce toxic air emissions at existing facilities, and to reduce localized emissions from backup diesel generators. These rulemaking proceedings could potentially be subject to CEQA review when they occur, depending on the nature of any rules the Air District may propose to adopt in them. At this point, however, the CERP merely calls for these proceedings to be initiated in the future, generally following a period of study to determine how to approach a particular issue. The CERP has not identified, let alone committed to, any particular type of new or more stringent rule or regulation that would be developed or adopted in these rulemaking proceedings. Given that it is uncertain what the result of those regulatory proceedings would be, it is not possible at this stage to determine whether they could result in potentially significant environmental impacts. Therefore, CEQA review is not required because the nature and extent of any environmental impacts would be too speculative for evaluation at this point. When the Air District initiates a specific rulemaking process, it will determine whether and what level of CEQA review is required for that rulemaking at that time.