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 Subject: Lake Jennings Marketplace

September 12, 2016

Darren Neufeld  
 Department of Planning and Development Services  
 5510 Overland Ave Suite 310  
 San Diego CA 92123

RE: Lake Jennings Marketplace, PDS2014-GPA-14-005

Dear Mr Neufeld:

Endangered Habitats League (EHL) appreciates the opportunity to submit comments on this proposal for a commercial center. We have concerns to bring to the County's attention on both on CEQA and General Plan grounds.

T-1

We note that in its greenhouse gas analysis, the DEIR uses the methodology of the July 29, 2016 "Recommended Content and Format for Climate Change Analysis Reports in Support of CEQA documents." For example, it utilizes its Thresholds of Significance and its Efficiency Metric. The Sierra Club has filed suit to set aside this document in its Second Supplemental Petition dated September 2, 2016 submitted to the San Diego County Superior Court (enclosure) and incorporated by reference. Also, as detailed in a letter submitted by Golden Door Properties on August 5, 2016 (Exhibit C in enclosure), there are numerous inadequacies under CEQA in using this approach. These concerns are equally valid for Lake Jennings Marketplace as for the subject of the Golden Door Properties letter. We incorporate these concerns by reference.

T-2

More fundamentally, according to the County's General Plan, a valid Climate Action Plan (CAP) must be the basis for Thresholds of Significance and GHG analysis for ongoing development projects. As you know, the County does not yet have a CAP. Therefore, to comply with the General Plan, this project should wait until the CAP is in place. These concerns are also detailed in the Sierra Club's Second Supplemental Petition. We note that while the petition focuses on General Plan amendments, the same issues apply to other types of development projects.

T-3

## Response to Comment Letter T

Endangered Habitats League  
 September 12, 2016

**T-1** This comment is introductory and includes a summary of more detailed comments that occur later in the comment letter. As such, this comment is noted and detailed responses to the issues referenced in this comment are provided below in responses to comments T-2 through T-4.

**T-2** This comment notes that the GHG analysis uses the July 29, 2016 "Recommended Content and Format for Climate Change Analysis Reports in Support of CEQA documents" and the Thresholds of Significance and efficiency metric. The comment summarizes that the Sierra Club has filed suit to set aside this guidance document and that the Golden Door Properties submitted a letter on another project claiming that there are numerous inadequacies under CEQA in using this approach. The comment claims that the concerns of the Sierra Club suit and Golden Door Properties letter are equally valid for the Lake Jennings Marketplace project. This comment, however, does not say how the Sierra Club suit and the Golden Door Properties letter and the issues they raise are "equally valid" for this project.

This comment also states that the Lake Jennings Marketplace project utilizes the efficiency metric to analyze the project's GHG emissions.

Regardless of whether the use of an efficiency metric is appropriate for the project, the Applicant has since committed to an additional mitigation measure which will result in a net-zero increase in GHG emissions as compared to the existing environmental setting, and therefore, the

	<p>project will result in no impacts related to GHG emissions. The County evaluated the project’s GHG emissions impacts by first calculating the overall magnitude of the project’s emissions from direct and indirect sources of greenhouse gases. As discussed in Section 2.3 of the Final EIR, the project’s total GHG emissions were determined to be 2,631 MTCO<sub>2</sub>e per year. After calculating the project’s emissions, the County considered several factors to determine whether those emission levels are significant. Those factors, which are outlined in CEQA Guidelines 15064.4, included the following: (1) whether the project increases or decreases project emissions; (2) whether the project exceeded an applicable threshold of significance; and (3) whether the project complies with applicable regulations, plans or policies that have been adopted to reduce GHG emissions. As discussed in Section 2.3 of the Final EIR, based on these factors, and with the addition of a mitigation measure resulting in a net-zero increase in GHG emissions from the project as compared to the existing environmental setting, the County concluded the project would have no impacts associated with GHG emissions.</p>
	<p><b>T-3</b> The claim that projects cannot move forward because they cannot be found to be consistent with the General Plan until a new CAP is adopted does not comport with case law analyzing general plan consistency. A project may be found consistent with the General Plan even if it is not “in perfect conformity with each and every general plan policy.” <i>Sierra Club v. County of Napa</i>, 121 Cal.App.4th 1490, 1509 (2004). Here, General Plan Policy COS 20.1 does not require a project to include a CAP, nor does it prevent projects from moving forward until a CAP has been adopted by the County. Therefore, approval of a development project prior to adoption of a CAP would not</p>

<p>Please let me know of questions, and thank you for considering our views. ] T-4</p> <p>Yours truly, Dan Silver</p> <p>Enclosure: Second Supplemental Petition with Exhibits ] T-5</p> <p>Dan Silver, Executive Director Endangered Habitats League 8424 Santa Monica Blvd., Suite A 592 Los Angeles, CA 90069-4267</p> <p>213-804-2750 <a href="mailto:dsilverla@me.com">dsilverla@me.com</a>&lt;<a href="mailto:dsilverla@me.com">mailto:dsilverla@me.com</a>&gt;&lt;<a href="mailto:dsilverla@me.com">mailto:dsilverla@me.com</a>&gt; <a href="http://www.ehleague.org">www.ehleague.org</a>&lt;<a href="http://www.ehleague.org">http://www.ehleague.org</a>&gt;</p>	<p>obstruct that policy, nor be inconsistent with the General Plan. Nothing in the challenge to the original CAP nor in the recent challenge to the County's 2016 GHG Guidance document changes this conclusion.</p> <p>In addition, the preparation of a CAP was one mitigation measure set forth in the General Plan Update (GPU) EIR to address GHG emissions from build out under the General Plan. There were seventeen other mitigation measures specifically dealing with climate change. The County Board of Supervisors' findings indicated that the various measures in combination would mitigate the impact to below a level of significance. The absence of a CAP does not preclude compliance with CEQA and development projects, such as the proposed project, must include a GHG analysis.</p> <p>Please also note that neither the trial court's writ in the Sierra Club's challenge of the CAP nor the Court of Appeal decision addressed the processing of development projects. Each court found that the CAP did not meet the description of Mitigation Measure CC 1.2. The County is complying with the writ by preparing a new CAP that will be supported by appropriate CEQA review.</p> <p><b>T-4</b> Comment noted.</p> <p><b>T-5</b> Comment noted. This comment lists an attached enclosure which is referenced in the comment letter. A response is not provided for the enclosure as it is utilized in support of the detailed comments responded to above.</p>
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9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
10 **FOR THE COUNTY OF SAN DIEGO**

11 SIERRA CLUB,

12 Petitioner,

13 v.

14 COUNTY OF SAN DIEGO,

15 Respondent.

16 CASE NO.: 37-2012-00101054-CU-TT-CTL

17 **SECOND SUPPLEMENTAL PETITION**  
18 **FOR WRIT OF MANDATE**

19 **IMAGED FILE**

20 (CALIFORNIA ENVIRONMENTAL  
21 QUALITY ACT)

22 Judge: Hon. Timothy B. Taylor

23 Dept: C-72

24 Original Petition Filed: July 20, 2012

25 First Supplemental Petition for Writ of

26 Mandate Filed: February 18, 2014

27 SECOND SUPPLEMENTAL  
28 PETITION FOR WRIT OF MANDATE



**INTRODUCTION**

1. Petitioner Sierra Club (“Petitioner” or “Sierra Club”) files this Second Supplemental Petition for Writ of Mandate seeking to set aside the 2016 Guidelines for Determining Significance for Climate Change. This action is required because the County of San Diego (“County”) failed to circulate the 2016 document that it refers to as “Guidelines”, but is really Thresholds of Significance, and is therefore referred to as “2016 Thresholds.” (Exhibit A.) The 2016 Thresholds was adopted administratively, without public comment and review, and it was not adopted by ordinance, rule or regulation. This action violates CEQA and the County’s own procedural requirements.

2. The County also has approved the 2016 Thresholds in violation of the Court of Appeal’s conclusion that the project is the “C[limite] A[ction] P[lan] and Thresholds project.” In light of the Court of Appeal’s conclusion that “the County failed to analyze the environmental impacts of the CAP and Thresholds project itself,” the County may not approve Thresholds independently from the CAP and without performing environmental review.

3. The 2016 Thresholds also should be set aside as it is inconsistent with the County’s General Plan and the General Plan Environmental Impact Report (“EIR”), and the commitment the County made when it required a Climate Action Plan (“CAP”) and Thresholds of Significance based upon that CAP, as part of the 2011 General Plan Update. General Plan Mitigation Measure CC-1.8 requires the County to revise its thresholds of significance “based on the [CAP].” Since the thresholds of significance relies upon and even incorporates the CAP that this Court invalidated, the thresholds of significance cannot precede the CAP.

4. The approval of the 2016 Thresholds also violates this Court’s May 4, 2015 Supplemental Writ of Mandate. The Supplemental Writ of Mandate, which set aside the 2013 Guidelines for Determining Significance for Climate Change (“2013 Thresholds”), required the County to provide a schedule for preparing Guidelines for Determining

1 Significance for Greenhouse Gas Emissions, as well as the CAP, and to comply with CEQA  
2 as it applied to this action. The County failed to do so.

3 5. The Sierra Club further seeks to enjoin the approval of major development  
4 projects requiring General Plan Amendments on lands that are currently greenfields within  
5 the County until the County approves a legally adequate CAP and Thresholds of Significance  
6 because proper environmental review cannot be conducted without such documents first  
7 being in place, and the premature approval of such developments would further jeopardize  
8 the ability of the County to attain the 2020 emission reduction goals to which it committed  
9 itself. Only if and when the County produces a legally adequate CAP and Thresholds of  
10 Significance based upon that CAP may major new development projects that require further  
11 amendments to the General Plan be considered.

12 6. In August 2011, the County adopted a General Plan Update, in which the  
13 County committed to preparing a CAP with greenhouse gas (“GHG”) emissions reduction  
14 targets and deadlines and comprehensive and enforceable GHG emissions reductions  
15 measures that will achieve specified quantities of GHG reductions by the year 2020.  
16 According to the County, the CAP was prepared to mitigate the impacts of climate change by  
17 achieving meaningful GHG reductions within the County. General Plan Update Mitigation  
18 Measure CC-1.2 required the preparation of a CAP within six months from the adoption date  
19 of the General Plan Update.

20 7. As this Court correctly stated in its April 24, 2013 judgment, “enforceable  
21 mitigation measures are necessary now.” Over three years after the issuance of this Court’s  
22 judgment, and five years after the County’s adoption of the General Plan Update, enforceable  
23 mitigation measures are still not in place. According to the First Return to the First  
24 Supplemental Writ of Mandate, the County provides for adoption of a new CAP by Winter  
25 2018.

26 8. Despite the absence of both a CAP to mitigate GHG impacts and Thresholds of  
27 Significance to assess whether impacts will be mitigated below the level of significance,  
28

1 major development projects that require further amendments to the existing General Plan  
 2 continue to be proposed and processed by the County. Approving such projects without  
 3 complying with a legally adequate CAP and Thresholds is inconsistent with the County's  
 4 General Plan commitment to mitigate GHG emissions and to comply with AB 32, CEQA,  
 5 and general planning laws. Approval of amendments to the General Plan to allow further  
 6 growth prior to the adoption of a legally adequate CAP and Thresholds would also be  
 7 contrary to the rationale for issuance of the original writ of mandate and the reasoning of the  
 8 Court of Appeal.

9 9. In light of Mitigation Measure CC-1.2's requirement that a CAP be prepared  
 10 within six months from the adoption of the General Plan Update, processing major  
 11 development projects absent a CAP five years after the General Plan Update was adopted  
 12 constitutes an impermissible deferral of Mitigation Measure CC-1.2.

13 10. To the extent that the County is anxious to process major development projects  
 14 requiring General Plan Amendments on lands that are currently greenfields, the answer is to  
 15 expeditiously adopt an adequate CAP and Thresholds of Significance that will result in the  
 16 County achieving the greenhouse gas emission reduction goals, adopted by it, that are  
 17 articulated in AB 32.

#### 18 JURISDICTION

19 11. This Court has jurisdiction over the writ action under section 1085 et seq. and  
 20 1094.5 et seq. of the Code of Civil Procedure, and sections 21168 and 21168.5 of the Public  
 21 Resources Code.

22 12. Furthermore, in this Court's April 24, 2013 writ of mandate and May 4, 2015  
 23 supplemental writ of mandate, this Court retained jurisdiction over the County until the Court  
 24 determines the County has adequately complied with CEQA and any and all other applicable  
 25 laws with regard to its CAP and Thresholds of Significance.

**PARTIES**

13. Petitioner Sierra Club is a national nonprofit organization with more than 600,000 members nationwide, including almost 150,000 in California and 12,000 members in San Diego and Imperial Counties.

14. The Sierra Club is dedicated to exploring, enjoying, and protecting the wild places of the earth; to practicing and promoting the responsible use of the earth's ecosystems and resources; to educating and enlisting humanity to protect and restore the quality of the natural and human environment; and to using all lawful means to carry out these objectives. The Sierra Club's concerns encompass climate stabilization, coastal issues, land use, transportation, wildlife and habitat preservation, parks and recreation. The interests that Petition seeks to further in this action are within the purposes and goals of the organization. Petitioner and its members have a direct and beneficial interest in Respondents' compliance with CEQA, its own mitigation measures, and the Judgment of this Court. The maintenance and prosecution of this action will confer a substantial benefit on the public by protecting the public from the environmental and other harms alleged herein, including but not limited to requiring informed decision-making.

15. County of San Diego is a public agency under Section 21063 of the Public Resources Code. County of San Diego is authorized and required by law to hold public hearings, to determine the adequacy of and certify environmental documents prepared pursuant to CEQA, and to take other actions in connection with the approval of projects within its jurisdiction.

**BACKGROUND AND STATEMENT OF FACTS**

16. On August 3, 2011, the County adopted a General Plan Update, in which the "County committed to preparing a climate change action plan with 'more detailed greenhouse gas [GHG] emissions reduction targets and deadlines' and 'comprehensive and enforceable GHG emissions reductions measures that will achieve' specified quantities of



1 GHG reductions by the year 2020.” (*Sierra Club v. County of San Diego* (2014) 231  
2 Cal.App.4th 1152, 1156, *emphasis added*.)

3 17. Mitigation Measure CC-1.2 “requires the preparation of a County Climate  
4 Change Action Plan within six months from the adoption date of the General Plan Update.”  
5 (*Id.* at 1159.)

6 18. On July 20, 2012, Sierra Club filed the original Petition for Writ of Mandate in  
7 this case challenging the County’s June 20, 2012 approval of the CAP and Thresholds and an  
8 Addendum to the General Plan Update EIR.

9 19. In its original petition, Sierra Club argued that the County did not proceed in  
10 the manner required by law and by its own promises.

11 20. In its opening brief, the Sierra Club outlined the County’s failures to comply  
12 with CEQA Guidelines section 15064.7, subdivision (b):

13 Thresholds of significance to be adopted for general use as part of  
14 the lead agency’s environmental review process **must be adopted**  
15 **by ordinance, resolution, rule, or regulation, and developed**  
16 **through a public review process** and be **supported by substantial**  
17 **evidence.**

18 (Cal. Code Regs., tit. 14, § 15064.7(b), *emphasis added*). Sierra Club pointed out that the  
19 Thresholds were never separately mentioned on any agenda or public notice, developed  
20 through a public review process and, critically, were not based on substantial evidence.

21 21. The County’s response to this particular argument was that “[t]he Board simply  
22 did not adopt the guidelines at all. . . . In addition, the record contains no evidence that the  
23 Guidelines have been adopted by staff. . . .” (County’s Points and Authorities in Opposition  
24 to Petition for Writ of Mandate, p. 12, ll. 15-24.)

25 22. On April 19, 2013, this Court ruled in favor of the Sierra Club, concluding that  
26 the CAP was not properly approved and violated CEQA. The Court stated, “In view of the  
27 foregoing, the court finds it unnecessary to address the subsidiary dispute over whether the  
28 guidelines for determining thresholds of significance for GHG were adopted or not.” On

1 April 24, 2013, this Court issued a Writ of Mandate and entered Judgment. The County  
2 appealed the Judgment of this Court on June 12, 2013.

3 23. In November 2013, the Director of Planning and Development sent a  
4 memorandum to the Board of Supervisors indicating the intent to adopt the 2013 Thresholds.

5 24. On December 18, 2013, counsel for the Sierra Club sent a letter to counsel for  
6 the County and requested that the Staff-Approved Thresholds be set aside. In a December  
7 27, 2013 response, the Chief Deputy County Counsel declined to set aside the Staff-  
8 Approved Thresholds.

9 25. On February 18, 2014, Sierra Club filed a Supplemental Petition for Writ of  
10 Mandate requesting that the Court order the County to set aside the Staff-Approved  
11 Thresholds unless and until the County has complied with the Judgment.

12 26. On October 29, 2014, the Court of Appeal affirmed this Court's judgment. In  
13 its opinion, the Court of Appeal stated, "By failing to consider environmental impacts of the  
14 CAP and Thresholds project, the County effectively abdicated its responsibility to  
15 meaningfully consider public comments and incorporate mitigating conditions." (*Sierra*  
16 *Club, supra*, 231 Cal.App.4th at 1173.)

17 27. On December 11, 2014, the parties entered into a stipulation regarding the  
18 disposition of the Supplemental Petition. In compliance with the Stipulation, on April 8,  
19 2015, the Board of Supervisors voted, in public session, to rescind the CAP and the  
20 November 2013 approval of the Thresholds was withdrawn.

21 28. On May 4, 2015, the Court issued the Supplemental Writ of Mandate ordering  
22 the County to demonstrate that it had set aside the CAP, findings, and 2013 Thresholds.  
23 Additionally, the County was required to file in its initial return "an estimated schedule for  
24 preparing a new Climate Action Plan, preparing Guidelines for Determining Significance for  
25 Greenhouse Gas Emissions, and complying with CEQA as it applies to those actions." The  
26 County was required to file additional returns at intervals not to exceed six months.



29. On June 4, 2015, the County submitted its initial return to the writ detailing the rescission of the CAP and the withdrawal of the 2013 Thresholds. The County also attached the estimated schedule. While the County alleged that the timeline encompassed “Greenhouse Gas Significance Guidelines,” the timeline does not reference the Guidelines or Thresholds at all. The County only provided a “Climate Action Plan Schedule,” which anticipated final approval of the CAP and EIR in “Spring 2017-Winter 2018.” While the County’s website refers to possible adoption by Fall 2017, clearly the time could be delayed considering the County has already fallen behind schedule on its stated timeline.

30. The schedule indicates that the Draft CAP would be developed in “Fall 2015-Spring 2016,” the Draft EIR would be developed in “Winter 2016-Summer 2016,” and the CAP and EIR would be finalized in “Spring 2016-Winter 2017.”

31. In its Second Return to Supplemental Writ of Mandate, filed on January 5, 2016, the County stated that it had created a Green Working Group composed of representatives of numerous County departments and consultants that meet monthly.

32. In its Third Return to Supplemental Writ of Mandate, filed on June 28, 2016, the County identified a number of preliminary actions, including participation in meetings, workshops, and public events, as well as review of CAPs from other jurisdictions. The County identified that an EIR Scoping Meeting is scheduled for fall 2016.

33. Since the Draft CAP Development and Formulation was scheduled for as late as Spring 2016, the Draft EIR Development was scheduled for as late as Summer 2016, and the Third Return did not identify any actions taken in drafting the CAP or EIR, the County is already behind schedule and is unlikely to be able to comply with its initial schedule anticipating final adoption of the CAP and Thresholds by Winter 2018.

34. On July 29, 2016, the County’s Planning and Development Services published its “2016 Climate Change Analysis Guidance.” Counsel for Sierra Club has found no evidence that either the Sierra Club or the general public was notified of the pendency of the proposed 2016 Thresholds, or was provided an opportunity to comment on them.

35. The 2016 Thresholds are less environmentally protective than the 2013 Thresholds that were previously set aside. For example, the 2013 “Efficiency Threshold” is lower (4.32 metric tons per person), and thus more environmentally protective, than the 2016 “County Efficiency Metric” (4.9 metric tons per person).

36. On July 26, 2016, Sierra Club sent the County a letter requesting that the County halt approval of development project applications requiring General Plan Amendments until a new CAP and Thresholds are prepared. (**Exhibit B.**)

37. On August 5, 2016, attorney Chris Garrett sent a letter to the County urging it to set aside the 2016 Thresholds. (**Exhibit C.**)

38. On August 9, 2016, Sierra Club sent the County a letter requesting that the County set aside the 2016 Thresholds. (**Exhibit D.**)

39. On August 10, 2016, the County responded to Sierra Club’s July 26, 2016 letter declining to postpone action on development projects claiming that a valid CAP is not necessary for project approvals because, “Even without an adopted CAP, each development project must comply with CEQA.” (**Exhibit E.**) The County did not respond to Sierra Club’s August 9, 2016 letter.

40. Petitioner has a beneficial right and interest in Respondent’s fulfillment of all its legal duties, as alleged herein.

41. Petitioner has no plain, speedy or adequate remedy at law. County staff purported to adopt the 2016 Staff-Approved Thresholds despite this Court’s Judgment, without any public review, and without complying with CEQA. Unless this Court enjoins and sets aside its action, the County will almost certainly approve projects with climate change impacts without any meaningful climate change analysis. The foreseeable consequence is that projects that individually and/or cumulatively would adversely impact the environment will be presented for approval without the benefit of science-based analysis and without science-based consideration of feasible mitigation measures. The result is that which CEQA seeks to avoid - uninformed decision-making and stifled solutions.

42. A valid CAP and Thresholds are necessary to adequately mitigate GHG impacts and comply with the commitments the County made during the 2012 General Plan Update process.

43. The County is currently processing projects that would require amendments to the General Plan in order to allow large commercial or residential development on lands that are currently not designated for intensive use. This includes, but is not limited to, lands designated as open space, semi-rural, agricultural, and village residential (hereinafter, referred to as “greenfields”). (**Exhibit B**, Chart entitled “San Diego County Proposed General Plan Amendments” [referenced in the letter as Exhibit A].)

44. In its 2016 Thresholds, the County itself has recognized that any project above a particular size requires a greenhouse gas analysis. The County identifies the sizes of projects that would generally require climate change analysis by referencing the table of project sizes as established by the California Air Pollution Control Officers Association in its “CEQA & Climate Change” publication. (**Exhibit A**, p. 2.) In the absence of a CAP and Thresholds, the County is unable to adequately mitigate GHG impacts of these major development projects.

45. Failing to enjoin these actions will result in the need for individual lawsuits on each project, which would not be an efficient use of judicial resources and would require a significantly larger commitment of resources by the Sierra Club and other parties who want to assure that the County will meet its commitment to achieve compliance with AB 32 and not contribute further to climate destabilization.

**FIRST CAUSE OF ACTION**  
**For Violation of Judgment**  
**(Cal. Code Civ. Pro. §1085; Cal. Pub. Res. Code §21168.5)**

46. Paragraphs 1 through 45 are fully incorporated herein.

47. The County has a mandatory and ministerial duty to comply with the terms of this Court’s April 24, 2013 and May 4, 2015 judgments.

48. Absent compliance with CEQA and the judgments of this Court, the Thresholds cannot be resurrected in the form of the Staff-Approved Thresholds.

49. Petitioner is entitled to a supplemental writ of mandate requiring the County to set aside the Staff-Approved Thresholds unless and until the County has complied with the judgments of this Court and CEQA, including completing a Draft EIR on the proposed CAP and Thresholds; circulating that document for public comment; finalizing an EIR; and the Board of Supervisors adopting a legally adequate CAP and approving the Thresholds of Significance to achieve implementation of the CAP.

50. Despite the Court ordering the County to include in the initial return an estimated schedule for preparing Guidelines for Determining Significance for Greenhouse Gas Emissions, none of the returns provide this information.

**SECOND CAUSE OF ACTION**

**For Violation of CEQA**

**Improperly Adopting Thresholds of Significance**

**(Cal. Code Civ. Pro. §§1085, 1094.5; Cal. Pub. Res Code §§21168.5, 21168)**

51. Paragraphs 1 through 50 are fully incorporated herein.

52. The Staff-Approved Thresholds were not adopted as required by CEQA Guideline Section 15064.7(b). Specifically:

(a) The Staff-Approved Thresholds were not adopted based upon a CAP, as the County committed to do when it adopted the 2011 General Plan Update;

(b) The Staff-Approved Thresholds were not the subject of environmental review, as required by the Court of Appeal decision;

(c) The Staff-Approved Thresholds were not adopted by ordinance, resolution, rule, or regulation as required by CEQA Guidelines section 15064.7;

(d) The Staff-Approved Thresholds were not developed through a public review process as required by CEQA Guidelines section 15064.7; and

(e) The Staff-Approved Thresholds are not supported by substantial evidence.



53. The Staff-Approved Thresholds were arbitrarily and capriciously adopted. In particular:

(a) The County failed to make any findings; and

(b) The Staff-Approved Thresholds are based on an invalid process. The Staff-Approved Thresholds do not meet the minimum emissions reductions necessary to avoid devastating environmental impacts. By way of example and not limitation, the Staff-Approved Thresholds enable post-2020 GHG emissions despite the fact that the invalid CAP incorporated by the Staff-Approved Thresholds concedes the County will fail to meet the minimum post-2020 emissions reductions targets established by Executive Order S-3-05 - and necessary to avoid disastrous environmental consequences.

**THIRD CAUSE OF ACTION**

**For Violation of CEQA**

**Processing Major Developments Requiring Further General Plan Amendments Without a Legally Adequate CAP and Thresholds of Significance (Cal. Code Civ. Pro. §§1085, 1094.5; Cal. Pub. Res Code §§21168.5, 21168)**

54. Paragraphs 1 through 53 are fully incorporated herein.

55. The processing of development projects that would result in amendments to the general plan and for which projected GHG emissions would exceed the limits of project sizes requiring a climate change analysis, as established by the California Air Pollution Control Officers Association in its “CEQA & Climate Change” publication, violates CEQA because there cannot be an adequate EIR when the County has not determined what mitigation measures are appropriate in order to ensure that the County’s climate action goals will be obtained and where there is no adopted threshold of significance.

56. In the absence of a legally valid CAP and Thresholds, the County’s processing and approval of major development projects that require additional General Plan Amendments violates CEQA because the County is not implementing a mitigation measure that it committed to in the General Plan Update.

57. Processing major development projects absent a CAP and Thresholds five years after the General Plan Update was adopted constitutes an impermissible deferral of General Plan Update Mitigation Measure CC-1.2.

**PRAYER FOR RELIEF**

In each of the respects enumerated above, Respondent has violated its duties under the law, abused its discretion, failed to proceed in the manner required by law, and decided the matters complained of without the support of substantial evidence. Accordingly, the Staff-Approved Thresholds must be set aside and the County must be ordered to postpone final approval of any projects requiring General Plan Amendments until approval of a legally adequate CAP and Thresholds.

WHEREFORE, Petitioner prays for relief as follows:


1. For an alternative and peremptory writ of mandate commanding Respondent to set aside and vacate approval of the Staff-Approved Thresholds unless and until the County complies with the Judgment of this Court;
2. For an order enjoining Respondent from applying the Staff-Approved Thresholds to any projects unless and until such time as the County complies with the Judgment of this Court;
3. For an order enjoining Respondent from circulating a Draft or Final EIR for any General Plan Amendments that would allow development on greenfields where the project is larger than the project size identified in the California Air Pollution Control Officers Association "CEQA and Climate Change" publication until the County complies with the Judgment of this Court by approving a legally adequate CAP and Thresholds;
4. For costs of the suit;
5. For reasonable attorneys' fees; and
6. For such other and further relief as the Court deems just and proper.



1 DATE: September 2, 2016  
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Respectfully Submitted,  
CHATTEN-BROWN & CARSTENS

5 By:

  
Josh Chatten-Brown  
Jan Chatten-Brown  
Attorneys for Petitioner

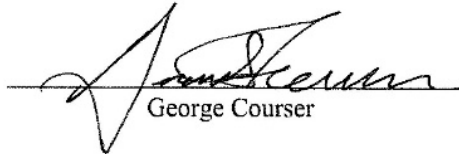
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VERIFICATION

I, George Courser, declare as follows:

I am an officer of the Sierra Club. I have read the foregoing SECOND SUPPLEMENTAL PETITION FOR WRIT OF MANDATE and know the contents thereof, and the same is true of my own knowledge.

I declare under penalty of perjury that the foregoing is true and correct and that this verification was executed on the 1<sup>st</sup> day of September, 2016 at San Diego, California.

  
George Courser

## EXHIBIT A



## County of San Diego

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### 2016 CLIMATE CHANGE ANALYSIS GUIDANCE

#### **RECOMMENDED CONTENT AND FORMAT FOR CLIMATE CHANGE ANALYSIS REPORTS IN SUPPORT OF CEQA DOCUMENTS**

County of San Diego  
Planning & Development Services (PDS)  
July 29, 2016

#### **Background**

The California Environmental Quality Act (CEQA) requires public agencies to review the environmental impacts of proposed projects and consider feasible alternatives and mitigation measures to reduce significant adverse environmental effects. As part of this analysis, agencies must consider potential adverse effects from a proposed project's greenhouse gas (GHG) emissions. The California Natural Resources Agency adopted amendments to the CEQA Guidelines to address GHG emissions, consistent with Legislature's directive in Public Resources Code section 21083.05 (enacted as part of Senate Bill (SB) 97 [Chapter 185, Statutes 2007]). These amendments took effect in 2010.

This Climate Change Analysis guidance is being provided by the County of San Diego to assist in project-level analyses of GHGs for discretionary projects. The guidance will be modified as needed if and when more specific guidance is provided by the California Air Resources Board (ARB), the Governor's Office of Planning and Research (OPR), or in response to legislative or judicial action pertaining to this issue.

Instigated by Governor Schwarzenegger's Executive Order S-3-05, the Global Warming Solutions Act of 2006, also known as Assembly Bill 32 (AB 32), requires reduction of statewide GHG emissions to 1990 emissions levels by 2020. In 2008, ARB adopted a *Climate Change Scoping Plan* to identify the next steps in reaching AB 32 goals. ARB adopted an update to the Scoping Plan in 2014. California Governor Brown signed Executive Order B-30-15, which established a reduction target of 40 percent below 1990 levels by 2030 to reflect the need for continued pursuit of GHG reductions necessary to avoid the most environmentally damaging aspects of climate change. ARB is currently working on an update to the Scoping Plan to address this target. However, no specific emission reduction goal beyond 2020 has been formally adopted by ARB or the California State Legislature.

Project analyses prepared consistent with this guidance document will need to be reviewed and verified by the County and is subject to County staff approval. The guidance provided in this document does not supersede the County's discretionary authority. It is important to note that alternative approaches to evaluating GHG emissions may be utilized; however, any approach must be supported by fact-based rationale and substantial evidence to demonstrate compliance with applicable CEQA Guidelines.

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### Determination of Need for Climate Change Analysis

Although climate change is ultimately a cumulative impact, not every individual project that emits GHGs must necessarily be found to contribute to a significant cumulative impact on the environment. While the County encourages CEQA analyses to focus on the GHG efficiency of a proposed project, it also acknowledges that some projects are sufficiently small such that it is highly unlikely they would generate a level of GHGs that would be cumulatively considerable.

Thus, the County encourages the use of the project size-based screening levels published by the California Air Pollution Control Officers Association (CAPCOA), and presented here in Table 1, to determine whether Climate Change Analysis is needed to examine the GHG impacts of a proposed project.

The annual 900 metric ton carbon dioxide equivalent (MT CO<sub>2</sub>e) screening level referenced in the CAPCOA white paper<sup>1</sup> is recommended by the County as a conservative screening criterion for determining which projects require further analysis and identification of project design features or potential mitigation measures with regard to GHG emissions. The CAPCOA white paper reports that the 900 metric ton screening level would capture more than 90 percent of development projects, allowing for mitigation towards achieving the State's GHG reduction goals. Table 1 shows the sizes of projects that would generally require additional analysis and mitigation.

Table 1 Project Sizes that Would Typically Require a Climate Change Analysis *	
Project Type**	Project Size Equivalency
Single Family Residential	50 units or more
Apartments/Condominiums	70 units or more
General Commercial Office Space	35,000 square feet or more
Retail Space	11,000 square feet or more
Supermarket/Grocery Space	6,300 square feet or more
Source: The screening levels are published in California Air Pollution Control Officers Association. 2008 (January). <i>CEQA &amp; Climate Change: Evaluating and Addressing Greenhouse Gas Emissions from Projects Subject to the California Environmental Quality Act</i> . Available at <a href="http://www.capcoa.org/wp-content/uploads/downloads/2010/05/CAPCOA-White-Paper.pdf">http://www.capcoa.org/wp-content/uploads/downloads/2010/05/CAPCOA-White-Paper.pdf</a>	
*A determination on the need for a climate change analysis for project types not included in the table will be made on a case-by-case basis considering the 900 metric ton criterion.	
**A project with a combination of types may demonstrate compliance with the screening threshold through addition of the ratios of each contribution by the associated equivalency threshold.	

If a proposed project is the same type and smaller than the project sizes listed in the table above, it is presumed that the construction and operational GHG emissions for that project would not exceed 900 MT CO<sub>2</sub>e per year, and there would be a less-than-cumulatively considerable impact. It should be noted that the screening level assumes that the project does not involve unusually extensive construction activities and does not involve operational characteristics that would generate unusually high GHG emissions. The applicability of the screening criteria presented in Table 1 will be evaluated by County staff on a project-by-project basis to determine if there is evidence to suggest that a project's

<sup>1</sup> California Air Pollution Control Officers Association. 2008 (January). *CEQA & Climate Change: Evaluating and Addressing Greenhouse Gas Emissions from Projects Subject to the California Environmental Quality Act*. Available at <http://www.capcoa.org/wp-content/uploads/downloads/2010/05/CAPCOA-White-Paper.pdf>.



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unique attributes would lead to emissions that are higher than 900 MT CO<sub>2</sub>e per year, thus justifying the need for a complete Climate Change Analysis.

Though CAPCOA's recommended project size-based screening criteria are based on the mass emissions level of 900 MT CO<sub>2</sub>e per year, it does not mean that project-generated GHG levels greater than 900 MT CO<sub>2</sub>e per year are automatically deemed cumulatively considerable. Instead, the screening levels presented in Table 1 are to be used to determine whether it is necessary to conduct further analysis to quantify a project's GHG emissions and evaluate its GHG efficiency.

### Contents of Climate Change Analysis Reports

The following are the minimum recommended components of a Climate Change Analysis consistent with CEQA, prepared for discretionary projects in the County that exceed the screening level identified in Table 1 above.

Introduction and Project Description. This section explains the purpose of the report and a summary of the most current scientific information related to climate change. A brief project description and general location is required, and it must include all elements of the project that would or could generate GHG emissions, with an estimated timeframe for project implementation. This section would also identify the project design and location features that have the effect of reducing GHG emissions.

Environmental Setting. This section includes a description of the existing environmental conditions or setting, without the project, which constitutes the baseline physical conditions for determining the project's impacts. Existing uses onsite that generate GHG emissions under baseline conditions must be disclosed and associated GHG emissions should be quantified to establish the baseline conditions.

Regulatory Setting. This section includes a discussion of the existing regulatory environment pertaining to climate change such as AB 32 and the California Building Efficiency Standards. In addition, a description of implementing plans, programs and policies including but not limited to the County General Plan, the San Diego Association of Governments (SANDAG) Regional Transportation Plan and associated Sustainable Communities Strategy, Executive Orders S-3-05 and B-30-15, ARB Scoping Plan (including any adopted and ongoing updates), and Advanced Clean Cars Program should be addressed as they relate to the proposed project. The list presented here is not all inclusive and the regulatory setting should address all regulations, programs, and policies directly relevant to the project.

Emissions Inventory. The Climate Change Analysis must provide a detailed accounting of the project's estimated construction and operational GHG emissions. Construction GHG emissions include an inventory of emissions associated with the use of heavy construction equipment, construction worker vehicle miles traveled (VMT), and truck trips required to deliver construction materials to the project site. Operational GHG emissions include energy use (including electricity, natural gas and other fuels) from land use development, water distribution, and wastewater treatment processes, off-gassing from solid waste generation, transportation VMT, and area sources (such as landscaping equipment and fireplaces). Emissions associated with other sectors, such as agricultural uses or industrial operations, should be quantified depending upon the individual project's proposed uses.

The analysis must also quantify the loss in sequestered carbon, expressed in CO<sub>2</sub>e that would result from any vegetation permanently removed as a result of project development. The total loss of sequestered carbon can be estimated using the Vegetation module in CalEEMod.

The GHG inventory must include justification and references to document the assumptions that are made about the emissions calculations. Activity data, such as trip distances, and emission factors



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specific to the County must be used, where available. The County suggests the use of modeling tools such as the current version of CalEEMod. Alternatively, emissions may be estimated using emission factors from EMFAC or OFFROAD, provided the current versions are used and the sources are appropriately cited. The URBEMIS model is no longer acceptable for use by the County.

Because some GHG emissions models build in different statewide programs and mitigation measures, it is important to coordinate with County staff to ensure that the correct approach is being used to estimate the effects of statewide efforts, particularly since new statewide programs, regulations and mitigation measures are likely to be established over time and certain actions are likely to be included in updates to the various GHG emissions models.

### Significance Criteria

Guidelines for Determining Significance. This section includes identification and justification of the selected significance criteria used to assess impacts. The report must discuss the reasons for choosing the significance criteria, referencing State legislation and implementing strategies that have been developed to reduce GHG emissions to meet statewide reduction targets. This section should explain that climate change is not generally considered a direct impact, but should be analyzed as a potential cumulative impact under CEQA. The significance criteria used in the Climate Change Analysis should include a statement and supporting analysis as to whether the subject project complies with GHG reduction requirements under AB 32, the Global Warming Solutions Act of 2006 for the year 2020; and whether the subject project is on the trajectory towards GHG emission reduction goals of Executive Orders S-3-05 and B-30-15 at buildout. Additional detail on the process to make the latter determination is provided below. Due to the range of project types processed by the County, significance criteria and analysis approaches may vary. The following sections identify one potential set of criteria and methodologies, along with supporting evidence that would be appropriate for a Climate Change Analysis.

This section should discuss the suggested questions referenced in the *CEQA Guidelines*, Appendix G, VII. Greenhouse Gas Emissions.

*Would the project:*

*Generate greenhouse gas emissions, either directly or indirectly, that may have a significant impact on the environment?*

*Conflict with an applicable plan, policy or regulation adopted for the purpose of reducing the emissions of greenhouse gases?*

The Study should describe how the appropriate significance criteria are used to address the above-referenced questions.

### Significance Determination

The County Efficiency Metric is the recognized and recommended method by which a project may make impact significance determinations. The County is recommending a quantitative GHG analysis be conducted and the significance of the impact determined for project emissions at 2020 and buildout year (if post-2020). For a Climate Change Analysis to be considered adequate, the County recommends quantification of GHG emissions at 2020 and project buildout. The determination of a project's efficiency may be determined by using applicable efficiency metrics derived for those specific years, e.g. 2020 and project buildout (if post-2020). Other methods to determine the significance of

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impacts relative to project emissions at 2020 and buildout will be considered on a case-by-case basis. All analysis (significance determination) results must be supported with substantial evidence.

**Horizon Year 2020.** For projects that exceed the screening criterion of 900 MT CO<sub>2</sub>e, as determined through the screening levels in Table 1 or emissions quantification, and that would be operational (buildout) on or before 2020, the Climate Change Analysis must analyze and determine the significance of project emissions in 2020. The County recognizes the quantitative efficiency metric for 2020 to be 4.9 MT CO<sub>2</sub>e/SP/year (where SP refers to the project's service population [residents + employees]).

**Buildout Year.** The County anticipates that some projects would have buildout dates beyond 2020. The County recommends quantification of project emissions for the year the project is anticipated to be fully constructed (buildout), in addition to 2020, and make a significance determination relative to the emissions reduction downward direction.

ARB has indicated in their 2030 Target Scoping Plan, October 1, 2015, that State GHG emissions would need to be reduced at an annual average rate of 5.2 percent between 2020 and 2050, representing an emission reduction downward direction <sup>(2)</sup> necessary to meet the goals advocated in Executive Orders S-3-05 and B-30-15.

### Efficiency Metric Background

The Efficiency Metric assesses the GHG efficiency of a project on a "service population (SP)" basis (Efficiency Metric = project emissions divided by the sum of the number of jobs and the number of residents provided by a project). The metric represents the rate of emissions needed to achieve a fair share of the State's emissions mandate embodied in AB 32 and Executive Orders B-30-15 and S-3-05. The use of "fair share" in this instance indicates the GHG efficiency level that, if applied statewide, would meet the AB 32 emissions target and support efforts to reduce emissions beyond 2020.

The Efficiency Metric is based on the AB 32 GHG reduction target and GHG emissions inventory prepared for ARB's 2008 Scoping Plan. To develop the efficiency metric for 2020, land-use driven sectors in ARB's 1990 GHG inventory were identified and separated to tailor the inventory to land use projects. This process removes emission sources not applicable to land use projects. The land-use driven sector inventory for 1990 was divided by the service population projections for California in 2020. The Efficiency Metric allows the threshold to be applied evenly to most project types (residential, commercial/retail and mixed use) and employs an emissions inventory comprised only of emission sources from land-use related sectors. The Efficiency Metric allows lead agencies to assess whether any given project or plan would accommodate population and employment growth in a way that is consistent with the emissions limit established under AB 32.

If a project includes a use that would not be covered by the adjusted land use-driven inventory, a tailored efficiency metric may be derived. For example, a project that proposes agricultural uses onsite may not use the efficiency metrics shown above because the inventory used to develop the metric did not include agricultural emissions. Coordination with County staff is recommended to develop the appropriate efficiency metric for such projects.

<sup>2</sup> 2030 Target Scoping Plan Workshop Slides. Page 10 – Path to 2050 Greenhouse Gas Target. Available: [http://www.arb.ca.gov/cc/scopingplan/meetings/10\\_1\\_15slides/2015slides.pdf](http://www.arb.ca.gov/cc/scopingplan/meetings/10_1_15slides/2015slides.pdf). It should be noted that ARB did not establish interim year reduction targets using the 5.2 percent annual reduction rate; rather it was used to illustrate the average annual emissions reduction needed to achieve the long-term targets for 2030 and 2050. The 2030 Target Scoping Plan has not been adopted as of this writing and this information is considered preliminary (from the first public workshop for the 2030 Target Scoping Plan) and used only to establish interim year efficiency metrics for CEQA analyses.

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## 2020 Efficiency Metric

The GHG efficiency metric is 4.9 MT CO<sub>2</sub>e/SP/year for 2020.

### California Service Population in 2020

2020 Population Projection* =	40,619,346
2020 Employment Projection** =	18,511,200
2020 Service Population =	59,130,546 SP

### ARB's 1990 California GHG Inventory

1990 Total Emissions =	431 MMT CO <sub>2</sub> e
1990 Non-land Use Emissions =	144.3 MMT CO <sub>2</sub> e
1990 Land Use Emissions =	286.7 MMT CO <sub>2</sub> e

1990 Land Use Emissions/2020 SP, or 286.7 MMT/59,130,546 SP = 4.9 MT/SP  
where MMT = million metric tons

### Sources:

\*California Department of Finance, Demographic Research Unit  
Report P-2, State and County Population Projections by Race/Ethnicity and Age (5-year groups)  
2010 through 2060 (as of July 1); December 15, 2014

\*\*California Department of Finance, Employment Development Department  
Industry Employment Projections, Labor Market Information Division, 2010-2020; May 23, 2012

## Post-2020 Efficiency Metric

ARB has indicated that an average statewide GHG reduction of 5.2 percent per year between 2020 and 2050 is necessary to achieve the 2030 and 2050 emissions reduction goals of Executive Orders B-30-15 and S-3-05 (ARB 2015). Efficiency metrics can be derived for each year between 2020 and 2050 based on this identified reduction downward direction, or based on other sources if supported by substantial evidence. As previously noted, the intent of the 5.2 percent annual reduction data is not to establish interim year reduction targets for the State; rather it is meant to allow projects to develop and apply interim year Efficiency Metrics at their buildout year and demonstrate consistency with the overall State reduction downward direction.

In *Center for Biological Diversity v. California Department of Fish and Wildlife and Newhall Land and Farming* (2015) 224 Cal.App.4th 1105 (*CBD vs. CDFW*), the California Supreme Court, citing the above-referenced Executive Orders, cautioned that those Environmental Impact Reports taking a goal-consistency approach to CEQA significance may "in the near future" need to consider the project's effects on meeting emission reduction targets beyond 2020. ARB is currently working on a second update to the Scoping Plan to reflect the 2030 target established in Executive Order B-30-15. Even though State policy for post-2020 GHG reduction is expressed in executive orders and programs, rather than legislation, CEQA impact evaluation in the context of longer term goals is advised. Additionally, certain regulations that are relevant to land use development will continue to be phased in after 2020 (e.g., Advanced Clean Cars, Renewables Portfolio Standard [RPS], SB 375) and result in additional GHG reductions. Thus, projects that are built out after 2020 should analyze consistency with the State's longer-term GHG reduction goals to provide a good-faith CEQA analysis.

For these reasons, the County requests a significance determination for a project's anticipated buildout year. Analysis of project emissions at buildout is consistent with current CEQA practice and available guidance from air districts on analyzing emissions from the first fully operational year (SMAQMD 2015:6-5, BAAQMD 2011:4-6). Operational emissions for a land use development project would be



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highest during the first year and continue to decline due to fleet turnover to cleaner vehicles and implementation of additional regulations at the State level.

#### **Service Population**

Recommended sources of information to determine a proposed project's service population are provided below. Other sources for this data will be considered on a case-by-case basis and should be from credible sources. Applicants are advised that use of different data sources from those listed below, should be approved by County staff prior to their use for an impact determination. Alternative sources of data such as State (Department of Finance), regional (SANDAG) or local government agencies (City of San Diego), industry groups or professional associations (Institute of Traffic Engineers), with clearly disclosed assumptions and limitations will be considered; provided the analysis clearly substantiates the representativeness of the data in terms of county-wide averages, planning area averages, census tracts, and others as applicable.

Alternative data sources should have San Diego region applicability and be supported with substantial evidence, including a discussion with fact based rationale explaining why the data source and its geographic representation are the most appropriate for the proposed project.

#### Service Population Data Sources

SANDAG Demographics and Other Data:

<http://www.sandag.org/index.asp?classid=26&fuseaction=home.classhome>

SANDAG Data Surfer for existing and forecasted socio-economic data:

<http://datasurfer.sandag.org/>

#### **Mitigation Measures**

Projects may be able to mitigate GHG emissions sufficiently to render impacts less than cumulatively significant. Such mitigation measures would be in addition to all project design features and may include measures that are not required by existing regulations (e.g., rooftop solar).

Mitigation measures must include specific, enforceable actions to reduce project emissions, and would need to provide some analysis about the emission reductions that would be achieved from each measure. To the extent feasible, each mitigation measure should include references or a logical, fact based explanation as to why a specific mitigation measure would achieve the stated reductions. While it will generally be possible to quantify reductions associated with energy and water related mitigation measures, other mitigation may require a qualitative discussion of reductions achieved.

Mitigation measures must be supported with substantial evidence. For example, a potential approach that can be considered is the inclusion of mitigation that requires certain GHG efficiency measures upon buildout of each development phase for projects that would develop over multiple phases across an extended period of time.

Many local, regional, and state agencies have produced lists of feasible mitigation measures and strategies that can be used to reduce GHG emissions. These lists can be consulted when developing feasible mitigation measures for projects within the County, including, but not limited to:

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Governor's Office of Planning and Research. 2008. Technical Advisory. CEQA AND CLIMATE CHANGE: Addressing Climate Change through California Environmental Quality Act (CEQA) Review. See Attachment 3, "Examples of GHG Reduction Measures." Available: <http://opr.ca.gov/docs/june08-ceqa.pdf>.

California Air Pollution Control Officers Association (CAPCOA). 2008 (January). CEQA & Climate Change. Evaluating and Addressing Greenhouse Gas Emissions from Projects Subject to the California Environmental Quality Act. See page 79, "Mitigation Strategies for GHG." Available: <http://www.capcoa.org/wp-content/uploads/downloads/2010/05/CAPCOA-White-Paper.pdf>.

California Air Pollution Control Officers Association (CAPCOA). 2010 (August). Quantifying Greenhouse Gas Mitigation Measures. A Resource for Local Government to Assess Emission Reduction from Greenhouse Gas Mitigation Measures. Available: <http://www.capcoa.org/wp-content/uploads/2010/11/CAPCOA-Quantification-Report-9-14-Final.pdf>.

Attorney General of the State of California. 2008 (December). The California Environmental Quality Act. Addressing Global Warming Impacts at the Local Agency Level. Available: [http://ag.ca.gov/globalwarming/pdf/GW\\_mitigation\\_measures.pdf](http://ag.ca.gov/globalwarming/pdf/GW_mitigation_measures.pdf).

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## **EXHIBIT B**



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July 26, 2016

By e-mail ([Ellen.Pilsecker@sdcounty.ca.gov](mailto:Ellen.Pilsecker@sdcounty.ca.gov))  
Original to follow

C. Ellen Pilsecker  
Office of County Counsel  
1600 Pacific Highway, Suite 355  
San Diego, CA 92101

**Re: Request That the County Postpone Actions on Any Projects Requiring  
General Plan Amendments Until Approval of a Legally Adequate  
Climate Action Plan and Thresholds of Significance**

Dear Ms. Pilsecker:

Mitigation Measure CC-1.2 “requires the preparation of a County Climate Change Action Plan within six months from the adoption date of the General Plan Update.” (Errata to the General Plan Update, *emphasis added*; *Sierra Club v. County of San Diego* (2014) 231 Cal.App.4th 1152, 1159.) The County adopted the General Plan Update in August 2011. In June 2012, the County adopted its Climate Action Plan (CAP). In July 2012, the Sierra Club filed its legal challenge to the CAP. In April 2013, the County was ordered to set aside the CAP and to comply with the law. More than a year has passed since the Supreme Court denied the County’s petition for review, making the 2013 order final. In May 2015, after the Supreme Court denied the County’s petition for review, the trial court issued a Supplemental Writ of Mandate setting aside the CAP, Addendum, and November 2013 Guidelines for Determining Significance, and required the County to submit a timeline for preparing a new CAP and Guidelines for Determining Significance.

Four years after the Sierra Club filed its lawsuit, the County still does not have a CAP and Thresholds of Significance to guide development in the County. The Sierra Club has repeatedly encouraged the County to promptly develop and approve a legally adequate CAP and Thresholds, including in their July 7, 2015 and July 9, 2015 letters. Despite the Sierra Club’s attempts, the County is not close to approving a new CAP and Thresholds, yet continues to process applications for major development.

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The County has a tentative schedule for adoption of a new CAP that does not contemplate adoption until late 2017, and the time could be even later. Despite the absence of a CAP to mitigate greenhouse gas impacts, and Thresholds of Significance to assess whether impacts will be mitigated below the level of significance, major development projects that require further amendments to the existing General Plan continue to be proposed and processed by the County. Approving such projects, without complying with a legally adequate CAP and Thresholds of Significance, is inconsistent with the County's General Plan commitment to mitigate greenhouse gas emissions and comply with AB 32, with the California Environmental Quality Act (CEQA), and with general planning laws. The Sierra Club believes approval of amendments to the General Plan to allow further growth prior to the adoption of a legally adequate CAP and Thresholds would also be contrary to the rationale for issuance of the original writ of mandate and the reasoning of the Court of Appeal.

As described below, a valid CAP and Thresholds are necessary to adequately mitigate greenhouse gas impacts and comply with the commitments the County made during the 2012 General Plan Update process. Additionally, without a CAP, the County cannot determine if any major development projects are consistent with the County's Open Space and Conservation Element. Finally, in light of Mitigation Measure CC-1.2's requirement that a CAP be prepared within six months from the adoption of the General Plan Update (GPU), processing major development projects absent a CAP five years after the GPU was adopted constitutes an impermissible deferral of Mitigation Measure CC-1.2. The Sierra Club requests the County postpone consideration of major development projects until approval of a legally adequate CAP and Thresholds.

**A. A Valid Climate Action Plan and Thresholds of Significance, Required By Mitigation Measures CC-1.2 and CC-1.8, Are Necessary for Adequate Mitigation of GHG Impacts.**

**1. A Valid CAP Is Required to Adequately Mitigate GHG Impacts.**

The County's General Plan includes a requirement that the County "prepare, maintain, and implement" a climate change action plan with "GHG emissions reduction targets and deadlines, and enforceable GHG emission reduction measures." (Conservation and Open Space Element, Policy COS-20.1 at 5-39.) The CAP should be used to monitor GHG emissions from "development" "as necessary to achieve GHG emission reduction objectives." (*Ibid.*) As the Court of Appeal explained, "[T]he County described the CAP as the most critical component of the County's climate change mitigation efforts." (*Sierra Club v. County of San Diego* (2014) 231 Cal.App.4th 1152, 1168.)

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The CAP is the County's primary mechanism to meet the GHG emissions reduction requirements of AB 32. "The mitigation measures discussed below are projected to reduce the County governmental operational GHG emissions to a level below the 1990 levels.... The GHG Reduction Climate Change Action Plan, which would be prepared as a mitigation measure, would further detail the community GHG emissions, and describe where and how the reductions would occur." (General Plan EIR § 2.17.6 at 2.17-30.)

Preparation of the CAP is required for two mitigation measures in the General Plan EIR – MM CC-1.2 and MM CC-1.8. CC-1.2 requires the CAP to develop a baseline inventory of GHG emissions from all sources, and develop "comprehensive and enforceable GHG emissions reduction measures that will achieve a 17% reduction in emissions from County operations from 2006 by 2020 and a 9% reduction in community emissions between 2006 and 2020." (General Plan EIR § 2.17 at 2.17-30.)

While the General Plan and its EIR contain other mitigation measures to reduce GHG emissions, the CAP is the only mitigation measure that provides specific, enforceable, and quantifiable methods to reduce greenhouse gases to the levels the County committed to, and that comply with the policies of the State as established in AB 32. The General Plan's other GHG mitigation measures are qualitative, providing no way to know whether any individual qualitative measures, or any combination thereof, could achieve consistency with AB 32, and thus mitigate the General Plan's GHG impacts. The CAP, therefore, is key to meeting the County's climate change goals. Without the CAP, the County will not achieve the required reductions, nor can it adequately mitigate the impacts of GHG emissions from large-scale development in the region. The CAP is the primary means of mitigating GHGs for major development projects, and addressing global climate change – an important purpose of the General Plan.

Without the CAP and the associated Thresholds of Significance, the County cannot demonstrate that it has mitigated GHG impacts consistent with the mitigation measures set forth in the General Plan EIR. In turn, a major development project would be unable to demonstrate it is consistent with the General Plan's mitigation for GHG impacts.

## **2. The Thresholds of Significance Are Required to Adequately Analyze and Mitigate GHG Impacts.**

MM CC-1.8 requires the County's guidance on thresholds of significance to rely on data compiled within the CAP. The thresholds of significance cannot be determined without the data compiled for the CAP. Without an approved CAP, therefore, the County cannot determine whether GHG impacts are significant or what degree of mitigation is necessary. Although the County may argue that it will determine the significance of the



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emissions on a case-by-case basis, we believe that under *Endangered Habitats League, Inc. v. County of Orange* (2005) 131 Cal.App.4th 777, the County must use the methodology committed to when the General Plan Amendments were adopted, which is a Threshold of Significance based upon the CAP. Thus, the County cannot simply determine significance on a case-by-case basis.

We understand that County staff may intend to develop an interim guidance document for GHG analysis at the staff level, but that they will not contain a threshold of significance. Interim guidance would not fulfill the General Plan EIR's requirements pursuant to CC-1.2 and CC-1.8 that the County prepare a CAP and Thresholds of Significance. Further, CEQA documents for major development projects could not rely on such interim guidance in lieu of the required CAP and associated Thresholds. The Draft EIR's prepared or ultimately approved by County staff must necessarily apply thresholds of significance which have been determined by County staff to be in compliance with the County General plan provisions. In the absence of a CAP and associated Thresholds, County staff would be acting in violation of the County General Plan by releasing an EIR employing any threshold of significance for GHG analysis that was not selected pursuant to the requirements of the County's adopted General Plan.

**B. Allowing Projects to Proceed Where the Project Requires an Amendment to the General Plan Without the CAP and the Thresholds of Significance Would Render the General Plan Internally Inconsistent.**

The Planning and Zoning Code requires every County to have a Conservation and Open Space Element that addresses measures to protect the environment. (Gov. Code § 65302.) The Conservation and Open Space Element requires adoption of the CAP and Thresholds of Significance under policies COS-20.1 and COS-20.2. Absent a CAP and Thresholds, the policies of the Conservation and Open Space Element cannot be fulfilled, rendering it incomplete. The Conservation and Open Space Element additionally requires a CAP and Thresholds in order to reduce emissions beneath the levels required by AB 32. Without the CAP and Thresholds, the Element is unable to fulfill its emission reduction goals.

Further, under the Planning and Zoning Code, a general plan must be consistent with itself. (See Gov. Code § 65300.5 [A general plan must be an "integrated, internally consistent and compatible statement of policies"].) Without an approved CAP, the General Plan is internally inconsistent because it refers to and assumes a missing CAP, as evidenced by the Conservation and Open Space Element's reliance on the CAP to adequately mitigate GHG emissions. In addition, a county's decision affecting land use and development must be consistent with the general plan. (See *Friends of Lagoon Valley v. City of Vacaville* (2007) 154 Cal. App. 4th 807, 815.) Without a CAP in place,

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the County cannot determine if any proposed major development projects are consistent with the County's Open Space and Conservation Element.

### **C. The County's Delay in Adopting a New CAP Is An Impermissible Deferral of Mitigation.**

CEQA Guidelines section 15126.4 prohibits the deferral of formulation of mitigation measures to the future. (CEQA Guidelines § 15126.4(a)(1)(B).) Deferral of mitigation measures cannot be too speculative or discretionary. In *Preserve Wild Santee v. City of Santee* (2012) 210 Cal. App. 4th 260, the court held that a mitigation measure was improperly deferred because it gave the preserve manager discretion as to timing for undertaking activities outlined in the mitigation measure. (*Id.* at 272.) Permitting additional growth will only make the task of achieving AB 32 goals more difficult. Thus, authorizing development cannot be allowed until there is adequate mitigation.

Here, the County originally intended the CAP to be implemented within six months of the General Plan's certification. Over three years have passed since the CAP was declared invalid, and five years have passed since the General Plan Update – well beyond the originally contemplated timeframe. The County fails to justify its extended timeline in light of the original requirement to implement the CAP within six months of the General Plan's certification. By processing major development projects absent a CAP this long after the contemplated timeframe, the County has *de facto* granted itself unlimited discretion as to the timing of the mitigation measures, in violation of *Preserve Wild Santee*. In essence, the County has an “unformulated plan” and has granted itself discretion as to how to achieve the GHG emission reductions required to achieve the AB 32 goals, including timing and unapproved, case-by-case decisions on how to determine the significance of GHG impacts, resulting in an impermissible deferral of mitigation measure CC-1.2 under *Preserve Wild Santee* and *Endangered Habitats League, Inc. v. County of Orange* (2005) 131 Cal.App.4th 777, 782.

### **Conclusion**

The Sierra Club respectfully requests the County postpone further County staff decisions employing GHG thresholds of significance prior to the approval of the Thresholds as specified in the adopted General Plan, including release of Draft EIRs by the County using unapproved thresholds, or County approvals of developments on lands that are currently greenfields and that would require an amendment to the General Plan until legally adequate CAP and Thresholds are approved. **Exhibit A**, attached, identifies all of the pending applications the Sierra Club is currently aware of that would allow development of greenfields, and that would be postponed. Any new application or others



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that we may not have uncovered, including Property Specific Requests, would also be subject to postponement.

The preparation or approval of the County's Draft or Final EIRs by County staff containing thresholds of significance for GHG analysis prior to the completion of the CAP and Thresholds must necessarily violate the General Plan. The release for public review of any Draft EIR prepared or approved by County staff containing thresholds of significance for GHG analysis necessarily constitutes a decision by the County to proceed in violation of the County's General Plan, unless and until the thresholds are adopted in compliance with the 2010 County General Plan. In addition, the approval of projects without a legally adequate CAP and Thresholds would be inconsistent with the trial court's peremptory writ of mandate, and the court retains jurisdiction until it determines that the County has adequately complied with CEQA and all other applicable laws. The Sierra Club retains the ability to initiate proceedings pursuant to the writ to halt the County's processing of major development projects until it has approved a legally adequate CAP and Thresholds.

We request that you provide a copy of this letter to all members of the Board of Supervisors, or their appropriate staff person. Please respond by August 10, 2016 regarding the County's position on this issue. We look forward to hearing back from you.

Sincerely,



Jan Chatten-Brown

**Exhibit A**  
**San Diego County Proposed General Plan Amendments**

Project Name	GPA	Community	Proposed Acreage	Proposed Units	Current Land Use Designation	Proposed Land Use Designation	Development Plans	Status Update
Harmony Grove South	15-002	San Diego/Itto	111	453	Semi-Rural/GPU SR-0.5/Zone A70- Limited Agricultural and RR-Rural Residential along S boundary	Village and Semi-Rural/GPU VR-10.9 and SR-0.5/Zone S88	453 single- and multi-family units proposed on 111 acres (per August 2015 Notice of Preparation letter)	July 19, 2016: Environmental report is expected to be out for public review late summer/early fall.
Lake Jennings Marketplace	14-005	Lakeside	13	N/A	Village Residential (VR-15)	General Commercial (C-1)	76,100 sq. ft. commercial center	July 18, 2016: DEIR must be recirculated; will go out for public review in the next few weeks.
Llano Hills Ranch	12-001	Valley Center/ Bonsall	608	1,746	Zone A70-Limited Agricultural (530 acres in Valley Center); RR-Rural Residential (78 acres in Bonsall)	General Commercial-Residential Use Regulation (C34) for the Town Center and two Neighborhood Centers; Single Family Use Regulation (R5) elsewhere.	1,700 units on 608 acres (903 single-family homes, 468 age- restricted senior homes, 164 condominiums, and 211 mixed-use units). Also, 50,000 sq ft commercial space, etc.	July 19, 2016: Approval of placing the project on the ballot is expected August 2, 2016.
Llano Plaza	15-004	Valley Center	7	36	VR-Village Residential	VR-10.9 and General Commercial	36 multi-family dwellings and 22,000 sq ft of commercial on approx. 7 acres located within the Valley Center South Village	December 2015: MND in process
Newland Sierra	15-001	Twin Oaks/ Bonsall	1876	2,199	GPU SR-10 (19.6 acres at ≤ 25% slope); RL-20 (1,907.8 acres); C-1 (4.6 acres); C-2 (53.6 acres)	SR-1 (748 acres at ≤ 25% slope); SR-1 (344 acres at ≥ 25% slope); SR-1 (109 units at ≥ 50% slope); SR-10 (8.2 acres at ≤ 25% slope); C-5 (53.3 acres); OS-C (1,218.1 acres)	2,199 dwelling units and 1,777, 684 sq. ft. commercial	July 18, 2016: DEIR is expected to be out for public review this fall.
Otay Ranch Village 13	04-003	Otay	1,869	1,881	S87 (Limited Control) in areas currently designated as Open Space in the Otay SRP; S88	Adjust the boundary of the S88 zone to reflect the specific plan development footprint; reclassify other designated areas to S80 (Open Space)	1,938 units as of March, 2015 (up from 1,007 in 2014)	December 2015: Expected PC Hearing 04-2016: Expected BOS Hearing 01-2017
Star Ranch	05-008	Campano/ Lake Morena	2,160	453	R/SR Village/Commercial	R/SR Village/Commercial	453 units and 86,000 sq. ft. commercial on 2,160 acres	July 18, 2016: EIR is expected to go out for public review this fall.
Sweetwater Place	14-003	Spring Valley	20	122	GPU RL-80/ Zone S90 (Holding Zone)	GPU VR-7.3/ Zone IV Variable Family Residential)	Per Tentative Map and Site Plan: subdivide the site into 2 lots with 122 residential condominium units and a 2.08 acre public park	July 15, 2016: Planning Commission recommended approval; will go to the Board 'sometime' this fall.

LAND USE FRAMEWORK

Table LU-1 Land Use Designations and Compatible Regional Categories				
Designation	Maximum Density	Maximum FAR	Compatible Regional Category	
			Village	Rural Lands
Village Residential				
Village Residential 30 (VR-30)	30 units per gross acre	—	X	
Village Residential 24 (VR-24)	24 units per gross acre	—	X	
Village Residential 20 (VR-20)	20 units per gross acre	—	X	
Village Residential 15 (VR-15)	15 units per gross acre	—	X	
Village Residential 10.9 (VR-10.9)	10.9 units per gross acre	—	X	
Village Residential 7.3 (VR-7.3)	7.3 units per gross acre	—	X	
Village Residential 4.3 (VR-4.3)	4.3 units per gross acre	—	X	
Village Residential 2.9 (VR-2.9)	2.9 units per gross acre	—	X	
Semi-Rural				
Semi-Rural 0.9 (SR-0.9)	1 unit per 0.5, 1, or 2 gross acres	—	X	X
Semi-Rural 1 (SR-1)	1 unit per 1, 2, or 4 gross acres	—	X	X
Semi-Rural 2 (SR-2)	1 unit per 2, 4, or 8 gross acres	—	X	X
Semi-Rural 4 (SR-4)	1 unit per 4, 8, or 16 gross acres	—	X	X
Semi-Rural 10 (SR-10)	1 unit per 10 or 20 gross acres	—	X	X
Rural Lands				
Rural Lands 20 (RL-20)	1 unit per 20 gross acres	—	X	X
Rural Lands 40 (RL-40)	1 unit per 40 gross acres	—	X	X
Rural Lands 60 (RL-60)	1 unit per 60 gross acres	—	X	X
Commercial				
General Commercial (C-1)	—	0.45 or 0.70 <sup>a</sup>	X	X
Office Professional (C-2)	—	0.45 or 0.80 <sup>a</sup>	X	X
Neighborhood Commercial (C-3)	—	0.35 or 0.85 <sup>a</sup>	X	X
Retail Commercial (C-4)	2 units per gross acre	0.35 or 0.80 <sup>a</sup>	X	X
Village Core Mixed Use (C-5)	30 units per gross acre <sup>b</sup>	0.70 <sup>a</sup>	X	
Industrial				
Limited Impact Industrial (I-1)	—	0.50	X	X
Medium Impact Industrial (I-2)	0	0.50	X	X
High Impact Industrial (I-3)	0	0.35	X	X
Other				
Tidal Lands (TL)	—	—	X	X
Public Agency Lands	—	—	X	X
Space-Plan Area (SPA) <sup>c</sup>	refer to individual SPA	—	X	X
Public-Space Public Facilities (PSPF)	0	0.50	X	X
Open Space - Conservation (OS-C)	—	—	X	X
Open Space - Recreation (OS-R)	1 unit per 4, 8, or 16 gross acres <sup>d</sup>	—	X	X

- a. Maximum floor area ratio is provided based on regional categories to guide intensity of development. Community Plans may specify a different floor area ratio for a specific area, provided the maximum floor area ratio is not less than the regional category floor area ratio. b. Village Residential 2 (VR-2) and Semi-Rural 0.5 (SR-0.5) currently appear as one designation on the Land Use Map but are differentiated on the 0.5 SR-0.5 map. The Land Use Map may be updated to reflect the different designations prior to map revision. Semi-Rural 0.5 is proposed in the General Regional Category in areas where the predominant development pattern is 0.5 SR-0.5 and larger parcels. c. The maximum density for lands designated as Semi-Rural is based on the slope of the site (see Table LU-2). When each component is mapped in the upper range for maximum density, the maximum density for the entire site is based on the slope of the site. d. The maximum density for lands designated as Semi-Rural is based on the slope of the site (see Table LU-2). When each component is mapped in the upper range for maximum density, the maximum density for the entire site is based on the slope of the site. e. Maximum residential densities are applied per the Zoning Ordinance. Land use designations that are not consistent with the community plan are shown in this table. This exception is available to existing land uses on the map. f. This designation solely reflects those designations retained from the former General Plan. New SPAs will not be shown on the Land Use Map under the SPA designation, rather these areas will retain their underlying land use. g. Based on the 0.5 SR-0.5 designation, within this designation unless the proposed development has been carefully examined to assure that there will be no significant adverse environmental impacts, and erosion and fire problems will be minimal.

COUNTY OF SAN DIEGO

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GENERAL PLAN

Summary of Use Regulations		Part of Sections 2000-2990
RS, RD, RM, RV – Single Family, Duplex, Multi and Variable Family Residential. Family Residential is the principle, dominant use and other uses are conditionally allowed by Use Permit.	M50 – Basic Industrial. Allows almost all processing and manufacturing uses. Permits only limited commercial uses. Virtually all uses must be enclosed within buildings.	
RU – Urban Residential. Family Residential, conditional institutional reduced lot size uses and civic uses allowed by Use Permit. Permitted uses are those where adequate streets or public services are available.	M52 – Limited Industrial. Allows wide range of industrial and commercial uses frequently associated with industrial operations, such as professional offices. Virtually all uses must be conducted within buildings except when outdoor uses are allowed by Use Permit.	
RMH – Mobilehome Residential. Family Residential use in a mobile home. Typically applied to a mobilehome park or mobilehome subdivision.	M54 – Industrial Impact Industrial. Allows unenclosed commercial and industrial operations having potential nuisance characteristics such as construction sales and services.	
RR – Rural Residential. Family Residential uses permitted with Group Allowed by Use Permit.	M56 – Mixed Industrial. Intended to create an industrial area, and a maximum of 5% of each lot to be designated as support commercial uses. Maximum of 10% of each lot to be designated as support commercial uses. A Specific Plan will be required.	
RRD – Residential Recreation Oriented. Residential uses permitted with certain recreation uses allowed by Use Permit.	M58 – High-Impact Industrial. Same as M54, but allows petroleum refining, manufacture of explosives and radioactive materials by Major Use Permit.	
RC – Residential-Commercial. Intended for mixed residential-commercial areas where residential uses predominate, and limited commercial, office and sales are allowed by Use Permit.	A70 – Limited Agriculture. Intended for crop or animal agriculture. Number of animals allowed are specified by neighborhood regulations.	
C30 – Office-Professional. Allows administrative and professional offices and other limited commercial uses.	A72 – General Agriculture. Intended for crop or animal agriculture. Number of animals allowed are specified by neighborhood regulations.	
C31 – Residential-Office Professional. Same as C30, but also allows Family and Group Residential uses.	S60 – Open Space. Intended for recreation areas or areas with severe environmental constraints.	
C32 – Convenience Commercial. Intended for retail commercial uses conducted inside buildings of limited size to serve immediate need of surrounding residential areas. Residents may be permitted as secondary uses of commercial buildings.	S62 – Extractive Use. Intended for mining, quarrying, borrow pits and oil extraction.	
C34 – General Commercial-Residential. Intended for mixed commercial-residential developments. General retail and commercial uses are permitted. Outdoor uses may be allowed by Use Permit.	S66 – Parking. Allows vehicle parking in association with another dominant land use.	
C35 – General Commercial-Limited Residential. Intended for mixed commercial-residential developments. General retail and commercial uses are permitted. Outdoor uses may be allowed by Use Permit.	S68 – Specific Plan. Allows limited uses, and after adoption of a specific plan, any use allowed by the specific plan.	
C36 – General Commercial. General retail sales and services permitted if conducted within buildings. Outdoor uses may be allowed by Use Permit. Residents may be permitted as secondary uses.	S69 – Holding Area. Used to prevent premature urban or non-urban development until more precise zoning regulations are prepared. Permitted uses are similar to R70. Any temporary use allowed by Use Permit.	
C37 – Heavy Commercial. Same as C36, except enclosure of uses not required, and additional wholesaling and other uses permitted. Industrial uses conforming to performance and power standards are permitted. Residents may be permitted as secondary uses.	S69 – General Rural. A residential and agriculture zone which is intended to provide approximate controls for land which is rugged terrain, watershed, dependent on ground water for a water supply, desert, susceptible to fire and erosion, or subject to other environmental constraints.	
C38 – Service Commercial. General commercial, wholesaling and retail uses are permitted. Residents may be permitted as secondary uses.	S94 – Transportation and Utility Corridor. Intended to create and protect transportation and utility corridors and to coordinate and control facilities for transmission of electricity, gas, water and other materials / forms of energy.	
C40 – Rural Commercial. Intended for commercial centers which serve predominantly rural or semi-rural areas with a broad range of goods and services.	AL-V – Indicates customized zoning regulations applied to properties within the Alpine Village Core area (refer to the Alpine Village Core FBC).	
C42 – Visitor Service Commercial. Intended for areas devoted to the provision of a broad range of recreational and tourist services. Other uses are very limited.	FB-V – Indicates customized zoning regulations applied to properties within the Fallbrook Village area.	
C44 – Freeway Commercial. Intended for small commercial areas to serve traveling public at freeway interchanges. Allows gasoline sales, motels, restaurants and similar uses.	RM-V – Indicates customized zoning regulations applied to properties within the Ramona Village Center area (refer to Ramona Village Center FBC).	

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## EXHIBIT C

**LATHAM & WATKINS<sup>LLP</sup>**

August 5, 2016

**VIA EMAIL AND FEDERAL EXPRESS**

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Milan	

Re: Concerns re Improper Use of GHG Threshold of Significance Document  
for the Newland “Sierra” Project’s GHG Impacts Analysis

Dear Mr. Eichar, Ms. Smith, and Ms. Pilsecker:

As you know, we represent the Golden Door Properties LLC (the “Golden Door”), an award-winning spa and resort that opened in 1958. This historic haven is situated on approximately 600 acres on the south side of Deer Springs Road in northern San Diego County (“North County”). It was the highest rated establishment in *Travel and Leisure’s* recent list of the world’s best destination spas.

We write to you regarding the County’s recently released 2016 Climate Change Analysis Guidance setting forth new thresholds of significance for greenhouse gases (“GHG”) which the County intends to use in processing new development projects (“GHG Threshold of Significance Document”), and its effect on the proposed Newland “Sierra” Project (the “Project”), a revised Merriam Mountains project on property located near Deer Springs Road. Newland’s proposal includes 2,135 residential units, 81,000 square feet of commercial development, a charter school, and various parks and equestrian facilities. The Golden Door opposes this unplanned urbanization of rural Twin Oaks Valley. Based on comments from County staff and from Newland, we understand the County will use the GHG Threshold of Significance Document as

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the basis of its GHG impacts analysis for the Project's draft environmental impact report ("EIR"). Newland has told the community in several sponsor group meetings that it was waiting on this GHG threshold to be released so that it could be included in the County's EIR for the Project.

The GHG Threshold of Significance Document is inconsistent with the County's General Plan and the General Plan EIR. The General Plan and General Plan EIR require preparation and certification of a Climate Action Plan ("CAP"), including an inventory of baseline GHG data, detailed GHG emissions reduction targets and deadlines, and enforceable measures to achieve specific reductions. The General Plan and General Plan EIR also require the County to develop related thresholds of significance for GHG emissions based on data compiled as part of the CAP. These requirements have been upheld by the courts. The GHG Threshold of Significance Document, however, sets thresholds of significance that are not based on the required baseline emissions data, contradict the General Plan's approach to GHG emissions reduction, and fail to ensure any emissions reductions. In fact, the GHG Threshold of Significance Document provides a threshold that allows *more GHG emissions* than the County's previous attempt to set GHG emissions thresholds—which was invalidated by the courts.

The GHG Threshold of Significance Document violates the County's General Plan, the General Plan EIR, and a court order. Because this attempt by County staff to provide guidance to project developers falls short of the requirements for a CAP and related thresholds of significance, it cannot serve as the basis for analysis of GHG impacts in the Project's draft EIR. We request that the GHG Threshold of Significance Document be set aside and publication of the Project's draft EIR be delayed until the County has certified a legally adequate CAP and related thresholds of significance as required by the County's General Plan and General Plan EIR and by a court order.

**I. THE GOLDEN DOOR'S CONCERNS REGARDING THE NEWLAND PROJECT**

**A. Background Regarding Newland "Sierra" Project**

Newland is proposing to construct an urban-style development in rural North County. This Project was proposed once before as the Merriam Mountains project, and was rejected by the County Board of Supervisors in 2010. Under the County's General Plan, the Project site is largely zoned RL-20, allowing one residential unit per 20 acres, permitting approximately 100 units. Newland's "Sierra" project, however, would include 2,135 residential units, 81,000 square feet of commercial development, a school, a vineyard, and various parks and equestrian facilities. The Project would be located across Deer Springs Road from the Golden Door.

The County issued a Notice of Preparation ("NOP") for the Project's EIR on February 12, 2015. At a community sponsor group meeting earlier this year, we were informed by County Planning and Development staff that the Project's EIR was being delayed until the County published staff-level guidance regarding GHG impacts analysis. As such, we believe the County intends to use the GHG Threshold of Significance Document as the basis for its GHG impacts analysis in the Project's draft EIR.

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The Project is not included in the County's General Plan or in the San Diego Association of Government's ("SANDAG") 2015 Regional Transportation Plan/Sustainable Communities Strategy ("RTP/SCS"). This unplanned growth is located in a rural area far from urban and job centers, and will require long, single-occupant vehicle trips. The Project is also located far from any existing or planned transit infrastructure that could alleviate the transportation-related GHG impacts from this outdated auto-centric development proposal. As such, analysis of GHG impacts is a crucial aspect of the Project's EIR. The Golden Door opposes the Project, and the Project's potential to significantly impact efforts to curb global climate change is a fundamental driver in the Golden Door's opposition.

The Golden Door submitted a letter to the County over a year and a half ago requesting that the County delay consideration of the Project until additional planning had been completed to address GHG impacts in the County.<sup>1</sup> At that time, the Court of Appeal had recently upheld a trial court decision striking down the County's CAP. *See Sierra Club v. Cty. of San Diego*, 231 Cal.App.4th 1152 (2014).<sup>2</sup> The County has not yet approved a revised CAP, and we understand the earliest the Board of Supervisors would consider a revised CAP and related thresholds of significance is late 2017. The GHG Threshold of Significance Document is not a sufficient substitute for the CAP and related thresholds of significance.

## **B. Background Regarding the Golden Door**

The Golden Door focuses on the health and fitness of its guests. Its property encompasses a peaceful array of hiking trails, luxurious spa amenities, tranquil Japanese gardens, and a bamboo forest. Agricultural cultivation on the property includes avocado groves and fresh vegetable gardens as well as citrus and olive trees.

The Golden Door is committed to environmental stewardship and sustainability. It uses sustainable and bio-intensive agriculture practices and has eliminated guests' use of plastic water bottles. The owners are not seeking to expand the Golden Door in any way, but are seeking to further enhance the Golden Door according to its guiding principles, including the extensive sustainable agriculture on several surrounding acres.

As such, the Golden Door is concerned about Newland's proposal to implement urban-style development in a rural area of the unincorporated County, far from job and urban centers

<sup>1</sup> A copy of the Golden Door's letter to Mark Slovick of County Planning & Development Services, dated January 20, 2015, is attached hereto as **Attachment A**.

<sup>2</sup> In a separate decision, the Court of Appeal had also invalidated SANDAG's RTP/SCS. *See Cleveland Nat'l Forest Found. v. San Diego Assn. of Gov'ts*, 231 Cal.App.4th 1056 (Dec. 16, 2014), *review granted and opinion superseded sub nom* (Mar. 11, 2015) (No. S223603). While SANDAG has approved a new RTP/SCS since that time as part of its "San Diego Forward" Regional Plan, the updated RTP/SCS does not include Newland's project in its land use assumptions. Unlike other jurisdictions which included planned general plan amendments in their SCS, the County and SANDAG decided to base their SCS only on the County's adopted General Plan.

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and from transit infrastructure. This unplanned development would contradict modern planning principles and result in long single-occupant vehicle trips causing GHG emissions.

**II. THE GHG THRESHOLD OF SIGNIFICANCE DOCUMENT IS DEFICIENT AS A MATTER OF LAW AND SHOULD BE SET ASIDE**

**A. The County's General Plan and General Plan EIR Require Certification of a Valid CAP and Related Thresholds of Significance Before the Newland Project May Be Processed**

The County's updated General Plan, approved in 2011, requires preparation and certification of a CAP and a program to monitor and implement GHG reduction measures. San Diego County General Plan at 5-39 (Aug. 2011)<sup>3</sup> ("COS-20.1: Climate Change Action Plan. *Prepare, maintain, and implement a climate change action plan* with a baseline inventory of GHG emissions from all sources; GHG emissions reduction targets and deadlines, and enforceable GHG emissions reduction measures.") (emphasis added); (COS-20.2, requiring a GHG emissions monitoring program and review of GHG reduction programs).

The General Plan's EIR also required preparation of a CAP as mitigation necessary for implementation of the General Plan. San Diego County General Plan Update EIR ("General Plan EIR"), State Clearinghouse No. 2002111067, § 2.17, at 2.17-30 (Aug. 2011).<sup>4</sup> Mitigation Measure CC-1.2 sets forth the CAP's requirements: a baseline inventory of GHG emissions, detailed GHG emissions reduction targets and deadlines, and enforceable measures to achieve specific GHG emissions reductions by 2020 (17% reduction from County operations and 9% reduction from community emissions). *Id.* The CAP also requires monitoring and progress reports. *Id.* In addition, Mitigation Measure CC-1.8 requires the County to revise its thresholds of significance "*based on the [CAP]*." *Id.*, § 2.17, at 2.17-31 (emphasis added). Mitigation Measures CC-1.2 and CC-1.8 are currently in effect as enforceable conditions of the General Plan update approved in 2011. They have not been superseded or amended.

The CAP and related thresholds of significance are required by the General Plan, and are necessary to mitigate the General Plan's GHG impacts. The CAP has well-defined parameters and specific reduction targets that the County must meet. Further, the revised thresholds of significance must rely on the data compiled as part of CAP preparation; therefore, the thresholds of significance cannot precede the CAP.

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<sup>3</sup> The County General Plan can be accessed at <http://www.sandiegocounty.gov/pds/generalplan.html>.

<sup>4</sup> The General Plan EIR can be accessed at <http://www.sandiegocounty.gov/content/sdc/pds/gpupdate/environmental.html>.

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**B. The County’s First Attempt to Develop a CAP and Related Thresholds of Significance Was Set Aside by the Court**

In 2012, the County certified a CAP (“2012 CAP”). The Sierra Club then filed a lawsuit challenging the 2012 CAP. The trial court ruled in favor of the Sierra Club, invalidating the 2012 CAP. The Court of Appeal then upheld the trial court ruling in 2014, holding that the 2012 CAP did not “ensure reductions” of GHG emissions. *Sierra Club v. Cty. of San Diego*, 231 Cal.App.4th at 1170, 1176. Subsequent to the Court of Appeal’s decision, the trial court issued a Supplemental Writ of Mandate on April 14, 2015, which requires the County to set aside the 2012 CAP as well as the November 7, 2013 Guidelines for Determining Significance and Report Format and Content Requirements (“2013 GHG Significance Thresholds”). The Supplemental Writ of Mandate also requires the County to prepare a new CAP and thresholds of significance for GHG impacts in compliance with the California Environmental Quality Act (“CEQA”). A copy of the Supplemental Writ of Mandate is attached hereto as **Attachment B**.

Last month, the Sierra Club submitted a letter (“Sierra Club Letter”) to County Counsel requesting that the County postpone consideration of the Newland Project, among others, until certification of a legally adequate CAP and related thresholds of significance—in accordance with the requirements of the General Plan and the General Plan EIR and in compliance with the Supplemental Writ of Mandate. A copy of the Sierra Club Letter is attached hereto as **Attachment C**. The Sierra Club Letter notes that (1) a valid CAP is required to adequately mitigate GHG impacts, (2) thresholds of significance based on data compiled in the CAP are required to adequately analyze GHG impacts, (3) the Newland Project’s proposed General Plan Amendment would be inconsistent with General Plan provisions requiring a CAP and related thresholds of significance, and (4) approving the Newland Project without a valid CAP and related thresholds of significance would violate the Supplemental Writ of Mandate.

The GHG Threshold of Significance Document fails to remedy the legal issues raised in the Sierra Club Letter and contradicts the Supplemental Writ of Mandate. The GHG Threshold of Significance Document is not a CAP, and the thresholds therein are not based on the CAP—because the County has yet to certify a legally adequate CAP. As such, the GHG Threshold of Significance Document should be set aside, and it cannot serve as the basis for GHG analysis in the County’s EIR for the Newland Project.

**C. The GHG Threshold of Significance Document Cannot Provide a Basis for Analyzing GHG Impacts Consistent With The Policy Decisions Already Made In The County’s General Plan**

The GHG Threshold of Significance Document is a staff level document that has not been approved by the Board of Supervisors. It includes (1) an “efficiency metric” referred to as a “threshold,” (2) “screening criteria,” and (3) recommended mitigation measures. This is a discretionary action which constitutes a key County decision setting the yardstick that will be used in all County EIRs to measure whether or not a project has a significant adverse impact due to GHG emissions and whether it is consistent with the County’s adopted GHG policies in the General Plan. *See* 14 Cal. Code Regs. § 15064.7(a).

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The GHG Threshold of Significance Document is not a CAP and does not contain the elements required by General Plan Mitigation Measures CC-1.2 or CC-1.8. Consequently, while the provisions set forth in GHG Threshold of Significance Document may, or may not be, “wise” public policy decisions regarding GHG emissions, they are flatly inconsistent with the GHG requirements in the County’s General Plan and must be set aside.

**1. The GHG Threshold of Significance Document Is an Improper Attempt to Set Thresholds of Significance Without Completing a CAP**

In a section of the GHG Threshold of Significance Document titled “Significance Determination,” County Staff invents a “County Efficiency Metric” to use as a new way of measuring “acceptable” increases in GHG emissions. The GHG Threshold of Significance Document states that “[t]he County Efficiency Metric is the recognized and recommended method by which a project may make impact significance determinations.” GHG Threshold of Significance Document at 4. The County Efficiency Metric, therefore, is intended to serve as the County’s measuring stick for evaluating GHG impacts—i.e., its threshold of significance. *See* 14 Cal. Code Regs. § 15064.7(a) (“A threshold of significance is an identifiable quantitative, qualitative or performance level of a particular environmental effect, non-compliance with which means the effect will normally be determined to be significant by the agency and compliance with which means the effect normally will be determined to be less than significant.”); *see also* § 15064.4 (thresholds of significance for GHG impacts).

For analysis of GHG emissions in 2020, the County Efficiency Metric provides a threshold of 4.9 million tons of GHG emission *per person per year*. GHG Threshold of Significance Document at 6. This measurement only considers GHG emissions on a “per person per year” basis; there is no overall maximum or maximum for emissions from new development. *Id.* at 4-6. For a project buildout year after 2020, the County Efficiency Metric sets an annual average reduction rate of 5.2 percent between 2020 and 2050, which is borrowed from the Air Resources Board. *Id.* at 5. Similar to the 2020 measurement, this buildout year analysis under the County Efficiency Metric fails to provide any overall maximum and is not related to any data for existing or proposed development specific to San Diego County. *Id.* at 4-6. In fact, under the County Efficiency Metric—for 2020 or a subsequent buildout year—there is no limit to the total overall amount of GHG emissions so long as its “per person” limits are satisfied.

**a. The County Efficiency Metric Fails to Fulfill the County’s General Plan and General Plan EIR’s Requirements**

The County Efficiency Metric fails to meet the requirements of the General Plan and General Plan EIR, which clearly require a CAP as well as thresholds of significance based on the data compiled as part of the CAP. The County General Plan sets forth a set of GHG requirements and goals based on reducing the County’s total overall GHG emissions consistent with AB 32’s goals—which the General Plan EIR determined would be accomplished in San Diego County by a 17% reduction from County operations and a 9% reduction from community emissions by 2020. General Plan EIR, § 2.17, at 2.17-28, 2.17-30 (Mitigation Measure CC-1.2). The General Plan polices are not based on any “per person” or “per capita” metric for determining what was to be an “acceptable” increase in GHG emissions. In fact, the Court of

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Appeal struck down the 2012 CAP, because it did not “ensure reductions” of GHG emissions. *Sierra Club v. Cty. of San Diego*, 231 Cal.App.4th at 1170.

Contrary to the General Plan and to the Court of Appeal’s guidance, the County Efficiency Metric requires no overall reduction, and could result in an overall GHG emissions increase so long as “per person” limits are satisfied. For example, the County could theoretically decide to open up large areas of open space, doubling the County’s overall population, and still satisfy the “Efficiency Metric” on a per person basis. This staff-authorized policy shift impermissibly conflicts with the General Plan and General Plan EIR and with the Court of Appeal’s opinion.

The County Efficiency Metric also does not provide any information as to how new growth or General Plan amendments affect the County’s overall total of emissions that was supposed to be reduced under the adopted General Plan. As a result, limitless GHG emissions increases could result from unplanned growth, even if it meets the County Efficiency Metric’s “per person” limits. The GHG Threshold of Significance Document’s failure to distinguish between planned and unplanned growth further renders it inadequate as a matter of law under the County’s General Plan and General Plan EIR.

While this might be a good or bad policy change by the County, this shift in policy expressly contradicts the General Plan and would require a General Plan Amendment to implement. *See Citizens of Goleta Valley v. Board of Supervisors*, 52 Cal.3d 553, 570-71 (1990) (requiring lead agency actions to be consistent with its General Plan under the State Planning and Zoning Law). County General Plan Policy COS 20.1 requires the County to develop a climate action plan with a “baseline inventory of GHG emissions from all sources” and “GHG emissions reduction targets and deadlines.” General Plan at 5-39. The “inventory” and “targets” set forth in the General Plan cannot be replaced by staff with a per person “efficiency metric.” The County’s latest GHG thresholds are also not consistent with the adopted CEQA mitigation measures that were part of the County’s General Plan, at the urging of the California Attorney General, since it provides no regulation or “measuring stick” of the County’s total emissions for the entire population.

- b. The County Efficiency Metric Is Not Based on the San Diego County GHG Inventory Data Required by the General Plan and General Plan EIR

The GHG Threshold of Significance Document provides no data regarding GHG emissions in San Diego County and fails to base its thresholds on any data specific to San Diego County—for 2020 or a subsequent buildout year. *See* GHG Threshold of Significance Document at 4-7. The County’s thresholds of significance for GHG emissions must be based on baseline inventory data for San Diego County compiled as part of a CAP. At this time, however, that is impossible, because the County has not yet prepared and certified a revised CAP. Further, the GHG Threshold of Significance Document fails to provide a mechanism for review and monitoring of GHG emissions to determine the County’s progress in reaching overall GHG emissions reduction goals, as required by the General Plan and General Plan EIR.

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c. The County Efficiency Metric Violates the Supplemental Writ of Mandate

Further, the County Efficiency Metric violates the Supplemental Writ of Mandate. Basing the GHG impacts significance determination on the County Efficiency Metric in Newland's draft EIR would undercut the purpose of the Supplemental Writ of Mandate requiring preparation of a CAP and related thresholds of significance. The County has a mandatory duty to process the Newland Project using only the thresholds required by the court's order, the County's General Plan, the General Plan EIR, and the County's adopted CEQA mitigation measures for the General Plan. The County cannot use unauthorized efficiency thresholds established by staff which contradict adopted County policy. This ruse is transparent and would not survive a legal challenge. *See* Pub. Res. Code § 21168.9(b) (court retains jurisdiction to enforce its writ under CEQA).

Moreover, the County Efficiency Metric allows for *more* per person GHG emissions than the 2013 thresholds that were struck down by the court. The County's 2013 GHG Significance Thresholds provided an "efficiency metric" of 4.32 metric tons of GHG emissions per person. *See* 2013 GHG Significance Thresholds at 24.<sup>5</sup> The County Efficiency Metric permits up to 4.9 metric tons of GHG emissions per person—an increase of 0.58 tons per person over the 2013 GHG Significance Thresholds' level. GHG Threshold of Significance Document at 6. After having one GHG emissions threshold of significance struck down by the court, County staff cannot now authorize a threshold allowing *more* GHG emissions, thus being *less protective of the environment*.

d. The CEQA Guidelines Preclude Use of the County Efficiency Metric as a General Use Threshold of Significance

The GHG Threshold of Significance Document is insufficient as a threshold of significance for general use because it was not approved by the Board of Supervisors, did not undergo a public review process, and is not supported by substantial evidence. 14 Cal. Code Regs. § 15064.7(b) ("Thresholds of significance to be adopted for general use as part of the lead agency's environmental review process must be adopted by ordinance, resolution, rule, or regulation, and developed through a public review process and be supported by substantial evidence."). After years of planning and approval of the General Plan Update—including its mandatory mitigation measures—County staff cannot now act without Board approval to implement a threshold of significance that reverses Board-approved requirements, contradicts a court order, and is less environmentally protective than a previous attempt to develop a threshold of significance that was overturned by the courts.

e. The County Efficiency Metric Must Be Set Aside

The County Efficiency Metric must be set aside as inconsistent with the General Plan, General Plan EIR, and the Supplemental Writ of Mandate, as well as CEQA Guidelines section 15064.7. Any attempt to base the Newland Project's significance determination for GHG

<sup>5</sup> The 2013 GHG Significance Thresholds are attached hereto as **Attachment D**.

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impacts on the County Efficiency Metric would be invalidated. The County's General Plan requirements were intended to regulate not just the final approval of County projects, but also the measuring sticks or thresholds used in County planning documents, such as draft EIRs. As such, it is not sufficient to wait until the County takes action on a final EIR; the Court must ensure that County staff perform their mandatory duty to comply with CEQA mitigation measures and the County's General Plan in any draft EIR they may release for the Newland Project.

**2. The GHG Threshold of Significance Document's Screening Criteria Is Inconsistent with the General Plan, General Plan EIR, and Supplemental Writ of Mandate**

The GHG Threshold of Significance Document's screening criteria is copied from a third party source and has no relationship to San Diego County's GHG emissions or planned development. The screening criteria is not based on an inventory prepared as part of a CAP. *See* GHG Threshold of Significance Document at 2. The GHG Threshold of Significance Document's "screening criteria" fails for the same reason as the County Efficiency Metric—it was not properly prepared based on data from a certified CAP, thus failing to comply with the General Plan and General Plan EIR and violating the Supplemental Writ of Mandate. The screening criteria provides no guidance as to whether a particular project is consistent with the overall County GHG reductions required by the General Plan, thus failing to provide an adequate "measuring stick." Further, the GHG Threshold of Significance Document fails to describe how application of the screening criteria in San Diego County will help achieve statewide goals, or how it will ensure that the County only approves projects which are consistent with the SANDAG Sustainable Communities Strategy, which is based on a specific projection of potential new development in unincorporated areas.

**3. The GHG Threshold of Significance Document Recommendations Regarding Mitigation Measures Are Inconsistent with the General Plan, General Plan EIR, and Supplemental Writ of Mandate**

While not setting forth specific mitigation measures, the GHG Threshold of Significance Document provides a non-exclusive list of four documents containing GHG mitigation measures. GHG Threshold of Significance Document at 7-8. Again, the GHG Threshold of Significance Document provides no analysis of the mitigation measures' applicability and appropriateness for San Diego County. The General Plan and General Plan EIR require a CAP to provide enforceable mitigation measures that will result in the County meeting a 17% reduction in GHG emission from County operations and a 9% reduction from community emissions by 2020. General Plan, § 2.17, at 2.17-30 (Mitigation Measure CC-1.2). The County's GHG mitigation measures must "ensure reductions" of GHG emissions. *Sierra Club v. Cty. of San Diego*, 231 Cal.App.4th at 1170.

The GHG Threshold of Significance Document falls far short of these standards, and provides no mechanism to measure the projected or actual effectiveness of such measures for mitigation of GHG impacts in San Diego County. While, as a matter of policy, the recommended mitigation measures may reduce GHG emissions, the staff-level GHG Threshold

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of Significance Document is attempting an impermissible end-around to avoid the requirements of the General Plan, General Plan EIR, and Supplemental Writ of Mandate.

**D. The GHG Threshold of Significance Document Fails To Provide For “Coordination” With Relevant Plans for GHG Emissions Reductions in San Diego County As Required By County General Plan Policy COS 20.3**

The GHG Threshold of Significance Document is further insufficient because it fails to discuss relevant planning documents for GHG emissions reductions. County General Plan Policy COS-20.3 requires the County to collaborate with other agencies in the region for air quality planning: “Coordinate air quality planning efforts with federal and State agencies, SANDAG, and other jurisdictions.” General Plan at 5-39. The GHG Threshold of Significance Document contradicts this policy by providing a staff-level threshold of significance for the County without any regional collaboration; therefore, it cannot be implemented without a General Plan Amendment remedying this inconsistency. *See Sierra Club v. Kern Cty. Bd. of Supervisors*, 126 Cal.App.3d 698, 703 (1981) (requiring internal general plan consistency); Gov. Code § 65300.5.

Reducing GHG emissions requires a concerted planning and monitoring effort to determine how to meet specific targets on specific dates. Statewide law and policy, such as AB 32, SB 375, Executive Order S-3-05, and Executive Order B-30-15, set various goals and deadlines on the state level. Local jurisdictions then determine their own criteria for planning land use and transportation infrastructure to GHG emissions consistent with the statewide goals. The County’s General Plan and General Plan EIR set forth specific goals for 2020 and provide a framework to meet those goals through development of a CAP and related thresholds of significance.

In addition, SANDAG approved an RTP/SCS in 2015, which plans for GHG emissions reductions and establishes specific regional GHG reductions of 15% per capita by 2020 and 21% per capita by 2035 from the transportation sector, which it plans to accomplish through land use policy. San Diego Forward: The Regional Plan at 97 (Oct. 2015).<sup>6</sup> The GHG Threshold of Significance Document provides no discussion of its consistency with SANDAG’s planned emissions reductions.

Despite the requirements for a coordinated planning effort, the GHG Threshold of Significance Document functions as an island unto itself. It ignores the General Plan and General Plan EIR provisions that directly contradict provisions of the GHG Threshold of Significance Document. The GHG Threshold of Significance Document also provides no analysis of consistency with SANDAG’s RTP/SCS. This failure to even acknowledge such important planning documents is a failure to provide substantial evidence in support of the thresholds of significance and mitigation measures set forth in the GHG Threshold of Significance Document and violates the County’s own General Plan Policy COS-20.3. *See* 14

<sup>6</sup> San Diego Forward: The Regional Plan can be accessed at [http://www.sdforward.com/pdfs/RP\\_final/The%20Plan%20-%20combined.pdf](http://www.sdforward.com/pdfs/RP_final/The%20Plan%20-%20combined.pdf).

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Cal. Code Regs. § 15064.7(b) (requiring a threshold of significance adopted for general use to be supported by substantial evidence).

**E. The County Cannot Publish a Draft EIR for the Newland Project that Bases Its GHG Impacts Analysis on the GHG Threshold of Significance Document**

- 1. Use of the GHG Threshold of Significance Document in the Newland Project's Draft EIR to Analyze GHG Impacts Would Violate the General Plan, General Plan EIR, and Supplemental Writ of Mandate**

Based on comments from County staff, we understand that County's EIR for the Newland Project would rely on the GHG Threshold of Significance Document. The GHG Threshold of Significance Document, however, cannot provide the basis for the Project's GHG analysis. The County set forth in its General Plan and General Plan EIR specific requirements for the CAP and related thresholds of significance. The CAP must include a baseline inventory of the County's GHG emissions, reduction targets and deadlines, and enforceable mitigation measures to meet specific reduction targets. General Plan EIR at § 2.17, at 2.17-30 (Mitigation Measure CC-1.2). The County must then approve thresholds of significance based on the CAP. *Id.*, § 2.17, at 2.17-31 (Mitigation Measure CC-1.8). The GHG Threshold of Significance Document fails to fulfill these criteria.

Further, use of the GHG Threshold of Significance Document would impermissibly circumvent the Supplemental Writ of Mandate's requirements to prepare a new CAP and related thresholds of significance. If the County can bypass its court-ordered obligations by processing a project on Newland's scale based on staff-level guidance—that fails to meet the requirements of the court-ordered documents—the County could carry on business as usual in perpetuity without ever complying with the court's order. This violation of the Supplemental Writ of Mandate would not hold up under judicial scrutiny.

Relying on the GHG Threshold of Significance Document for Newland's GHG impacts analysis would prejudice the County's efforts to reduce GHG emissions consistent with its General Plan. The Project's rural location, far from urban and job centers and far from existing or planned transit infrastructure, causes long single-occupant vehicle trips that will result in substantial GHG emissions. Moreover, the Project is not included in the County's land use assumptions. It also was not included in SANDAG's land use assumptions when SANDAG developed its RTP/SCS's approach to limiting GHG emissions. *See* County Comment Letter to SANDAG, dated July 15, 2015, and Responses, attached hereto as **Attachment E**. As a result, Newland's substantial additive GHG emissions have not been accounted for in any planning documents. It is essential, therefore, that the County follow its legal mandates in evaluating the Project's GHG emissions to ensure a 17% reduction from County operations and a 9% reduction from community emissions by 2020. General Plan, § 2.17, at 2.17-30 (Mitigation Measure CC-1.2).

Further, the County has not provided the CAP's baseline inventory from which it can measure impacts from new development to determine if the development is consistent with the specific percentage reductions set forth in General Plan Mitigation Measure CC-1.2. This is

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particularly important with regard to the Newland Project, which is unplanned growth. The General Plan and General Plan EIR require specific GHG emissions reduction targets by 2020, and there is no way for the public or decisionmakers to know whether the Project is consistent with those goals until the County has approved a legally adequate CAP and related thresholds of significance. On the contrary, the GHG Threshold of Significance Document provides a separate metric for determining the significance of GHG impacts, which contradicts the General Plan's overall reduction goal and instead allows for an overall increase in GHG emissions so long as "per person" limitations are met. The County cannot simultaneously pursue two contradictory approaches to mitigating GHG emissions impacts. Because the staff-level GHG Threshold of Significance Document contradicts the approach of the County's Board-approved General Plan and General Plan EIR, the GHG Threshold of Significance Document cannot serve as the basis for the Newland Project's EIR evaluation of GHG impacts.

In addition, the County has not provided GHG reduction targets and deadlines required by the CAP. As a result, it is impossible for the County's analysis of the Project's GHG impacts to determine whether the Project is consistent with such targets and deadlines.

**2. Approval of the Newland Project Before Certification of a Revised CAP and Related Thresholds of Significance Can Be Used in the EIR's Analysis Would Result in Impermissible General Plan Inconsistency**

Finally, approving the Project based on analysis under the GHG Threshold of Significance Document instead of a legally adequate CAP and related thresholds of significance would result in inconsistency with the County's General Plan. Project approvals must be consistent with the General Plan. *See Citizens of Goleta Valley*, 52 Cal.3d at 570-71. In addition, the General Plan is required to be consistent within itself. *See Sierra Club v. Kern Cty. Bd. of Supervisors*, 126 Cal.App.3d at 703; Gov. Code § 65300.5.

The General Plan's Conservation and Open Space Element requires certification of a CAP. General Plan at 5-39 (COS-20.1). The County's General Plan, therefore, depends on the CAP for consistency among its elements, and may not be "reasonably consistent and integrated on its face" without it. *Concerned Citizens of Calaveras Cty. v. Bd. of Supervisors*, 166 Cal.App.3d 90, 97 (1985). The County, consequently, is precluded from making a finding of General Plan consistency for the Project's proposed General Plan Amendment unless and until the County approves a legally adequate CAP and related thresholds of significance, and uses such documents to evaluate the Project's GHG impacts in its public CEQA review. Reliance on the staff-invented GHG Threshold of Significance Document is not an adequate substitute and will result in inconsistency with the General Plan.

**III. PUBLICATION OF THE DRAFT EIR PRIOR TO CERTIFICATION OF A VALID CAP AND RELATED THRESHOLDS OF SIGNIFICANCE WOULD REQUIRE RECIRCULATION**

Publication of the Project's draft EIR prior to approval of a legally adequate CAP and related thresholds of significance would require recirculation later. Recirculation is required when "significant new information is added to the EIR after public notice is given of the

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availability of the draft EIR for public review ... but before certification.” 14 Cal. Code Regs. § 15088.5. “Information” may include “changes in the project or environmental setting as well as additional data or other information.” *Id.* New information is “significant” when the EIR is “changed in a way that deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the project or feasible way to mitigate or avoid such an effect ... that the project’s proponents have declined to implement.” *Id.*; *see also Laurel Heights Improvement Assn. v. Regents of University of California*, 6 Cal.4th 1112, 1129 (1993). The CEQA Guidelines specifically require recirculation when the public is deprived of the opportunity to comment on mitigation measures. *See* 14 Cal. Code Regs. § 15088.5; *see also Clover Valley Foundation v. City of Rocklin*, 197 Cal.App.4th 200, 223 (2011) (“significant new information” includes a disclosure that a new significant environmental impact would result from the project).

Once a revised CAP is certified, the County would be required to analyze the Project pursuant to the new thresholds of significance based on the CAP and would likely be required to implement mitigation measures included in the CAP. The CAP would also provide a baseline inventory for the County’s GHG emissions. This baseline information, as well as the thresholds of significance and project-specific mitigation measures provided by the CAP, would constitute “significant new information” triggering recirculation. The County should not publish the Project’s draft EIR with a GHG analysis it knows to be invalid, and require multiple rounds of circulation and comment. If the County publishes the Project’s draft EIR before a valid CAP is certified, it will be depriving the public of an opportunity to comment on impacts that would result from measuring the Project’s emissions against the legally required baseline and on potential impacts from mitigation measures that may be required by the CAP. Instead, the County should withhold the Project’s EIR until such time as a valid CAP and related thresholds are certified by the County.

#### **IV. THE COUNTY IS RESPONSIBLE FOR ANALYZING GHG IMPACTS AND CANNOT DELEGATE RESPONSIBILITY TO NEWLAND**

The County is responsible for CEQA review and cannot rely on Newland to conduct the necessary environmental review, including analyzing the Project’s GHG impacts. The County, as the lead agency, must independently review and analyze the EIR, and circulate a draft EIR that reflects its independent judgment. Pub. Res. Code § 21082.1(c)(1)-(2); 14 Cal. Code Regs. § 15084(e) (“The draft EIR which is sent out for public review must reflect the independent judgment of the lead agency. The lead agency is responsible for the adequacy and objectivity of the draft EIR.”). When certifying the final EIR, the County must then make a specific finding that the document reflects its independent judgment. Pub. Res. Code § 21082.1(c)(1)-(2). The County must sufficiently exercise its independent judgment over the environmental analysis. *Friends of La Vina v. Cty. of Los Angeles*, 232 Cal.App.3d 1446, 1452-55 (1991) (requiring the lead agency to exercise its independent judgment in certifying an EIR).

The County, therefore, must perform an independent analysis of the Project’s GHG impacts and cannot rely only on the analysis submitted by Newland. In the absence of a valid CAP and related thresholds of significance pursuant to the County’s General Plan and General Plan EIR, the County cannot simply rubber stamp analysis that Newland claims is consistent

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with the staff-level GHG Threshold of Significance Document or any thresholds developed by Newland and its consultants on an ad hoc basis for the Project.

### V. CONCLUSION

For the reasons discussed above, we request that the County set aside the GHG Threshold of Significance Document and delay publication of the Newland Project's EIR until the County has approved a legally adequate CAP and related thresholds of significance and the County has incorporated such analysis into the Project's EIR and provided an opportunity for public review and comment. Proceeding with Newland's EIR at this time is legally impermissible due to the deficiencies in the GHG Threshold of Significance Document and the absence of a legally valid CAP and thresholds of significance. The County must comply with the law, including the terms of its own General Plan and General Plan EIR, the requirements of the Supplemental Writ of Mandate, and CEQA Guidelines section 15064.7.

Thank you for your time and attention to this matter. Please feel free to contact me at (858) 523-5400 or [christopher.garrett@lw.com](mailto:christopher.garrett@lw.com) if you would like to discuss this matter further.

Best regards,

*Christopher W. Garrett*

Christopher W. Garrett  
of LATHAM & WATKINS LLP

### Enclosures

cc: Kathy Van Ness, Golden Door  
Mark Slovick, County Planning and Development Services  
Thomas Montgomery, Office of County Counsel  
Dan Silver, Endangered Habitats League  
Jan Chatten-Brown, Chatten-Brown & Carstens LLP  
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## EXHIBIT D

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August 9, 2016

By e-mail ([Ellen.Pilsecker@sdcounty.ca.gov](mailto:Ellen.Pilsecker@sdcounty.ca.gov))  
Original to follow

C. Ellen Pilsecker  
Office of County Counsel  
1600 Pacific Highway, Suite 355  
San Diego, CA 92101

**Re: Request To Set Aside 2016 Climate Change Guidance Document**

Dear Ms. Pilsecker:

As I advised you yesterday, the Sierra Club agrees with the conclusion reached in the August 5, 2016 letter from Chris Garrett that the recently adopted 2016 Climate Change Guidance Document is inconsistent with the County's General Plan and the General Plan EIR, which require preparation and certification of a Climate Action Plan ("CAP") and related thresholds of significance for greenhouse gas ("GHG") emissions based on data compiled as part of the CAP. The GHG "guidance document" is a thinly veiled Threshold of Significance. For the same reasons that the November 2013 staff adopted guidance document was improper, this latest guidance document should be set aside. In addition to being inconsistent with the General Plan and the General Plan EIR, we believe it is inconsistent with the spirit of the Supplemental Writ issued by Judge Taylor on May 4, 2015.

Because Chris Garrett's letter amply sets forth the reasons why the law requires that this document be set aside, I will not detail them here. Suffice it to say that the Sierra Club believes that any environmental analysis that relies on the efficiency based metrics contained in the Guidance document, rather than examining compliance with a legally adequate CAP and using the appropriately adopted Threshold of Significance to assure that the emissions reductions promised within the County will be achieved, is fatally flawed. Because environmental review documents relying on the Guidance document would be legally deficient and waste the time of both applicants and the general public, the Sierra Club asked that the County set aside the Guidance document.

Pilsecker  
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To the extent that the County is anxious to process pending actions for land development approvals, the answer is to expeditiously adopt an adequate CAP and Thresholds of Significance that will result in the County achieving the greenhouse gas emission reduction goals, adopted by it, that are articulated in AB 32.

I look forward to your response regarding our July 26, 2016 letter, as well as a response to this request.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Chatten-Brown", with a stylized flourish at the end.

Jan Chatten-Brown

## **EXHIBIT E**





## County of San Diego

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August 10, 2016

Jan Chatten-Brown  
Chatten-Brown & Carstens LLP  
220 Pacific Coast Hwy., Suite 318  
Hermosa Beach, CA 92054

Re: Request to Postpone Projects

Dear Ms. Chatten-Brown:

After review and consideration of your July 26, 2016 letter, Planning & Development Services (PDS) will continue to develop the County's Climate Action Plan (CAP) while processing project applications. PDS will not postpone action on projects requiring General Plan Amendments. The Board of Supervisors will have the opportunity to take action on each project when it is set for a public hearing.

Your letter reflects a misunderstanding of the role of a CAP, and of the General Plan Update Environmental Impact Report (GPU EIR). Just as the existence of a valid CAP does not guarantee a project's compliance with CEQA, the absence of a CAP does not preclude compliance. Even without an adopted CAP, each development project must comply with CEQA. The absence of a CAP does not preclude the imposition of any necessary mitigation measure as a condition of approval of a particular project.<sup>1</sup> If the EIR for a particular project identifies greenhouse gas (GHG) emissions as having a significant indirect impact, but the project does not adequately mitigate for that impact, the Sierra Club (or any other interested party) may challenge the project's compliance with CEQA.

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<sup>1</sup> You cite two cases that deal with mitigation of impacts of specific development projects. Neither deals with the need for a CAP. Thus, neither supports your claim that a CAP is a prerequisite for any particular development project.

As to your comment about initiating proceedings pursuant to the writ, please note that neither the trial court's writ nor the court of appeal decision dealt with the processing of development projects. Each court found that the CAP did not meet the description of mitigation measure CC 1.2. The County is complying with the writ by preparing a new CAP that will be supported by appropriate CEQA review.

Putting the CAP in context, the preparation of a CAP was one mitigation measure set forth in the GPU EIR to address GHG emissions from build out under the general plan. There were seventeen other mitigation measures specifically dealing with climate change. The Board's unchallenged findings indicated that the various measures in combination would mitigate the impact to below a level of significance. The statement that the County cannot meet its General Plan goal of reducing GHG emissions without a CAP is not correct. All project-level mitigation measures that could be included in a CAP can be implemented at the project level without a CAP.

Your claim that a project cannot be found to be consistent with the General Plan until a new CAP is adopted does not comport with case law analyzing general plan consistency. A project may be found consistent with the General Plan even if it is not "in perfect conformity with each and every general plan policy." *Sierra Club v. County of Napa*, 121 Cal.App.4<sup>th</sup> 1490, 1509 (2004). Moreover, Policy COS 20.1 does not require a project to include a CAP. Approval of a development project would not obstruct the policy. Therefore, such a project would not be inconsistent with General Plan. *Id.*

The County is working diligently to prepare a new CAP. In addition, the County is taking other steps to support sustainability goals. Examples (with references to the County's website for additional information) include: the Strategic Energy Plan adopted in 2015<sup>2</sup>; the Comprehensive Renewable Energy Plan initiated by the Board in 2013<sup>3</sup>; the Active Transportation Plan, an update of the County's Bicycle and Pedestrian Plans, which is expected to be completed this fall<sup>4</sup>; and the County's Strategic Plan on Waste Reduction<sup>5</sup>.

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<sup>2</sup> [http://www.sandiegocounty.gov/general\\_services/Energy/Energy.html](http://www.sandiegocounty.gov/general_services/Energy/Energy.html)

<sup>3</sup> <http://www.sandiegocounty.gov/pds/advance/CREP.html>

<sup>4</sup> <http://www.sandiegocounty.gov/pds/advance/ActiveTransportationPlan.html>

<sup>5</sup> <http://www.sandiegocounty.gov/content/sdc/dpw/recycling/plan.html>

The County looks forward to working with the Sierra Club and others as we undertake our public outreach sessions to obtain input as we prepare the new CAP. We welcome your constructive input in this process. Please see the Public Outreach and Engagement Plan on the CAP project website.<sup>6</sup>

Very truly yours,

THOMAS E. MONTGOMERY, County Counsel

By   
C. ELLEN PILSECKER, Chief Deputy

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<sup>6</sup> <http://www.sandiegocounty.gov/pds/advance/climateactionplan.html>

**PROOF OF SERVICE**

I am employed by Chatten-Brown & Carstens LLP in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 2200 Pacific Coast Highway, Ste. 318, Hermosa Beach, CA 90254. On September 2, 2016, I served the within documents:

**SECOND SUPPLEMENTAL PETITION  
FOR WRIT OF MANDATE**

☐ **VIA UNITED STATES MAIL.** I am readily familiar with this business' practice for collection and processing of correspondence for mailing with the United States Postal Service. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid. I enclosed the above-referenced document(s) in a sealed envelope or package addressed to the person(s) at the address(es) as set forth below, and following ordinary business practices I placed the package for collection and mailing on the date and at the place of business set forth above.

☐ **VIA OVERNIGHT DELIVERY.** I enclosed the above-referenced document(s) in an envelope or package designated by an overnight delivery carrier with delivery fees paid or provided for and addressed to the person(s) at the address(es) listed below. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.

☒ **VIA ONE LEGAL E-SERVICE.** By submitting an electronic version of the document(s) to One Legal, LLC, through the user interface at [www.onelegal.com](http://www.onelegal.com).

☐ **VIA ELECTRONIC SERVICE.** I caused the above-referenced document(s) to be sent to the person(s) at the electronic address(es) listed below.

I declare that I am employed in the office of a member of the bar of this court whose direction the service was made. I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on September 2, 2016, at Hermosa Beach, California.



Cynthia Kellman

**SERVICE LIST**

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PROOF OF SERVICE