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September 12, 2016

Via Electronic Mail Only

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Re: Lake Jennings Market Place Revised Draft Environmental Impact Report (State Clearinghouse Number: 2014121089)

Dear Mr. Neufeld:

We submit this letter on behalf of Cleveland National Forest Foundation to state our position that the Revised Draft Environmental Impact Report ("RDEIR")¹ does not comply with the requirements of the California Environmental Quality Act ("CEQA") and the CEQA Guidelines, for all of the reasons set forth below, as well as all of the reasons stated in our letter of January 4, 2016 commenting on the DEIR ("SMW DEIR letter"). Like the DEIR before it, this RDEIR takes a blinkered approach to analyzing and mitigating the Project's significant impacts and the RDEIR's evaluation of alternatives to the Project remains flawed.

V-1

As explained in our January 4, 2016 letter on the DEIR for this Project, the County determined years ago that the proposed Project site would be designated for housing to serve unmet current and projected future demand for housing in the Lakeside community. The proposed Project remains inconsistent with the County's General Plan and the designated use of the site for housing. Especially in light of the County's housing crisis, the County should deny this regional-scale shopping center proposed on a site designated for housing. See, KPBS article entitled, *San Diego's Housing Crisis Squeezing The Middle Class*, August 8, 2016, available at:

V-2

¹ When our comments refer to both the Draft Environmental Impact Report ("DEIR") and the RDEIR, they are collectively referred to as the "EIR".

Response to Comment Letter V

Cleveland National Forest Foundation
(Submitted by Shute, Mihaly & Weinberger LLP)
September 12, 2016

- V-1 This introductory comment provides 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 mentioned in this comment are provided in responses to V-2 through V-33. Please also refer to responses to comments G-1 through G-69.
- V-2 The County acknowledges that the project is inconsistent with the existing designations set forth by the General Plan and Zoning Ordinance, and that a General Plan Amendment and Rezone is required for project implementation. Please refer to response to comment G-2.

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<http://www.kpbs.org/news/2016/aug/08/housing-crisis-squeezes-middle-class/>, and attached as Exhibit A.

} V-2
Cont.

In addition, the County has presented inaccurate, misleading data and analysis related to the Project's noise and air quality impacts. See, Letter from Rick Tavares, President, Investigative Science & Engineering ("ISE"), Inc. to Darin Neufeld, County Planner dated September 3, 2016, attached as Exhibit B. As explained in the ISE letter, the County misrepresented the project consultant's work, which undermines the validity of the County's noise and air quality analyses and of the EIR in general.

} V-3

I. The RDEIR's Analysis of Project Alternatives Remains Inadequate.

Every EIR must describe a range of alternatives to the proposed project and its location that would feasibly attain the project's basic objectives while avoiding or substantially lessening the project's significant impacts. Pub. Res. Code § 21100(b)(4); CEQA Guidelines § 15126(d). A proper analysis of alternatives is essential for the County to comply with CEQA's mandate that significant environmental damage be avoided or substantially lessened where feasible. Pub. Res. Code § 21002; CEQA Guidelines §§ 15002(a)(3), 15021(a)(2), 15126(d); *Citizens for Quality Growth v. City of Mount Shasta* (1988) 198 Cal.App.3d 433, 443-45. As stated in *Laurel Heights Improvement Association v. Regents of University of California*, 47 Cal.3d 376, 404 (1988) "[w]ithout meaningful analysis of alternatives in the DEIR, neither the courts nor the public can fulfill their proper roles in the CEQA process. . . . [Courts will not] countenance a result that would require blind trust by the public, especially in light of CEQA's fundamental goal that the public be fully informed as to the consequences of action by their public officials."

} V-4

The RDEIR's analysis of alternatives fails to remedy errors in the DEIR identified in our January 4, 2016 letter, and introduces new errors into the analysis.

A. The RDEIR Fails to Analyze Alternatives That "Offer Substantial Environmental Advantages Over the Project Proposal."

In our letter dated January 4, 2016, we identified several errors in the DEIR's alternatives analysis, none of which the RDEIR attempts to address. Our January 4 letter explains, for example, that the alternatives offered "Reduced Commercial" Alternatives 1 and 2, do little to remedy the most impactful features of the Project. As such, they do not satisfy CEQA's mandate that an EIR discuss a reasonable range of alternatives that "offer substantial environmental advantages over the project proposal." *Citizens of Goleta Valley v. Board of Supervisors*, 52 Cal.3d at 566 (1990).

} V-5

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V-3 The County does not concur with this comment. There were no changes to the analysis, data or conclusions of the ISE reports (Air Quality Conformity Assessment and Acoustical and Ground Vibration Site Assessment). The County considers the EIR's air quality and noise findings to be valid, and has confirmed that they are consistent with the various technical analyses prepared for the project. Please also refer to responses to comments J-1 through J-6 and X-1 through X-3.

V-4 The County disagrees that the analysis of alternatives is inadequate. The range of alternatives originally evaluated in the Draft EIR and provided in the Draft Revised EIR are considered appropriate and are considered to be adequate because they contain enough variation to facilitate informed decision making and public participation that leads to a reasoned choice. (CEQA Guidelines, 15126.6(a)-(f)). The alternatives analyzed in the EIR would reduce impacts to biological resources, cultural resources, GHG emissions, and transportation/traffic when compared to the proposed project. In addition, as provided in Chapter 4.0 Alternatives to the Proposed Project, of the Draft Revised EIR, the alternatives analysis was revised to reflect the updated GHG emissions analysis and revised conclusions. Further, no new alternatives have been identified by the commenters that are capable of reducing GHG emissions to a level less than significant.

V-5 Please refer to responses to comments V-4 and G-66. The County disagrees that the EIR fails to analyze alternatives that offer substantial environmental advantages over the proposed project. As described in Chapter 4.0 Alternatives to the Proposed Project of the Draft Revised EIR and shown in Table 4-2, both reduced commercial alternatives would reduce impacts to biological resources, cultural

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The RDEIR perpetuates this error by failing to identify any new alternatives that offer substantial environmental advantages. This failure is particularly surprising since the RDEIR identifies a new significant and unavoidable impact (related to Greenhouse Gas Emissions), thus making the need for less-impactful alternatives all the more acute. Setting aside the above-described problems with the County's GHG threshold, the "Reduced Commercial" Alternatives 1 and 2 hardly make a dent in attaining the County's chosen emissions standard. On the other hand, the Existing General Plan Designation Alternative slashes emissions considerably on a per person basis. The ability of other alternatives – such as Mixed-Use and Alternate Sites – is unknown because the RDEIR rejects them out of hand.

Amount of Gases That Will Be Emitted By Each Alternative	
County GHG Threshold: 4.9 MTCO _{2e} (per service population)	
Proposed Project:	20.6 MTCO _{2e}
Alternative 1:	18.1 MTCO _{2e}
Alternative 2:	18.6 MTCO _{2e}
"No Project/Existing General Plan":	2.7 MTCO _{2e}
Mixed Use:	Unknown because the RDEIR finds it infeasible
Alternative locations:	Unknown because the RDEIR finds them infeasible

B. The RDEIR Fails to Support Its Conclusion That Reduced Commercial Alternative 1 is the Environmentally Superior Alternative.

Our January 4 letter further explained that the No Project/Existing General Plan Designation Alternative is the Environmentally Superior Alternative, not Alternative 1. As the January 4 letter explains, Alternative 1 would result in 3,233 average daily traffic trips (ADT), or more than double the No Project/General Plan Designation Alternative. This has enormous implications not only for traffic congestion but for noise, air quality, and greenhouse gases. As shown above, the No Project/General Plan Designation Alternative is the only alternative (other than the true No Project alternative) that reduces GHG impacts to a less than significant level.

The RDEIR appears to concede that the No Project/General Plan Designation Alternative is environmentally superior, but claims that it would not meet the most of the project objectives. This conclusion is erroneous. CEQA mandates selection of the environmentally superior alternative if it can feasibly attain most of the project's objectives, "even if it would impede to some degree the attainment of the project

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V-6

V-7

V-8

resources, noise and transportation/traffic associated with the proposed project. The alternatives studied constitute a reasonable range because they contain enough variation to facilitate informed decision making and public participation that leads to a reasoned choice. (CEQA Guidelines, 15126.6(a)-(f)).

V-6 Please refer to response to comment G-66 and V-4. Additionally, as provided in Chapter 4.0 Alternatives to the Proposed Project, of the Draft Revised EIR, the alternatives analysis was revised to reflect the updated GHG emissions analysis and revised conclusions.

Section 15126.6(f)(2) of the CEQA Guidelines addresses alternative locations for a project. The key question and first step in the analysis is whether any of the significant effects of the proposed project would be avoided or substantially lessened by putting the proposed project in another location. Only locations that would avoid or substantially lessen any of the significant effects of the project need to be considered for inclusion in the EIR. As discussed in Chapter 4.0 Alternatives to the Proposed Project, of the Draft Revised EIR, an alternative site location would increase impacts to noise and traffic and would not substantially reduce any environmental impacts associated with the proposed project. In addition, this alternative would result in additional impacts (agricultural resources) that were not identified for the project at its currently proposed location. Therefore, it was eliminated from further consideration in the EIR. The mixed used alternative was rejected from further consideration, as parking requirements would limit the amount of commercial development that could be built on the project site.

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objectives, or would be more costly.” CEQA Guidelines § 15126.6(b). Moreover, any failure to meet project objectives is not grounds to reject an alternative where those objectives are too narrowly drawn. See *North Coast Rivers Alliance v. Kawamura* (2015) 243 Cal.App.4th 647, 669-70 (where the lead agency’s overly narrow project purpose caused it to “dismiss[] out of hand” a relevant alternative, this error “infected the entire EIR”).

The DEIR lists six project objectives, which taken as a whole, essentially mandate selection of the proposed Project. Objective #2 for example, sets forth the following razor-thin objective:

Develop a new commercial center compatible with the character of the Lakeside community that will serve the retail shopping needs of the southwest corner of the Lakeside Community Plan area from Blossom Valley to Lake Jennings Park Road.

This narrow objective forces the County to “dismiss out of hand” all alternatives but the proposed Project. Yet the objective makes no sense, in light of the fact that the project site is designated Village Residential (VR-15) in the recently-updated County General Plan. In fact, the existing residential designation was the result of a multi-year, multi-million dollar General Plan Update process. The RDEIR contains no explanation of what was in error with this process, or why VR-15 residential housing is no longer appropriate or feasible at the site.

Had the RDEIR correctly set forth the project objectives, it would have concluded that the No Project/General Plan Designation Alternative is feasible. As such, CEQA mandates its selection.

C. The RDEIR Impermissibly Rejects Alternatives Based on Unanalyzed Theories and Unduly Narrow Project Objectives.

The RDEIR also fails to support its rejection of Mixed-Use and Alternative Site alternatives. CEQA requires agencies to explain their rejection of potentially feasible alternatives in a manner “sufficient to enable meaningful public participation and criticism.” *Save Round Valley Alliance v. County of Inyo* (2007) 157 Cal.App.4th 1437, 1458. Courts have repeatedly found that agencies fail to meet this standard when they reject alternatives based on unsupported conclusions. *Save Round Valley Alliance*, 157 Cal.App.4th at 1465; *Habitat and Watershed Caretakers v. City of Santa Cruz* (2013) 213 Cal.App.4th 1277, 1305 (“CEQA does not permit a lead agency to omit . . . analysis . . .

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V-8
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V-9

Additionally, it is unlikely that commercial tenants would be attracted to the site, as there would not be a major anchor under this scenario. Further, this alternative would likely triple the traffic generation compared to the project. It is for these reasons that this alternative was not considered for further review in the EIR.

V-7 Please refer to response to comment G-67.

V-8 As described in Section 4.7 Environmentally Superior Alternative of the Final EIR, pursuant to CEQA Guidelines Section 15126.6(e)(2), if the environmentally superior alternative is the No Project Alternative, the EIR shall also identify an environmentally superior alternative among the other alternatives. In addition to the No Project/No Development Alternative, the No Project/Existing General Plan Designation Alternative is a no project alternative; therefore it cannot be selected as the environmentally superior alternative. Please also refer to responses to comments G-65 through G-67.

The County disagrees that the project objectives are too narrowly drawn, as they are appropriate for the proposed commercial use. The County acknowledges that the project is inconsistent with the existing designation (VR-15) set forth by the General Plan, and that a General Plan Amendment is required for project implementation.

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of any alternatives that feasibly might reduce the environmental impact of a project on the *unanalyzed theory* that such an alternative *might not* prove to be environmentally superior to the project”); *Center for Biological Diversity v. County of San Bernardino* (2010) 185 Cal.App.4th 866, 884-85 (overturning FEIR in which an agency rejected an alternative based on unsupported, conclusory statements); *Pres. Action Council v. City of San Jose* (2006) 141 Cal.App.4th 1336, 1355 (rejecting FEIR’s alternatives analysis because “the public and the City Council were not properly informed of the requisite facts that would permit them to evaluate the feasibility of this alternative”).

V-9
Cont.

The RDEIR explains that the Mixed-Use alternative was rejected because “it is unlikely that commercial tenants would be attracted to the site” and the alternative would likely “triple” the traffic generation. These unsupported, conclusory statements fail to support the RDEIR’s rejection of the Mixed-Use alternative. The RDEIR provides no evidence of the “likelihood” that tenants would be not attracted to the site. Nor does it address whether this assumed increase in trip generation would result in more traffic. Indeed, mixed-use projects are typically touted for their ability to reduce overall traffic and GHG emissions due to “internal capture.” *See, Getting Trip Generation Right: Eliminating the Bias Against Mixed Use Development*, American Planning Association, May 2013, attached as Exhibit C.

V-10

The RDEIR similarly fails to support its rejection of the Alternative Site alternative. Here, the RDEIR explained that the site had to be within the “identified market area.” RDEIR at 4-2. But this factor screened out all viable alternatives—including alternative sites that are already zoned commercial—because the “market area” is impermissibly small. As discussed above, the project objectives limit the market area to the “southwest corner of the Lakeside Community Plan area from Blossom Valley to Lake Jennings Park Road.” This impermissibly narrow objective forecloses alternate locations except for one area designated “Unique” and “Important” farmland (RDEIR at 4-3), which is obviously a non-starter. The document fails to explain why no commercially-designated sites were considered. In short, the narrow project objective, once again, “infected the entire EIR.” *Kawamura*, 243 Cal.App.4th at 669-70.

V-11

II. The EIR Fails to Conduct a Conservative Analysis that Would Identify All Potential Impacts.

The Project is a region-serving shopping center that would draw a substantial number of new customers to the area. The EIR acknowledges that the Project will cause significant traffic impacts on area roadways where the Project will significantly contribute to traffic congestion. DEIR at 2.6-20 and 2.6-21 and RDEIR at 2.3-14. Yet, the EIR fails to disclose the extent and severity of these impacts. The DEIR

V-12

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V-9 As stated in the Readers Guide to Recirculation, for ease of review, the County has included the entirety of Chapters 3 and 4. However, with the exception of Section 2.3, the County requests that comments are provided on only the text indicated in underline format, which capture all additions to these chapters.

Although some revisions have been made to the EIR’s alternatives analysis, none have been made to Section 4.2 Alternatives Considered but Rejected of the Draft Revised EIR, in which the commenter has focused their comments on. Therefore, in accordance with CEQA Guidelines 15088.5(f)(2) no further response is required.

Nonetheless, the County disagrees that the EIR does not support the rejection of the mixed-use and alternative site alternatives; mixed use and alternate site alternatives are described in EIR Section 4.2 Alternatives Considered but Rejected. The commenter is also referred to responses to comments G-65 through G-67 and V-6 regarding alternatives.

V-10 Please refer to response to comment V-9.

V-11 Please refer to response to comment V-9.

V-12 This comment mischaracterizes the project as a “region-serving shopping center” as the project is much smaller in acreage and square footage than a typical regional-shopping center based on SANDAG’s “(not so) Brief Guide of Vehicular Traffic Generation Rates for the San Diego Region.” As described in response to comment G-8,

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improperly relies on assumptions that minimize, rather than conservatively assess, the Project's traffic impacts. This results in inaccurate analysis the Project's traffic impacts. Moreover, reliance on an inaccurate traffic analysis in turn implicates the EIR's air quality, greenhouse gas/climate change, air quality, and noise analyses as well. In so doing, the DEIR fails to conduct an analysis that accounts for all of the Project's likely impacts, as CEQA requires. See Pub. Res. Code § 21061.

Specifically, the DEIR underestimates the Project's trip generation rates. The proposed Project includes a gas station component (12 gas pumps, a car wash, and a 3,000 sq. ft. market). DEIR Appendix I, Traffic Impact Study, KOA Corporation ("KOA Report"), July 29, 2015, Part 3 at p. 6. The DEIR's trip generation estimate for this component is based on rates for a "Gasoline [Station] with Food Mart & Car Wash," as follows:

- a. Daily: 155 trips/vehicle fueling position (1,860 trips)
- b. AM Peak Hour: 12.4 trips/vehicle fueling position (149 trips)
- c. PM Peak Hour: 13.95 trips/vehicle fueling position (167 trips)

But trip generation rates for "Convenience Market (with gasoline pumps)" are as follows:

- a. Daily: 550 trips/vehicle fueling position (6,600 trips)
- b. AM Peak Hour: 33.0 trips/vehicle fueling position (396 trips)
- c. PM Peak Hour: 38.5 trips/vehicle fueling position (462 trips)

Institute of Transportation Engineers, *Trip Generation Manual*, Ninth Edition, 2012.

The applicant may argue that inclusion of the car wash in the description justifies use of the lower trip generation rates. However, an appropriately conservative analysis for CEQA purposes should be based on higher trip generation assumptions since there's no obvious difference between the two land use descriptions. Moreover, the trip rate for "Convenience Market with Gas Pumps" in the ITE Trip Generation Manual, which is cited as a source for both sets of rates, is based on data collected at sites that coincidentally have markets that average 3,000 sq. ft. and that both data sets encompass facilities with 12 fueling positions. Given that the description of "Convenience Market with Gas Pumps" matches the Project exactly, it stands to reason that the EIR should have incorporated these trip generation rates into the analysis.

Similarly, the DEIR's trip generation estimate for the retail component of the project employed rates for "Neighborhood Shopping Center," rather than "Supermarket". The proposed Project is not a small, local-serving business and as such

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V-12
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V-13

V-14

a "regional shopping center" would occupy a site between 40 and 80 acres of land, and would comprise between 400,000-800,000 square feet of commercial building area. The project site is 13 acres in size (with only 9 acres proposed to be developed), and proposes 76,100 square feet of commercial uses which is consistent with the definition of a Neighborhood Shopping Center.

Regarding Draft EIR trip generation rates, as described in Draft EIR Section 2.6 Traffic/Transportation, SANDAG Trip Generation Rates were used for the traffic analysis. These rates have been vetted and approved by local jurisdictions and are the rates to be used (MEMBER AGENCIES: Cities of Carlsbad, Chula Vista, Coronado, Del Mar, El Cajon, Encinitas, Escondido, Imperial Beach, La Mesa, Lemon Grove, National City, Oceanside, Poway, San Diego, San Marcos, Santee, Solana Beach, Vista and County of San Diego. ADVISORY/LIAISON MEMBERS: California Department of Transportation, County Water Authority, U.S. Department of Defense, S.D. Unified Port District and Tijuana/Baja California). The trip generation rates presented in the SANDAG trip generation manual are the result of trip generation studies made by the City of San Diego, the San Diego Association of Governments (SANDAG), the Institute of Transportation Engineers (ITE), and other qualified sources. This was done to ensure that the rates being applied would be fitting to the setting in the local area.

Since these comments were submitted during the Draft Revised EIR comment period and the Draft Revised EIR did not include revisions to Section 2.6 Traffic/Transportation, no further response regarding Draft EIR trip generation rates is required. See response to comment V-9.

	<p>Further, the County disagrees that the extent and severity of traffic impacts in Draft EIR Section 2.6 Traffic/Transportation have not been disclosed. The County finds the traffic analysis to be adequate, and in turn, the air quality, noise and revised GHG emissions analyses are adequate.</p> <p>V-13 Please refer to response to comment V-12. As described on page 1-2 of the Draft Revised EIR, the proposed project includes a gas station with car wash and commercial building. The commenter states that the Traffic Impact Analysis should have used the trip generation rate for “Convenience Market with Gas Pumps” per the ITE Trip Generation Manual because it matches the project exactly. However, the “Convenience Market with Gas Pumps” does not include a car wash component. The project’s Traffic Impact Analysis is correct in its use of the “Gasoline with food mart and car wash” trip generation rate.</p> <p>V-14 As defined in the ITE Manual, a Neighborhood Shopping Center is “less than 15 acres, less than 125,000 sq. ft, with usually grocery & drugstore, cleaners, beauty & barber shop, & fast food services).” As described in response to comment V-12, the project site is 13 acres in size (with only 9 acres proposed to be developed), and proposes 76,100 square feet of commercial uses which is consistent with the definition of a Neighborhood Shopping Center. The commenter states that the Traffic Impact Analysis should have used the trip generation rate for “Supermarket” per the ITE Trip Generation Manual. However, the project as a whole is a development of a commercial shopping center with six structures (market building, financial building, restaurant with drive through, restaurant-retail building, gas station with car wash, and major building).</p>
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	<p>The project is not a standalone supermarket development. Therefore, trip generation rates for a Neighborhood Shopping Center were used in the traffic analysis.</p>
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does not qualify as a “Neighborhood Shopping Center.” It is a regional-scale shopping center so that “Supermarket” trip generation rates are more applicable. These rates are 25 percent higher than the Neighborhood Shopping Center rates. Therefore, the DEIR underestimates Project-related traffic and understates related impacts.

V-14
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The underestimation of the project-generated trips is important because the Existing plus Project intersection level of service results show that Study Intersection 5: Lake Jennings Park Road/Blossom Valley Road would operate at a barely-acceptable LOS D with a delay value of 54.9 seconds per vehicle. DEIR at Table 2.6-5. The boundary between acceptable LOS D and unacceptable LOS E is 55.0 seconds per vehicle – 55.0 seconds per vehicle is LOS D and 55.1 seconds per vehicle is LOS E. So, a mere 0.2 sec per vehicle increase in project-related delay at that location would represent a new significant impact. The traffic volume increases described above would certainly have that effect.

V-15

In addition, the DEIR Traffic/Transportation section generally misrepresents the analysis in the DEIR Traffic Study. Some parts of the study are completely omitted from the DEIR analysis. For example, the DEIR fails to incorporate the ramp meter analysis and part of the “General Plan Buildout” analysis. In other cases, the DEIR misleadingly presents analysis in the KOA Report that is not representative of the analysis in the DEIR. Specifically, the KOA Report included two previously-approved projects in its analysis of cumulative impacts. The DEIR analysis included three cumulative projects in its analysis, but it presents the traffic volume data and LOS results directly from the KOA report (which, again, only included *two* cumulative projects). The result is that the EIR presents misleading data that results in an inaccurate analysis. This approach undermines the entire traffic analysis.

V-16

III. The RDEIR’s Climate Change Analysis and Mitigation Remains Inadequate.

The RDEIR Climate Change analysis omits important information, is based on an understatement of Project emissions, and its conclusion is not supported by substantial evidence. Rather, the RDEIR presents the same defective analysis that the California Supreme Court rejected in *Center for Biological Diversity v. California Dep’t of Fish & Wildlife* (2015) 62 Cal.4th 204 (“*Newhall Ranch*”). Moreover, the analysis unlawfully relies on the County’s 2016 GHG Guidance, which was not properly adopted pursuant to CEQA’s procedural requirements and which violates the supplemental writ in *Sierra Club v. County of San Diego* case, Case No. 37-2012-00101054-CU-TT-CTL.

V-17

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V-15 Regarding the comment about the trip generation estimates, please refer to response to comment V-12.

As discussed in Section 2.7 Traffic/Transportation of the Final EIR, traffic volume increases from public or private projects that result in one or more of the following criteria would have a significant traffic volume or level of service traffic impact on a signalized intersection:

- The additional or redistributed ADT generated by the project would significantly increase congestion on a signalized intersection currently operating at LOS E or LOS F, or would cause a signalized intersection to operate at LOS E or LOS F.

Based on the Traffic Impact Study prepared for the project and as shown in Final EIR Table 2.7-6, Intersection: Lake Jennings Park Road and Blossom Valley Road currently operates at LOS C. With the addition of project traffic, this intersection would operate at acceptable LOS D. This intersection does not meet the significance criteria described above; therefore, no significant traffic impact would occur at this intersection.

V-16 Refer to response to comment V-9. The County disagrees that the EIR Traffic section misrepresents the analysis in the project’s Traffic Study. The General Plan Buildout analysis is summarized from the technical report and is provided in Draft EIR pages 2.6-8 through 2.6-9. The commenter states that the Draft EIR fails to incorporate “part of the General Plan Buildout analysis” but does not specifically state which part has not been incorporated. Therefore, no further response can be provided.

As described on Draft EIR page 2.6-15, three cumulative projects have been included in the cumulative traffic

	<p>analysis: Lakeside Tractor Supply Project, Lake Jennings Park Road Subdivision Project, and the Peter Rios Estates Apartment Complex Project. Although not specifically called out as a cumulative project in the project’s Traffic Impact Analysis, it has been identified as a cumulative project in Section 2.6, Traffic/Transportation of the Draft EIR. The Peter Rios Estates Complex Project has been determined by the County to be consistent with the General Plan, Community Plan, and Zoning. Therefore, the traffic volumes for the Peter Rios Estates Apartment Complex Project are included in the SANDAG Series 12 traffic forecast model. The following text has been added to Final EIR page 2.7-14 to clarify the traffic cumulative impact analysis:</p> <p style="padding-left: 40px;"><u>On August 28, 2015, the County approved the Peter Rios Estates Apartment Complex Project and found the project to be exempt from CEQA because the project is consistent with the Community Plan, General Plan, and Zoning. Because the project is consistent with the Community Plan, General Plan, and Zoning, it is assumed to be built out to the General Plan designation as modeled by SANDAG for the year 2035. Therefore, the traffic volumes for the Peter Rios Estates Apartment Complex Project are included in the SANDAG Series 12 traffic forecast model.</u></p> <p>V-17 The commenter incorrectly states that the Draft Revised EIR uses the same “defective” analysis as the “Newhall Ranch” project, and that the EIR relies on the 2016 Climate Change Analysis Guidance document (Guidance Document).</p> <p>The GHG analysis completed for this project is consistent with CEQA Guidelines Section 15064.4. The CEQA Guidelines offer two paths to evaluating GHG emissions</p>
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	<p>impacts in CEQA documents: 1) Projects can tier off a “qualified” GHG Reduction Plan (CEQA Guidelines Section 15183.5); or 2) Projects can determine significance by calculating GHG emissions and assessing their significance (CEQA Guidelines Section 15064.4). As described in Draft Revised EIR Section 2.3, neither the CARB nor the San Diego Air Pollution Control District (SDAPCD) has adopted significance criteria applicable to land use development projects for the evaluation of GHG emissions under CEQA. OPR’s Technical Advisory <i>CEQA and Climate Change: Addressing Climate Change through CEQA Review</i> states, “public agencies are encouraged, but not required to adopt thresholds of significance for environmental impacts. Even in the absence of clearly defined thresholds for GHG emissions, the law requires that such emissions from CEQA projects must be disclosed and mitigated to the extent feasible whenever the lead agency determines that the project contributes to a significant, cumulative climate change impact.” Furthermore, OPR’s advisory document indicates, “in the absence of regulatory standards for GHG emissions or other scientific data to clearly define what constitutes a ‘significant impact,’ individual lead agencies may undertake a project-by-project analysis, consistent with available guidance and current CEQA practice.”</p> <p>Please refer to response to comment T-2, and V-18 through V-20, as well as the revised GHG analysis in the Final EIR.</p>
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A. The County May Not Rely On Its 2016 GHG Guidance Recommending Use of the Efficiency Metric to Determine Significance.

To conduct its GHG analysis, the County relies on newly published guidance that its Planning and Development Services department issued in July, 2016. This guidance sets forth the County's recommended CEQA threshold of significance for GHG emissions:

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 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.

County of San Diego, 2016 Climate Change Analysis Guidance, July 29, 2016 ("July, 2016 GHG guidance"). The RDEIR utilizes this adopted threshold. RDEIR at 2.3-11 and 2.3-17. However, this guidance and threshold was not developed through a public review process or adopted by ordinance, resolution, rule, or regulation, as required by CEQA. Guidelines § 15064.7. Nor does it contain substantial evidence to support its chosen threshold, as required by CEQA. Guidelines § 15064.7. The guidance is unlawful for both of these reasons, and the County may not rely on it.

Furthermore, for the reasons stated in the attached Second Supplemental Petition for Writ of Mandate, the County's issuance of this guidance and CEQA threshold violates the supplemental writ filed on May 4, 2015 in the *Sierra Club v. County of San Diego* case, Case No. 37-2012-00101054-CU-TT-CTL. See Exhibit D. This writ ordered the County to set aside its November 7, 2013 Guidelines for Determining Significance and Report Format and Content Requirements and not to reissue its Guidelines for Determining Significance for Greenhouse Gas Emissions until it complies with CEQA. *Id.*; see also *Sierra Club v. County of San Diego* (2014) 231 Cal.App.4th 1152. Yet the County issued its July, 2016 GHG guidance without public review, without conducting appropriate CEQA review, and apparently without filing a return to the writ in the *Sierra*

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V-18 The project's GHG impact analysis has been revised in Appendix E and Section 2.3 of the Final EIR. The revised GHG analysis no longer uses the County's Guidance Document. As discussed in response to comment T-2, 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 MTCO₂e 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.

V-19 The project's GHG impact analysis has been revised in Appendix E and Section 2.3 of the Final EIR. The revised GHG analysis no longer uses the County's Guidance Document. See also response to comment T-2.

See also responses to comments T-3 and V-17.

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Club v. County of San Diego case. For all of these reasons, the County may not utilize or rely on its July, 2016 GHG guidance.

Even if the County’s July, 2016 GHG guidance were procedurally proper, it is substantively invalid under the California Supreme Court’s recent decision in *Newhall Ranch*. First, the RDEIR claims that that in the *Newhall Ranch* decision, the Supreme Court identified a “service population” GHG ratio threshold for land use projects as the preferable approach over mass emissions-based thresholds. RDEIR at 2.3-11 at footnote 3. The RDEIR fails to provide a specific citation to support this claim and we find no evidence that the court made such a statement.

Moreover, under *Newhall Ranch*, the County may not adopt CEQA thresholds of significance that simply import—without substantial evidence—a goal (or metric) that is applicable statewide to an individual project. In *Newhall Ranch*, the court specifically stated that a lead agency must relate *statewide* levels of reduction effort to the percentage of reduction that would or should be required from *individual projects*.” *Newhall Ranch*, 62 Cal.4th 204 at 225-226 (emphasis in original). Similarly, the County may not assume that an efficiency metric based on statewide reduction targets is automatically applicable to individual projects.

The County’s July, 2016 GHG guidance does exactly what the Supreme Court forbids. The RDEIR explains that the efficiency metric “represents the rate of emissions needed to achieve a fair share of the State’s emission mandate embodied in AB 32.” RDEIR at 2.3-11. The RDEIR goes on to say that “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 by 2020. *Id.* The RDEIR then applies the statewide efficiency metric (4.9 MTCO₂e per service population) as the project’s significance threshold such that the amount of emissions per capita for the project is lower than this metric, the impact would be considered less-than-significant. RDEIR at 2.3-13. In other words, it assumes that a metric applicable statewide is appropriate to apply to this individual project.

In *Newhall Ranch*, the Court held that while a Business As Usual approach was not categorically unlawful, the agency’s application of that methodology failed to comply with CEQA because the EIR “simply assume[d]” that the level of reduction effort required in the statewide context would be sufficient for the specific land use development at issue, failing to support its finding of no significant GHG impacts with substantial evidence. *Id.* at 226. The Court’s summary of that EIR’s failings applies equally to the Lake Jennings EIR:

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V-20 Please refer to response to comment T-2.

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At bottom, the EIR's deficiency stems from taking a quantitative comparison method developed by the Scoping Plan as a measure of the greenhouse gas emissions reduction effort required by the state as a whole, and attempting to use that method, without consideration of any changes or adjustments, for a purpose very different from its original design: To measure the efficiency and conservation measures incorporated in a specific land use development proposed for a specific location. *Id.*

Contrary to the Supreme Court's direction, the County's and RDEIR's use of an efficiency metric analytic approach violates CEQA because it also fails to support with substantial evidence the application of the metric based on statewide levels of reduction effort to the reduction effort required of the specific project to achieve compliance with AB 32. In other words, the RDEIR and the County's CEQA Guide both fail to explain why this general target for the entire state should be presumptively sufficient at the individual project level, for a project in San Diego County.

To be consistent with AB 32, any new individual project will certainly need to provide significantly greater emission reductions than merely meeting a statewide or region wide target. Contrary to the methodology applied by the RDEIR, there is no reason to presume without evidence that the Project's "fair share" of reductions would match a state average. The Court explained this point in *Newhall Ranch*: new projects may require a greater level of reduction because "[d]esigning new buildings and infrastructure for maximum energy efficiency and renewable energy use is likely to be easier, and is more likely to occur, than achieving the same savings by retrofitting of older structures and systems." *Id.* at 226. The RDEIR ignores this reality and directly imports in statewide standards, assuming the reduction rate should be the same. The Scoping Plan, on which these methodologies are all based, is silent on the obligation of new developments versus existing development to reduce emissions, but it stands to reason that new developments will need to reduce at a greater rate, as older development will continue to exist and emit at levels higher than the average. As the RDEIR blindly assumes the same emissions reductions levels for statewide and project-specific compliance with AB 32, its GHG analysis is not supported by substantial evidence and the EIR is deprived of its "sufficiency as an informative document." *Id.* at 227 (citing *Laurel Heights*, 47 Cal.3d at 392).

B. The RDEIR Underestimates the Project's GHG Emissions.

The EIR fails to account for all the ways in which the Project will cause GHG emissions. For example, the EIR simply calculates vehicular emissions based on Project-related trips and miles traveled. RDEIR at 2.3-14 and 2.3-15. However, it fails to

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V-21 The County disagrees that the EIR fails to describe how the project will cause traffic congestion and associated emissions. Draft EIR Section 2.6 Traffic/Transportation provides a detailed analysis of the potential impacts associated with the proposed project. Please see for example Draft EIR Tables 2.6-5 through 2.6-11, which depict the existing traffic conditions and levels of service for intersections and roadway segments, and the change in conditions (level of service) as a result of the addition of project trips. Draft EIR Tables 2.6-13 and 2.6-14 depict the roadway segment and intersection conditions without, and with proposed traffic mitigation measures. Section 2.6.4 of the Draft EIR identifies the roadway segments and intersections that would operate below level of service (LOS D). As indicated in Section 2.6.5, with implementation of proposed mitigation measures, all intersections and roadway segments would operate at an acceptable level of service (LOS); therefore, vehicle movement efficiency would be maintained and there would not be an increase in GHG emissions. The project will include traffic improvements along Olde Highway 80 including roadway segment and intersections improvements, as well as other improvements to the surrounding street network that will maintain and in some cases improve LOS over existing conditions. A roundabout is proposed as well to facilitate traffic movements and improve LOS over conventional intersections. Therefore, there will be no significant increase in GHG emissions due to traffic congestion. Furthermore, the project includes mitigation measures which will result in net-zero GHG emissions.

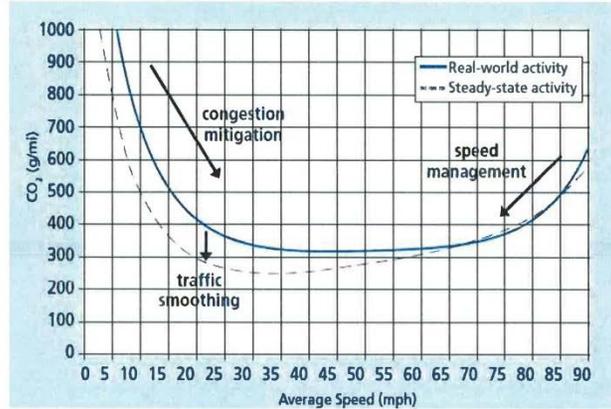
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describe how the Project will cause traffic congestion, which dramatically affects vehicle efficiency and increases GHG (and other) emissions. As Caltrans described in an EIR for the I-5 freeway widening project:

One of the main strategies in the Caltrans' Climate Action Program to reduce GHG emissions is to make California's transportation system more efficient. The highest levels of carbon dioxide from mobile sources, such as automobiles, occur at stop-and-go speeds (0-25 mph) and speeds over 55 mph; the most severe emissions occur from 0-25 mph (see Figure 4-2). To the extent that a project relieves congestion by enhancing operations and improving travel times in high congestion travel corridors GHG emissions, particularly CO₂, may be reduced.



See Exhibit E (citing Traffic Congestion and Greenhouse Gases: Matthew Barth and Kanok Boriboonsomsin (TR News 268 May-June 2010), available at <http://onlinepubs.trb.org/onlinepubs/trnews/trnews268.pdf>).

Here, the Project includes a General Plan amendment that will change the project site designation and zoning from residential use to commercial use. DEIR at 1-11. This change will result in a substantial increase in traffic. The current designation and

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V-22 The commenter is correct in stating that a General Plan Amendment and Rezone is required for project implementation. The EIR recognizes that a residential project would generate less trips than a commercial project (please refer to Final EIR Chapter 4.0 Alternatives to the Proposed Project). However, a residential project is not proposed and would not meet the basic objectives of the proposed commercial project. As stated on Final EIR page 2.3-14, to evaluate project trips, the total trip generation rate of 4,683 ADT for buildout conditions was used. The average vehicle trip length would be 3.5 miles, with a median running speed of 45 MPH (Appendix K of this EIR). The total emissions associated with the project, based on trip generation, vehicle fleet mix, and trip lengths, are estimated using the industry accepted EMFAC for estimating total project air emissions. The EMFAC 2011 was run using input conditions specific to the San Diego air basin to predict operational vehicle emissions from the project, based upon a project completion scenario year of 2020. As stated in response to comment V-21, while the project will result in an increase in traffic in the area, mitigation measures are proposed that would reduce to impacts to a less than significant level and all intersections and roadway segments would operate at an acceptable LOS. In addition, there will be no significant increase in GHG emissions because the project includes mitigation measures which will result in net-zero GHG emissions.

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zoning would result in potential construction of 160 two-bedroom multi-family residential units, which would result in 1,600 average daily trips (ADTs), compared to the 4,683 ADT generated by the proposed project. RDEIR at 4-6 and 4-8. Therefore, the proposed project would result in a substantial increase in traffic and roadway congestion. By increasing traffic congestion on these roads, the Project will cause greater emissions not only from Project-related vehicle trips, but also from existing trips where drivers will be forced to operate at lower speeds. Additionally, the Project will cause greater congestion on area freeways. The EIR acknowledges that the project would add at least 4,683 daily trips to area roadways, intersections and certain segments of the I-8, and will significantly contribute to declining levels of service and increasing congestion on that freeway. DEIR at 2.6-20 and 2.6-21 and RDEIR at 2.3-14. It also admits that implementation of I-8 interchange related improvements to address this congestion is uncertain. DEIR at 2.6-21. Yet, the RDEIR fails to analyze how the Project's contribution to this congestion will increase GHG emissions.

EIRs must analyze not only a project's direct effects, but also indirect effects that are reasonably foreseeable. § 21065; Guidelines § 15064(d). Here, it is reasonably foreseeable—indeed, the EIR acknowledges that it is certain—that the Project will cause increased congestion and lower traffic speeds. This, in turn, will cause greater GHG emissions than existing levels or than levels that would occur without the Project. The EIR's failure to analyze these indirect impacts of the Project is prejudicial error. See *Plastic Pipe & Fittings Assn. v. California Building Standards Com.* (2004) 124 Cal.App.4th 1390, 1412 (CEQA requires analysis of indirect impacts).

C. The RDEIR's Analysis of the Project's Consistency with Applicable Plans is Flawed.

1. Climate Action Plan

The RDEIR acknowledges that the County's General Plan contains a mitigation measure that requires the County to adopt a Climate Action Plan that will ensure the County reduces its GHG emissions in quantities sufficient to meet AB 32's goals and beyond. As the Court of Appeal recently stated:

[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. The Climate Change Action Plan will include a baseline inventory of greenhouse gas emissions from all sources and more detailed greenhouse gas emissions reduction targets and deadlines. The County Climate Change Action Plan will achieve comprehensive and

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V-23 The commenter summarizes the history of the County's CAP and relationship to the General Plan. Please refer to response to comment T-3.

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enforceable GHG emissions reduction of 17% (totaling 23,572 MTC02E) from County operations from 2006 by 2020 and 9% reduction (totaling 479,717 MTC02E) in community emissions from 2006 by 2020.

Sierra Club v. County of San Diego (2014) 231 Cal.App.4th 1152, 1159. This mitigation measure is a crucial aspect of the General Plan, and the General Plan EIR made it clear that adoption of the Climate Action Plan, among other measures, was necessary to mitigate the Plan's significant climate impacts. However, when the County adopted its Climate Action Plan, it failed to ensure that the Plan contained enforceable measures to reduce Countywide emissions to 1990 levels by 2020. Sierra Club successfully challenged the Climate Action Plan, which the court threw out. *Id.*

The RDEIR purports to analyze the Project's consistency with various General Plan policies that pertain to GHG emissions and finds that the Project's consistency with these policies supports a finding of no significant impact. RDEIR at 3.1.2-31 – 33. This conclusion is not supported by evidence. First, the RDEIR has not been shown to be consistent with the County's Climate Action Plan. Second, the RDEIR manufactures a spurious rationale to explain plain inconsistencies with General Plan policies. For example, Land Use Element Policy LU-11.3 Pedestrian-Oriented Commercial Centers, encourages "the development of commercial centers in compact, walkable configurations in Village centers..." RDEIR at 2.3-38. The RDEIR acknowledges that the Project "is unlikely now or in the future to experience the volume of foot traffic assumed in the policy desired for compact and walkable development." *Id.* However, it then inexplicably concludes that the Project is consistent with this policy. *Id.* The RDEIR reasons that since the Project's parking areas are all internal to the development and there are buildings along the street frontage, the project does not meet the definition of 'strip commercial' as defined by the policy, and the proposed Project is found to be consistent with this policy. *Id.* This rationale is absurd. The intention of the General Plan was clearly to discourage shopping centers outside of the pedestrian-oriented Village centers and to encourage pedestrian friendly commercial centers. The EIR's reasoning is a self-serving attempt to exempt itself from compliance with this policy when in reality, the proposed Project would perpetuate traditional shopping center design, located far from the Village center in contravention of this policy.

Thus, the County's demonstration that the Project allegedly complies with a few General Plan policy measures does not demonstrate that the Project will not have significant climate impacts. On the contrary, the RDEIR's failure to describe how the aborted Climate Action Plan is an integral part of the General Plan, and how the County has failed to come up with a legally sufficient Climate Action Plan, renders the EIR misleading and incomplete. Without the Climate Action Plan, the Project cannot be found

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V-24 CEQA does not require the analysis of a proposed project's consistency with a draft, or unadopted plan. In this case, the County does not have an adopted CAP; therefore, an analysis of the project's consistency with an unadopted CAP is not required. Please also refer to response to comment T-3.

Regarding General Plan consistency, the County disagrees that the EIR fails to accurately describe how the project will comply with General Plan policies (refer to response to comment G-2). As shown in Draft Revised EIR Table 2.3-10, the proposed project would be consistent with the General Plan goals and policies addressing climate change and reducing GHG emissions. Policy LU-11.3 has clear applications in areas of the Village Regional Category where there are basic levels of urban scaled development. The segment of Olde Highway 80 within the project area, however, is unlikely now or in the future to experience the volume of foot traffic assumed in the policy desire for compact and walkable development. Still,, out of the approximate 1,050 linear feet of frontage on Olde Highway 80, only about 140 linear feet are proposed for onsite parking with the balance including buildings, project entrances and landscaping. Policy LU-11.3 discourages "strip" commercial development. "Strip" commercial development consists of automobile-oriented commercial development with the buildings set back from the street to accommodate parking between the building and street. The project design internalizes virtually all of the parking and the commercial buildings all front to the internal parking and circulation system. The larger buildings all include enhanced and covered walkways which allows for a 'compact and walkable' commercial development once the public has arrived on site. Since the parking areas are all

	<p>internal to the development and there are buildings along the street frontage, the project does not meet the definition of ‘strip commercial’ as defined by the policy. Therefore, the proposed project is consistent with Policy LU-11.3, as applicable. In addition, the project will implement every feasible mitigation measure to reduce potential GHG emissions from the project to “net zero” emissions.</p> <p>V-25 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 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. Refer also to comment V-24 and T-3.</p>
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consistent with the General Plan’s climate-related policies. The County should defer consideration of this Project until it develops and approves a legally sufficient Climate Action Plan.

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2. Consistency With SB 375.

The RDEIR fails to evaluate the Project’s consistency with SANDAG’s Regional Transportation Plan/Sustainable Communities Strategy (“SCS”) and SB 375. The SCS sets forth a projected land use development pattern and transportation network that is supposed to help reduce driving and attendant GHG emissions. SANDAG’s plan is based on the County’s 2011 General Plan and the land use projections contained in it. This Project is not part of the General Plan, and SANDAG did not anticipate commercial development in this area when it developed its SCS.

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The Project proposes a region-serving commercial shopping center that would result in substantially greater average daily trips, vehicle miles traveled, and greenhouse gas emissions than would result from a development consistent with the existing designation and zoning for the site. As such, the Project is not consistent with the SCS. CEQA contains definitions and requirements that govern whether projects are consistent with an SCS, and this Project does not meet them. Specifically, the law requires that projects be “consistent with the general use designation, density, building intensity, and applicable policies specified for the project area” in order to qualify for CEQA streamlining. § 21155(a) (emphasis added). Accordingly, projects that fail to meet an SCS’s land use designations are fundamentally inconsistent with the SCS, regardless of whether a project meets a few of the SCS’s “policies”.

In sum, there is no evidence that the Project is consistent with SB 375 or the SCS. On the contrary, the Project is clearly and unequivocally inconsistent with this law and plan.

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3. The Project is Inconsistent With Relevant Executive Orders and Recently Approved SB 32, Which Reflect the Scientific Consensus Regarding the Minimum GHG Reductions Needed to Stabilize the Climate.

The County must analyze the Project’s consistency with the GHG emissions trajectories outlined in Executive Orders B-30-15 and S-03-05. The Fourth

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V-26 As discussed in Draft Revised EIR Section 2.3 Greenhouse Gas Emissions, SB 375 requires Metropolitan Planning Organizations (MPOs) to adopt a Sustainable Communities Strategy (SCS) or Alternative Planning Strategy to address GHG reduction targets from cars and light-duty trucks in the context of that MPO’s Regional Transportation Plan (RTP). The San Diego Association of Governments (SANDAG) is the San Diego region’s MPO. SANDAG completed and adopted its 2050 RTP in October 2011. However, after the plan was adopted, a lawsuit was filed by the Cleveland National Forest Foundation and the Center for Biological Diversity (later joined by the state’s Attorney General’s office). In November 2014, the Court of Appeal found that SANDAG’s Program EIR for its RTP/SCS did not comply with CEQA because SANDAG omitted from the EIR an analysis of the Plan’s consistency with the state climate policy, reflected in Executive Order S-3-05, of continual greenhouse gas emission reductions. This case was on appeal at the California Supreme Court. On July 13, 2017, the California Supreme Court rendered a 6-1 decision holding that SANDAG’s 2011 EIR for its RTP/SCS issued pursuant to SB 375 did not violate CEQA “by declining to explicitly engage in an analysis of the consistency of projected 2050 greenhouse gas emissions with the goals in [a 2005] executive order [the “2005 EO”].” (Cleveland National Forest Foundation, et al v. San Diego Association of Governments (2017) ___ Cal. 5th ___, Supreme Court Case No. 5223603.)

As discussed in response to comment G-49, determining whether a project is consistent with a locally applicable Sustainable Communities Strategy (SCS): applies to certain residential/mixed-use projects consistent with an SCS adopted under SB 375. First, the Project is a commercial

	<p>project that does not contain residential or mixed use elements. As a result, consistency with an SCS is not an appropriate methodology to analyze the potential GHG emissions from this project. Next, although SCS consistency is a helpful approach for considering the car and light-duty truck emissions sector of projects, GHG emissions from other sources such as building energy and water are not accounted for and still need evaluation. The proposed project’s transportation-related emissions would include cars and light-duty trucks along with emissions from medium and heavy duty vehicles such as delivery trucks. In addition, the project’s emissions would include sources such as electricity, natural gas, water consumption, and solid waste. Therefore, the entirety of the project’s emissions cannot be assessed using the SCS consistency approach.</p> <p>The proposed project would be consistent with the following Mobility goal and policy objectives identified in the 2050 RTP/SCS:</p> <ul style="list-style-type: none"> • Goal: The transportation system should provide the general public and those who move goods with convenient travel options. The system also should operate in a way that maximizes productivity. It should reduce the time it takes to travel and the costs associated with travel. • Policy Objective: Provide convenient travel choices including transit, intercity and high speed trains, driving, ridesharing, walking and biking. • Policy Objective: Increase the use of transit, ridesharing, walking and biking in major corridors and communities. <p>Implementation of the proposed commercial project would enhance and expand an existing concentration of</p>
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	<p>commercial land uses. There are existing and planned commercial uses to the west, north, and east of the site (see RTC Figure 1 – Commercial Areas within Two Miles of Project Site). The project would provide additional commercial services for residents in the adjacent neighborhoods and would reduce the overall number of trips currently required to meet the commercial needs of the area.</p> <p>The proposed project would provide improvements (i.e., sidewalk, curb and gutter, traffic signal and striping) that would enhance pedestrian access. The project proponent would also provide for a standard 8-foot shoulder serving a bicycle lane with the frontage improvements. These improvements would encourage the use of alternative modes of transportation. For example, the improved pedestrian network would enhance the pedestrian access for the residential neighborhood located along Rios Canyon Road to utilize the retail and transit opportunities available along Olde Highway 80.</p> <p>The proposed project would encourage the use of public transportation by providing on-site amenities. As part of the project, 40 bicycle stalls would be provided on the project site. Improved bicycle facilities can increase access to and from transit hubs, thereby expanding the “catchment area” of the transit stop or station and increasing ridership.</p> <p>Regarding CEQA streamlining, the commenter incorrectly identifies the project as a CEQA streamlining project. The County has not evaluated this project nor attempted to process the project as a CEQA streamlining project. Rather, the County has performed a robust evaluation of potential environmental impacts associated with the project.</p>
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District Court of Appeal ruled against the County on this very issue in the context of the County’s failure to implement mitigation promised by its General Plan update²:

The [Climate Action Plan] CAP and Thresholds project now acknowledges it does not comply with Executive Order No. S-3-05. Instead of maintaining a constant rate of GHG emissions reductions after 2020, as required by Executive Order No. S-3-05, the County admits that GHG emissions will instead increase after 2020. Thus, the County’s own documents demonstrate that the CAP and Thresholds project *will not meet the requirements of Assembly Bill No. 32 and Executive Order No. S-3-05 and thus will have significant impacts.*

Sierra Club v. County of San Diego (2014) 231 Cal.App.4th 1152, 1175. As the court noted, “the County [] *committed to compliance* with the Executive Order No. S-3-05 trajectory” when it adopted its updated General Plan in 2011. *Id.* at 1160.

Given that the County has *committed to complying* with the Executive Order, the County must analyze whether this Project, or any other Project before the County, would comply with the established trajectory. Moreover, the State Legislature recently approved Senate Bill 32 (SB 32), which codifies the state target to reduce greenhouse gas emissions to 40 percent below 1990 levels by 2030. However, the RDEIR fails to actually analyze consistency with the established trajectory. Instead, the document simply states that achieving the long-term goals will require systemic changes in how energy is produced and used, and notes that emissions from the Project will continue to decline after 2020 due to state fuel standards and other state climate actions. RDEIR at 2.3-29. But it never analyzes whether these reductions will be on a steep enough trajectory to actually reach the Executive Order/SB 32 goals. Given that the Project will cause longer vehicle trips and is inconsistent with SANDAG’s SCS, the notion that this Project could help achieve the Executive Order/SB 32 goals is wishful thinking, and not supported by substantial evidence.

² The RDEIR misrepresents the status of the lawsuit brought by the Cleveland National Forest Foundation and the Center for Biological Diversity. The Court of Appeal has ruled and struck down SANDAG’s EIR ruling that it failed to analyze impacts to 2050.

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V-27 Please refer to Final EIR pages 2.3-3 through 2.3-10 which provide an overview of the existing regulatory background related to GHG emissions and climate change. Included in this discussion are SB-32 and Executive Order S-03-05. Further analysis of these regulations in the context of the proposed project is provided on Final EIR pages 2.3-29 through 2.3-30. Since SB 32 extends GHG emission reduction targets through 2030 but the proposed project buildout year is 2018, using a 2020 target under AB 32 is the most appropriate for the project. With implementation of the on-site mitigation measures and the purchase of carbon off-set credits, the project will result in a net-zero increase of GHG emissions as discussed in more detail in Section 2.3 of the Final EIR. Therefore, the project is consistent with SB 32. Implementation of the on-site mitigation measures and the purchase of carbon off-set credits would result in the project having “net zero” GHG emissions.

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D. The RDEIR Fails to Adopt All Feasible Mitigation or Find That Suggested Mitigation Is Infeasible.

An agency must evaluate suggested mitigation measures in an EIR. Guidelines § 15126.4(a)(1)(B). In evaluating the measure, the agency must demonstrate that the mitigation measure will be either (1) effective in reducing a significant environmental impact, or (2) ineffective or infeasible due to specific legal, economic, environmental, social, or technological factors. §§ 21002, 21081(a)(1)-(3), 21061.1; Guidelines §§ 15021(a)(2), (b), 15364. If the agency determines that the adoption of a mitigation measure is infeasible, it must make detailed findings supporting its determination, and those findings must be legally accurate and supported with substantial evidence. §§ 21081(a)(3), 21081.5; Guidelines §§ 15091(a)(3), (b); *Village Laguna of Laguna Beach, Inc. v. Orange County Bd. of Supervisors* (1982) 134 Cal. App. 3d 1022, 1034 (CEQA requires express findings of infeasibility). If commenters suggest mitigation measures, the agency must consider them and adopt them if feasible. *Sierra Club*, 231 Cal. App. 4th at 1176.

The RDEIR relies on insufficient mitigation and fails to consider and adopt all feasible mitigation. First, many of the measures listed to address GHG emissions are vague, insubstantial, and nonbinding, and thus cannot be relied on to mitigate Project impacts. Measures relied upon to mitigate impacts must be "fully enforceable" through permit conditions, agreements, or other legally binding instruments. Pub. Res. Code § 21081.6(b); CEQA Guidelines §15126.4(a)(2). Similarly, they must actually be implemented, not merely adopted and then disregarded, and thus the mitigation must provide assurance that such implementation will in fact occur. *Anderson First Coalition v. City of Anderson* (2005) 130 Cal. App. 4th 1173, 1186-87; *Fed'n of Hillside & Canyon Assn's v. City of Los Angeles* (2000) 83 Cal. App. 4th 1252, 1261. The greenhouse gas-related mitigation measures does not meet this standard.

Some measures are vague, such as M-GHG-9, which requires the applicant to install electric vehicle charging stations, but fails to indicate how many or where they would be located. RDEIR at 2.3-32. Other measures don't go far enough to ensure that the Project's emissions will be reduced as much as possible. For example, M-GHG-1 requires that the applicant demonstrate that design of the buildings would exceed Title 24 requirements by a minimum of 20 percent. RDEIR at 2.3-30. This percentage reduction is expected to reduce Project emissions by 70 MTCO₂e per year. RDEIR at 2.3-19. The RDEIR never explains why a 20 percent reduction is appropriate. Given the Project's projected emissions of 2,628 MTCO₂e annually, the County should require a much larger percentage reduction of emissions. As discussed earlier in this letter, new development is

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V-28

V-28 The County disagrees that the EIR relies on insufficient mitigation to reduce GHG emissions. A robust analysis of feasible mitigation measures to address potential GHG emissions associated with the project is provided on Final EIR pages 2.3-18 through 2.3-28. In total, 18 mitigation measures have been determined to be applicable to the project, feasible, and will be implemented. These measures will be enforced as part of the conditions of approval for the project. As provided on Final EIR pages 2.3-31 through 2.3-35, Mitigation Measures M-GHG-1 through M-GHG-18 include a description of the enforceability mechanisms for each measure (i.e., timing, responsibility, proof of compliance). Further, Final EIR Table 2.3-11 lists and provides the rationale for all the mitigations that were determined to be infeasible, not applicable to the proposed project, or not the responsibility of the applicant. With implementation of Mitigation Measures M-GHG-1 through M-GHG-18, the project will result in a net-zero increase of GHG emissions as discussed in more detail in Section 2.3 of the Final EIR.

V-29

V-29 Mitigation Measure M-GHG-9 proposes 16 parking stalls designated for a combination of low-emitting, fuel efficient, and carpool/van pool spaces. EV charging stations will also be installed. This is consistent with Measure SDT-8 of the California Air Pollution Control Officers Association's (CAPCOA's) *Quantifying Greenhouse Gas Mitigation Measures: A Resource for Local Government to Assess Emission Reductions from Greenhouse Gas Mitigation Measures* (herein referred to as the CAPCOA Report). As provided in Mitigation Measure M-GHG-9, the location of the 16 parking facilities and EV charging stations shall be indicated on the site plan and verified by the County prior to issuance of a building permit.

	<p>Regarding Mitigation Measure M-GHG-1, the County disagrees that an explanation needs to be provided why a 20 percent reduction in GHG as a result of this mitigation measure alone is appropriate. Rather, the mitigation measure is only one of 18 mitigation measures proposed (and determined to be feasible) to reduce the GHG emissions for the project. As shown in Final EIR Table 2.3-8, with implementation of adopted State regulations, the project's total GHG emissions would be reduced to 2,631 MTCO₂e per year. A thorough analysis of available mitigation measures and design considerations was performed and detailed on Final EIR pages 2.3-18 through 2.3-28. Please refer to Final EIR Table 2.3-11 which identifies the mitigation measures that were determined to be infeasible, not applicable to the proposed project, or not the responsibility of the applicant. As discussed on Final EIR page 2.3-28, with application of all quantifiable mitigation measures identified in the EIR, the proposed project's GHG emissions would be reduced from 2,631 MTCO₂e per year to zero net GHG emissions. With implementation of Mitigation Measures M-GHG-1 through M-GHG-18, a reduction of 2,631 MTCO₂e per year would occur from solar power, efficient refrigeration, limiting outdoor lighting, and the purchase of carbon credits. The resultant mitigated project emissions are presented in Final EIR Table 2.3-9.</p>
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better able to reduce future emissions compared to existing development. Therefore, the County should require new projects to reduce emissions as much as practicable.

V-29
Cont.

Similarly, M-GHG-4 requires the applicant to install solar panels on 45 percent of the grocery store roof and 5 percent of each of the other buildings. RDEIR at 2.3-31. This measure results in off-setting only 11.8 percent of the Project's power needs. Yet, the RDEIR provides no explanation as to why the Project cannot implement a larger percentage of the roof in solar panels and provides no evidence to suggest such mitigation would be infeasible.

V-30

The RDEIR's identified mitigation measures related to GHG emissions are also completely insufficient because the document ignores many other feasible mitigation measures available to lessen the Project's climate impacts. The RDEIR measures listed as mitigation for the Project's significant impacts together only reduce emissions by approximately 235 MTCO₂, a 10 percent reduction in Project emissions, resulting in GHG emissions that exceed the significance threshold by three-fold. RDEIR at 2.3-28 and 2.3-37. Because the Project will result in significant climate impacts, the County must adopt *all* feasible climate mitigation or find, based on substantial evidence, that such mitigation is infeasible. Other feasible measures the RDEIR should analyze include:

V-31

- Use of recycled water for landscaping and for the car wash;
- Use of low or zero-emission vehicles, including construction vehicles;
- Reducing the use of pavement and impermeable surfaces; and
- Purchasing of offset credits.

Finally, the best mitigation would be to disapprove this Project and adopt an alternative that is consistent with the designation and zoning for the site. This would implement an environmentally superior project to the proposed Project and provide needed housing for the County. Alternatively, the County can analyze an alternative for a shopping center in the Lakeside Town Center that adheres to smart growth principles, which would offer numerous benefits to the County and the State, including preservation of important wildlife habitat and open space land, preservation of the rural character of the Project area, reduced vehicle miles traveled (and concomitant reductions in greenhouse gas and other air pollutant emissions), and less traffic on area roads.

V-32

IV. Conclusion

For all of the foregoing reasons, we respectfully submit that the County cannot lawfully approve the Lake Jennings Marketplace Project. The RDEIR is deeply flawed and fails to inform the public of the full impacts of the Project. It can support

V-33

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V-30 As described in mitigation measure M-GH-4, the project's minimum rooftop coverage of photovoltaic (PV) panels is anticipated to include 45 percent of roof dedicated to panels on the grocery store and a cumulative total of 5 percent of the rooftop among the other five buildings. Placement of solar panels on rooftops is limited by a variety of factors including the need for placement of other rooftop equipment, such as HVACs, and installation of parapets and supporting structures (such as support bars that are installed at a 45 degree angle from the parapet and anchored into the roof). Please see pages 2.3-22 through 2.3-23 of Section 2.3 of the Final EIR.

V-31 The County disagrees that the EIR ignores other potential mitigation measures. Please refer to Draft Revised EIR Table 2.3-9. Regarding the specific measures identified in this comment:

- **Use of recycled water for landscaping and for the car wash.**
Recycled water is not available at this location and therefore is not proposed for landscaping. However, water used to wash vehicles would be recycled for use in the car wash system. Although the proposed project would use a recycled water system for the car wash operation, no GHG reduction credit was taken for this aspect of the project.
- **Use of low or zero emission vehicles, including construction vehicles.**
As identified in M-GHG-9, the project will encourage the use of low or zero emission vehicles on a long-term, operational basis through the provision 16 parking spaces on site that will be dedicated to a combination of

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neither the findings required by CEQA nor a determination of General Plan consistency. In addition, the County must adopt more mitigation, and more specific mitigation, to address the Project's numerous, significant impacts.

V-33
Cont.

Very truly yours,

SHUTE, MIHALY & WEINBERGER LLP



Catherine C. Engberg



Carmen J. Borg, AICP
Urban Planner

816697.7

List of Exhibits:

- Exhibit A *San Diego's Housing Crisis Squeezing The Middle Class*, August 8, 2016, available at: <http://www.kpbs.org/news/2016/aug/08/housing-crisis-squeezes-middle-class/>
- Exhibit B Letter from Rick Tavares, President, Investigative Science & Engineering ("ISE"), Inc. to Darin Neufeld, County Planner dated September 3, 2016.
- Exhibit C Walters, J. et al., *Getting Trip Generation Right: Eliminating the Bias Against Mixed Use Development*, American Planning Association, May 2013.

V-34

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low-emitting, fuel efficient, and carpool/van pool spaces and electric vehicle charging stations.

- **Reducing the use of pavement and impermeable surfaces.**

Approximately 40 percent of the project site will be dedicated to open space, which will consist entirely of impermeable surfaces. This includes the proposed impermeable surface trail, which will be located along the southern extent of the site generally adjacent to the developable areas.

- **Purchasing of off-site credits.** In response to this comment, and based on the commitment of the applicant to achieve carbon neutrality (i.e., net zero emissions), Mitigation Measure M-GHG-18 has been added to Section 2.3 of the Final EIR. Specifically, Mitigation Measure M-GHG-18 requires the following: **M-GHG-18:** Prior to issuance of the first grading permit, the project applicant shall purchase 2,396 MTCO_{2e} of carbon offset credits sufficient to offset all project construction emissions. The carbon offset credits shall be purchased by a California Air Resources Board-approved registry, such as Climate Action Reserve, American Carbon Registry, and Verified Carbon Standard. If no registry is in existence, then the applicant shall purchase carbon offset credits from any other reputable registry or entity that issues carbon offsets to the satisfaction of the Director of Planning & Development Services.

	<p>Prior to issuance of the first certificate of occupancy, the project applicant shall purchase 71,880 MTCO₂e of carbon offset credits sufficient to offset all project operations emissions over the 30-year project life.</p> <p>The carbon offset credits shall be purchased by a California Air Resources Board-approved registry, such as Climate Action Reserve, American Carbon Registry, and Verified Carbon Standard. If no registry is in existence, then the applicant shall purchase carbon offset credits from any other reputable registry or entity that issues carbon offsets to the satisfaction of the Director of Planning & Development Services.</p> <p>The County of San Diego will consider, to the satisfaction of the Director of Planning & Development Services, the following geographic priorities for GHG reduction features, including the purchase of carbon offset credits: 1) project design features/on-site reduction measures; 2) off-site within the unincorporated areas of the County of San Diego; 3) off-site within the County of San Diego; 4) off-site within the State of California; 5) off-site within the United States; and 6) off-site internationally.</p> <p>CARB recommends that “lead agencies prioritize on-site design features and direct investments in GHG reductions in the vicinity of the project” (CARB 2016c). CARB also recognizes that “[w]here further project design or regional investments are infeasible or not proved to be effective, it may be appropriate and feasible to mitigate project</p>
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	<p>emissions through purchasing and retiring carbon credits issued by a recognized and reputable accredited carbon registry” (CARB 2016c).</p> <p>Similarly, the California Attorney General’s Office, Addressing Climate Change at the Project Level (California Attorney General’s Office 2010), states that if, after analyzing and requiring all reasonable and feasible on-site GHG emission reducing strategies for avoiding or reducing GHG-related impacts, the lead agency determines that additional mitigation is required, the agency may consider additional off-site mitigation. Examples of off-site mitigation include participation in GHG reduction projects or programs and the purchase of verifiable carbon “credits” from another entity that will undertake mitigation.</p> <p>Projects listed on CARB-approved registries represent the past reduction or sequestration of one metric tonne of carbon dioxide equivalent that is “not otherwise required” (CEQA Guidelines section 15126.4(c)(3)). Projects are not registered unless they conform to strict protocols, which are vetted through working groups of experts, stakeholder engagement, and public review. The same protocols apply to projects inside and outside of California.</p> <p>V-32 Comment noted. The No Project/Existing General Plan Designation Alternative was analyzed in the Final EIR. As described in Section 4.7 Environmentally Superior Alternative of the Final EIR, pursuant to CEQA Guidelines Section 15126.6(e)(2), if the environmentally superior alternative is the No Project Alternative, the EIR shall also identify an environmentally superior alternative among the other alternatives. In addition to the No Project/No Development Alternative, the No Project/Existing General Plan Designation Alternative is a no project alternative;</p>
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	<p>therefore it cannot be selected as the environmentally superior alternative. See response to comment V-6 regarding an alternative site location. As described in Chapter 4.0 of the Final EIR, similar to the proposed project, all of the alternatives considered in the EIR would result in net zero emissions with implementation of mitigation.</p> <p>V-33 This closing comment summarizes the other comments provided in the letter and expresses a general opposition for the project. As such, this comment is noted and detailed responses to the issues mentioned in this comment are provided above in responses to comments V-1 through V-32.</p> <p>V-34 Comment noted. This comment provides a list of attached exhibits which are references cited throughout the comment letter. Individual responses are not provided for each exhibit as they were utilized in support of the detailed comments responded to above.</p>
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San Diego's Housing Crisis Squeezing The Middle Class

Monday, August 8, 2016

By [Alison St John](#)

Homeowners in San Diego County may not feel it, but a housing crisis is underway in the region, and the middle class is especially hard squeezed.

Longtime Escondido resident Guy Chandler faced a situation that may be all too familiar to many San Diego families. He described what happened at a recent San Diego County Board of Supervisors' meeting.

"Probably the worst day of my life was in June 2015," Chandler said. "My daughter, Jenelle, 37 years old, came to me and told me, 'Dad, sit down. There's something you're not going to like. We have to move out of San Diego County.'"

Chandler's daughter told him she was planning to take her family and move to another state because she couldn't find a house in San Diego where she could afford to raise her kids.

"The next two days a lot of hand-wringing and crying went on," Chandler said.

He now communicates with his grandchildren on the web via FaceTime.

"What's my point?" he asked the board. "My point is, droves of young families are leaving the state of California because they can't afford to live here."



The housing situation in San Diego is being called a crisis, for both buyers and renters.

Stephen Russell heads the San Diego Housing Federation, which works to produce more low-income housing for renters with the help of government subsidies.

"Since the year 2000, we've seen rents increase by about 32 percent, while wages have decreased 2 percent during that same time frame," he said.

By Nicholas McVicker

Stephen Russell, executive director of the San Diego Housing Federation, July 14, 2016.



California Housing Partnership Corporation

This graph compares the rising median rent in San Diego

<http://www.kpbs.org/news/2016/aug/08/housing-crisis-squeezes-middle-class/>

9/12/2016

County and the decreasing median income.

More than half of San Diego renters pay more than one-third of their income in rent, Russell said. The San Diego Housing Commission estimates more than 70 percent of San Diegans are now priced out of the market for an average priced home.

Forecasts: We have enough housing capacity

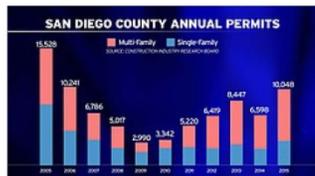
And yet Charles Stoll, director of land use and transportation planning for the San Diego Association of Governments said the region has the space and the capacity to build enough housing to meet the area's needs.

"Our current forecast shows the planned housing that is contained in all the general plans for all the local jurisdictions — the cities and the unincorporated county — provides enough housing to accommodate the projected need of about 325,000 units between now and the year 2050," Stoll said. "So the current general plans show sufficient capacity to meet that."

But in practice, the gap is widening between what is needed and what is actually built.

Actual construction versus planned construction

Matt Adams, vice president of San Diego's Building Industry Association, quoted SANDAG when he said the region needs to build 11,000 to 12,000 housing units annually just to keep pace with population growth.



That hasn't happened since 2005, when 15,000 permits were issued, Adams said. Since then, the numbers have dropped to as low as 3,000 housing units in 2009. Last year, the building industry did get permits for more than 10,000 units countywide.

"I thought it would have gotten more attention," Adams said of the increase in building. "But sadly, it didn't."

BIA

This graph shows the number of permits issued in San Diego County each year.

Adams acknowledges there's a catch in these improving numbers. Even though more of the permits are for multi-family homes rather than single-family units, the homes still are not affordable.

"Of the 10,000 that were produced last year, you had only 229 single-family homes that could be sold at \$500,000 or less," Adams said. "And then you had only 471 multi-family homes produced that could be sold for \$500,000 or less. The market that is not being met is the market of working middle-class families."

Less middle-income housing built

Adams called the housing market an "hourglass" market, with more houses being built for people at the top and the bottom of the economic ladder than for people in the middle.

The reality is that in the first eight years of building out SANDAG's fourth housing element cycle — between 2003 and 2010 — the construction industry built 152 percent of the housing needed for above-average earners. Low earners got 26 percent of the housing they needed. Middle-income earners did worst of all — just 18 percent of their construction needs were met.

Figure 4: City of San Diego Estimated Housing Need vs. Permits Issued (2003 to 2010)

**Share of New Housing units by Income Category, January 1, 2003 – December 31, 2010 (8 years)
Fourth Housing Element Cycle**

Income Level	Very Low	Low	Moderate	Above Moderate	Total for all Categories
Total Housing Units Permitted	4,537	4,721	3,652	67,772	80,682
Estimated Need	24,143	18,348	20,280	44,530	107,301
Percent of Goal Produced	19%	26%	18%	152%	75%
Units Left to Permit	19,606	13,627	16,628	-23,242	26,619

Credit: San Diego Housing Commission Report, Nov. 2015

In first eight years of SANDAG's Fourth Housing Element Cycle, many more permits for homes for high income earners were issued than for low or middle income earners.

Because of government subsidies, Russell said, more affordable housing is being built for low-income families than for middle-income families. He said a graph of the housing market looks more like a goblet, with a big bowl for upper-income earners, a tiny base for low-income earners, and a thin stem: the squeezed supply for the middle class.



Jorge Contreras

Percentage of San Diego housing needs met by new construction between 2003 and 2010.

“You think of the goblet spilling over with supply, and for the top third there is a plethora of choice,” Russell said. “For folks below the top third, there really are not choices.”

In the face of this evidence, the profit-motivated building industry chooses to build for the top end of the market at the expense of the rest, Adams said, citing a [2015 report](#). It says city regulations are so costly that they drive up the price of construction to the point where building middle- and low-income housing is no longer profitable.

The median income for a family of four in the San Diego region in 2016 is \$73,495 a year. So [a family of four earning less than \\$68,000 a year](#) (80 percent of the median) is considered eligible for low-income housing.

Few incentives, no penalties

Russell said part of the problem is that though the state [requires cities to submit plans for where housing can be built](#), few incentives exist to actually build those houses.

"It would be helpful if municipalities actually built according to their community plans and actually met the expectations that they put out in their own local housing elements," Russell said. "If they were to do that, then we could, in fact, meet the local demand for housing."

Adams of the Building Industry Association said there are no penalties and few incentives motivating cities to follow through on their state-mandated housing plans.

"It's a paperwork exercise right now," he said.

In the decade between 2003 and 2013, Carlsbad, for example, issued permits for 231 out of the 3,400 very low-income units that were its share of the Regional Housing Needs Assessment.

That assessment allocated 2,645 moderate-income homes as Carlsbad's share of growth, but the city issued only 522 permits.

On the other hand, Carlsbad was allocated 4,800 above moderate-income homes under the regional assessment, and the city actually issued 5,575 permits.



By Alison St John

The North Santa Fe Apartments on the Sprinter line in Vista, July 2016.

Stoll said SANDAG awards \$5 million to \$8 million every few years to cities that do a good job of building sustainable, affordable houses near transit lines such as the North Santa Fe Apartments in Vista. But, he said, the regional planning agency has no authority to enforce local land-use plans that call for higher density.

"Each jurisdiction is responsible for pulling their own weight," Stoll said. "That's the way it has always been."

What's more, Stoll said, the law recently changed to update the housing needs assessment every eight years instead of every five, so the next review of how local jurisdictions are meeting housing needs won't happen until 2019.

Russell said SANDAG should step up and take more of a leadership role.

"We have had some constructive conversations, but I don't think that the magnitude of the housing crisis we're in has really permeated to the minds of all of those board members," he said. "We have a lot of work ahead of us to get the level of focus and attention and commitment from SANDAG that the issue really deserves."

Russell and Adams said the challenge is to stop the region from falling farther behind in its plans to meet the needs of future residents. As the economy improves, market forces are doing a good job of providing housing for upper-income residents. Government strategies to encourage affordable housing are struggling to adjust since redevelopment money disappeared in 2012. But housing for middle-income renters and buyers is being squeezed out by shrinking of the land available to build on and a resistance to higher density.

As Escondido's Guy Chandler knows, future house-hunters are not all moving here from other places: They are mostly the children of current residents, and they don't want to leave San Diego to find a place they can afford to live.

To view PDF documents, [Download Acrobat Reader](#).

ALISON ST JOHN, North County Bureau Chief | [Contact alison-st-john](#) | [Follow @AlisonStJohn on Twitter](#)

Please stay on topic and be as concise as possible. Leaving a comment means you agree to our [Community Discussion Rules](#). We like civilized discourse. We don't like spam, lying, profanity, harassment or personal attacks.

<http://www.kpbs.org/news/2016/aug/08/housing-crisis-squeezes-middle-class/>

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September 3, 2016

Mr. Darin Neufeld
County of San Diego, DPLU
5530 Overland Ave, Third Floor
San Diego, CA, 92123

**RE: COMMENTS ON DPLU ENVIRONMENTAL DOCUMENTATION
LAKE JENNINGS MARKETPLACE RECIRCULATION**

Dear Mr. Neufeld:

Investigative Science & Engineering, Inc. (ISE) has completed our review of the environmental documentation provided by the County of San Diego Planning & Development Services department with respect to the Lake Jennings Marketplace project (PDS2014-GPA-14-005, PDS2014-REZ-14-004, PDS2014-TM-5590, PDS2014-STP-14-019, PDS2014-ER-14-14-013). Our concerns are expressed below. Please ensure that these comments are part of the environmental record.

Previous Letter to Your Office

In a 12/10/15 letter to you, ISE identified numerous inconsistencies in the published PDF copies of technical reports we prepared for this project, and asked your office to correct these discrepancies in order to provide a true and accurate environmental record. Notably, we identified two areas where attribution to ISE should not be given: 1) the DEIR due to its parallel analyses separate from the technical reports, and, 2) the published PDF technical reports due to their excessive modification after they were submitted to the County.

Instead of correcting the previous problems by using the final PDF files provided by ISE, your office proceeded to publish a further modified version of the acoustical and vibration technical report, which even went so far as to use a newer version of Adobe Acrobat that ISE doesn't even have (Figure 1). This latest alteration appears to be an attempt by your office to further replicate the security features shown in our report.

AEROSPACE ♦ ACOUSTICS ♦ VIBRATION ♦ MATERIALS SCIENCE ♦ GEOPHYSICS
FORENSIC ENGINEERING ♦ EXPERT WITNESS ♦ AIR QUALITY & ENVIRONMENTAL COMPLIANCE

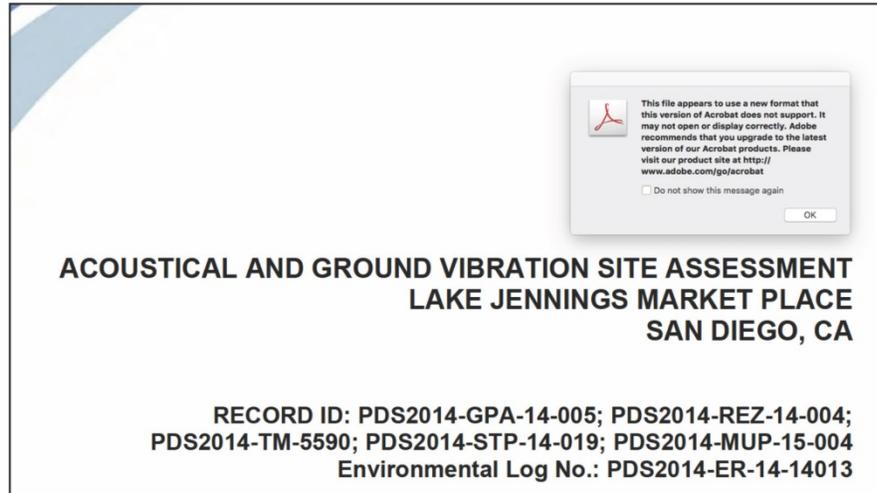


Fig. 1: Partial Screenshot of Modified Acoustical Technical Report from DPLU Website

Given the fact that your office was provided with complete final PDF files from ISE, the continued insistence of your office to alter our work products after they were submitted, plagiarize our copyrighted logo, and attempt to pass unsigned work products off as independent assessments is quite disturbing, and frankly dishonest.

Modifications to ISE's Work Products After Submittal

As previously stated, ISE provided the County of San Diego DPLU with final signed PDF documents of our technical work products for the aforementioned project, in addition to unsigned Microsoft Word files. County staff assured ISE that the Word files would only be used for extracting information for the DEIR, and would not be altered in any way (let alone being altered, and then published).

Contrary to County assurances, your office not only modified the MS Word files, and in the process added content in some areas while destroying it in others, your office also appears to have intentionally attempted to modify the reports so as to make them appear as though they originated from ISE, even to the point of poorly replicating the document security features.

Please note the following two screenshots (Figures 2 and 3). Although ISE's last iteration of our technical reports were both dated 5/12/15, and generated into PDF format on the same date, these are not the versions shown on the County's website. ISE's PDF reports were generated on a Mac OS X machine version 10.6.8, using PDF format version 1.4. Contrast these against the reports shown on the County's website (Figures 4 and 5).

Mr. Darin Neufeld
Comments on DPLU Environmental Documentation
Lake Jennings Marketplace Recirculation
September 3, 2016
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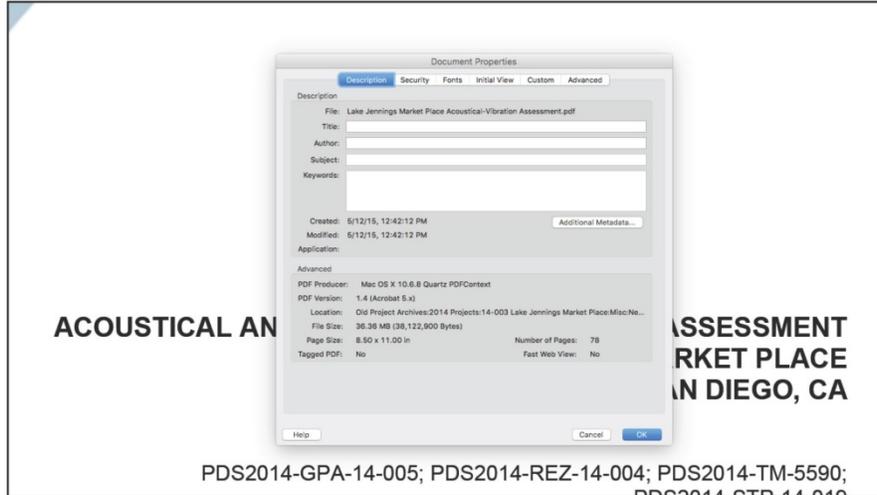


Fig. 2: Partial Screenshot of Original Acoustical Technical Report Properties Pane

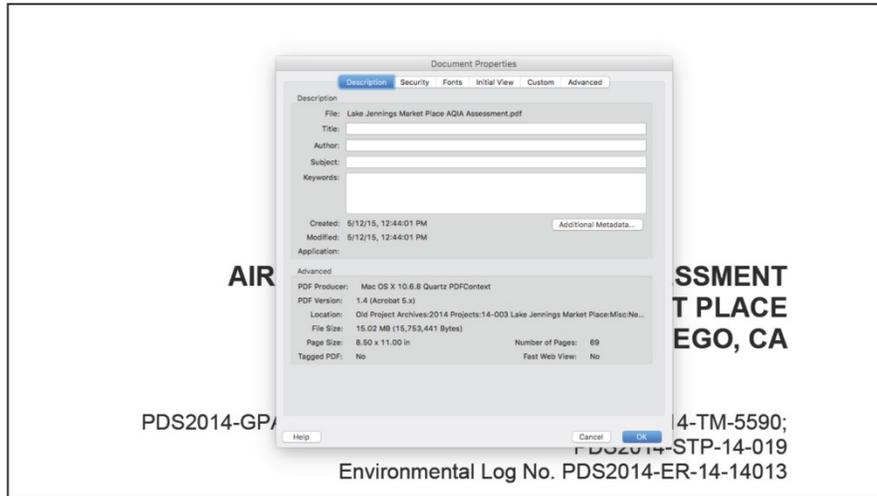


Fig. 3: Partial Screenshot of Original Air Quality Technical Report Properties Pane

The PDF's shown on the County's website were generated on 11/2/15, with the additional modification of the acoustical report on 11/11/15 to copy some additional security features. The following discrepancies are noted:

1. The PDF's were generated using PDF format versions 1.5 and 1.7. Version 1.7 is a newer version than ISE uses, hence the error shown in Figure 1.
2. Both PDF's have different page counts than the original documents provided by ISE.
3. Both PDF's were authored by someone named TPARSONS from renamed versions of the MS Word files sent to the County (the original files have no such references).
4. Finally, both PDF's were generated on a Microsoft Windows machine. For the record, ISE exclusively uses Apple products.

In short, the PDF's provided on the County's website, which are masquerading as ISE reports, did not originate from ISE. ISE does not warranty this work, and considers it to be plagiarized content in violation of the Digital Millennium Copyright Act (DMCA), USC Title 17, as amended.¹



Fig. 4: Partial Screenshot of Modified Acoustical Technical Report Properties Pane

¹ Per sections 17 U.S.C. §§ 512, 1201–1205, 1301–1332; 28 U.S.C. § 4001, and as amended 17 U.S.C. §§ 101, 104, 104A, 108, 112, 114, 117, 701.

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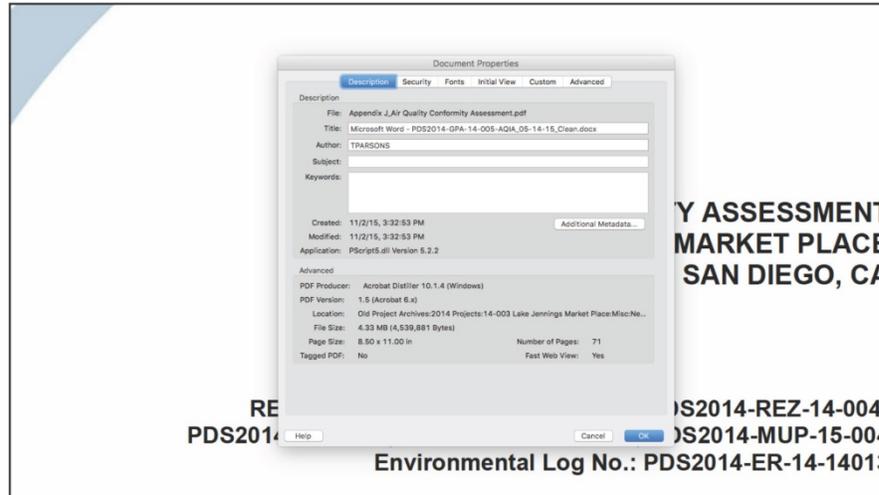


Fig. 5: Partial Screenshot of Modified Air Quality Technical Report Properties Pane

Specific Areas of Concern

ISE takes pride in our work products, which is why reading what is published on the County's website irritates us so much. Given the magnitude of the unnecessary alterations, one has to wonder if the intent was to transform a professional report into an amateurish one.

A standard document comparison using Adobe Acrobat reveals so many changes between the PDF documents posted (and the original) that it almost appears that entire segments of the report were cut and re-pasted. The end result makes it appear that ISE's work products are a sloppy, poorly formatted mess, which is completely opposite from reality.

ISE notes the following significant alterations and/or mysteries in the reports (with the caveat that others might exist). They are provided in no particular order.

1. In both County published acoustical and air quality reports, the Record ID was appended after we submitted the reports to also include a Major Use Permit (PDS2014-MUP-15-004). For the record, ISE never examined a Major Use Permit application (or its environmental constraints) for this project, and were in fact told by County staff, and the applicants planning consultant, not to do so.

In fact, ISE states on Page 48 of the acoustical report that, "*The final design of the mitigation plan would be conditioned as part of a separate Major Use Permit (MUP) action for this construction pad.*" Thus, the MUP was separate from what was analyzed by ISE. The report does not include any MUP analyses or findings.

2. On Page 22 (acoustical report), the equation of motion for ground vibration was altered to include an ampersand making the work look sloppy and unprofessional. This is a good trick considering the equation is a vector graphic image.
3. Unnumbered page (air quality report) following the title page. This page does not exist in the ISE generated report. The footer is wrong, and is from a different 2008 ISE report using our old logo at the time. This was apparently cut-and-pasted from a previous ISE report that the County has for some unknown reason.
4. Multiple pages (both reports), the footer is missing from most of the pages. This effectively strips-off the copyright notices on these reports, which is a direct violation of copyright management protocol as defined by 17 U.S. Code § 1202(b).
5. Unnumbered page (should be Page 13, but the page header was removed for some reason), the text discussing County Code Section 36.410 has been altered from its original citation changing the meaning.
6. On Page 20 (air quality report), the highlighted annotations showing the various variables associated with toxic risk has been removed. The same problem is indicated on Pages 33 and 34 where the computation of PM10 is discussed, as well as on Page 39 for VOC's, and on Page 50 where natural gas emissions are discussed.
7. On Page 42 (air quality report), the header of Table 9 has been altered. The meaning of the number "1" in the table is a mystery to us.
8. On Page 24 (acoustical report), the equation describing the equivalent acoustical emissions from the car wash equipment was altered to remove a multiplication symbol, and insert a lowercase 'g'. Again, this makes the work look sloppy and unprofessional, and was not part of the original document.
9. On Pages 25 and 26 (acoustical report), the graphics were down-sampled making them hard to read. This is not how they were presented in the ISE generated PDF. The same problem is indicated on Pages 33 and 34.
10. On Pages 35 through 37 (acoustical report), the graphics were rasterized and severely down-sampled making them unreadable and unusable. This is not how they were presented in the ISE generated PDF, as these images were saved to the PDF in vector format for this reason.
11. Page 61 (air quality report), the page formatting has been changed, and only part of the EMFAC emissions table is shown. Values pertinent to the analysis have been omitted from the report.
12. Superfluous white space was intentionally added to most pages of both reports.
13. Numerous examples of paragraphs being run together, or properly formatted sentences being made into run-ons, and tab settings being removed to alter the look of the report and/or make it harder to read.
14. The reports index and table of contents/figures/tables was regenerated in an attempt to conceal the report alterations.

Mr. Darin Neufeld
Comments on DPLU Environmental Documentation
Lake Jennings Marketplace Recirculation
September 3, 2016
Page 7

15. The reports are unsigned, making them worthless.

Should you have any questions, please do not hesitate to contact me at the number listed above.

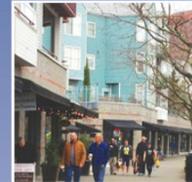
Sincerely,



Rick Tavares, Ph.D.
President
Investigative Science & Engineering, Inc.

GETTING TRIP GENERATION RIGHT
Eliminating the Bias Against Mixed Use Development

By Jerry Walters, Brian Bochner, and Reid Ewing



American Planning Association

Making Great Communities Happen



Originally published as a PAS Memo by the American Planning Association (APA) in May 2013. PAS Memo is a bimonthly online publication of APA's Planning Advisory Service, a subscription service providing its members with the latest planning resources and customized research assistance. Learn more at www.planning.org/pas/about/.

Photos in document courtesy of Fehr & Peers.

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When planners, developers, or traffic engineers conduct traffic impact analyses for proposed developments, they typically use the trip-generation data and analysis methods published by the Institute of Transportation Engineers (ITE) in its *Trip Generation* report and *Trip Generation Handbook*. However, standard traffic engineering practice does not account for project characteristics such as the mix and balance of land uses, compactness of design, neighborhood connectivity and walkability, infill versus remote location, and the variety of transportation choices offered. This can have significant implications when the project in question is a mixed use development.

The conventional methods used by traffic engineers throughout the U.S. to evaluate traffic impacts fail to account for the benefits of mixed use and other forms of lower-impact development. They exaggerate estimates of impacts and result in excessive development costs, skewed public perceptions, and decision maker resistance. These techniques overlook the full potential for internalizing trips through interaction among on-site activities and the extent to which development with a variety of nearby complementary destinations and high-quality transit access will produce less traffic. These effects can reduce the number of vehicle trips generated to a far greater degree than recognized in standard traffic engineering practice.

The ITE trip-generation data and analysis methods apply primarily to single-use and freestanding sites, which limits their applicability to compact, mixed-use, transit oriented developments (ITE 2004, 2012). The *Handbook* does include an approach based on limited data on mixed use developments, but only from six sites in Florida, not nearly enough to cover today's diverse mixed use developments across the United States.

It is important that planners and developers recognize the implications of using standard ITE trip generation data and methodologies for mixed use developments and use methods that more accurately estimate traffic generated by these projects. Commonly used methods unjustifiably favor types of development that consume greater resources and generate greater impacts, shifting our attention away from development forms and locations that stimulate higher levels of social interaction and benefit to established communities.

Researchers have attempted to analyze how a mix of uses in a compact, walkable project design affects trip generation and on-the-ground traffic impacts. In 2011, two major studies introduced methodologies for predicting traffic generation from mixed use development. The researchers on those studies have now collaborated to combine the advantages of both and provide, in this *PAS Memo*, an even more complete and reliable approach to measuring the benefits of such forms of development. Using this new approach, planners conducting trip-generation analysis for mixed use development projects will produce more accurate forecasts of traffic generation, which will allow more appropriate on-site design features and off-site mitigation measures.

The Problem with Conventional Traffic Impact Analysis

Traffic analysis is intended to inform planners, community members, and public officials of the most suitable planning features and infrastructure elements needed to support new development. However, the conventional methods were developed during an era when most new development was single use, stand alone, highway oriented, and suburban. Standard practices ascribe similar levels of impact to mixed-use, integrated, transit-oriented, and infill development, and consequently overlook the benefits of — and impose unreasonable obstacles to — appropriate planning and approval of such “smart growth” forms.

The standard analytic process used for planning, design, and impact analysis does not account for the degree to which well-designed mixed use development places shops, restaurants, offices, and residences in close proximity to one another, shortening internal trips between them and making more trips conducive to walking, biking, or riding transit. Such reductions in traffic and vehicle miles traveled reduce fuel consumption, greenhouse-gas and other emissions, and exposure of residents to passing traffic and the related threats to comfort, health, and safety. Reduced vehicular travel can also lessen the need to construct new or wider streets and highways, allowing communities to economize on infrastructure. Mixed use developments (MXD) also create opportunities for shared parking, which can reduce the number of spaces needed in parking lot and garage construction.

Traffic-Reducing Attributes of Mixed Use Development

Many of the attributes of lower-impact development can reduce traffic generation compared with conventional single-use suburban development forms:

Diverse land uses and activities can fill basic needs nearby, thereby reducing automobile travel. They allow for linkage

of trips in multipurpose trip chains, with a single auto trip to an activity center followed by several short trips on foot. Mixed use sites also create the opportunity for shared parking, which in turn encourages multipurpose trips and reduces the tendency to make separate automobile trips from one destination to the next.

Higher densities and intensities of development provide opportunities for residents, employees, and visitors to circulate among larger numbers of businesses and activities by walking, bicycling, or making short trips by automobile. Higher concentrations of land use also support higher quality and higher-frequency transit service, offering tenants and visitors a viable alternative to driving. High land values and cost to provide parking also leads to higher parking prices, a disincentive to driving versus other available modes of travel.

Walkable urban design and interconnected streets generally reduce the perceived and real separation among destinations, encourage walking and cycling, and reduce the circuitousness and length of each trip.

Short distances to transit help make transit a viable alternative to the automobile and can create activity centers with sufficient street life, amenities, and walking connections where needs and entertainment can be accomplished without independent car trips.

Accessibility to complementary destinations outside the development reduces distances between jobs and housing, services and entertainment, and recreation, often making automobile travel unnecessary. Placed at infill locations, complementary new development that satisfies local needs can also reduce trip making by residents, employees, and shoppers in the surrounding community.

Socio-demographic compatibility can further reduce auto traffic to the extent that developments are designed to attract and accommodate residents with low auto ownership (through, for example, parking supply limits), low travel needs (based on, for example, family size,



fewer employed residents, lower income, or age range), or close affiliation with other project elements or surrounding land uses (linked, or simply compatible, jobs and residents).

Scale of development affects feasibility for communities and employers to provide travel demand options and management services that can shift traveler modes from the auto to alternative modes of travel. Residents and businesses that self-select into such sites and settings are also often more amenable to travelling less or using alternatives to the automobile. Transportation demand management (TDM) programs are both more likely to be available and more likely to be successful in compact, central, transit-supported settings.

The danger of using traditional traffic-generation data based on single-use facilities is that it misrepresents the true traffic generation impacts of mixed use development. The consequences of miscalculating the benefits of mixed-use development may include unreasonable development cost, exaggerated impacts and mitigation responsibilities, skewed public perceptions, and decision maker resistance. This penalizes mixed use development proposals, often tipping the balance in

favor of projects that offer fewer benefits and ultimately generate higher impacts. Denying “smart” forms of development does not reduce the overall market demand for housing and business, so the building disallowed ends up in other locations within the region, often in less accessible locations, at lower densities, and in less-mixed use configurations. The end result can be more traffic and higher regional vehicle-miles traveled than had the smart-growth development been approved.

Understandably, communities and public reviewers want to minimize the risk of unmitigated impacts. However, doing so through the application of overly conservative project evaluation criteria undermines the pursuit of other community values, such as vibrant neighborhoods with integrated development and activities that minimize the need to travel and the impacts produced by excessive unnecessary use of the automobile.

Conservative traffic-generation estimates have supply-side impacts, affecting design and cost of streets and parking. Within constrained sites, over design of traffic elements can limit the space available for revenue-producing land uses and increase other development costs. Development fee programs also rely heavily on traffic-generation estimates from the ITE *Trip Generation Manual*; this can lead to setting excessively high fee rates on mixed use development. Unquestioning use of the ITE data can unreasonably jeopardize a MXD project’s approval, financial feasibility, and design quality.



Mixed use sites can take many forms, but all offer a diversity of uses in walkable settings. Oakland City Center BART (left); RiverPlace, Portland, Oregon (opposite page).



of walking and biking and allows for shared parking.

Design: connectivity, walkability. Good design improves connectivity, encourages walking and biking, and reduces travel distance.

New Research Evidence for Mixed Use Development Trip Generation

Several hundred studies over the past 20 years have confirmed that the built environment affects travel generation (Ewing and Cervero 2010). Development features associated with reduced trip rates include a series of “D” variables: density, diversity of uses, design of urban environment, distance from transit, destination accessibility, development scale, demographics of inhabitants, and demand management. In the past three years, research has examined more directly the relative influence of each factor and their interactions and has sought to corroborate the research results through field verification. Organizations such as the U.S. Environmental Protection Agency and the National Academy of Sciences Transportation Research Board have sponsored several of the more reputable studies on the subject.

The Eight “D” Variables

The most advanced research has confirmed that trip rate reductions are quantifiably associated with the attributes of mixed use development, defined in terms of these characteristics of urban development patterns:

Density: dwellings, jobs per acre. Higher densities shorten trip lengths, allow for more walking and biking, and support quality transit.

Diversity: mix of housing, jobs, retail. A diverse neighborhood allows for easier trip linking and shortens distances between trips. It also promotes higher levels

Destinations: regional accessibility. Destination accessibility links travel purposes, shortens trips, and offers transportation options.

Distance to Transit: rail proximity. Close proximity to transit encourages its use, along with trip-linking and walking, and often creates accessible walking environments.

Development Scale: residents, jobs. Appropriate development scale provides critical mass, increases local opportunities, and supports transit investment.

Demographics: household size, income. Mixed use development allows self-selection by households into settings with their preferred activities and travel modes, allows businesses to locate convenient to clients, and supports a socioeconomic “fit” among residents, businesses, and activities.

Demand Management: pricing, incentives. Demand management ties incentives to the urban environment and allows alignment of auto disincentives with available alternate modes. It takes advantage of critical mass of travel resulting from density, diversity, and design.

A growing body of evidence indicates that these factors, individually or together, quantifiably explain the number of vehicle trips and vehicle-miles traveled for a development project and for a region as a whole. Each of the D factors influences traffic generation through a variety of mechanisms. There are also important interactions, both synergistic and mutually dampening, among the D factors that call for sophisticated techniques when quantifying the travel generation effects of different combinations proposed in any project or plan.



The Evidence that Conventional Methods Overstate MXD Impacts

Empirical evidence and research provides evidence that mixed-use, infill, and transit-oriented developments generate fewer external vehicle trips than equivalent stand-alone uses. A nationwide study sponsored by the U.S. EPA (Ewing et al. 2011) found statistical correlation between the D factors and increased trip internalization and increased walking and transit use. It further demonstrated, for 27 mixed-use development sites across the U.S., that:

1. On average, the sites' land uses would generate 49 percent more traffic if they were distributed among single-use sites in suburban settings, the situations to which the ITE *Trip Generation Manual* would apply.
2. The ITE *Handbook*, the current state-of-practice resource for estimating mixed use trip generation, would overestimate peak hour traffic by an average of 35 percent.

Atlantic Station offers residential units alongside walkable office and commercial space.



The following examples from recent studies demonstrate the degree by which such developments reduce traffic generation relative to what would be presumed under conventional traffic analysis methods.

Atlantic Station in Atlanta is a major mixed-use infill development located on a 138-acre former brownfield site in midtown Atlanta, connected by nonstop shuttle service to a MARTA metro rail station about a half-mile away. At the time it was studied, the development included 798 mid- and high-rise residential units, 550,600 square feet of office space, 434,500 square feet of retail space, a 101-room hotel, a restaurant, and a cinema.

For Atlantic Station, the "internal capture rate" (proportion of generated trips that remain internal to the site) is 15 percent in the morning peak hour and about 40 percent of evening peak-hour. Of the trips entering and leaving the site, between 5 and 7 percent use transit and another 5 to 7 percent walk or bicycle.

According to standard ITE trip-generation rates, were the Atlantic Station development elements located at single-use suburban sites, they would generate 37 percent more weekday traffic and 69 percent more PM peak traffic than actually counted at the centrally located, mixed use site.

RiverPlace in Portland is an award-winning mixed use waterfront development on a former brownfield within easy walking distance of downtown Portland, Oregon. Adjacent to the Tom McCall Waterfront Park, the site contains 700 residential units (condominiums and apartments), 40,000 square feet of office space, 26,500 square feet of small retail shops and restaurants, a 300-room hotel, and a marina, cinema, and athletic club. The waterfront walking environment conveniently links all of the activities within the development site and connects the site to the Portland central business district. Transit is also available at the site; the Portland Streetcar connects RiverPlace to downtown Portland and the greater Portland area.



RiverPlace (left) offers a mix of residential, office, and commercial uses on Portland's waterfront. Photo courtesy Fehr & Peers. Bay Street's walkable urban village (below) is designed on a Main Street theme.

RiverPlace's internal capture rate is 36 percent. For internal and external trips combined, 40 percent are by walking and 5 percent by transit. These statistics are significantly higher than the regional averages of 15 percent of trips taken by walking and 2 percent by transit.

Bay Street in Emeryville is a vibrant, thriving recent redevelopment project in Emeryville, California, just outside San Francisco. The previously heavy-industrial area within and around Bay Street has undergone dramatic revitalization in the past two decades, and it now includes the headquarters of Pixar Studios and other businesses. Bay Street itself is a one-million-square-foot walkable urban village designed on a Main Street theme. It contains a major theater complex, hotel, and 382,000 square feet of fashionable retail shops (including an Apple Store) with 381 apartment units and offices above. The site is within walking distance of a Capitol Corridor commuter rail station and within a shuttle bus ride of BART metro rail.



Bay Street's daily traffic generation is about 41 percent less than the combined total that would be generated by similarly sized suburban shopping centers, theater complexes, residential uses, and office developments based on standard ITE trip rates for stand-alone land uses. It also generates 36 percent less daily traffic than would be estimated by traffic engineers applying the ITE *Handbook* and conventional analysis methods. In the PM peak hour, Bay Street traffic generation is 46 percent lower than would be generated by the same land uses scattered on individual suburban sites, and 41 percent lower than would be estimated by standard ITE traffic analysis.

New Models for Mixed Use Development Traffic Analysis

To address the shortcomings in conventional analysis methods, the National Cooperative Highway Research Program (NCHRP) and the U.S. EPA recently conducted significant research studies to improve quantification of the trip-reducing effects of mixed use development. Each study took a different approach: NCHRP undertook extensive visitor surveys and traffic counts at Atlantic Station and two mixed-use developments in Texas (Bochner et al. 2011), while EPA sponsored a nationwide study of more than 260 mixed use developments across the U.S. using regional travel survey data and verification traffic counts at a subset of the sites (Ewing et al. 2011). Using different analysis methods, each study developed a recommended approach to discounting traffic generation estimates to account for the mix of uses and other development characteristics. Each study represents a major advancement over conventional analysis methods.



NCHRP Report 684

National Cooperative Highway Research Program (NCHRP) Report 684, “Enhancing Internal Trip Capture Estimation for Mixed-Use Developments,” analyzed internal-capture relationships of MXD sites and examined the travel interactions among six individual types of land uses: office, retail, restaurant, residential, cinema, and hotel. The study looked at three master-planned developments: Mockingbird Station, a single-block TOD in Dallas; Legacy Town C enter, a multiblock district in suburban Plano, Texas, containing fully integrated and adjacent complementary uses; and Atlantic Station (see above). It compared the survey results to those found in prior ITE studies at three Florida sites, Boca del Mar, Country Isles, and Village Commons, all containing a variety of land uses, though in single-use pods.

Based on traveler and vehicle counts and interviews, the study ascertained interactions among the six land-use types of interest and compared them with site characteristics. It then examined the percentage of visitors to each land-use type who also visited each of the other uses during the same trip. The study considered site context factors and described percentage reductions in sitewide traffic generation that might result from the availability of transit service and other factors.

Researchers then performed verification tests by comparing the analysis results to those available from ITE for three earlier studies at Florida mixed use sites. The validation confirmed that the estimated values were a reasonable match for actual counted traffic. The product of the study is a series of tables and spreadsheets that balance and apply the discovered use-to-use visitation percentages to the land uses within the project site under study. The interaction percentages are then used to discount ITE trip-generation rates and to reduce what would otherwise represent the number of trips entering and leaving the entire site.

EPA MXD

The U.S. EPA–sponsored 2011 report, “Traffic Generated by Mixed-Use Developments — A Six-Region Study Using Consistent Built Environmental Measures,” investigated trip generation, mode choice, and trip length for trips produced and attracted by mixed use developments. Researchers selected six regions — Atlanta, Boston, Houston, Portland, Sacramento, and Seattle — to represent a wide range of urban scale, form, and climatic conditions. Regional travel survey data with geographic coordinates and parcel-level detail available for these areas allowed researchers to isolate trips to, from, and within MXDs and relate travel choices to fine-grained characteristics of these developments.

In each region, researchers worked with local planners and traffic engineers to identify a total of 239 MXDs that met the ITE definition of multi-use development. The MXDs ranged from compact infill sites near regional cores to low-rise freeway-oriented developments. They varied in size, population and employment densities, mixes of jobs and housing, presence or absence of transit, and locations within their regions. In total, the MXD sample for the six regions provided survey data on almost 36,000 trips.

The analysis found that one or more variables in each of seven D categories (see above) were statistically significant predictors of internal capture, external walking, external transit use, and external private vehicle trip length. Specifically, an MXD’s external traffic generation was related to population and employment within the site (density); the relative balance of jobs and housing within the site and the amount of employment within 1 mile of the site (diversity); the density of intersections within the site as a measure of street connectivity (design); the presence of bus stops within a quarter mile or the presence of a rail station (distance from transit); employment within a mile of site boundaries and percentage of regional employment within 20 minutes by car, 30 minutes by car, and 30 minutes by transit (destination accessibility); the gross acreage of the development (development scale); and the average number of household members as well as

household vehicle ownership per capita (demographics). The accuracy of the EPA MXD method was verified through traffic generation comparisons at 27 mixed-use sites across the U.S.

The EPA MXD product is a series of equations and instructions captured in a spreadsheet workbook. The methodology calculates the percentage reductions in ITE trip generation resulting from the national statistical analysis of seven D effects on internal trip capture, walking, and transit use. The spreadsheets produce reduced estimates of traffic generation on a daily basis and for peak traffic hours.

Combining the Approaches

The NCHRP 684 method and EPA MXD method each derive from different research approaches and produce different methods of analyzing trip generation at mixed use developments. They focus on overlapping but not identical aspects of mixed-use development sites and their contexts and offer respective strengths and weaknesses in terms of factors considered and ease of application. Selecting which method to employ under different circumstances requires both a comparison of their capabilities as well as professional judgment of their respective strengths and weaknesses.

Report 684 includes a refined assessment of on-site land-use categories, specifically recognizing the roles of restaurants, theaters, and hotels within the site land-use mix, along with an adjustment to account for the spatial separations among individual land uses within the development site. It is directly useful for the evaluation of proposed development sites that are similar to the one or more of the three surveyed in Atlanta and Texas for the report. However, it is not responsive to factors such as regional location, transit availability, density of development, walkability factors, and the socio-demographic profile of site residents and businesses.

In contrast, the EPA MXD method accounts directly and quantitatively for these factors. However, while it accounts for the balances of retail, office, and residential development, it does not explicitly differentiate subcategories such as restaurants, theaters, and hotels. Furthermore, it requires the analyst to account for off-site development, including employment within a one-mile radius of the MXD and the number of jobs available within 30 minutes of the site.

To develop a method that captures the best of both sets of research findings, the authors of the two original studies decided to collaborate on an integrated method that recognizes the full array of on-site and context characteristics that contribute to traffic reduction and, through a focus on empirical verification, achieves greater accuracy than either method individually.

In developing the integrated approach, we compared the performances of the methods to actual traffic counts at a diverse group of mixed use developments in a variety of settings. The 27 verification sites were successful mixed-use development, exhibiting moderate to high levels of activity in terms of business sales, occupied residential units, property value, and household income, with average or above-average person trips, at the time of the survey. They included those studied for NCHRP 684, the sites used as the basis for the ITE *Trip Generation Handbook*, and others surveyed by Fehr & Peers, transportation consultants. Six of the 27 sites were located in Florida, and three were located in Atlanta and Texas. Three of these nine were nationally known examples of smart growth or transit-oriented development: Atlantic Station, Mockingbird Station, and Celebration, Florida. Six sites were located in San Diego County and were designated by local planners and traffic engineers in 2009 as representing a wide range of examples of smart growth trip generators in that region. The 12 remaining sites were MXD developments located elsewhere in California and in Utah, ranging from TOD sites (commuter rail and ferry) to conventional suburban freeway-oriented mixed use sites.



A New Approach: The MXD+ Method

The new analytical approach, the MXD+ method, combines the strengths of NCHRP 684 and EPA MXD. The authors sought to (1) address the fact that each method has strengths relative to the other, (2) create a method that is more accurate than either of the individual methods alone, and (3) reduce confusion among practitioners on which is the most appropriate method.

The proposed MXD+ method incorporates the underlying data sources and logic that the two methods share. It offers the ability to assess the effects of spatial separation of uses and recognition of more specific land-use categories and to consider the dynamic influences of local development context, regional accessibility, transit availability, development density and walkability factors, and the characteristics of residents.

To develop the preferred method, the authors experimented with different methods of integrating the two methods and arrived at a direct calibration approach. The appropriate combination of the results of the two individual methods was determined through regression analysis to identify the proportions that provided the best correlation with the traffic counted at the 27 validation sites. Table 1 presents results from the regression analysis, listing the proportions of the two methods found most effective at matching the traffic generation at the diverse set of mixed use validation sites. Weighting the results of the two individual analyses by the percentages in Table 1 and combining the results produces more accurate estimates of traffic generation and captures the effects of all of the site description variables included in the NCHRP and EPA methods.

	AM PEAK TRAFFIC	PM PEAK TRAFFIC	AVERAGE DAILY TRAFFIC
NCHRP 684	10.1%	36.5%	n/a
EPA MXD	89.9%	63.5%	100%

The step-by-step method is as follows:

1. Apply the full EPA MXD methodology to predict external traffic generation as influenced by site development scale, density, accessibility, walkability and transit availability, resident demographics, and general mix of uses.
2. Apply the full NCHRP 684 method to capture the effects of detailed land-use categories, including hotel, theater, and restaurant, and the spatial separation of uses within small and medium sites.
3. Combine the results of the two methods in terms of percentages of trips remaining internal to the development site, using proportioning factors presented in the table above.
4. Apply adjustments to account for off-site walking and transit travel using the EPA MXD method.
5. Discount standard ITE traffic-generation rates by the percentages of internalization produced in step 3 and the percentage of walk and transit travel in step 4 to obtain the estimate of site-generated traffic.



TABLE 2 COMPARISON OF THREE PRINCIPAL METHODS IN TERMS OF PROJECT CHARACTERISTICS CONSIDERED			
	EPA MXD METHOD	NCHRP 684 METHOD	MXD+ METHOD
Project Characteristics Considered			
Density of Development	◆		◆
Diversity of Uses: Jobs/Housing	◆	◆	◆
Diversity of Uses: Housing/Retail		◆	◆
Diversity of Uses: Jobs/Services		◆	◆
Diversity of Uses: Entertainment, Hotel		◆	◆
Design: Connectivity, Walkability	◆	◆	◆
Design: Separation Among Uses		◆	◆
Destination Accessibility by Transit	◆		◆
Destination Accessibility by Walk/Bike	◆		◆
Distance from Transit Stop	◆		◆
Development Scale	◆		◆
Distance from Transit Stop	◆		◆
Development Scale	◆		◆
Demographic Profile	◆		◆
Data Needs (beyond Project Site Plan)			
Average Residents per Dwelling Unit	◆		◆
Average Autos Owned per Dwelling Unit	◆		◆
Nearby (1/4 mi) Bus Stops and Rail Stations	◆		◆
Jobs Within 1 Mile of Site	◆		◆
Jobs Within 30-Minute Transit Trip	◆		◆
Regional Employment	◆		◆
Located in CBD or TOD?	◆		◆
Site Development by Classification		◆	◆
Vehicle Occupancy Estimate		◆	
Mode Split Estimate		◆	

As Table 2 indicates, the MXD+ method improves traffic generation estimates by considering the full array of 12 site development and context characteristics shown to influence internal capture and mode share, while the individual methods consider only 5 to 8 factors each. Effects considered in MXD+ that are not included in the

NCHRP 684 method include household size and auto ownership, site proximity to bus and rail stops, and accessibility to local and regional jobs. Effects considered in the NCHRP 684 method that do not appear in the EPA MXD method include specific land uses and proximity of interacting land uses to each other.



Table 3 presents the statistical performance of the MXD+ integrated method with the individual performance of the individual NCHRP 684 and EPA MXD methods. We compared the ability of each of the available methods to replicate the amount of traffic generated at the 27 validation sites in terms of statistical measures including percent root mean squared error, a metric used in the transportation field to evaluate

model accuracy, and the coefficient of determination (or “R-squared”), which measures the ability of the analysis method to account for the variations in traffic generation among the 27 survey sites. For daily traffic generation, MXD+ is equivalent to the EPA MXD method, as the NCHRP 684 method does not address daily analysis. For peak hour traffic generation, MXD+ performs notably better than either of the individual methods.

TABLE 3 COMPARISON OF THREE PRINCIPAL METHODS IN TERMS OF PERFORMANCE AT VALIDATION SITES

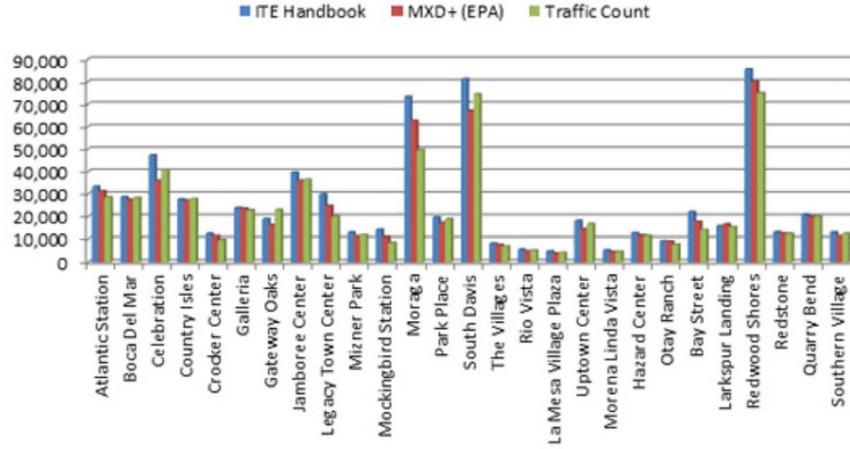
	EPA MXD METHOD	NCHRP 684 METHOD	MXD+ METHOD
Daily Traffic Generation			
R-squared	96%	89%*	96%
Average Error	2%	16%*	2%
Root Mean Square Error	17%	27%	17%
AM Peak Traffic Generation			
R-squared	97%	93%*	97%
Average Error	12%	30%	12%
Root Mean Square Error	21%	33%	21%
PM Peak Traffic Generation			
R-squared	95%	81%	97%
Average Error	8%	18%	4%
Root Mean Square Error	18%	36%	15%

** ITE Handbook internalization statistics (NCHRP 684 method does not address daily trip generation)*

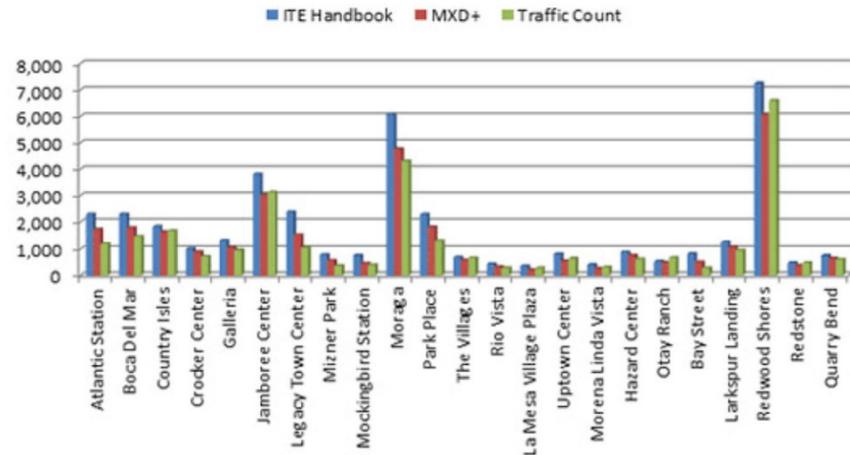
The graphs on the following page compare the performance of the MXD+ method to the ITE *Handbook* method at replicating traffic generation at the diverse group of mixed-use validation sites. Compared with the ITE *Handbook*, MXD+ method more accurately matches

the amount of daily traffic actually counted at 20 of the 27 survey sites. In the AM peak hour, it is more accurate than the ITE *Handbook* at 21 of the 24 sites for which counts were available, and in the PM peak hour, MXD+ is more accurate than the ITE *Handbook* method at 23 of 25 sites.

DAILY TRAFFIC GENERATION COMPARISON OF ITE HANDBOOK & MXD+ METHODS

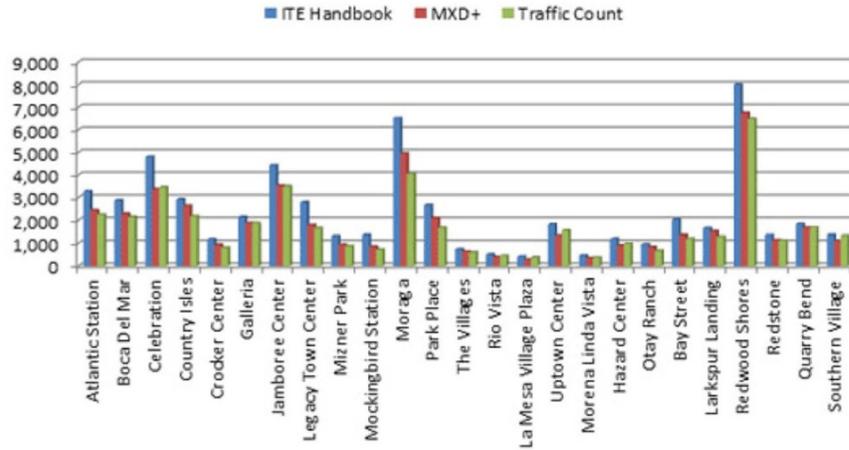


AM PEAK HOUR TRAFFIC GENERATION COMPARISON OF ITE HANDBOOK & MXD+ METHODS





PM PEAK HOUR TRAFFIC GENERATION COMPARISON OF ITE HANDBOOK & MXD+ METHODS



The MXD+ method explains 97 percent of the variation in trip generation among mixed-use developments, compared with 65 percent for the ITE *Handbook* method. On average, the *Handbook* overestimates AM peak traffic generation by 49 percent, compared with 12 percent for MXD+. For the PM peak hour, the ITE *Handbook* overestimates actual traffic by 35 percent. The MXD+ method reduces this to 4 percent, remaining slightly conservative and unlikely to understate impacts.

By combining and refining the two most advanced methodologies for estimating traffic generation for mixed-use development, the MXD+ method provides transportation planners and engineers a more accurate single approach that accounts for the most important factors that distinguish lower impact development from

other forms. Doing so advances development planning and impact assessment beyond the practices that have, to date, unreasonably discouraged mixed-use development.

Recommendations for Planners

We recommend that planners adopt the latest methods for evaluating traffic generation of mixed use and other forms of smart growth, including infill and transit-oriented development. The MXD methods developed under the U.S. EPA multiregional study and the NCHRP 684 study on enhancing trip-capture estimation each represent substantial advances to the conventional practices previously available through ITE. Combining the two new methods, as described above, improves upon both individual methods. Tools for all three approaches are available for use through the references and resources listed below.

Traffic engineers are beginning to take notice of the new methods, but we expect that natural sluggishness in adopting new practices will continue to impose unfair penalties on mixed use and other forms of lower-impact development. We recommend activism on the part of all planners, development reviewers, and impact analysts on behalf of the more accurate MXD methods.

Immediate adoption of the improved methods will allow planners to account for a project's regional location, transit availability, density of development, walkability factors, and the characteristics of residents and businesses and on-site adjacencies of land uses including residential, office, retail, restaurants, theaters, and hotels. Accounting for these factors through the MXD+ method will achieve the highest levels of accuracy possible in estimating traffic impacts of mixed use development.

We recommend applying and promoting the MXD+ method for day-to-day project planning and performance-based site-plan refinement, impact analysis, and discretionary review. Doing so will eliminate what is presently a systematic bias in traffic analysis that favors single-use, isolated, suburban-style development.

Conclusion

Standard traffic engineering practices are blind to the primary benefits of smart growth. A plan's development density, scale, design, accessibility, transit proximity, demographics, and mix of uses all affect traffic generation in ways unseen to prescribed methods. The Institute of Transportation Engineers (ITE) *Trip Generation Manual* and *Handbook* overestimate peak traffic generation for mixed-use development by an average of 35 percent. For conventional suburban stand-alone development, ITE rates portray the average for such sites; so hedging mixed-use analysis toward more conservative assumptions creates a systematic bias in favor of single-use suburban development.

ITE overestimation of traffic impacts reduces the likelihood of approval of mixed use and related forms of smart growth such as infill, compact, and transit-oriented development. Such overestimation escalates development costs, skews public perception, heightens community resistance, and favors isolated single-use development.

The methods of evaluating mixed use development described in this report represent a substantial improvement over conventional traffic-estimation methods. They improve accuracy and virtually eliminate overestimation bias, and they are supported by the substantial evidence of surveys and traffic counts at 266 mixed use sites across the U.S. The MXD+ analysis method explains 97 percent of the variation in trip generation among mixed use sites and all but eliminates the ITE systematic overestimation of traffic. We hope planners and other professionals will take advantage of the available spreadsheet tools listed below to help even the playing field between conventional development patterns and more sustainable, walkable, livable places.

About the Authors

Jerry Walters is a principal and sustainability practice leader with Fehr & Peers, transportation consultants. He has more than 30 years of experience in transportation planning, engineering, and travel forecasting and is a registered traffic engineer. Jerry developed project evaluation methods for the U.S. EPA study "Mixed-use Development and Vehicle Trips: Improving the Standard Estimation Methodology." He is a co-author of the book [Growing Cooler – the Evidence on Urban Development and Climate Change](#) (Urban Land Institute, 2008).



Brian S. Bochner is a senior research engineer at Texas Transportation Institute with over 40 years of experience in traffic engineering and planning. He is a certified professional traffic engineer, a professional traffic operations engineer and transportation planner, an affiliate with the Transportation Research Board, and past president and member of the International Board of Direction of the Institute of Transportation Engineers (ITE). His awards include Transportation Innovator, Texas Department of Transportation Research Program, and Transportation Engineer of the Year for the Texas Section of ITE.

Reid Ewing is a professor of city and metropolitan planning at the University of Utah, associate editor of the *Journal of the American Planning Association*, columnist for *Planning* magazine, and Fellow of the Urban Land Institute. His 2010 article, "Travel and the Built Environment: A Meta-Analysis," won the Best Article of the Year award from the American Planning Association, and his book, [Best Development Practices](#) (APA Planners Press, 1996), is listed by APA as one of the 100 essential planning books of the past 100 years.

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Additional Resources

Description, documentation, and spreadsheet tools for the NCHRP 684 method, Enhancing Internal Trip Capture Estimation for Mixed-Use Developments may be found at www.trb.org/Main/Blurbs/165014.aspx.

Description, documentation, and spreadsheet tools for the EPA MXD Trip Generation Tool for Mixed-Use Developments may be found at www.epa.gov/smartgrowth/mxd_tripgeneration.html.

Quick-response analysis tools for applying the EPA MXD method, the combined EPA /NCHRP method MXD+, and MXD in conjunction with analysis of vehicle-miles traveled, GHG emissions, and shared parking, Plan+, may be found at <http://asap.fehrandpeers.com/tools/>.

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GETTING TRIP GENERATION RIGHT Eliminating the Bias Against Mixed Use Development 19

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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
 9 **FOR THE COUNTY OF SAN DIEGO**

11 SIERRA CLUB,
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 13 Petitioner,
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 15 v.
 16 COUNTY OF SAN DIEGO,
 17
 18 Respondent.

11 CASE NO.: 37-2012-00101054-CU-TT-CTL
 12 }
 13 } **SECOND SUPPLEMENTAL PETITION**
 14 } **FOR WRIT OF MANDATE**
 15 }
 16 } **IMAGED FILE**
 17 }
 18 } (CALIFORNIA ENVIRONMENTAL
 19 } QUALITY ACT)
 20 }
 21 } Judge: Hon. Timothy B. Taylor
 22 } Dept: C-72
 23 } Original Petition Filed: July 20, 2012
 24 } First Supplemental Petition for Writ of
 25 } Mandate Filed: February 18, 2014

26 SECOND SUPPLEMENTAL
 27 PETITION FOR WRIT OF MANDATE
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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[limat]e 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,
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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-I.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.

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

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

12 31. In its Second Return to Supplemental Writ of Mandate, filed on January 5,
13 2016, the County stated that it had created a Green Working Group composed of
14 representatives of numerous County departments and consultants that meet monthly.

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

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

24 34. On July 29, 2016, the County’s Planning and Development Services published
25 its “2016 Climate Change Analysis Guidance.” Counsel for Sierra Club has found no
26 evidence that either the Sierra Club or the general public was notified of the pendency of the
27 proposed 2016 Thresholds, or was provided an opportunity to comment on them.
28

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

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

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

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

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

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

19 41. Petitioner has no plain, speedy or adequate remedy at law. County staff
20 purported to adopt the 2016 Staff-Approved Thresholds despite this Court’s Judgment,
21 without any public review, and without complying with CEQA. Unless this Court enjoins
22 and sets aside its action, the County will almost certainly approve projects with climate
23 change impacts without any meaningful climate change analysis. The foreseeable
24 consequence is that projects that individually and/or cumulatively would adversely impact
25 the environment will be presented for approval without the benefit of science-based analysis
26 and without science-based consideration of feasible mitigation measures. The result is that
27 which CEQA seeks to avoid - uninformed decision-making and stifled solutions.
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1 DATE: September 2, 2016

2 Respectfully Submitted,
3 CHATTEN-BROWN & CARSTENS

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5 By: 
6 Josh Chatten-Brown
7 Jan Chatten-Brown
8 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 1st day of September, 2016 at San Diego, California.

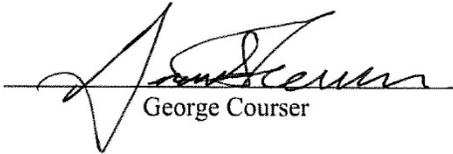

George Courser

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.

Climate Change Analysis Guidance
 County of San Diego

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 CO₂e) screening level referenced in the CAPCOA white paper¹ 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
<p>Source: The screening levels are published in California Air Pollution Control Officers Association. 2008 (January). <i>CEQA & Climate Change: Evaluating and Addressing Greenhouse Gas Emissions from Projects Subject to the California Environmental Quality Act</i>. Available at http://www.capcoa.org/wp-content/uploads/downloads/2010/05/CAPCOA-White-Paper.pdf</p> <p>*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.</p> <p>**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.</p>	

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 CO₂e 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

¹ 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>.

Climate Change Analysis Guidance
County of San Diego

unique attributes would lead to emissions that are higher than 900 MT CO₂e 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 CO₂e per year, it does not mean that project-generated GHG levels greater than 900 MT CO₂e 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 CO₂e 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 CO₂e, 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 CO₂e/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 ⁽²⁾ 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.

² 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. 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 CO₂e/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 ₂ e
1990 Non-land Use Emissions =	144.3 MMT CO ₂ e
1990 Land Use Emissions =	286.7 MMT CO ₂ 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.

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EXHIBIT B

Hermosa Beach Office
Phone: (310) 798-2400
Fax: (310) 798-2402



San Diego Office
Phone: (858) 999-0070
Phone: (619) 940-4522

July 26, 2016

By e-mail (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

San Diego County Proposed General Plan Amendments

Exhibit A

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/rio	111	453	Semi-Rural/GPU SR-Q/Zone A70- Limited Agricultural and RR-Rural Residential along S boundary	SR-Q/Zone S88 Village and Semi-Rural/GPU VR-10.9 and SR-Q/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 re-calculated; 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 \leq 25% slope); RR-20 (1,907.8 acres); C-1 (4.6 acres); C-2 (53.6 acres)	SR-1 (248 acres at \leq 25% slope); SR-1 (344 acres at \geq 25% slope); SR-1 (109 units at \geq 50% slope); SR-10 (8.2 acres at \leq 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.
Olay Ranch Village 13	04-003	Olay	1,869	1,881	S87 (limited control) in areas currently designated as Open Space in the Olay 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	Campo/ Lake Moreno	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/ 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 and a 2.08 acre public park sometime this fall.

EXHIBIT C

LATHAM & WATKINS LLP

August 5, 2016

VIA EMAIL AND FEDERAL EXPRESS

Peter Eichar, Land Use/Environmental Planning Manager
County of San Diego
Planning & Development Services
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San Diego, California 92123

Ashley Smith, Land Use/Environmental Planner
County of San Diego
Planning & Development Services
5510 Overland Avenue, Suite 310
San Diego, California 92123

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

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. Pilssecker:

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.¹ 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).² 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

¹ 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**.

² 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)³ (“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).⁴ 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.

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

⁴ 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.

I. 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 24.⁵ 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

⁵ 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).⁶ 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

⁶ San Diego Forward: The Regional Plan can be accessed at http://www.sdfoward.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 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
Doug Hageman, Newland
Paul Robinson, Hecht Solberg Robinson Goldberg & Bagley
Mark Dillon, Gatzke Dillon & Balance
Stephanie Saathoff, Clay Co.
Denise Price, Clay Co.
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EXHIBIT D

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August 9, 2016

By e-mail (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
August 9, 2016
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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,



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.¹ 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.

¹ 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.4th 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 2015²; the Comprehensive Renewable Energy Plan initiated by the Board in 2013³; the Active Transportation Plan, an update of the County's Bicycle and Pedestrian Plans, which is expected to be completed this fall⁴; and the County's Strategic Plan on Waste Reduction⁵.

² http://www.sandiegocounty.gov/general_services/Energy/Energy.html

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

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

⁵ <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.⁶

Very truly yours,

THOMAS E. MONTGOMERY, County Counsel

By *C. Ellen Pilsecker*
C. ELLEN PILSECKER, Chief Deputy

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

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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.

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

Traffic Congestion and Greenhouse Gases

MATTHEW BARTH AND KANOK BORIBOONSOMSIN

Fuel consumption and carbon dioxide (CO₂) emissions are sensitive to many factors, including individual driving behavior, vehicle and roadway types, and traffic conditions. Therefore estimating CO₂ emissions from a single variable, such as trip distance or average speed, cannot provide a reliable measure. A comprehensive methodology has been developed to take advantage of the latest vehicle activity measurements and detailed vehicle emission factors to create a more accurate emissions inventory for different types of vehicles and different levels of traffic congestion (1, 2). This methodology produces better estimates of CO₂ reductions from improvements in traffic operations, including

- ◆ Congestion mitigation strategies—such as ramp metering and incident management—that achieve higher average traffic speeds;
- ◆ Speed management techniques—such as better enforcement and active speed governors—that can reduce excessive speeds to more moderate speeds of approximately 55 miles per hour; and
- ◆ Traffic-flow smoothing techniques—such as variable speed limits and intelligent speed adaptation—that can suppress shock waves, reducing the number of acceleration and deceleration events.

Figure 1 (below) shows an example of a speed-based CO₂ emissions curve for a typical vehicle traveling on a highway section

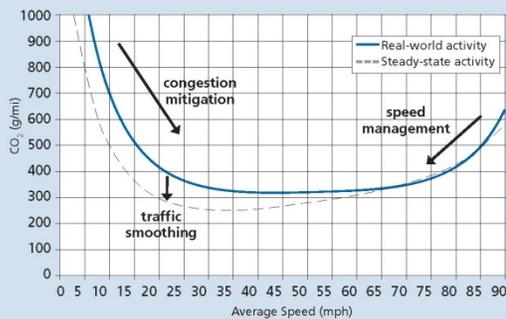


FIGURE 1 Possible use of traffic operation strategies in reducing on-road CO₂ emissions.

The authors are with the University of California, Riverside—Barth is Professor of Electrical Engineering and Director of the Center for Environmental Research and Technology, and Boriboonsomsin is a member of the research faculty at the Center for Environmental Research and Technology.



Speed management techniques, such as this dynamic message sign in Phoenix, Arizona, can help reduce vehicle emissions.

(solid line). The curve indicates how different traffic management techniques would affect CO₂ emissions:

- ◆ Congestion mitigation increases average traffic speeds from those under heavily congested conditions;
- ◆ Speed management reduces excessively high speeds to safer speeds; and
- ◆ Traffic smoothing reduces the number and intensity of accelerations and decelerations.

The dashed line in Figure 1 represents the approximate lower bound of CO₂ emissions for vehicles traveling at constant steady-state speeds.

Under typical traffic conditions in Southern California, each of these methods could lower CO₂ emissions by an estimated 7 percent to 12 percent as long as travel demand does not increase because of the improved traffic flow. Although the individual effects of single methods may not be that large, combining methods could have a synergistic effect, adding up to a greater amount. Because of the potential demand for additional driving in heavily congested areas such as Southern California, other demand management techniques also could be employed to realize these synergistic effects.

References

1. Barth, M., and K. Boriboonsomsin. Real-World Carbon Dioxide Impacts of Traffic Congestion. In *Transportation Research Record: Journal of the Transportation Research Board*, No. 2058, Transportation Research Board of the National Academies, Washington, D.C., 2008, pp. 163–171.
2. Barth, M., and K. Boriboonsomsin. Traffic Congestion and Greenhouse Gases. *ACCESS Magazine*, University of California Transportation Center, Fall 2009. www.uctc.net.

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