

CHAPTER 8.0 LETTERS OF COMMENT AND RESPONSES

This chapter contains all comments received on the Draft Supplemental Environmental Impact Report (Draft SEIR) and responses thereto and is organized as follows:

- List of Agencies and Individuals that Commented on the Draft SEIR
- Master Responses
- Comment Letters Received and Responses to Comments

The focus of the responses to comments in this chapter is on the disposition of significant environmental issues raised in the comments, as specified by Section 15088(c) of the California Environmental Quality Act (CEQA) Guidelines. When a comment is not directed to significant environmental issues, the responses indicate that the comment has been acknowledged and no further response is necessary.

This section of the Final SEIR (Final SEIR) presents copies of comments on the Draft SEIR received in written form during the public review period, and it provides the County of San Diego's responses to those comments. Each comment letter is lettered and the issues within each comment letter are bracketed and numbered. Comment letters are followed by responses, which are numbered to correspond with the bracketed comment letters.

The County's responses to comments on the Draft SEIR represent a good-faith, reasoned effort to address the environmental issues identified by the comments. Under the CEQA Guidelines, the County is not required to respond to all comments on the Draft SEIR, but only those comments that raise environmental issues. In accordance with CEQA Guidelines 15088 and 15204, the County has independently evaluated the comments and prepared the attached written responses describing the disposition of any significant environmental issues raised. CEQA does not require the County to conduct every test or perform all research, study, and experimentation recommended or demanded by commenters.

Rather, CEQA requires the County to provide a good faith, reasoned analysis supported by factual information. To fulfill these requirements, the County's experts in planning and environmental sciences consulted with and independently reviewed analysis responding to the Draft SEIR comments prepared by Ascent and other experts identified in the Draft SEIR's list of preparers, which include experts in planning, aesthetics, agriculture, air quality, biology, cultural resources, geology and soils, greenhouse gas emissions, hazards and hazardous materials, hydrology and water quality, land use planning, noise, public services, transportation and traffic, utilities and service systems, energy, and environmental studies, each of whom has years of educational and field experience in these categories of environmental sciences; is familiar with the project and the environmental conditions in the County; and is familiar with the federal, state, and local rules and regulations (including CEQA) applicable to the Climate Action Plan (CAP).

Accordingly, the County staff's final analysis provided in this response to comments are backed by substantial evidence. Likewise, the County Counsel's Office prepared and/or

independently reviewed legal analysis supplementing the responses to the Draft SEIR comments.

In the case of specific comments, the County has responded with specific analysis; in the case of a general comment, the reader is referred to a related response to a specific comment, if applicable. The absence of a specific response to every comment does not violate CEQA if the response would merely repeat other responses.

8.1 List of Agencies and Individuals that Commented on the Draft SEIR

This section identifies all written comments received during the public comment period. Table 8-1 provides an index to commenters and comment letters.

Table 8-1 Commenters and Comment Letters

Letter Number	Organization/Commenter
S1	State of California Governor's Office of Planning and Research, State Clearinghouse and Planning Unit Scott Morgan, Director
L1	Olivehain Municipal Water District Kimberly A. Thorner, General Manager
L2	Padre Dam Municipal Water District Clara Cornelius, Engineering Staff Assistant
L3	San Diego Gas & Electric Company (SDG&E) Joe Gabaldon, Public Affairs Manager
L4	San Diego Association of Governments (SANDAG) Seth Litchney, Senior Regional Planner
L5	Sweetwater Authority Israel Marquez, Environmental Specialist
L6	City of Imperial Beach, Community Development Department Jim Nakagawa, AICP, City Planner
C1	Julian Community Planning Group Patrick L. Brown, Chair
C2	Hidden Meadows Community Sponsor Group C. Wayne Dauber, Chair
C3	Borrego Springs Community Sponsor Group Rebecca Falk, Chair
C4	Twin Oaks Valley Community Sponsor Group Tom Kumura, Chair
C5	Boulevard Planning Group Donna Tisdale, Chair
C6	Bonsall Community Sponsor Group Margarete Morgan, Chair
Acronyms: L = Local Agency; C= Community; O = Organization; I = Individual; X = Submitted after the close of public review.	

Table 8-1 Commenters and Comment Letters

Letter Number	Organization/Commenter
O1	Southwest Wetlands Interpretive Association Michael A. McCoy, President Bill Tippetts, Board Member
O2	Southwest Wetlands Interpretive Association Michael A. McCoy, President Bill Tippetts, Board Member
O3	Preserve Wild Santee Van K. Collinsworth, Executive Director/Resource Analyst
O4	Environmental Center of San Diego Pamela Heatherington, Board member
O5	Backcountry Against Dumps Stephan C. Volker, Attorney and Donna Tisdale
O6	Building Industry Association of San Diego County Matthew J. Adams, Vice President
O7	BOMA San Diego and NAIOP San Diego Craig Benedetto, Legislative Consultant
O8	California Construction and Industrial Materials Association Suzanne Seivright, Director, Local Governmental Affairs
O9	California Native Plant Society, San Diego Chapter Frank Landis, PhD, Conservation Chair
O10	Climate Action Campaign Sophie Wolfram, Policy Advocate Business for Good San Diego Karim Bouris, Executive Director
O11	Coastal Environmental Rights Foundation Livia Borak Beaudin, Legal Advisor
O12	Endangered Habitats League Dan Silver, Executive Director
O13	Friends of the Earth U.S. Kari Hamerschlag and Julian Kraus-Polk
O14	Golden Door Properties LLC Christopher W. Garrett of Latham & Watkins LLP
O15	The Nature Conservancy Cara Lacey, AICP, Regional Planning Strategy Lead
O16	Protect Our Communities Foundation Maris Brancheau, Esq
O17	SanDiego350 David Harris, Public Policy Team
O18	San Diego County Farm Bureau Eric Larson, Executive Director
Acronyms: L = Local Agency; C = Community; O = Organization; I = Individual; X = Submitted after the close of public review.	

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Letter Number	Organization/Commenter
O19	San Diego Food System Alliance Elly Brown, Alliance Director
O20	San Diego Regional Urban Forests Council Anne S. Fege, Ph.D., M.B.A., Executive Team
O21	Sempra Services Corporation Frank Urtasun
O22	Sierra Club Josh Chatten-Brown, Attorney for Sierra Club
O23	STAY COOL for Grandkids Sarah Benson
I1	Jeff Hayden
I2	George Henry
I3	Jeffrey Kent
I4	Richard Fennelly
I5	Susan Krzywicki
I6	Richard Fennelly
I7	Jon Vick
I8	John Suhr
I9	John Suhr
I10	Donna Tisdale
I11	Wael Al-Delaimy MD, PhD
I12	Larry Scott
I13	Sarah Boltwala-Mesina
I14	Tena Scruggs
I15	Linda Aurora Espino
I16	Joy Frew
I17	Lori Jirak
I18	Arne Johanson
I19	Caitlin Kreutz
I20	Michael Almer
I21	Jacqueline Arsivaud
I22	Philip E. Church
I23	Susanne Dillmann
I24	Laura P. Gordon
I25	Laurel L. Lemarie
I26	Lael Montgomery
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Letter Number	Organization/Commenter
I27	Will Rogers
I28	Rich Rudolf
I29	Deanne Sanderson
I30	Judith Shadzi
I31	Kay Stewart
I32	Julia Feliciano
I33	Lori Jacobs
I34	Su Kraus
I35	Kathy MacKenzie
I36	Bill Manning
I37	K. McNairnie
I38	Cynthia A. McShea
I39	Richard & Elizabeth Mercurio
I40	Richard Mercurio
I41	Jo Moran
I42	Anita Noone
I43	Sharon Reeve
I44	Sharon Reeve
I45	Robert Reid
I46	Andrea Richards
I47	Don Richards
I48	Don Wood
I49	Linda Aurora Espino
I50	Lisa Million
I51	Ileana Paul
I52	Robert Reid
I53	Eric Farrar
I54	Enrico Ferro
I55	Carol B. Gartner, PhD
I56	Lawrence M. Gartner, M.D.
I57	Don Richards
I58	MaryEllen Garcia, Ph.D.
I59	Steve Hutchison
I60	Jess Morton
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Letter Number	Organization/Commenter
I61	Pam Nelson
I62	Laura Robinson
I63	Jon Sherman
I64	Barbara Bensen
I65	Jerry Janisch
I66	Sue Janisch
I67	Emily Kessler
I68	Sherri Pflibsen
I69	Emily Gray
I70	Kathe Robbins
I71	Wesley and MaryAnn Truesdale
I72	Sandra Farrell
I73	Anja Pressler
I74	Bernie Wrightson
I75	Catherine Wrightson
I76	Rosalind Brown
I77	Elin Pierce
I78	Puja Batra, Ph.D.
I79	Karen Binns
I80	Mary H. Clarke
I81	Elizabeth Gabrych
I82	Laura Hunter, Escondido Marge Wurgel, San Diego Keith Mescher, San Diego Ron Landsel, Oceanside Herb Zapata, Escondido Mousqa Katawazi, Valley Center Thich Chan Phap Ho, Escondido Ron Forster, Escondido David Solomon, Escondido Julia Katawazi, Valley Center Douglas Anthony, San Diego Joanne Rizza, San Marcos Chris Brickett, San Diego Kimberly Vander Bie, Chula Vista Amy Spintman, Chula Vista Michelle Betbadal, Oceanside Mychael McNeeley, La Mesa Michelle Schmalvogl, Escondido
Acronyms: L = Local Agency; C= Community; O = Organization; I = Individual; X = Submitted after the close of public review.	

Table 8-1 Commenters and Comment Letters

Letter Number	Organization/Commenter
I83	Harris Korn
I84	Bernie Miller
I85	Ana Rosvall
I86	Jim and Kathie Rosvall
I87	Marian Sedio
I88	James E. Whalen
X1	Camille Strate
X2	Roberta Andrews
X3	Tammy Bennetts
X4	Jim Bennetts
X5	Ralph Bowman
X6	Chelley Correa
X7	Linda Luce
X8	Elizabeth Merz
X9	Susan A. Reiman
X10	Lyn Renouard
X11	Ryan Tracy
X12	John Angel
X13	Josie Fox
X14	Noelle Clark-Hill
X15	Lawrence Mummey
X16	Bob Polselli
X17	Karen Strand
X18	Irene Veltri
X19	Joe Veltri
X20	Campo Lake Morena Community Planning Group Billie Jo Jannen, Chairman
X21	The Associated General Contractors of America, San Diego Chapter, Inc. Mike McManus, Director of Engineering Construction and Industry Relations
X22	Endangered Habitats League Dan Silver, Executive Director
X23	Golden Door Properties LLC Samantha Seikkula of Latham & Watkins LLP
X24	John Suhr
<u>X25</u>	<u>California Native Plant Society, San Diego Chapter</u> <u>Frank Landis, PhD, Conservation Chair</u>
<u>X26</u>	<u>Endangered Habitats League</u>

Table 8-1 Commenters and Comment Letters

Letter Number	Organization/Commenter
	<u>Dan Silver, Executive Director</u>
<u>X27</u>	<u>Golden Door</u> <u>Kathy VanNess, Chief Operating Officer/General Manager</u>
<u>X28</u>	<u>Southwest Wetlands Interpretive Association</u> <u>Michael A. McCoy, President</u> <u>Bill Tippetts, Board Member</u>
<u>X29</u>	<u>Golden Door Properties LLC</u> <u>Christopher W. Garrett of Latham & Watkins LLP</u>
<u>X30</u>	<u>Boulevard Planning Group</u> <u>Donna Tisdale, Chair</u>
<u>X31</u>	<u>STAY COOL for Grandkids</u> <u>Bob Leiter, Advisory Council Chair</u>
<u>X32</u>	<u>Backcountry Against Dumps</u> <u>Stephan C. Volker, Attorney</u> <u>and Donna Tisdale</u>
<u>X33</u>	<u>Sierra Club</u> <u>Josh Chatten-Brown, Attorney for Sierra Club</u>
<u>X34</u>	<u>Climate Action Campaign</u> <u>Sophie Wolfram, Policy Advocate</u>
<u>X35</u>	<u>Associated General Contractors of America, San Diego Chapter Incorporated</u> <u>Mike McManus P.E., Director of Engineering Construction & Industry Relations</u>
<u>X36</u>	<u>Environmental Center of San Diego</u> <u>Pamela Heatherington, Board of Directors</u>

Acronyms: L = Local Agency; C= Community; O = Organization; I = Individual; X = Submitted after the close of public review.

Changes have been made to the Draft SEIR in strikeout/underline format in response to comments and to provide updates and clarifications to information provided herein. Please refer to Chapters 1 through 7 of this document.

8.2 Summary of Changes to the Draft SEIR

Revisions to the Draft SEIR, consistent with CEQA Guidelines Section 15088.5 (b), have been made to clarify text for consistency or revise punctuation as appropriate throughout the document and does not result in what constitutes new significant information that would require recirculation of the document. A summary of these revisions is provided in the Recirculation Findings for the Final SEIR which are attached to the Planning Commission Hearing Report.

As a point of clarification, the revisions to the Draft SEIR do not include the strikeout/underline text that occurs on pages 7 through 9 of the Summary and 1-15 through 1-17 of the Project Description that reflects the changes to 2011 GPU Goal COS-

20, Policy COS-20.1 and 2011 GPU PEIR Mitigation Measure CC-1.2 which is required to make the CAP consistent with the 2011 GPU and 2011 GPU PEIR.

8.3 Summary of Changes to the Climate Action Plan

Changes have been made to the Draft CAP in highlighted text in response to comments and to provide updates and clarifications to information provided herein. Changes are also documented in a table on Page 7 of the Final CAP. Please refer to Chapters 1 through 7 of the CAP.

The CAP Consistency Review Checklist (Checklist) was updated accordingly in strikeout-underline format based on updates to the Draft CAP. Questions 2a and 3a of the Checklist were updated to clarify that emissions from the two measures (T-2.2 and T-2.4) are not intended to be additive for individual projects. Certain projects may be able to achieve more effective reductions through transportation demand management (TDM) while others may benefit from parking reduction strategies. There is a cap on the overall vehicle miles traveled reductions that can be achieved at the project level, therefore, the Checklist questions were modified for clarity of application and compliance.

8.4 Master Responses

A number of the comments received on the Draft SEIR addressed the same or similar issues and environmental concerns. Rather than repeat responses to recurring comments in each letter, the master responses outlined in Sections 8.4.1 through 8.4.13 were prepared. Each response to comment references these master responses where applicable.

8.4.1 Master Response 1 - Recirculation of the EIR

Numerous comments were received that generally state that the County should revise and recirculate the Draft SEIR for an additional round of public review and comment. The County does not concur with these comments. The following response discusses the standards generally applicable to this issue, applies those standards to the comments requesting recirculation, and states why recirculation of the Draft SEIR is not warranted.

Pursuant to CEQA, a lead agency is required to recirculate an EIR when the agency adds “significant new information” to the EIR after the close of the public comment period but prior to certification of the FEIR (PRC Section 21092.1; State CEQA Guidelines Section 15088.5.). “New information added to an EIR is not ‘significant’ unless 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 a feasible way to mitigate or avoid such an effect (including a feasible project alternative) that the project’s proponents have declined to implement” (State CEQA Guidelines Section 15088.5(a)). “Significant” new information includes information showing that “(1) [a] new significant environmental impact would result from the project or from a new mitigation measure proposed to be implemented [;] or (2) [a] substantial increase in the severity of an environmental impact would result unless mitigation measures are adopted that reduce the impact to a level of

insignificance” (State CEQA Guidelines Section 15088.5 (a)(1), (a)(2)). In effect, if a lead agency determines that a new significant effect (i.e., an effect that exceeds the identified threshold) would occur related to the project or new mitigation, and this was not previously disclosed in the EIR, then recirculation would be triggered. Similarly, if a lead agency determines that a significant effect identified in the EIR would now, in fact, be more severe or substantially greater than previously disclosed, then recirculation may be warranted.

The Resources Agency adopted Section 15088.5 of the State CEQA Guidelines to incorporate the California Supreme Court’s decision in *Laurel Heights Improvement Assn. v. Regents of the Univ. of Cal.* (1993) 6 Cal.4th 1112 (*Laurel Heights II*). Per the Supreme Court, the rules governing recirculation of a DEIR are “not intend[ed] to promote endless rounds of revision and recirculation of EIRs” (*Laurel Heights II*, supra, 6 Cal.4th at p. 1132). Instead, recirculation is “an exception, rather than the general rule” (*Mount Shasta Bioregional Ecology Center v. County of Siskiyou* (2012) 210 Cal.App.4th 184, 221). As such, lead agencies must remember that the environmental review process is intended to close and come to an end, and only upon specific circumstances be reopened for additional evaluation.

Under these standards, a change to a project, made in response to comments on a DEIR, generally does not trigger the obligation to recirculate the DEIR. “The CEQA reporting process is not designed to freeze the ultimate proposal in the precise mold of the initial project; indeed, new and unforeseen insights may emerge during investigation, evoking revision of the original proposal” (*County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 199; see *River Valley Preservation Project v. Metropolitan Transit Development Bd.* (1995) 37 Cal.App.4th 154, 168, fn. 11).

As these cases recognize, CEQA encourages the lead agency to respond to concerns as they arise, by adjusting a project or developing mitigation measures, as necessary. That a project evolves to address such concerns is evidence of an agency performing meaningful environmental review. A rule requiring recirculation of the DEIR any time a project changes would have the unintended effect of freezing the original proposal, and of penalizing the lead agency for revising the project in ways that may be environmentally benign or even beneficial. Considering this policy concern, the courts uniformly hold that the lead agency need not recirculate the DEIR merely because the project evolves during the environmental review process. (See, e.g., *Citizens for a Sustainable Treasure Island v. City and County of San Francisco* (2014) 227 Cal.App.4th 1036, 1061-1065 [project modification requiring consultation with Coast Guard regarding building designs did not require recirculation of DEIR]; *South County Citizens for Smart Growth v. County of Nevada* (2013) 221 Cal.App.4th 316, 329-332 [identification of staff-recommended alternative after publication of FEIR did not trigger obligation to recirculate DEIR because the alternative resembled other alternatives that the EIR had already analyzed]; *Western Placer Citizens for an Agricultural and Rural Environment v. County of Placer* (2006) 144 Cal.App.4th 890, 903-906 [revision in phasing plan did not trigger recirculation requirement because the revision addressed environmental concerns identified during EIR process]; *Laurel Heights II*, supra, 6 Cal.4th at pp. 1141-1142 [FEIR’s identification of night-lighting glare, and adoption of corresponding mitigation measures, did not trigger recirculation requirement]; *Long Beach Sav. & Loan Assn. v. Long Beach Redevelopment*

Agency (1986) 188 Cal.App.3d 249, 262-263 [adding mitigation did not require recirculation of negative declaration where the mitigation was added to respond to comments].)

In the instance of the Draft CAP and the Draft SEIR, the County has made changes based on comments received during the public review period. The changes to the Draft CAP and Draft SEIR, as fully described in Attachments A, G-1, and J of the Final CAP, were analyzed within the Draft SEIR and would not increase the severity of impacts or increase impacts to a level that would change the impact conclusions presented. The changes, in general, were related to the addition of one GHG reduction measure and the increase of three GHG reduction measures within the Draft CAP. However, the Draft SEIR adequately analyzed (at a program level) the potential environmental impacts of these changes; and, the addition of one measure and slight increases of three measures did not increase the severity of impacts or change the overall impact conclusions within the Draft SEIR.

For example, in the Draft SEIR, GHG Reduction Measure E-1.4 stated (emphasis added):

- “Reduce energy use intensity at County facilities by 10% below 2014 levels by 2020 and by 15% below 2014 levels by 2030.”

After reviewing numerous comments, the County revised GHG Reduction Measure E-1.4 to state:

- “Reduce energy use intensity at County facilities by 10% below 2014 levels by 2020 and by 20% below 2014 levels by 2030.”

The potential environmental impacts of the County increasing renewable energy operations were analyzed programmatically within the Draft SEIR, and the slight increase in the percent of renewable energy used would not increase the severity of the impact or change the impact conclusions presented within the Draft SEIR. In addition, the measures increased based on public comment reduce the emissions reductions required from GHG Reduction Measure T-4.1, Local Direct Investment Program, resulting in a decrease of the impacts identified throughout the Draft SEIR from GHG Reduction Measure T-4.1.

Further, the GHG reduction measures adjusted based on comments received do not change the total reductions that the County will achieve by 2020 or 2030; they simply reduce the amount of reductions required from GHG Reduction Measure T-4.1. These adjustments similarly do not change the fundamental purpose of the GHG reduction measures that were included within the project description of the Draft SEIR. Furthermore, the fact that the CAP consists of multiple GHG reduction measures, as required for qualified GHG reduction plans by CEQA Guidelines section 15183.5, does not necessarily result in an unstable project description. The public was provided with a stable project description that included numerous GHG reduction measures; none of these measures were removed from the project description, and each will be implemented by the County upon adoption of the CAP. GHG Reduction Measure T-3.5 was added to the Final SEIR in response to public comments; however, the Draft CAP and Draft SEIR

evaluated electric vehicle charging stations in other measures and through supporting efforts. This change is consistent with the project description in the Draft SEIR. Even if measures are removed after public review, the underlying fundamental purpose of the Project, which is to reduce County GHG emissions consistent with state legislative requirements through implementation of a CAP, has not changed and will be met. Further, all project objectives can be met to the same degree as described in the Draft SEIR even if certain measures were removed and other measures were increased.

The fundamental description of the project components (the GHG reduction measures) did not change from the Draft SEIR to the Final SEIR. More importantly, the GHG reduction measures remain achievable, measurable, and enforceable. The County has demonstrated through substantial evidence that the emissions reduction commitment of each GHG reduction measure will be achieved. Therefore, the County was responsive to public comments and performed meaningful environmental review, which comports with the above citations and is consistent with the public disclosure purpose of performing CEQA review.

Similarly, information that clarifies or expands on information in the Draft SEIR does not require recirculation. (See, e.g., *North Coast Rivers Alliance v. Marin Municipal Water Dist. Bd. of Directors* (2013) 216 Cal.App.4th 614, 654-656 [addition of a hybrid alternative to the FEIR did not trigger duty to recirculate the DEIR]; *Mount Shasta Bioregional Ecology Center v. County of Siskiyou*, supra, 210 Cal.App.4th at p. 221 [addition of two reports to FEIR where DEIR had already summarized the reports' contents]; *Clover Valley Foundation v. City of Rocklin* (2011) 197 Cal.App.4th 200, 219-224 [information regarding presence of cultural resources on property did not require recirculation because information amplified on information that was already in DEIR]; *Silverado Modjeska Recreation and Park Dist. v. County of Orange* (2011) 197 Cal.App.4th 282, 305-307 [new information regarding potential presence of protected species in vicinity of project site did not require recirculation because previous EIRs already disclosed that species might be present]; *California Oak Foundation v. Regents of Univ. of Cal.* (2010) 188 Cal.App.4th 227, 266-268 [letters addressing seismic risks did not trigger duty to recirculate DEIR, where letters recommended further analysis but did not contradict conclusions in DEIR]; *Cadiz Land Co. v. Rail Cycle, L.P.* (2000) 83 Cal.App.4th 74, 97 [commenter's disagreement with analysis of groundwater flow in EIR did not require recirculation because substantial evidence supported EIR's analysis; lead agency had discretion regarding which expert to rely upon]; *Chaparral Greens v. City of Chula Vista* (1996) 50 Cal.App.4th 1134, 1148-1151 [regulatory and planning efforts to protect endangered species did not require recirculation of DEIR because analysis already contained detailed analysis of project's physical impacts on that species]; *Fort Mojave Indian Tribe v. California Department of Health Services* (1995) 38 Cal.App.4th 1574, 1605-1606 [designation of "critical habitat" under Endangered Species Act was not "significant new information" where EIR analyzed physical impacts to species and its habitat]; *Marin Municipal Water Dist. v. KG Land California Corp* (1991) 235 Cal.App.3d 1652, 1666-1668 [clarifying information regarding potential length of moratorium was not "significant new information"].)

There are instances in which the courts have ruled that an agency erred by failing to recirculate a Draft EIR. In particular, in *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, the EIR for a large development project contained no analysis of the impact of groundwater pumping on surface water flows in a river that provided habitat for endangered fish species. In responses to comments from expert resource agencies, the Final EIR conceded that the pumping could dry up the river at the same time the fish would otherwise migrate through the area. The disclosure of a new significant impact, for which no mitigation was offered, triggered the duty to recirculate the DEIR (40 Cal.4th at page 447-449; see also *Save Our Peninsula Committee v. Monterey County Board of Supervisors* (2001) 87 Cal.App.4th 99, 128-131 [County had to revise and recirculate the DEIR to disclose potential impacts of reducing off-site groundwater pumping to offset increase in pumping to provide water supply for proposed development project]; *Grey v. County of Madera* (2008) 167 Cal.App.4th 1099, 1120 [where County included new mitigation measure in FEIR, and record contained no evidence of the feasibility of that measure, County had to recirculate the DEIR to receive comments on that measure].) Moreover, if a Draft EIR is found to be “woefully inadequate,” such that meaningful public review and comment are precluded, then the agency must recirculate the document. (See *Mountain Lion Coalition v. Fish & Game Com.* (1989) 214 Cal.App.3d 1043, 1050-1052 [DEIR omitted entirely any discussion of cumulative impacts, despite court order requiring such analysis].)

The following discussion applies these standards to the comments stating that the County should recirculate the Draft SEIR. In particular, the discussion focuses on whether the information provided in the comment is new, and whether that information discloses:

- a new significant impact that the project or mitigation would cause;
- an impact that would be substantially more severe unless mitigation is adopted that avoids the impact;
- a feasible project alternative or mitigation measure considerably different from others previously analyzed that would clearly lessen the environmental impacts, but that the County will not adopt; or
- that the DEIR is “fundamentally and basically inadequate” such that meaningful public comment was precluded (State CEQA Guidelines Section 15088.5(a)).

The responses to comments for the Draft SEIR are extensive, in large part because the comments were also extensive. The responses to comments provide the following information:

- The responses address the environmental concerns raised by the comments, and describe how they are addressed in the Draft SEIR;
- They provide corrections to the Draft SEIR text, where such corrections are warranted;

- They expand on or provide minor clarifications to information already included in the Draft SEIR in those instances where comments question this information;
- They address recommendations for alternatives to the project; and
- They address other information that has arisen since release of the Draft SEIR.

However, none of the conditions warranting recirculation of the Draft SEIR, as specified in State CEQA Guidelines Section 15088.5 and described above, has occurred. The responses to comments and the addition of information do not result in or show any new significant impacts; there is no increase in the severity of a significant impact identified in the Draft SEIR, following application of existing mitigation; no feasible alternatives have been recommended that would avoid a significant impact, or that the County has refused to adopt; and as to the Draft SEIR adequacy, the County believes the Draft SEIR was complete and fully compliant with CEQA. As previously detailed, the reader is also referred to the Recirculation Findings which are attached to the Planning Commission Hearing Report for a detailed description of changes made to the Final SEIR that substantiate the above decision not to recirculate.

8.4.2 Master Response 2 – CAP and SB 375

Many comments request further explanation of the relationship between the CAP and Senate Bill 375 (SB 375). Other comments conflate vehicle miles traveled (VMT) reductions under GHG reduction measures (e.g., Measure T-1.3 and Measure T-2.2) with SB 375 targets. Several comments also express concern that the proposed GHG reduction measures within the CAP would not meet the VMT reduction targets established in the San Diego Association of Governments (SANDAG's) San Diego Forward: The Regional Plan (Regional Plan). Comments also refer to language from the California Air Resources Board's (CARB's) 2017 Climate Change Scoping Plan, adopted in December 2017, that stresses the importance of local VMT reductions, and suggest that the County should adopt VMT reduction targets as part of the CAP. Finally, several comments question how CAP Mitigation Measure M-GHG-1 within the Draft SEIR addresses the consistency of future projects proposing a General Plan Amendment (GPA) with SB 375. A brief overview of SB 375, the Regional Plan, and how the County's 2011 General Plan Update (2011 GPU) and CAP interface with these regulations is provided below, followed by an explanation about why the County has determined that the CAP would not conflict with SB 375 and the Regional Plan.

As detailed in Section 2.7.2 of the Draft SEIR, SB 375, signed by the Governor in September 2008, aligns regional transportation planning efforts, regional greenhouse gas (GHG) emission reduction targets, and land use and housing allocation. SB 375 requires Metropolitan Planning Organizations (MPOs) to adopt a Sustainable Communities Strategy (SCS) or Alternative Planning Strategy, showing prescribed land use allocation in each MPO's Regional Transportation Plan. CARB, in consultation with the MPOs, provides each affected region with reduction targets for GHGs emitted by passenger cars and light trucks in their respective regions for 2020 and 2035.

The SANDAG serves as the MPO for the San Diego region. SANDAG adopted San Diego Forward: The Regional Plan (Regional Plan) on October 9, 2015. The Regional Plan combines two existing documents: the Regional Comprehensive Plan (RCP), and the Regional Transportation Plan and its SCS (RTP/SCS). The Regional Plan details how the region will reduce GHG emissions to state-mandated levels. SANDAG was tasked by CARB to achieve a 7% reduction in per capita GHGs from passenger cars and light trucks by 2020 and a 13% reduction by 2035, relative to emission levels in 2005. As discussed further below, the region would achieve or exceed both reduction targets by implementing its SCS (SANDAG 2015).

Pursuant to State Government Code Section 65080(b)(2)(K), a SCS does not: (i) regulate the use of land; (ii) supersede the land use authority of cities and counties; or (iii) require that a city's or county's land use policies and regulations, including those in a general plan, be consistent with it. SB 375 does, however, make regional and local planning agencies responsible for developing those strategies as part of the federally required metropolitan transportation planning process and the state-mandated housing element process. Neither of these planning processes are related to the Draft CAP, which proposes no land use changes and aims to reduce GHG emissions from existing planned land uses. Therefore, it is the responsibility of SANDAG to ensure that the region is demonstrating consistency with SB 375; though it is acknowledged that the County is one of many agencies that comprise the region in helping SANDAG achieve this goal.

Page 2.7-7 of the Draft SEIR reports the SB 375 targets for SANDAG. Analysis demonstrating achievement of these targets was reviewed and accepted by CARB in December 2015 and was based on the same emission factors (EMFAC2014 v 1.0.7) as used in the CAP (CARB 2015). SANDAG's analysis in the Regional Plan and associated CEQA documentation demonstrated that it would achieve a reduction of 15% in per capita GHG emissions from 2005 levels by 2020 (SANDAG was tasked by CARB to achieve a 7% reduction in per capita GHGs from passenger cars and light trucks by 2020), and 21% in per capita GHG emissions from 2005 levels by 2035 (SANDAG was tasked by CARB to achieve a 13% reduction in per capita GHGs from passenger cars and light trucks by 2035) from light-duty vehicles, thereby exceeding its SB 375 targets. Some comments characterize the 21% figure as the SB 375 target for SANDAG for 2035. As explained above, SANDAG's target for 2035, set by CARB, is a 13% reduction in per capita GHGs from passenger cars and light trucks, which they are exceeding by 8%. Therefore, the 21% standard is not the SB 375 target but SANDAG's projection of anticipated reductions in 2035.

Some comments state that the CAP must take into account how its adoption may affect SANDAG's ability to adopt a new RTP/SCS that complies with CARB's new targets in the 2017 Climate Change Scoping Plan. This is incorrect. As stated in the preceding paragraph, SANDAG is on track to exceed these targets and the adoption of the CAP in no way changes this, as no changes in land use are proposed.

Concerning the relationship between the County's land use plans and the Regional Plan, the County provided SANDAG land use forecasts based on the GPU, which SANDAG then incorporated into the adopted Regional Plan. SANDAG uses these land use

forecasts to determine VMT projections within the region. As discussed further below, if a project proposes a land use change from what was established in the 2011 GPU (i.e., a General Plan Amendment (GPA)), it is the responsibility of the GPA project to determine how it affects VMT projections and in turn how that affects the ability of the Regional Plan to meet SB 375 targets. Currently, however, the VMT projections within the Regional Plan align with the 2011 GPU. These projections were also used to establish the GHG inventory within the Draft CAP. As explained in the Draft CAP, to conservatively account for GHG emissions in the unincorporated county, the Draft CAP's GHG inventory includes GPAs adopted between August 2011 (adoption of 2011 GPU) and March 28, 2017 (date at which the inventory technical reports were prepared). Again, however, the Draft CAP itself does not propose any changes to land use. Therefore, it is inherently consistent with the VMT projections in the Regional Plan, which in turn is consistent with SB 375.

In summary, VMT projections provided by SANDAG incorporate the County's land use forecasts and show achievement of regional SB 375 targets as accepted by CARB. Thus, both the CAP's forecasted VMT, which was based on information provided by SANDAG after the adoption of the Regional Plan, and the related emissions forecasts through 2050 in the CAP, as conservatively adjusted to account for approved GPAs, are consistent with SB 375.

Nevertheless, the County (as reflected in the Draft CAP) is further committed to reducing VMT within its jurisdiction beyond VMT projections already accounted for in the Regional Plan. GHG Reduction Measures T-1.1 through T-1.3 specifically reduce VMT from planned developments either through elimination of development potential in more remote areas of the unincorporated county or through improved design of community plan areas. For example, a Community Plan Update could refine and change the land use designations within a certain community to establish a mixed-use village, increase density, or include specific roadway improvements that provide for enhanced multi-modal use. All of these actions within a Community Plan Update would serve to reduce VMT.

Other measures in the CAP focus on reducing commute VMT through transportation demand management and parking strategies, which will be required for certain types of projects that are implemented after the adoption of the CAP. In addition, GHG Reduction Measures T-1.1 and T-1.2 focus on conserving open space and agricultural lands and in turn limit future growth in the more remote areas of the county. The extinguished future development potential under these measures serves to eliminate VMT that would otherwise be generated from a developed land use. This reduction in development potential will result in VMT reductions above and beyond those contemplated in the current Regional Plan and SB 375 targets, and will also be reflected in future updates provided to SANDAG based on land use changes that occur in the unincorporated county.

Certain comments refer to information from the 2017 Climate Change Scoping Plan, where CARB states that in its evaluation of the role of the transportation system in meeting the statewide emissions targets, it was determined that VMT reductions of 7 percent below projected VMT levels in 2030 (which includes currently adopted SB 375 SCSs) are necessary, and in 2050, reductions of 15 percent below projected VMT levels are needed. While it is true that CARB discloses the VMT reductions they anticipate are

needed beyond adopted SB 375 targets, they do not set these as reduction targets for local jurisdictions. The County's CAP follows CARB's recommendations on overall per-capita GHG reduction targets. The anticipated VMT gap, as reported in the Scoping Plan, is based on statewide data and does not account for local context and land use patterns. Moreover, CARB acknowledges that the guidance is voluntary when it states the following in the Scoping Plan (page 99):

While this guidance is provided out of the recognition that local policy makers are critical in reducing the carbon footprint of cities and counties, the decision to follow this guidance is voluntary and should not be interpreted as a directive or mandate to local governments.

Nonetheless, as described above, the County agrees with CARB that "...local actions that reduce VMT are also necessary to meet transportation sector-specific goals and achieve the 2030 target under SB 32 and has included VMT reduction measures in line with the State's vision while accounting for the local, rural setting and land use patterns.

Finally, some comments question how future GPAs would be consistent with the Regional Plan and SB 375 targets. As described on Page 2-14 of the CAP, the base inventory and projections do not include emissions from proposed or future GPAs that would increase density or intensity above the 2011 GPU. These projects are analyzed in the cumulative impact analysis of the Draft SEIR, Chapter 2.7, because they represent current or reasonably foreseeable future projects. As discussed in the Draft SEIR, Chapter 2.7, future GPAs have the potential to result in a significant cumulative GHG impact because they may adversely affect the ability of the CAP to meet its targets and goal because of the increase in density or intensity above the 2011 GPU caused by the GPAs. However, CAP Mitigation Measure M-GHG-1 is provided to reduce the cumulative impact to less than significant. Implementation of this mitigation measure by future GPAs would address their individual GHG emissions and ensure that the County can meet the targets in the CAP. In addition, each future GPA will also be required in the project-level CEQA documents prepared for them to assess their consistency with the Regional Plan. However, incorporation of CAP Mitigation Measure M-GHG-1 would ensure that GPAs are mitigating their emissions such that they would not conflict with the Regional Plan and SB 375 targets on this issue.

8.4.3 Master Response 3 – Local Direct Investment Program

Several comments expressed concerns related to GHG Reduction Measure T-4.1, including whether the measure would "undercut" other feasible transportation-related GHG reduction measures, the feasibility of this measure in reducing the County's annual emissions by 190,262 MTCO₂e by 2030, and whether the measure should be included under the "Built Environment and Transportation" category. Commenters have also recommended that, under this measure, the County provide funding for incentives and rewards for innovative and effective projects that reduce emissions beyond what the CAP already anticipates under its proposed GHG reduction measures. Perhaps the most common misconception regarding local direct investment projects under GHG Reduction Measure T-4.1 is that they are the same program as the mitigation requirement for GPAs

that increase density or intensity above what is allowed in the 2011 GPU. The Final SEIR requires these GPAs to mitigate GHG emissions (CAP Mitigation Measure M-GHG-1), which may include the purchase of off-site carbon offset credits. The proposed local direct investment program related to GHG Reduction Measure T-4.1 is not the same as the carbon offset credits that future GPAs may use. For information related to the separate use of carbon offset credits as mitigation for future GPAs, refer to Master Response 12 below.

Under the Local Direct Investment Program, the County would fund/implement and register local direct investment projects on one or more recognized GHG offset registries. These projects would follow approved GHG emission reduction protocols from registries acknowledged or approved by governing bodies in the State of California to calculate the amount of GHG reductions generated by each project's activity. As listed on page 2.7-25 and in Appendix B of the Final SEIR, these projects may include, but are not limited to, boiler efficiency upgrades, reforestation projects, compost additions to rangeland, organic waste digestion, livestock management, urban forest and urban tree planting, and weatherization.

Preliminary Assessment of the Local Direct Investment Program

The County and its consultant team prepared the "Preliminary Assessment of the Local Direct Investment Program" (see Draft SEIR Chapter 2.7 and Appendix B for a range of project protocols that may be used to implement GHG Reduction Measure T-4.1). As stated on page 3-39 of the CAP, the County is required to establish a local direct investment program by 2020; therefore, this preliminary assessment is the initial analysis of the local direct investment program prior to its completion by 2020. The preliminary survey included a high-level cost effectiveness analysis that identified for each protocol or protocol group a range of unit costs (in \$/MT CO₂e) and identified a range of aggregate costs that reflect the relative costs between the protocols to achieve the requisite reduction by 2030. The analysis also assesses the possible approaches to obtain GHG reductions via the County's local direct investment program. To do this, a survey was conducted of various protocols from four GHG offset registries to determine applicability to the unincorporated areas of San Diego. Calculations were then performed to determine a range of potential GHG emission reductions achievable for a protocol or protocol group.

Currently, there are several different GHG offset registries in existence. Each of these registries develops its own protocols for estimating emission reductions, or adopts parts of or full protocols from other registries (see Draft SEIR Chapter 2.7 and Appendix B). Industry, or other bodies, can then implement projects that follow these protocols to accrue offsets to be listed and tracked through the relevant registry. These offsets can then be retired (resulting in a net reduction in GHG emissions), or sold on the open market as a commodity. As stated on page 2.7-24 of the Final SEIR, the County will not purchase carbon offset credits from a registry in the carbon offset market, but will use the registry to track carbon offsets achieved through County direct investment projects.

The protocols assessed came from the following GHG offset registries: Climate Action Reserve (CAR), American Carbon Registry (ACR), Verified Carbon Standard (VCS), and

the California Air Pollution Control Officers Association (CAPCOA) GHG Reduction Exchange (CAPCOA GHG Rx). These registries were chosen because they have been acknowledged or approved by governing bodies in the State of California.

GHG offset registries have developed a broad consensus around the performance standards that are necessary to ensure that offsets are verified and monitored and are additional to any offset otherwise required (CEQA Guidelines Section 15126(c)(3)) (*Our Children's Earth Foundation v. CARB* (2015) 234 Cal.App.4th 870, 880, 889), namely that offsets be real, permanent, quantifiable, verifiable, enforceable, and additional. In addition, CARB applies these standards in reviewing and approving Compliance Offset Protocols (CARB 2013). The County would use this system and the standards-based protocols therein to track emissions reductions from GHG Reduction Measure T-4.1. The County could choose to incentivize projects that exceed projected emission reductions through funding or other efforts, however, the specific details related to funding or the consideration of the types of projects that would be considered under the local direct investment program have not been developed at this time.

The location of projects under the local direct investment program would be only within the unincorporated County, because as a County initiative, the program and specific direct investment projects must be within the jurisdictional control of the County. The activities/sources governed by each protocol were preliminarily reviewed to determine if they have the potential to exist in unincorporated San Diego. (Activities can generally be defined as actions that result in the increase or decrease of emissions, whereas sources are entities that produce emissions.) This was partially determined by noting whether or not the activities/sources were included in the emission inventory for the draft CAP. Any protocols related to activities/sources that were determined not to exist and likely would continue not to exist or were outside of the jurisdictional control of the County, were excluded from further analysis. For example, there is currently no commercial rice cultivation in unincorporated San Diego. Because rice cultivation is tied to a very particular climate and land use, it was assumed that commercial rice cultivation would continue to not exist in San Diego. Therefore, protocols related to rice cultivation were excluded from further analysis.

While the preliminary assessment of the local direct investment program was conducted to determine a high-level cost effectiveness analysis and a range of aggregate costs for the Board of Supervisors to consider, the assessment represents a further refinement of the programmatic analysis conducted in Chapter 2.7 and Appendix B of the Draft SEIR and is the initial analysis of the local direct investment program prior to its completion by 2020 (see GHG Reduction Measure T-4.1, Actions, Time Frame). See the attachment to the Planning Commission Hearing Report for additional information regarding the preliminary assessment of the local direct investment program.

Programmatic Nature of Local Direct Investments

The Final SEIR is a program EIR as that term is used in CEQA Guidelines Section 15168 and, therefore, the County is not obligated to provide a project-level analysis of local direct investment projects. That analysis will be required as the County undertakes direct

investments through the local direct investment program required by 2020 under GHG Reduction Measure T-4.1. However, as previously described, the County has prepared a preliminary assessment of the local direct investment program to determine high-level cost effectiveness and aggregate costs associated with implementation of GHG Reduction Measure T-4.1. The preliminary assessment also further determines the specific direct investment projects in the unincorporated county by protocol type (as listed in Draft SEIR Chapter 2.7 and Appendix B). The preliminary assessment confirms that GHG Reduction Measure T-4.1 can achieve the entire 190,262 MT CO₂e of emission reductions as stated in the Draft CAP and evaluated in the Draft SEIR and can achieve up to 198,800 MT CO₂e in the unincorporated county. This preliminary assessment will be available a minimum of 10 days prior to the Planning Commission hearing on the CAP. However, this analysis does not change any of the conclusions in the CAP or Draft SEIR (see attachment to the Planning Commission Hearing Report).

In line with the assessment of the local direct investment program, the County has also committed to creating annual monitoring reports to ensure that performance of existing measures is achieved, and if not, allow for adjustments to existing measures, replacing ineffective or obsolete actions, and adding new measures as technology, and federal and State programs change. This program is discussed in Chapter 5 – Implementation and Monitoring of the CAP. Adjustments have also occurred during preparation of the Final CAP. In response to public comments, County staff is recommending a revised Draft CAP that will increase the GHG reduction goals from other measures, lowering the GHG reduction target for GHG Reduction Measure T-4.1 from 190,262 MTCO₂e to 175,460 ~~167,592~~ MTCO₂e by 2030, despite the fact that the County can achieve up to 198,800 MT CO₂e in reductions.

“Built Environment and Transportation” Category

Although this measure could technically encompass reductions from a variety of sectors, the placement of this strategy in the “Built Environment and Transportation” sector does not alter the amount of reduction associated with the sector, and it is most generally related to activities affecting this sector (e.g., weatherization, boiler efficiency upgrades, and urban tree planting). The placement of this measure is not intended to imply that reductions from GHG Reduction Measure T-4.1 would only come from the transportation sector, but that placement in the Built Environment and Transportation sector is appropriate based on some of the direct investment opportunities. Protocols identified as applicable to the unincorporated county were grouped into five main protocol sectors: agriculture, energy efficiency/production, land use management, landfill/waste management, and transportation.

Additionally, the County disagrees that direct investments in local projects would undercut investment in transportation infrastructure improvements as the establishment of the local direct investment program would be a separate effort from any coordinated efforts to improve regional transit or other bicycle and pedestrian infrastructure associated with other GHG Reduction Measures. Other GHG Reduction Measures such as T-1.1, W-1.2, and A-1.2 also affect emissions from sectors other than the ones in which they are

categorized. Finally, the fundamental purpose of the CAP is to meet the targets for 2020 and 2030, which the CAP accomplishes through its entire suite of 30 reduction measures.

8.4.4 Master Response 4 – GHG Baseline and Reduction Targets

Several comments suggested that the 2020 emissions target (equivalent to 1990 levels) should be used as the starting point to establish the 2030 target and 2050 goal. In other words, a baseline year of 1990 equivalence should be used as the starting point from which to establish reduction targets, instead of 2014, to achieve equivalency with State targets. Comments also suggested the use of a regional GHG emissions inventory for 1990 prepared by the Energy Policy Initiatives Center (EPIC). Comments suggest that the proportion of unincorporated county's 1990 GHG emissions can be determined from this regional inventory, but do not provide specific methods that could be used for this exercise. Comments identified confusion with the term, "baseline," where "baseline" sometimes either referred to the 1990 inventory or the 2014 inventory. Finally, comments suggest that a mass emissions target should be used versus a per capita target.

While comments provide various suggestions on target setting, the methodology used in the CAP would require GHG emissions to be reduced to the lowest level when compared to the methodology from the previous CAP and from the 2011 GPU PEIR. A detailed comparison of target emissions is provided below. The term "target emissions" in this response refers to the emissions level that needs to be achieved by the target year (i.e., level that emissions need to be reduced *to*). Lower target emissions equal a *more* stringent reduction target because an overall lower emissions level would need to be achieved under that scenario. The County target emissions are listed in Table 3.2 of the Draft CAP.

This response first describes the methodology used to develop reduction targets used in the CAP and explains why targets derived based on 2014 baseline emissions are more accurate than a 1990 emissions inventory at the local level. Following this, the response provides a comparison of "target emissions" under the proposed CAP, the rescinded CAP, and the 2011 GPU PEIR.

The State GHG reduction targets, pursuant to AB 32 and SB 32, aim for a reduction of the State's GHG emissions to 1990 levels by 2020 and 40% below 1990 levels by 2030, respectively. In addition, a 2050 goal of 80% below 1990 levels by 2050 is expressed in Executive Order S-3-05. Reductions for the 2020 and 2030 targets and 2050 goal for the County's CAP were developed based on the most current guidance from the California Air Resources Board (CARB). At the community-level, CARB currently recommends a reduction target for local CAPs of 6 metric tons of CO₂ equivalent (MTCO_{2e}) per capita for 2030 and 2 MTCO_{2e} per capita for 2050. These recommendations are described in CARB's *California's Climate Change Scoping Plan Update* (CARB 2017). CARB states that these per-capita goals are consistent with the statewide emissions targets and goal that refer to a 1990 baseline year.

The per-capita targets represent the 2030 and 2050 mass emission targets divided by total population projections from California Department of Finance (CARB 2017: 148,

Footnote 242). In addition, the statewide per capita targets are also consistent with Executive Order S-3-05, B-30-15, and the Under2 MOU that California originated with Baden-Württemberg and has now been signed or endorsed by 205 jurisdictions representing 43 countries and six continents (Under2 2017). The Under 2 MOU identifies action being taken by jurisdictions around the world and promotes ambitious action on climate change. The MOU does not introduce new legal constraints on participating jurisdictions, but demonstrates a clear and lasting commitment to reduce emissions in the decades to come. The per capita targets represent California's and these other governments' recognition of their "fair share" to reduce GHG emissions to the scientifically based levels to limit global warming below two degrees Celsius (CARB 2017). However, as acknowledged by CARB, this statewide per-capita target includes emissions from sectors not included in the County's GHG inventory and which are outside the County's jurisdiction, such as emissions from large industrial sources. In fact, multiplying the 6 MTCO_{2e} per capita rate by the estimated County unincorporated population in 2030 (551,712) would result in target emissions of 3,310,272 MTCO_{2e} in 2030, which is higher than the County's target emissions of 1,926,903 MTCO_{2e} in 2030 as used in the CAP. Thus, the methodology used in the CAP, as described in the following paragraphs, leads to *lower* target emissions, i.e., a more stringent reduction target, when compared to a straight per-capita metric.

CARB provides guidance to local governments on target setting as follows:

CARB recommends that local governments evaluate and adopt robust and quantitative locally-appropriate goals that align with the statewide per capita targets and the State's sustainable development objectives and develop plans to achieve the local goals. The statewide per capita goals were developed by applying the percent reductions necessary to reach the 2030 and 2050 climate goals (i.e., 40 percent and 80 percent, respectively) to the State's 1990 emissions limit established under AB 32. (CARB 2017: 148)

Considering this statement, the County developed a reduction target based on the per-capita targets relative to the State's 1990 and 2014 inventories; however, using a local inventory of emissions. Considering the overall statewide emissions in 1990 and 2014 and the forecasted statewide population in 2030 and 2050, the per-capita community-level goals would be equivalent to reducing 2014 emissions by 40% by 2030 and 77% by 2050 (CARB 2016, DOF 2014). These targets may not exactly match up with targets derived directly from 1990 levels because of potential rounding done by CARB to simplify the per-capita targets and to stay consistent with the Under 2 MOU. However, this difference due to CARB's chosen methodology is *de minimis*. The County's 2030 target and 2050 goal are based on CARB-recommended community-level targets, which represent the best available guidance to local jurisdictions and are consistent overall with the State GHG reduction goals as stated within the *2017 Climate Change Scoping Plan*:

The recommendation above that local governments develop local goals tied to the statewide per capita goals of six metric tons CO_{2e} by 2030 and no more than two metric tons CO_{2e} per capita by 2050 provides guidance on

CARB's view on what would be consistent with the 2030 Target Scoping Plan and the State's long-term goals. (CARB 2017: 151)

Certain comments suggest the use of a mass emissions target instead of a target based on per capita emissions. Comments claim that per capita targets are not "capped" and may change as population grows. The CAP does not use a de facto per capita target. Instead, as described in detail above, the State-recommended per capita targets were used to derive equivalent reduction targets, expressed as percent reductions from baseline levels, and ultimately target emissions in MTCO_{2e}. The CAP commits to reducing 2030 emissions to 1,926,903 MTCO_{2e}, expressed as a mass emissions level. As illustrated above, if the County were to use a straight per capita target for 2030, this would result in target emissions of 3,310,272 MTCO_{2e}, almost double the target emissions that the County commits to achieve in the CAP. The target in the CAP is more stringent than using a straight per capita target and emissions would not be "uncapped" as the comments claim, because the CAP commits to achieving target emissions of 1,926,903 MTCO_{2e} by 2030. The 2014 inventory is based on actual activity data (e.g., electricity consumption based on energy billing from SDG&E, tonnage of solid waste sent to landfills in that year). In contrast, reduction targets and emissions projections are based on calculation methods that use the 2014 inventory as a starting point. In other words, activity data that correlate to emissions projections are not available as these projections are estimates based on projected growth data (e.g., growth in number of households). Similarly, mass emissions that align with the reduction target are estimated based on the 2014 inventory (e.g., two percent below 2014 levels by 2020). As a point of clarification, for the purposes of the CAP, the term "baseline inventory" refers to the 2014 inventory that forms the basis of future projections and reduction targets.

Some comments contend that if the County's GHG emission reductions are 2 percent less than its 2014 baseline by 2020, then to achieve equivalency with the AB 32 target of lowering GHGs to 1990 levels by 2020, the CAP should establish that 2020 target as the basis for reducing future GHG emissions. The County disagrees with this assertion. The 2020 target itself is estimated based on 2014 emissions levels. Appendix A to the CAP describes the rigorous data collection process for each sector used to develop the 2014 inventory. In addition, projected 2020 emissions after accounting for legislative reduction and CAP measures are expected to be significantly lower than the level required to meet a reduction target that aligns with the State target (see Page 3-4 of the CAP). Emissions in 2020 are anticipated to be 2,886,465 MTCO_{2e} compared to the target emissions of 3,147,275 MTCO_{2e}. In reality, 2020 emissions may end up being different than this reported data as these are projections based on best estimates of how growth could occur in the county and how emissions may change. Therefore, the County disagrees with using the 2020 levels to set the 2030 target and 2050 goal as the 2020 level itself is based on estimates of future growth and therefore does not represent an accurate baseline. Actual growth may deviate from projections and this would affect emissions in 2020. The reduction targets were based on the emissions level from 2014 that is based on actual activities that were documented for that year, and thus represent a defensible baseline. For this reason, the County has also committed to conduct an updated inventory every two years to build a data set of emissions changes and examine trends towards the 2020 target. While a reduction target applied to the County's 1990 inventory and consistent

with the State targets could have been calculated, using the available 1990 inventory for the San Diego Region developed by EPIC would not be as accurate as the 2014 inventory that was undertaken for the CAP. EPIC's 1990 inventory was developed before the *U.S. Community Protocol for Accounting and Reporting of Greenhouse Gas Emissions* was available as guidance to help local governments develop effective community GHG emissions inventories. In fact, the County's GHG analysis in the 2011 GPU PEIR reported 1990 and 2006 emissions by scaling down emissions from EPIC's regional inventory to the unincorporated areas. The scaling was done on a simplified per-capita or per-VMT basis. At that time, the reported emissions were based on prevailing standards. For example, for the electricity sector, all emissions in the San Diego region (from electricity use in the residential, commercial, industrial, mining, agriculture, transportation, communication and utilities, and street lighting) were divided by the region's population to derive a per-capita electricity-related emissions figure. This per-capita metric was then multiplied by the unincorporated areas' population to derive electricity-related emissions. We now know that this method, while reducing the complexity of the inventory, loses accuracy in the process for various reasons. First, it assumes that all consumers of electricity (residential, commercial, industrial etc.) are uniformly distributed in the San Diego region. In reality, the unincorporated area is rural in nature and does not have the same density of commercial and industrial uses as the urban areas. Second, it assumes that all consumers of electricity are directly proportional to population. While this may be roughly applicable for residential uses, electricity use in commercial, industrial, mining and agricultural uses would not be dependent on population directly. This methodology was followed for other sectors and is not as accurate as using activity data for the unincorporated areas. As described above, the 2014 inventory uses *actual*, reported consumption data that are used to develop the inventory, resulting in more accurate and rigorous results. Because of the passage of time, and the evolution in data collection and inventory development methodologies, accurate activity data that comply with existing protocols are not available for 1990. While the 1990 EPIC inventory was based on the best available regional data at that time, applying the inventory and scaling its data to the unincorporated area now would be problematic for the reasons described above. For the same reasons, data reported in the 2011 GPU PEIR are now outdated and not as reliable as the current baseline and methods. Therefore, the CAP uses a more current baseline and methods to estimate emissions and reductions.

The challenges in developing or relying upon a 1990 inventory are not unique to the County. Other jurisdictions have relied on a current baseline year, rather than 1990, to develop their reduction targets in their CAPs (e.g., City of San Diego, City of Carlsbad, City of Solana Beach). Recognizing these challenges, CARB has provided a methodology to develop locally-applicable reduction targets based on current baseline emissions data as illustrated above, which was used to develop the CAP targets.

In addition, jurisdictional boundaries have changed since 1990 due to annexations and incorporation into cities, changing the acreage of the unincorporated County and potentially altering how the emissions inventory would be calculated. Data sources have also evolved to provide consistent methodologies and more accurate accounting of emissions, consistent with established protocols. For example, SANDAG's travel demand model has been updated to provide activity-based VMT and reflects current land use

plans and infrastructure. The choice of a more recent year (i.e., 2014) to establish a base inventory is also consistent with recommendations in GHG inventory protocols. For example, the *Local Government Operations Protocol* developed in partnership by CARB, California Climate Action Registry, ICLEI - Local Governments for Sustainability and The Climate Registry states that “it is good practice to compile an emissions inventory for the earliest year for which complete and accurate data can be gathered.” “Earliest” in this context refers to the most recent year of complete data. The County collected representative and reliable data for the most recent year of complete data, which is 2014; therefore, this year was chosen as the base year (see Appendix A to the CAP for details on data used to develop the inventory). For these reasons, a 2014 base inventory was used for a more accurate accounting of emissions as compared to an approximation of 1990 emissions for the unincorporated county based on outdated data and methods.

Finally, if the County were to rely on the previous 2005 inventory from the rescinded CAP as recommended by commenters, it would result in less stringent GHG reduction targets (i.e., higher target emissions which equal a lesser amount of GHG emissions to reduce). The rescinded CAP reported 2005 GHG emissions at 4,512,580 MTCO₂e and applied a 2020 reduction target of 15% below 2005 levels. This would result in target emissions of 3,835,693 MTCO₂e by 2020. In contrast, the County’s base emissions in 2014 are estimated at 3,211,505 MTCO₂e in the CAP. The decline in base emissions from 2005 to 2014 is partially due to State and local actions to reduce GHG emissions, but also reflects improvements in data and methods to develop inventories as described above. Applying the standard of two percent below 2014 levels develop the 2020 target in the CAP, the County’s emissions would need to be reduced to 3,147,275 MTCO₂e by 2020 (i.e., target emissions in 2020). Therefore, the County must achieve lower target emissions using the updated inventory and target methodology in the CAP. The target emissions for 2020 are lower applying the 2014 inventory, resulting in a more stringent target than would have resulted had the 2005 inventory been used. The end result is beneficial in that the unincorporated county is now required to reduce its emissions to a lower level, thus helping achieve the fair share of required reductions in alignment with State goals. This difference is illustrated in the table below.

	Target Emissions (MTCO ₂ e)		
	2020	2030	2050 <u>(goal)</u>
Proposed CAP	3,147,275 *	1,926,903	738,646
Rescinded CAP	3,835,693	No target	No <u>(goal)</u> target
2011 GPU PEIR	5,227,025 **	No target	No <u>(goal)</u> target
* indicates the lowest target emissions, i.e. most stringent reduction target.			
** combined local government operations and community emissions from 2011 GPU PEIR			

Mitigation Measure CC-1.2 of the 2011 GPU PEIR required the County to prepare a CAP that achieves a 17% reduction in emissions from County operations from 2006 by 2020 and a 9% reduction in community emissions between 2006 and 2020. As described in Chapter 1 of the Draft SEIR, updates are proposed to this measure to make it current with existing regulatory requirements. The 17% and 9% reduction targets were derived based

on the 1990 inventory scaled from regional levels (i.e., the estimated 1990 emissions equaled the 2020 target). The limitations of the 1990 inventory are described above. Target emissions based on these standards are shown in the table above for comparison. The table illustrates that the proposed CAP would require an overall lower level of emissions to be achieved by the County. The same applies to local government operations emissions in the CAP that are incorporated into the community inventory and are held to the same overall targets. The target emissions for both community emissions and County operations in 2020 are now lower (i.e., more stringent) than targets developed based on 2005/2006 base emissions. Combined local government and community emissions under the 2011 GPU PEIR would need to be reduced to 5,227,025 MTCO_{2e}, 66% higher than the target emissions under the proposed CAP (i.e., 3,147,275 MTCO_{2e}).

In summary, the prior target in the rescinded CAP resulted in target emissions of 3,835,693 MTCO_{2e} by 2020. Targets specified in the 2011 GPU PEIR, taking into account the 17% and 9% reductions referenced in CC-1.2, resulted in target emissions of 5,227,025 MTCO_{2e} (combined local government operations and community emissions). The CAP target for 2020, based on 2% below 2014, results in target emissions of 3,147,275 MTCO_{2e}. Thus, the CAP target emissions, based on 2% below 2014, achieves a lower level of GHG emissions because the overall target is lower. Target emissions under the CAP in 2020 would be 18% lower than what would have been achieved had the rescinded CAP been implemented, and 40% lower than emissions levels that would have been achieved had the 2011 GPU PEIR targets of 17% and 9% reductions from 2006 levels been implemented. Therefore, the CAP would achieve reductions consistent with State goals and serves the ultimate purpose of achieving lower GHG emissions to reduce the unincorporated county's contribution to climate change. Moreover, the CAP now sets a target for 2030 and a reduction goal for 2050, thus going well beyond the requirements established in 2011 GPU PEIR mitigation measures.

8.4.5 Master Response 5 – Community Plan Updates

Several comments question the validity of reduction quantifications for GHG Reduction Measure T-1.3 and assert that the CAP does not provide details on how community plans would be updated, and how those updates would translate into changes to the design of these communities to reduce VMT. Comments also assert that because “possible mechanisms to increase density” could be one of the options the County employs, the CAP should account for any associated increases in population. Further, comments assert that the quantification methodology used does not apply to modifying an existing development's design as opposed to building a new development, mistakenly implying that all community plan areas are largely built out.

GHG Reduction Measure T-1.3 is quantified based on the metrics in California Air Pollution Control Officers Association (CAPCOA) Measure LUT-9 “Improve Design of Development” (refer to Page 5 of Attachment 1, Appendix C to the CAP). LUT-9 quantifies the percent VMT reduction associated with improved development design elements to “enhance walkability and connectivity.” LUT-9 includes number of intersections per mile as a characteristic of an “improved street network”. However, LUT-9 states that “improved design” is also measured in terms of “sidewalk coverage, building setbacks, street widths,

pedestrian crossings, presence of street trees, and a host of other physical variables that differentiate pedestrian-oriented environments from auto-oriented environments.” (CAPCOA 2010: 182).

As CAPCOA acknowledges, the measure depends upon multiple variables but is quantified in terms of number of intersections per square mile. Each community plan area contains a unique mix of land uses and infrastructure thereby necessitating a unique mixture of design elements to achieve necessary VMT reducing improvements. Therefore, this specific metric is not available at the plan-level analysis in the CAP because the CAP and SEIR are program documents. The CAPCOA measure is used as a proxy to quantify the types of improvements that could be implemented through the community plans. An average VMT reduction of 12% based on the CAPCOA guidance related to VMT reducing improvements was applied for this measure. The CAPCOA guidance identifies a range of 3-21.3% reduction in GHG emissions from LUT-9 (CAPCOA 2010: 182). Therefore, the 12% reduction represents a reasonable rate of reductions in the context of the unincorporated community plan areas.

The rationale for selecting LUT-9 as a proxy for quantifying this measure was based on the general nature of LUT-9 in terms of its applicability to the design of a development as a whole. The County aims to pursue multiple facets of “improved development design” such as increasing the diversity of land uses (e.g., mixed use), complete streets (i.e., multi modal streets that serve bicycles, pedestrians, transit, and auto), transit- and bicycle-oriented development, and increased transit accessibility. A question was also raised about how transit-oriented development will be defined and quantified. The County will rely on guidance from CAPCOA and other planning guidance to determine how transit-oriented development would be defined for the county. For example, CAPCOA defines transit-oriented development as a project with a residential/commercial center designed around a rail or bus station (CAPCOA 2010). CAPCOA also includes several design features in defining transit-oriented development. These include: a transit station/stop with high-quality, high-frequency bus service located within a 5-10 minute walk (or roughly ¼ mile from stop to edge of development); and/or a rail station located within a 20 minute walk (or roughly ½ mile from station to edge of development); fast, frequent, and reliable transit service connecting to a high percentage of regional destinations; and a neighborhood designed for walking and cycling. These design features are provided here as examples of considerations the County would make in updating the Community Plans. The County acknowledges that definition and quantification of transit-oriented development may vary based on the individual community plan and ultimately, these project attributes will be defined as Community Plan updates are undertaken.

Comments also contend that many of these design improvements apply only to urban or suburban developments. The County disagrees with these comments. Design improvements can be applied to community plan areas within the unincorporated County to achieve the 2030 GHG reduction target. In doing so, the County will prioritize community plans based on proximity to urban/suburban settings, communities with a village center, those located within the San Diego County Water Authority boundary, and the level of buildout. Updates to community plans would focus on achieving the residual development potential in a GHG-efficient manner. The updates would define a core area

within the county villages that would include affordable housing units; mixed-use development with possible mechanisms to increase density; “Complete Streets” that include sidewalk and bike way improvements; shared parking; and parks and community services, which could include libraries, schools, or community centers located in the core area. Existing density would be emphasized in the core area using tools such as form-based code, and parking and setback reductions. Additional mechanisms to effect change include zoning updates to incentivize the types of development needed in a community and developing design guidelines to guide development of each community. All of these design improvements are possible under this reduction measure within community plan areas in the unincorporated County.

This CAPCOA measure was selected based primarily on the measure’s description and used as a proxy to estimate the VMT reductions from these general improvements to the selected community plans. Although the VMT reduction calculations are based on the metric of number of intersections per mile, the average percent reduction in VMT through this measure is consistent with the range of percent VMT reductions quantified across other CAPCOA measures that address more specific aspects of improved development (e.g., LUT-1, LUT-2, LUT-3, LUT-4, LUT-5, LUT-7).

Comments also state that the VMT elasticities with respect to density, diversity, design, and destination accessibility that inform CAPCOA measure LUT-9 would not apply in the context of modifying an existing development’s design, implying that all community plan areas are largely built out. This is an incorrect assertion. The County maintains data of completed and in-process development applications to determine residual development capacity. These data confirm that the County has not exhausted the development capacity of the approved 2011 General Plan Update and subsequent General Plan Amendments. Updates to community plans would focus on achieving this residual development potential in a GHG-efficient manner. Existing density would be emphasized in the core area using tools such as form-based code, and parking and setback reductions. A planning level analysis that includes an assessment of VMT, including elasticities related to various design elements, would be conducted during each community plan update.

Further, comments contend that the measure does not account for self-selection, i.e., the idea that people who are less likely to drive in the first place choose to live in areas where the built environment design makes it easier to get around without driving. Comments question the effect of design modifications on travel choices without controlling for self-selection. The same study cited by commenters (Ewing and Cervero 2010) states that nearly all of 38 studies that have attempted to control for residential self-selection found “resounding” evidence of statistically significant associations between the built environment and travel behavior, *independent of self-selection influences* (Cao, Mokhtarian, et al. 2009a, p. 389; emphasis added). The comment only cites partial information from the study that indicates that residential self-selection attenuates the effects of the built environment on travel. However, information cited above from the same study suggests that findings related to self-selection are not conclusive. Regardless, the County will conduct a planning level analysis that includes an assessment of VMT including the factors outlined here, during each community plan update.

CAPCOA acknowledges that quantification methods can inform planning decisions; however, a complete planning-level analysis of mitigation strategies would entail additional quantification. The County will consider the unique needs of each community to determine which improvements would be the most effective when a particular community plan is updated. The CAP is a program-level planning document for the entire unincorporated area, therefore, undertaking this analysis for each community plan would be speculative at this time. A planning level analysis that includes an assessment of VMT and an environmental analysis would be conducted during each community plan update. If a community plan update proposes density changes to achieve the community's objectives, those impacts, including any potential increases in VMT, would be addressed in their specific CEQA documents.

The County acknowledges that implementation of GHG Reduction Measure T-1.3 assumes future legislative action by the Board. If the Board does not approve these future Community Plan updates, the CAP's rigorous implementation and monitoring component will allow the County to evaluate the progress of this and other GHG reduction measures on a regular basis, and to make changes if necessary to ensure that the 2030 target is met. The County will conduct annual monitoring beginning in 2019, which is assumed to be one year after adoption. Monitoring reports would include the status of measure implementation and would provide the County with the flexibility to adjust as needed, if measures are underperforming. The County would also prepare a CAP update every 5 years beginning in 2025 which would include updated inventories, adjustments to reduction measures, as necessary, and any changes to land use projections to achieve consistency with zoning and current 2011 GPU land use designations and policies. The regular monitoring and assessment regimen ensures that implementation of the CAP would achieve established GHG emission reductions.

8.4.6 Master Response 6 – Transportation GHG Reduction Measures

Several comments assert that the County underutilizes opportunities to reduce emissions in the transportation sector, comparing the contribution of emissions from the transportation sector (45%) to proportion of overall reductions from the Built Environment and Transportation category (13%). Comments also suggest that the CAP should specify performance standards for residential VMT like those for nonresidential development (e.g., GHG Reduction Measure T-2.2).

The County acknowledges the disproportionality between the higher percentage of the emissions inventory attributable to the transportation sector and the lower percentage of GHG emissions reductions under the CAP attributed to measures in the Built Environment and Transportation category. However, as specified in the CAP, the nature of the unincorporated county is low-density development that is not conducive to non-driving trips. Trip distances are longer in the unincorporated county because of this low-density nature and intervening distance between land uses. In addition, the County has limited jurisdiction in controlling transportation emissions apart from land use and infrastructure planning. The scope of the CAP is to serve as mitigation to reduce GHG emissions resulting from buildout of the 2011 GPU in accordance with GPU Policy COS-20.1 and GPU EIR Mitigation Measure CC-1.2. The CAP does not propose and/or facilitate the

development of new land uses or changes in land use density, nor does it propose to change land use designations that were adopted with the 2011 GPU. The authority for land use policy and regulations continues to be governed by the 2011 GPU. The County's jurisdiction covers rural and semi-rural lands, along with suburban areas, many of which have limited transportation options and are served by limited transit. Thus, proposed transportation measures in the CAP focus on reducing VMT through improved design of development, infrastructure improvements, travel demand management programs, parking code revisions, and alternative fuel use. While the nature of trips will likely continue to be personal vehicle based, the fuel source and emissions factors of those trips can be modified by switching to renewable sources including electricity. Supporting efforts include facilitating the growth of electric vehicle (EV) charging infrastructure. In an effort to be responsive to these comments, the County has added Measure T-3.5 to install 2,040 Level 2 electric vehicle charging stations through public-private partnerships at priority locations in the unincorporated county by 2030. Electrifying VMT allows for the use of cleaner and renewable energy to power vehicles, and reduces GHG emissions associated with gasoline-powered internal combustion engines. Investment in a larger charging network than currently exists is needed to encourage EV use and achieve additional GHG reductions beyond State goals. This measure increases the availability of EV charging infrastructure to increase the number of VMT that are electric- over gasoline-powered.

The County also recognizes numerous efforts are currently underway across California by State agencies and Metropolitan Planning Organizations (MPOs) to reduce transportation emissions that cannot be directly influenced by the County. These include updates to and implementation of SANDAG's San Diego Forward: The Regional Plan, the low-carbon fuel standard (LCFS), statewide vehicle fuel efficiency standards under the Advanced Clean Cars program, Heavy-Duty Vehicle GHG Regulations, Truck and Bus Regulations, the statewide Sustainable Freight Strategy, and other efforts.

Regarding comments on the specificity of transportation GHG reduction measures, the CAP is a plan that identifies key strategies and implementation measures that would apply to the unincorporated area. The County recognizes the importance of partnerships with agencies such as SANDAG, MTS, and NCTD to implement the measures, as indicated in the CAP and in the 2011 GPU. The CAP also includes several measures to address VMT from residential development. Please refer to Master Response 2 on the relationship between the CAP and SB 375. Land use and transportation-related emissions are addressed in the Built Environment and Transportation category in the CAP, specifically under Strategy T-1. GHG Reduction Measures T-1.1 and T-1.2 focus on conserving open space and agricultural lands and in turn limit future growth in the more remote areas of the county. The extinguished future development potential under these measures serves to reduce sprawl development. GHG Reduction Measure T-1.3 is intended to focus growth in the county villages to achieve mixed-use, transit-oriented village centers. See Master Response 5 for a full description of the community plan update GHG reduction measure. Therefore, the County believes that proposed measures address residential VMT through a range of options. Specific performance standards, similar to those identified in GHG Reduction Measure T-2.2 for non-residential development, are not applied to residential development because of the challenges in tracking VMT

performance from residential uses. Measure T-2.2 requires the County to develop an ordinance that requires employers to implement a TDM program. The ordinance would also include a monitoring and reporting mechanism to demonstrate on-going compliance and ensure enforcement. A similar monitoring and reporting requirement cannot be enforced on individual homeowners. Comments also question the enforceability of identified transportation GHG reduction measures. Each of the measures described above includes specific actions the County would take to implement the measures, identifies departments and agencies responsible for implementation, and includes an associated timeline. For example, the County of San Diego Department of Parks and Recreation (DPR) would be responsible for acquiring 437 acres of open space conservation lands per year between 2021 and 2030 to implement GHG Reduction Measure T-1.1. These performance metrics will inform the CAP monitoring process. The County will conduct annual monitoring beginning in 2019, which is assumed to be one year after adoption. Monitoring reports would include the status of measure implementation and would provide the County with the flexibility to adjust as needed, if measures are underperforming. For Measure T-1.1 for example, the monitoring report will confirm if the specified acres have been acquired by DPR. If there is a shortfall in measure implementation for any reason, the County would make adjustments to ensure that overall achievement of the 2030 target stays on track. The County would also prepare a CAP update every 5 years beginning in 2025 which would include updated inventories, adjustments to reduction measures, as necessary, and any changes to land use projections to achieve consistency with zoning and current 2011 GPU land use designations and policies. The regular monitoring and assessment regimen ensures that implementation of the CAP would achieve established GHG emission reductions. Because of the active and adaptive implementation and management of the CAP, the County does not anticipate a situation where the CAP would deviate substantially from the pathway to achieving reduction targets.

8.4.7 Master Response 7 – Outdoor Water Use

Many comments sought clarification on whether GHG Reduction Measure W-1.2 (Reduce Outdoor Water Use) specifies a 40% water reduction from current levels or from a previous version of the County's Water Conservation in Landscaping Ordinance (Landscaping Ordinance). The comments also expressed concern that a 40% reduction may hinder necessary plant-based infrastructure such as bioretention areas, reduce areas able to have native plants, reduce quality of life for residents, and hinder a project's ability to meet grading ordinances to protect slopes from erosion and requirements for discretionary permit approval.

This measure specifically affects water use in outdoor landscaping. The County's definition of a "landscaped area" in the Landscape Ordinance does not include non-irrigated areas designated for non-development, such as open spaces and existing native vegetation, but does include in a project's water budget calculations rock, stone, or pervious design features, such as decomposed granite ground cover adjacent to vegetated areas, if the primary purpose of the feature is decorative. The measure also does not apply to water budgets established for grading plans, which include storm water best management practices. Water budget calculations associated with a grading permit

would be added to the water budget calculations of the building permit to establish an overall water budget for the property. The measure description will be updated to clarify that this measure only applies to water use in landscaping and not all outdoor applications.

This reduction measure targets a 40% reduction from 2014 outdoor water use budgets in potable water use in landscaping applications in the County's 2014 Water Conservation in Landscape Ordinance. The year 2014 is the baseline year for purposes of the CAP inventory as well as this measure. This measure would result in a small increase in water conservation in addition to the conservation efforts already in place as a result of the updates to the State's Model Water Efficient Landscape Ordinance (MWELO) in 2015. In 2014, the reduction factor required was 0.7. A 40 percent reduction of this 0.7 factor (0.28) would require a reduction to a factor of 0.42 (i.e., 0.7 minus 0.28 equals 0.42). With the updates to the MWELO in 2015, this value was already reduced to 0.55 for residential landscapes and 0.45 for non-residential landscapes. Therefore, the CAP would require a new residential project to reduce further by a factor of 0.13 (0.55 required down to 0.42) and a new non-residential project to reduce further by a factor of 0.03 (0.45 required down to 0.42). A reduction of 0.05 ETAF would be like switching out a medium-water use plant for a low-water use plant, assuming an average irrigation efficiency of 0.71. The reduction in outdoor potable water use in the landscape would most likely affect the types of plants to be used in a landscape more than the types of irrigation products used to deliver that water. Additional details related to the methodology and assumptions behind the calculation of MAWA can be found in the MWELO (DWR 2009).

The County's Fire Defensible Space and You brochure contains a list of Undesirable Species that are known to be highly flammable based on other characteristics other than water usage. Many of the plants listed on the Suggested Plant List are considered low water plants and would be acceptable for planting within a fuel modification zone. Drought tolerant trees and shrubs can be maintained by deep watering at least once a month after establishment and once a week for high water use plants. As little as one inch of water per month helps keep established drought tolerant vegetation from readily burning. Properties that require fuel management zones would require additional consideration in plant types when establishing water budget calculations to meet this measure.

On September 24, 2016, Governor Brown signed Assembly Bill (AB) 2515 directing the California Department of Water Resources to update the MWELO, or make a determination that an update is not necessary. The update must be synchronized with the triennial update process of the California Green (CALGreen) Building Standards Code, effective 1/1/2020. A Landscape Stakeholder Advisory Group has been formed to provide recommendations to bring forward in early 2018 to determine if an update is necessary at this time or if it can wait till 2023. One such recommendation currently being considered is including water quality control basins as a Special Landscaped Area which would afford a project additional water with the projects' MAWA calculations. The County's BMP Design Manual and the Low Impact Development Manual contain plant lists that are appropriate for their intended uses in providing water quality benefits and allow designers to propose other species as long as it meets the intent of the intended use and water budget calculations.

The MAWA values would be adjusted accordingly on PDS Form 410 for those projects utilizing the Prescriptive Compliance Option (any new project proposing between 500 and 2500 sq. ft. of irrigated landscaping). Landscape plans are not required, just the signed PDS Form 410 at time of building permit application.

The Prescriptive Compliance Option (PCO) limits a single-family resident to utilizing 75% of the planted areas with climate adapted plants (average plant factor 0.3) that requires occasional watering and no more than 25% turf. Non-residential projects utilizing the PCO require 100% of planted areas to have an average 0.3 plant factor and no turf.

Multifamily residential properties that have sufficient room to provide a common turf area will be afforded additional water use within the MAWA formula based on the turf being considered a recreational area. Compensation on plant types may need to be considered elsewhere on the property to meet the overall 40% reduction requirements.

The 40% reduction target in potable landscaping water use would be applied to all projects within the unincorporated area of the county for which the County issues a building permit, discretionary permit, or grading permit. As part of the implementation plan for this measure, the County would update its Water Conservation in Landscaping Ordinance to require the ETAF for residential landscapes to be no more than 0.50 for residential and 0.40 for non-residential landscapes excluding requirements for special landscape areas (e.g., edible landscapes, recreational areas, and areas irrigated with recycled water) as defined in the current ordinance. This ordinance would specify that the water demand requirements apply to potable water only. The County will clarify this in a revision to the measure's description.

Additionally, the goal of the CAP's water measures is to reduce the amount of conveyed potable water use. The County has committed to increasing rain barrel installations under GHG Reduction Measure W-2.1 to increase water availability. Developments may also incorporate greywater landscaping systems that would reduce the demand on potable water conveyance and still provide necessary water needs for desired landscaping. Graywater systems are currently incorporated in to the County's Water Conservation in Landscaping Ordinance.

Reducing water use decreases GHG emissions as it reduces the energy required to treat and convey water and wastewater. This is also a necessary adaptation measure as California is predicted to go through longer and drier periods of drought.

In requiring two trees be planted for each new residential dwelling unit, as required by GHG Reduction Measure A-2.1, commenters have expressed concern that requiring a reduction in outdoor water use would negatively affect this measure and restrictions on locations of trees for fire protection requirements would make this difficult to obtain for many residential dwellings. The County will develop guidelines on how residential dwellings would need to demonstrate compliance with this Measure, including compliance with any potential fire protection measures imposed upon the property, as this implementation moves forward. Information within the guideline will include the County's current plant list within the Water Efficient Landscape Design Manual, consistent with the

County's Fire Code and Fire, Defensible Space and You brochure. The Maximum Applied Water Allowance (MAWA) values would be adjusted accordingly on PDS Form 410 for those projects utilizing the Prescriptive Compliance Option (single family residential projects proposing between 500 and 2500 sq. ft. of irrigated landscaping). Currently, the PCO limits a single-family residence to utilizing 75% of the planted areas with climate adapted plants (average plant factor of 0.3) and no more than 25% area in turf.

Multifamily residential and commercial properties are not included in this requirement at this time as they already have requirements for tree planting contained within community design guidelines and the parking design manual. Sufficient trees are required of these properties to satisfy this Measure. Additional trees would potentially conflict with fire protection requirements.

This Measure applies to single family residential dwellings. Tree planting within a bioretention basin is not applicable to this Measure.

8.4.8 Master Response 8- Range of Alternatives

Several comments expressed concern regarding the dismissal of alternatives, suggested new alternatives, and/or expressed interest in combining, enhancing, or changing certain elements of specific alternatives. Other comments expressed support for the selection of an alternative instead of the project. Finally, some comments suggested that alternatives which were carried forward for evaluation were not feasible. This Master Response has been prepared to address the role of alternatives in the CEQA process and provide context about how alternatives to the project were selected.

CEQA Guidelines Section 15126.6 describes the requirements for the consideration of potentially feasible alternatives to a project. It states in part, the following:

"An EIR shall include a range of reasonable alternatives to the project, or to the location of the project, which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives. An EIR need not consider every conceivable alternative to a project. Rather it must consider a reasonable range of potentially feasible alternatives that will foster informed decision making and public participation. An EIR is not required to consider alternatives which are infeasible..." (Guidelines Section 15126.6 (a))

"...The EIR should...identify any alternatives that were considered by the lead agency but were rejected as infeasible...and briefly explain the reasons underlying the lead agency's determination... Among the factors that may be used to eliminate alternatives from detailed consideration in an EIR are: (i) failure to meet most of the basic project objectives, (ii) infeasibility, or (iii) inability to avoid significant environmental impacts." (Guidelines Section 15126.6 (c))

“The EIR shall include sufficient information about each alternative to allow meaningful evaluation, analysis, and comparison to the proposed project.” (Guidelines Section 15126.6 (d))

“The range of alternatives required in an EIR is governed by a “rule of reason” that requires the EIR to set forth only those alternatives necessary to permit a reasoned choice. The alternatives shall be limited to ones that would avoid or substantially lessen any of the significant effects of the project. Of those alternatives, the EIR need examine in detail only the ones that the lead agency determines could feasibly attain most of the basic objectives of the project.” (Guidelines Section 15126.6 (f))

The purpose of an alternatives analysis is to identify alternatives that reduce or avoid the significant impacts of the project. As evaluated throughout the Draft SEIR, the CAP could result in significant environmental impacts because of:

- construction effects from implementation of many of the GHG reduction measures across all sectors;
- operational impacts to sensitive receptors associated with odors for new or expanded solid waste facilities;
- construction and operational impacts associated with implementation of small wind turbines and large-scale renewable energy facilities; and
- impacts related to not achieving the 2050 GHG reduction goal.

CEQA Guidelines Section 15126.6(a) requires that alternatives reduce the significant impacts of the project while also meeting most of the project objectives. As described on pages 4-5 through 4-11, the Draft SEIR briefly describes several alternatives that were considered, but were rejected from further evaluation because they were determined to be infeasible. These alternatives and a summary of the reasons for elimination include the following:

- Alternative Locations (not evaluated further because it would not support any of the project objectives) (see discussion starting on page 4-5 of the Draft SEIR);
- Reduced Solid Waste Alternative (eliminated GHG Reduction Measure SW-1.1; not evaluated further because it would conflict with the adopted Strategic Plan to Reduce Waste) (see discussion starting on page 4-6 of the Draft SEIR);
- 80% Below 1990 Levels by 2030 (Climate Stabilization Alternative) (more advanced GHG Reduction Measures; not evaluated further because it would result in increased environmental impacts, would not meet the fundamental purpose of a CEQA alternative, and would be legally infeasible) (see discussion starting on page 4-6 of the Draft SEIR);

- Carbon Neutral Alternative (reduce County GHG emissions to net zero; not evaluated because it relies on technologically and economically infeasible measures) (see discussion starting on page 4-8 of the Draft SEIR);
- Distributed Generation Alternative (relies solely on distributed generation technology to achieve renewable energy goals; eliminated because the availability of sufficient sites and infrastructure is speculative and alternative may not meet project objectives) (see discussion starting on page 4-9 of the Draft SEIR); and
- Other Variations/Combinations of GHG Reduction Measures Alternative (considers reductions or enhancements of GHG Reduction Measures; not evaluated further because it is speculative and would not be meaningful to the analysis) (see discussion starting on page 4-10 of the Draft SEIR).

The alternatives that were carried forward for evaluation are described in detail on pages 4-12 through 4-28 of the Draft SEIR and are compared to the impacts of the project, topic-by-topic. The alternatives carried forward for evaluation include:

- No Project Alternative,
- Enhanced Direct Investment Program Alternative,
- 100% Renewable Energy Alternative, and
- Increased Solid Waste Diversion Alternative.

Consistent with CEQA Guidelines Section 15126.6(a), the Draft SEIR includes a reasonable range of feasible alternatives that avoid or substantially lessen the significant effects of the project, even if the alternatives would not attain all project objectives or would be costlier. According to the CEQA Guidelines Section 15126.6 (f)(1), there are many factors that may be considered when addressing the feasibility of alternatives, such as environmental impacts, site suitability as it pertains to various land use designations, economic viability, availability of infrastructure, regulatory limitations, and jurisdictional boundaries. An EIR need not consider an alternative whose effects cannot be reasonably identified, whose implementation is remote or speculative, or one that would not achieve most of the basic project objectives (CEQA Guidelines Section 15126.6(f)(3)). However, CEQA Guidelines Section 15126.6 (e) requires that the No Project Alternative be included in the range of alternatives and the Environmentally Superior Alternative be identified.

The discussion of alternatives is subject to a “rule of reason” (*Laurel Heights Improvement Assn. v. Regents of Univ. of Cal.* [1988] 47 Cal.3d 376, 406-407; *Citizens of Goleta Valley v. Board of Supervisors* [1990] 52 Cal.3d 553, 565-566). “‘There is no ironclad rule governing the nature or scope of the alternatives to be discussed other than the rule of reason.’ (Guidelines, § 15126.6(a)). ‘The agency’s discretion to choose alternatives for study will be upheld as long as there is a reasonable basis for the choices it has made.’” (1 Kostka & Zischke, Practice Under the Cal. Environmental Quality Act [Cont.Ed.Bar 2d ed. 2012] Project Alternatives Section 15:11, p. 743 (rev. 3/12)) (*City of Maywood v. Los Angeles Unified School Dist.* [2012] 208 Cal.App.4th 362, 420-421). “The rule of reason ‘requires the EIR to set forth only those alternatives necessary to permit a reasoned choice’ and to ‘examine in detail only the ones that the lead agency determines could

feasibly attain most of the basic objectives of the project.’ (CEQA Guidelines Section 15126.6(f)). An EIR does not have to consider alternatives ‘whose effect cannot be reasonably ascertained and whose implementation is remote and speculative.’ (CEQA Guidelines Section 15126.6(f)(3))” (*In re Bay-Delta Programmatic Environmental Impact Report* (2008) 43 Cal.4th 1143, 1163-1164).

The County has provided a good-faith evaluation of a reasonable range of potential alternatives to the project. The range of alternatives considers different approaches to GHG reductions from different sectors (e.g., energy and waste). Consideration of every suggested permutation and scaling of an alternative would not provide new meaningful analysis that would be substantially different from the analysis provided in the Draft SEIR. Rather, that analysis would be similar to the analysis provided in the Draft SEIR because the same types of activities (e.g., increased distributed generation, increased waste diversion) would occur. The magnitude of environmental impacts would not be substantially different than the range of analysis provided in the Draft SEIR.

Alternatives/Options Suggested by Commenters

Many commenters suggested that the County should consider and adopt one of the alternatives either rejected or fully evaluated in the Draft SEIR. A description of those alternatives and why those alternatives were either rejected or carried forward for analysis is provided above as well as in Chapter 4 of the Draft SEIR.

In some cases, commenters made general references to increasing the targets of certain measures (e.g., increasing renewable energy to 100%) or devoting more funding and research to specific measures (e.g., traffic calming). No specific alternatives to the project as a whole were provided, but rather options on the ramping up or ramping down of certain GHG reduction measures were suggested. Where these suggestions were made, a specific response is provided in the individual response to comments that follow. No additional analysis of these suggestions is provided in this master response.

Draft SEIR Environmentally Superior Alternative

CEQA Guidelines Section 15126.6(e)(2) requires that if an EIR determines that the No Project Alternative is environmentally superior to the project, the EIR must identify an environmentally superior alternative among the other alternatives considered. Table 4-1 in the Draft SEIR provides a summary comparison of the impacts of the project and alternatives. As described therein, the No Project Alternative would not be environmentally superior to the project because it would not meet SB 32 reduction targets and would not reduce any of the project’s significant environmental impacts. Therefore, this alternative would result in a new significant GHG impact that was not previously identified for the project.

Based on review of the other alternatives considered, the Draft SEIR determined that the Enhanced Direct Investment Program Alternative would be environmentally superior to the Recommended Project because it would reduce significant and unavoidable impacts related to the induced demand for large-scale renewable energy systems while still

achieving both the primary objective of GHG emission reductions consistent with SB 32 and all other supporting objectives. The premise of this alternative was to increase the amount of direct investment projects within the unincorporated county to achieve 227,423 MTCO_{2e} of GHG reductions. Subsequent to publication of the Draft SEIR, the County prepared the “Preliminary Assessment of the Local Direct Investment Program.” The preliminary survey included a high-level cost effectiveness analysis and also assessed the possible approaches to obtain GHG reductions via the County’s local direct investment program (see Master Response 3 above). The preliminary assessment confirms that GHG Reduction Measure T-4.1 can achieve the entire 190,262 MT CO_{2e} of emission reductions as stated in the Draft CAP and could achieve only up to 198,800 MTCO_{2e} in the unincorporated county. As a result, because this alternative would rely on greater GHG reductions from local direct investment projects than may be potentially feasible, this alternative is no longer feasible.

The 100% Renewable Energy Alternative would result in greater GHG reductions, and, therefore, lesser GHG impacts, compared to the project because this alternative would have a greater amount of county-wide energy demands supplied from renewable energy resources. While GHG impacts would be less, overall impact conclusions for all other resource categories would be the same as the project and this alternative could increase the magnitude of these impacts because a greater number of large-scale renewable energy projects would be required.

The Increased Solid Waste Diversion Alternative would result in greater GHG reductions, and, therefore, lesser GHG impacts, compared to the project because this alternative would have a greater amount of waste diversion within the county. While GHG impacts would be less, overall impact conclusions for other resource categories would be the same as the project for aesthetics, agricultural resources, cultural resources, hazards and hazardous materials, hydrology and water quality, and noise. In addition, this alternative would result in greater impacts to air quality, biological resources, transportation, and tribal cultural resources. Overall, this alternative would result in environmental tradeoffs compared to the project. In light of the determination that the previously identified Environmentally Superior Alternative would no longer be feasible.

With regard to the Environmentally Superior Alternative, as described above, CEQA Guidelines Section 15126.6 (f)(1), allows lead agencies when addressing the feasibility of alternatives to consider multiple factors in addition to the relative environmental impacts including factors such as site suitability, economic viability, availability of infrastructure, regulatory limitations, and jurisdictional boundaries. In considering a project, agencies must then render a decision on whether to proceed with the project or whether to proceed with a modification to the project or an alternative that reduces environmental impacts. If an agency decides to proceed with the project despite its significant environmental impacts, it must provide the reasons to support this action based on substantial evidence in the record (CEQA Guidelines Section 15093). This reasoning often balances, as allowed by CEQA, the economic, legal, social, technological, or other benefits of the project that outweigh implementation of project modifications or alternatives that could reduce significant impacts. As such, while an Environmentally Superior Alternative is required to be identified in an EIR (CEQA Guidelines 15126.6 (e)(2)), if an agency

provides substantial evidence in the record to support adoption of the project, modified project, or other alternative that was not identified as the Environmentally Superior Alternative, it is allowed to do so. These reasons and evidence are to be provided in the Statement of Overriding Considerations prepared for the project ultimately approved (CEQA Guidelines Section 15093).

Staff Recommended Project

The County has engaged in a comprehensive process to evaluate the CAP, the feasibility of GHG reduction measures and supporting efforts, and the environmental impacts of those measures and efforts. The County has also considered comments received on the CAP and Draft SEIR in determining the recommendation to bring forward to County decisionmakers. Based on review of the record for the project, County staff are recommending the adoption of the Project as proposed and evaluated in the Draft SEIR with the following revisions (Recommended Project):

- SEIR “Increased Solid Waste Diversion Alternative” would replace GHG Reduction Measure SW-1.1, and
- Direct Investments implemented through GHG Reduction Measure T-4.1 would be implemented at the level to achieve 145,642 MTCO_{2e} of GHG emission reductions.

The Recommended Project would result in implementation of a CAP that includes increased reliance upon solid waste diversion to achieve additional GHG reductions. This Recommended Project would achieve a 5 percent increase in the diversion rate of solid waste county-wide by 2030 compared to the Project. This would further accelerate the reduction that would occur over the life of the project and would provide approximately 74,572 MTCO_{2e} in additional GHG reductions by 2030. The Recommended Project also includes increases to three measures and the incorporation of a new measure to install electric vehicle charging stations throughout the unincorporated County. The Recommended Project would also decrease reliance on direct investments under GHG Reduction Measure T-4.1.

The Recommended Project was selected because in comparison to the Project it would result in similar impacts for most issue areas and it would provide additional GHG reductions that would not be achieved with the Project. Further, it would achieve all project objectives and would better fulfill the first project objective: reduce community and County operations GHG emissions to meet the County’s GHG reduction targets for 2020 and 2030, and provide a mechanism to meet the County’s projected 2050 goal. The Recommended Project would better fulfill this objective because of the greater amount of GHG reductions that would be achieved by 2030 and beyond (i.e., 57,103 MTCO_{2e} and 74,527 MTCO_{2e}, respectively) under this alternative.

The Draft SEIR identified the Enhanced Direct Investment Alternative as the Environmentally Superior Alternative because it would reduce impacts in all environmental issue areas and would achieve 2020 and 2030 GHG reduction targets.

However, the preliminary assessment of the local direct investment program (see Planning Commission Hearing Report and Master Response 3) illustrates that this alternative would no longer be feasible as evaluated in the Draft SEIR. The preliminary assessment shows that the County can attain no more than 198,800 MTCO₂e of reductions from GHG Reduction Measure T-4.1 by 2030, less than the 227,423 MTCO₂e of reductions needed to implement the Enhanced Direct Investment Alternative. As explained further in the preliminary assessment of the local direct investment program, the County cannot achieve the amount of reductions needed to implement the Enhanced Direct Investment Alternative by 2030. Therefore, this alternative is no longer feasible.

8.4.9 Master Response 9 Selection of GHG Reduction Measures

Several comments expressed concern that the County's selection of GHG reduction measures within the CAP is limited, and the GHG reduction measures that were selected disproportionately reduce GHG emissions compared to the relative contribution of the emissions sectors (e.g., transportation measure-related GHG reductions do not equal the proportion of transportation-related GHG emissions that were inventoried). Other comments suggested revising or intensifying existing GHG reduction measures, or suggested the addition of new measures. This master response addresses broad concerns regarding the selection process for GHG reduction measures related to all sectors. Master Response 6 addresses a similar concern but focuses on the built environment and transportation sector only.

The purpose of the CAP is to mitigate GHG emissions resulting from buildout of the 2011 GPU in accordance with GPU Policy COS-20.1 and 2011 GPU EIR Mitigation Measure CC-1.2. Additionally, the County's CAP and associated GHG reduction measures are consistent with the State's GHG reduction objectives. The California Air Resources Board (CARB) considers local governments as essential partners in helping the State, either through CAPs or other GHG reduction plans, to achieve its objectives of reducing statewide GHG emissions to 1990 levels by 2020 and 40% below 1990 levels by 2030 per targets set under AB 32 and SB 32, and 80% below 1990 levels by 2050 per the goal set by EO S-3-05. In addition to local action, the State's plan includes policies and programs that are outside local government jurisdiction such as vehicle technology requirements, Cap-and-Trade, and regulations on refineries (CARB 2017, CARB 2014). As such, the County's CAP both implements an adopted 2011 GPU policy and mitigation measure, and serves a collaborative role in addressing the State's climate objectives.

The CAP includes 30 GHG reduction measures that form the regulatory framework that implements the plan. CEQA Guidelines 15183.5, which establishes required elements for GHG reduction plans, does not require the CAP to implement all feasible GHG reduction measures, but does require a qualified GHG reduction plan like the CAP to specify measures or a group of measures that substantial evidence demonstrates, if implemented on a project-by-project basis, would collectively achieve the specified emissions level. The County is also not required to adopt GHG reduction measures in any specific proportion, whether proportional to the County's GHG emissions sectors or not. The County has the policy authority to consider and select reduction measures in any combination or at any level it finds, based on substantial evidence, meet the CAP's GHG

reduction targets, regardless of whether other suggested measures may also result in GHG reductions.

The range of measures included in the CAP were determined through review of potential available strategies and measures, their effectiveness in reducing GHG emissions, and their applicability to the unincorporated area. The final strategies and measures for inclusion in the CAP were determined through visioning sessions, workshops, and meetings with stakeholder groups and deliberation among the County's Sustainability Task Force members, comprised of 11 County departments. As described on pages 6-2 and 6-3 of the CAP, the County collaborated with over 50 stakeholder groups in the environmental, business, and community sectors during a total of over 100 public events to gather input to inform development of strategies and measures for the CAP. The primary determinant for whether a measure was chosen was its GHG reduction potential and whether it would help the County achieve its GHG reduction target in 2030. Measures were also assessed for their applicability and effectiveness in the County's unique rural setting. The County focused on measures that would be enforceable, achievable, and measurable. As shown in the CAP, the selected measures are anticipated to meet State targets through 2030.

The County could consider additional measures or varying degrees of implementation of each GHG reduction measure, to the degree implementation would be feasible and would contribute to reaching the 2030 target. However, the proposed CAP evaluated throughout this Draft SEIR already contains a full spectrum of feasible GHG reduction measures to achieve the 2020 and 2030 targets, and now also includes a new GHG Reduction Measure T-3.5 and increases in reductions from other measures at the suggestion of commenters.

The County acknowledges that the current mix of GHG reduction measures achieves a greater percentage of reductions from the non-transportation sector. However, the CAP's current mix of GHG reduction measures, which substantial evidence supports are adequate to meet the CAP's reduction targets, would not be static over the life of the CAP. Rather, this mix of GHG reduction measures would be monitored and changed as additional data and technology become available, and if feasible could achieve additional reductions from the transportation sector in the future.

Implementation of a CAP is adaptive and per CEQA Guidelines Section 15183.5, the County is required to monitor progress towards attaining adopted reduction targets. Also, per CEQA Guidelines Section 15183.5(b)(1)(E), the County is required to amend the CAP if it finds that the plan is not achieving those targets. In addition, the CAP specifically includes an implementation requirement for regular monitoring and updates per Chapter 5 of the Final CAP. The County appreciates the multiple suggestions provided by the public for additional measures that can further reduce emissions in the county. However, as discussed above, the CAP already contains a full spectrum of GHG reduction measures to achieve the 2020 and 2030 targets. Although not all suggested measures may fall under the County's jurisdiction, the County will continue to evaluate these suggestions as part of the CAP's adaptive management process.

Potential co-benefits of reduction measures and their relative cost were secondary determinants for measures chosen. Co-benefits represent beneficial secondary effects that may result from implementing strategies and measures. These co-benefits could include air-quality improvements, conservation of biological resources, carbon sequestration, community health, cost savings, energy savings, improved mobility, job generation, noise reduction, public health improvements, water quality improvements, and water savings. Co-benefits are not necessary for measure selection, but identify important beneficial aspects of a measure. Relative costs are also used as a feasibility metric for County deliberation. The County is undertaking a detailed implementation cost analysis and benefit-cost analysis for the CAP. The Climate Action Plan Implementation Cost Report: A Preliminary Estimate of County of San Diego Costs for the Five-Year Forecast includes an estimate of internal costs to the County of San Diego for implementing and administering the CAP and its measures. The Climate Action Plan Cost-Effectiveness Analysis includes an estimate of the net benefits or costs to residents, businesses, and County operations that participate in, or comply with, the CAP measures. These analyses are provided as attachments to the Planning Commission Hearing Report as information for the decision-makers; however, they were not the primary determinants on selected measures.

8.4.10 Master Response 10- Use of a Program EIR to Evaluate a Climate Action Plan and Streamlining under CEQA Guidelines Section 15183.5

Multiple public comments appear to misinterpret the intended purpose, scope, or use of the Climate Action Plan (CAP) and its associated Program EIR (Draft SEIR). Also, multiple comments question the specific locations of where projects or infrastructure that supports a particular GHG Reduction Measure would be located or what level of implementation should be achieved by a particular GHG Reduction Measure. This Master Response has been prepared to reiterate and clarify the purpose, scope, and use of the CAP and associated Program EIR. Further, this response clarifies the process by which the County will ultimately determine the location of infrastructure connected to individual GHG Reduction Measures.

Purpose, Scope, and Use of the CAP

As discussed in Chapter 1 of the CAP, the County's proposed CAP is a comprehensive plan for the reduction of GHG emissions through a series of actions and strategies that would be undertaken by the County. The CAP is a multi-objective plan that balances environmental, economic, and community interests; implements the County's General Plan; and aligns with multiple County initiatives. It identifies strategies and measures to meet the State's 2020 and 2030 GHG reductions targets, and to demonstrate progress towards the 2050 GHG reduction goal.

The CAP has been designed and developed to be an adaptive plan; as progress is made in implementing GHG Reduction Measures, that progress will be monitored (i.e., reductions achieved will be logged), and an assessment will be made on whether

changes to the plan would be required. For example, if certain measures have proven successful, additional investment in those measures may be made; or, conversely, if certain measures are proving to be more difficult to achieve, then the County may redirect its efforts to other measures to achieve overall GHG reduction targets. The County will monitor the overall effectiveness of the plan through annual progress reports, and will ensure the plan continues to make substantial progress toward reduction targets through inventory updates every two years and with updates made to the CAP every five years. If any measures become infeasible or less effective than anticipated in this program-level analysis, the County will be in the position to adjust the measure(s) as needed to ensure that GHG reduction targets are met. Conversely, if any measures prove to be more effective, the County would have the flexibility to adjust those measures. Finally, if new measures become available in future years as a result of technological advancements, the CAP's mandatory monitoring and update mechanism will ensure these measures can be considered for incorporation.

With regard to the specificity of individual measures, the CAP has identified 30 GHG Reduction Measures and supporting strategies to reduce county-wide GHG emissions. The GHG Reduction Measures have been designed to provide clear requirements for achieving GHG emissions reductions, and the specific sectors where emissions reductions will occur, while providing flexibility in the implementation mechanisms that would be used to achieve the reductions. Information relied upon in development of the CAP represents the best and most current information, research, and techniques available today. However, the County does not want to preclude the CAP's consideration of future advancements in technology and legislation. Therefore, the reduction measures and strategies have been proposed as broad categories of actions that can be implemented to achieve reductions consistent with the CAP's targets while at the same time allowing for the future advancement of technology and legislation. To limit the CAP to very specific actions or technologies would limit the overall effectiveness of the CAP because it could not adapt as technology quickly advances and legal requirements rapidly evolve in this area. Therefore, the County has not identified specific locations where actions or improvements resulting from certain measures (e.g., transportation improvements, renewable energy infrastructure) would occur. Rather, as a plan or program level document, the CAP allows for broad consideration of implementation of those actions throughout the unincorporated area.

Purpose, Scope, and Use of the Program EIR

The CAP meets the CEQA definition of a project for a program of activities. Specifically, as described in CEQA Guidelines 15168(a), the CAP consists of "one large project" that covers "a series of actions" that are linked "geographically, as logical parts in a chain of contemplated actions; in connection with issuance of rules, regulations, plans, or other general criteria to govern the conduct of a continuing program; or as individual activities carried out under the same authorizing statutory or regulatory authority and having generally similar environmental effects which can be mitigated in similar ways."

As the CAP is a program, the County has prepared a Program EIR (Draft SEIR), consistent with the requirements of CEQA Guidelines Section 15168. The Draft SEIR is

programmatic in nature, as it analyzes the potential environmental effects of all GHG Reduction Measures and strategies, but it does not specifically analyze individual projects or actions resulting from implementation of the CAP because the details of such projects and actions are not available (e.g., specific location of infrastructure). This is consistent with the requirements of CEQA. While CEQA coverage is provided on the program of activities proposed under the CAP, specific GHG Reduction Measures or strategies will require subsequent implementing action by the County. The County will implement specific activities proposed under the CAP (e.g., “later activities”), determining whether they are consistent with the activities identified in the CAP, and determining whether sufficient evaluation of the potential environmental impacts associated with these later activities has been provided in the Draft SEIR for the CAP. These later activities would be examined in light of the information in the Draft SEIR to determine whether an additional environmental document must be prepared. During this examination, if the County finds pursuant to CEQA Guidelines section 15162 that no new significant effects are identified or no new mitigation measures would be required on a subsequent project, the activity can be approved as being within the scope of the project covered by the Draft SEIR. In this situation, the County must incorporate all project requirements relevant to the GHG Reduction Measure and all feasible mitigation measures from the Draft SEIR into the later activity, as needed, to address significant or potentially significant effects on the environment. If a subsequent project or later activity would have significant effects that were not examined in this Draft SEIR, the County would prepare an initial study to determine the appropriate environmental document. If an additional environmental document is needed, whether it is a mitigated negative declaration or supplement to the Draft SEIR, the Draft SEIR can be used to simplify the task of preparing the follow-up environmental document by allowing the County to focus on the issues that were not previously addressed in the Draft SEIR, as indicated in CEQA Guidelines Section 15168(d).

An additional streamlining benefit of the CAP and Draft SEIR is that the CAP has been prepared consistent with the tiering and streamlining provisions of CEQA Guidelines Section 15183.5, which would allow for streamlining future project-specific GHG emissions analyses where projects considered by the County can demonstrate consistency with the CAP.

To use the tiering and streamlining provisions of Section 15183.5, agencies must prepare a plan that meets certain requirements described as follows in Section 15183.5(b)(1):

“(1) Plan Elements. A plan for the reduction of greenhouse gas emissions should:

- (A) Quantify greenhouse gas emissions, both existing and projected over a specified time period, resulting from activities within a defined geographic area;
- (B) Establish a level, based on substantial evidence, below which the contribution to greenhouse gas emissions from activities covered by the plan would not be cumulatively considerable;

- (C) Identify and analyze the greenhouse gas emissions resulting from specific actions or categories of actions anticipated within the geographic area;
- (D) Specify measures or a group of measures, including performance standards, that substantial evidence demonstrates, if implemented on a project-by-project basis, would collectively achieve the specified emissions level;
- (E) Establish a mechanism to monitor the plan's progress toward achieving the level and to require amendment if the plan is not achieving specified levels;
- (F) Be adopted in a public process following environmental review."

The proposed CAP has been prepared in accordance with the plan elements described in CEQA Guidelines Section 15183.5(b)(1). Chapter 2, GHG Emissions, Inventory, Projections, and Reduction Targets, describes the County's methodology for quantification of existing baseline and projected emissions for 2020, 2030, and 2050 (CEQA Guidelines § 15183.5(b)(1)(A)). It also describes the recommended reduction targets for 2020 and 2030 which are consistent with the recommended community targets in CARB's Draft 2017 Scoping Plan Update, the State's 2014 GHG emissions inventory, and the targets established by AB 32, SB 32, and Executive Orders B-30-15 and S-3-05 (CEQA Guidelines § 15183.5(b)(1)(B)). For the reasons described in the CAP and Draft SEIR, it is not possible for the CAP to reduce GHG emissions below the 2050 goal with a sufficient degree of certainty. Chapter 3, GHG Reduction Strategies and Measures, describes the specific strategies and actions the County would take to reduce GHG emissions and quantifies the resultant reductions that would be achieved by each measure (CEQA Guidelines § 15183.5(b)(1)(C,D)). Chapter 5, Implementation and Monitoring, describes how the County would implement the plan, monitor its effectiveness, and adaptively manage implementation of specific strategies to achieve reduction targets (CEQA Guidelines § 15183.5(b)(1)(E)). Finally, the County is engaging in a public review process and has prepared appropriate environmental documentation (the Draft SEIR) that programmatically evaluates the full scope of activities that could be implemented under the plan (CEQA Guidelines § 15183.5(b)(1)(F)).

Additionally, the County has prepared a CAP Consistency Review Checklist that provides a process and evidence by which subsequent development projects would demonstrate how they would be consistent with the CAP (i.e., they would not hinder attainment of the 2020 and 2030 reduction targets). If subsequent projects are found to be consistent with the CAP, then the environmental documents prepared for these projects can rely upon and incorporate by reference the cumulative GHG analysis for the CAP as presented in the Draft SEIR. If they are not found consistent with the CAP, or if their effects on GHG emissions are found to be cumulatively considerable notwithstanding compliance with the CAP and the checklist, CEQA Guidelines section 15183.5 provides that the project would require further evaluation pursuant to CEQA. For example, a project found not consistent with the CAP would require a GHG technical study prepared in accordance with the Report Format and Content Requirements (included as part of the proposed project), which would then determine if impacts could be mitigated to a less-than-significant level.

Therefore, the qualified CAP, the program EIR for the CAP, and the CAP's Consistency Review Checklist process are based on substantial evidence and work together to provide the programmatic environmental review and streamlining mechanism for the evaluation of GHG emissions for future development projects.

8.4.11 Master Response 11 - Carbon Sequestration

Several comments raise questions about the level of carbon sequestration assessment in the CAP, including addressing changes in carbon stock in existing or proposed vegetation as well as in soil. Comments include the claim that the CAP does not assess the carbon storage and sequestration 1) benefits associated with preserving open space and agricultural easements (GHG Reduction Measures T-1.1 and T-1.2), planting native species, and woody crops; and 2) losses associated with the development of large-scale renewable energy projects, such as solar and wind, and land use conversions. Other comments contend that the CAP should include a thorough accounting of carbon sources and sinks related to vegetation and soils. Some comments acknowledge methodological challenges associated with establishing a soil carbon baseline while others reject using such challenges as a reason for excluding soil carbon from the CAP's analysis, citing a variety of sources. Comments also included a list of recommended measures related to increasing the carbon stock and sequestration potential in the County.

Exclusion of Carbon Storage and Sequestration in the CAP Inventory and Forecasts

The County acknowledges the role of vegetation in the County's overall carbon emissions as noted by the commenters. Changes in the County's carbon stock over time, or carbon flux, can both result in indirect GHG emissions through lost carbon sequestration potential from removed or disturbed vegetation, such as through urbanization; and reductions in GHG emissions through an increase in carbon stock, such as through tree plantings and conservation of natural lands through easements. Forecasting changes in carbon stock would entail analyzing how much existing vegetation would be removed or disturbed by growth projected under the 2011 General Plan Update. Vegetation removal for a future individual development cannot be projected at the plan level as the amounts, timing, and type of vegetation removal would vary for each individual project. In addition, to characterize the effect of carbon flux on the County's GHG inventory and projections, an inventory of the existing carbon stock would need to be taken first and then compared to an assessment of the activities affecting the County's carbon stock in the future.

The County's inventory relies on models and methods approved by the State to be consistent with the State's accounting methodologies and GHG reduction goals. In CARB's Draft 2017 Scoping Plan Update, the State focuses renewed attention on California's natural and working lands (CARB 2017:121). Natural and working lands and their potential to sequester carbon form one of six pillars of Governor Brown's climate change strategy for the State. In an effort to further the vision of California's Global Warming Solutions Act, Governor Brown identified key climate change strategy pillars in his January 2015 inaugural address. As a result of this renewed attention, the California Natural Resources Agency's (CNRA) is developing the California Natural and Working

Lands Carbon and Greenhouse Gas Model (CALAND). CALAND is a joint effort between CNRA and Lawrence Berkley National Laboratory (LBNL) that simulates the effects of various land management practices on the carbon dynamics on all California lands based on a historical baseline carbon inventory, with the ability to analyze at the county level. CALAND is currently undergoing a formal public engagement process and is scheduled for public release in mid-2018 (pers. comm., Di Vittorio). To stay consistent with State-approved carbon accounting methodologies and for increased data defensibility and integrity, the County has chosen not to independently undertake a separate carbon stock inventory that may be superseded in the near future by the CALAND effort. The County plans to utilize CALAND, once released, in the next update to the CAP to develop a carbon stock inventory and forecast that is consistent with the State's GHG inventory.

The California Emissions Estimator Model (CalEEMod) is another model recommended by several air districts throughout California, including the San Diego County Air Pollution Control District, that quantifies the effects of tree plantings and land use changes on carbon sequestration and resulting GHG emissions. However, this model is limited to project-specific applications and does not have the capacity to determine baseline carbon inventories based on existing sinks. CalEEMod applies carbon accumulation rates per acre or per tree, in metric tons of carbon dioxide (MTCO₂) per year, to the changes in land cover types and tree populations by land use and tree type, respectively. As such, this model was used to quantify the tree planting GHG Reduction Measures A-2.1 and A-2.2, but the model input only evaluates land use changes and cannot be used to determine the County's baseline carbon stock. CalEEMod is currently used to quantify sequestration loss from vegetation removal for individual projects. While such accounting is occurring at the project level, tracking of net carbon flux in the future is not feasible at the programmatic level at this time.

Comment-Specific Responses

The CAP accounts for the reduction in GHG emissions associated with the carbon sequestration anticipated in the proposed tree planting programs under GHG Reduction Measures A-2.1 and A-2.2. However, the County did not quantify the GHG emissions reductions because of additional sequestration from the future preservation of natural lands in GHG Reduction Measures T-1.1 and T-1.2 because it is speculative to determine what natural lands could be preserved as the exact location of displaced development is not yet known. Implementation of the measure and progress towards these performance metrics will be tracked through the CAP's robust implementation and monitoring process.

The County appreciates the recommendations made by commenters to include additional planting measures for native vegetation and woody crops, such as orchards and vineyards, to increase carbon sequestration in the county. The carbon sequestration benefits of such measures were not quantified for a variety of reasons. The planting of native vegetation is already encouraged through the County's current Landscape Ordinance and also through GHG Reduction Measure W-1.2. However, the type and number of plantings that result pursuant to this ordinance and GHG Reduction Measure W-1.2 could vary widely for individual developments and, thus, the quantification of the carbon storage benefits of these efforts would be speculative. With respect to woody

crops, the County does not have jurisdiction over the types of crops that farmers choose to plant and cannot mandate increased cultivation of woody crops. For the next update to the CAP, the County will consider inclusion of the analysis of carbon storage and sequestration benefits of native vegetation and woody crops.

One comment stated that the carbon sequestration lost from removed vegetation and disturbed soil due to development of large-scale renewable energy generation projects pursuant to the CAP would outweigh the GHG reduction benefits of such projects. As stated in the Draft SEIR on pages 2.7-28 through 2.7-29, such projects would be subject to discretionary review and feasible mitigation would occur at the project level.

As part of the County's discretionary review process, all large renewable energy projects would be subject to discretionary review and required to obtain a Major Use Permit. As part of the County's discretionary review process all large renewable energy projects would be evaluated under CEQA and would be required to implement mitigation measures to minimize all significant impacts to the extent feasible related to GHG emissions.

If applicable, a renewable energy project's analysis would need to assess the effect of vegetation removal on the net GHG emissions associated with the project. The Draft SEIR assumes that these impacts will be mitigated to the extent feasible and, as such, anticipates that the GHG reduction benefits associated with renewable energy projects over the life of the projects would more than compensate for the increases in emissions from construction, vegetation removal, or decommissioning activities. In addition, biological mitigation will likely be required for these impacts, typically on a one-to-one basis, mitigating both biological impacts and effects on carbon sequestration.

With respect to addressing the loss of carbon sequestration and stored carbon in various types of soils because of land use change, the County appreciates the variety of suggestions submitted by the community to help the County quantify these losses and increase carbon sequestration and storage potential in soils. To track the soil carbon stocks in the County, a detailed long-term study of samples from areas across all land use types in the County would need to be conducted. While the U.S. Department of Agriculture's Carbon Management and Evaluation Tool (also known as COMET-Farm) is available to individual farms and ranches to estimate their soil carbon levels, the use of this tool for the entire County would require a comprehensive survey of farming practices, irrigation factors, and other data needs. The analysis would require comprehensive County-specific soil carbon studies to address the County's soil carbon stocks and forecasts. The unincorporated areas cover lands under federal and State jurisdiction and private lands. The County would have limited ability to collect soil samples from these lands to analyze sequestration potential for the unincorporated area. Nonetheless, the County will continue to track development of tools that allow quantification of soil carbon stocks and will consider inclusion of such an analysis in future CAP updates.

With respect to including additional measures that increase carbon capture and storage, the County acknowledges the suggestions to recommend soil amendment and conservation, conversion of the Sycamore Landfill to a carbon storage area, conversion

of urban landscapes to natural landscapes, carbon farming, and other similar measures. However, most of the suggested measures would require the detailed assessment of the carbon stock in the County that may be considered in a future update to the CAP. A carbon storage assessment for the County may be considered in the next update to the CAP. The County acknowledges the benefits of carbon farming and does have an opportunity under implementation of GHG Reduction Measure T-4.1 to pursue compost additions to rangeland project, as listed on page 2.7-25 and in Appendix B of the CAP SEIR. Thus, the County will have an opportunity to consider these measure recommendations in the future CAP update pending a carbon stock analysis for the County.

8.4.12 Master Response 12 - Mitigation Hierarchy and Use of Carbon Offset Credits

Several comments expressed concern regarding CAP Mitigation Measure M-GHG-1, which the Final SEIR identifies as mitigation for significant cumulative impacts related to General Plan Amendments (GPAs). Specifically, the commenters are concerned that CAP Mitigation Measure M-GHG-1 allows GHG emissions resulting from GPAs to be offset through the purchase of carbon offset credits. Additionally, many commenters conflate two separate concepts that are related to the CAP: direct investments through a local direct investment program under GHG Reduction Measure T-4.1, and the use of carbon offset credits to mitigate project-related GHG emissions from future GPAs under CAP Mitigation Measure M-GHG-1. Direct investments, established through GHG Reduction Measure T-4.1, would be made by the County. Carbon offset credits under CAP Mitigation Measure M-GHG-1, if utilized by projects, will mitigate significant cumulative impacts from GPAs. This Master Response describes the use of carbon offset credits only, and has been prepared to reiterate and clarify the purpose, scope, and use of the GHG mitigation hierarchy that would be applicable to GPAs. For information related to GHG Reduction Measure T-4.1 and the County's direct investments, refer to Master Response 3.

Use of Carbon Offset Credits

The use of carbon offset credits as a mechanism to mitigate project-related GHG emissions is a feasible, established, and commonly recognized approach utilized in the discretionary development review process. The utilization of carbon offset credits to mitigate GHG emissions is expressly authorized by CEQA Guidelines Section 15126.4(c)(3). The CEQA Guidelines recognize that offsite mitigation, which may include purchase of offsets, may be used as mitigation for GHG emissions.

Further, the State legislature when adopting AB 32, delegated the California Air Resources Board (CARB) with the responsibility to implement and develop the programs and requirements necessary to achieve the GHG emissions reduction mandates of AB 32. Among the responsibilities given to CARB, AB 32 authorized CARB to adopt market-based compliance mechanisms, which could include carbon offset credits. In particular, CARB's Scoping Plan must "identify and make recommendations on direct emission reduction measures, alternative compliance mechanisms, market-based compliance

mechanisms, and potential monetary and nonmonetary incentives” to achieve the 2020 goal, and achieve “the maximum technologically feasible and cost-effective GHG emission reductions” by 2020 and maintain and continue reductions beyond 2020. On December 14, 2017, CARB adopted *The 2017 Climate Change Scoping Plan Update* (Second Update)(CARB 2017). CARB recommended that lead agencies prioritize on-site design features that reduce emissions, especially from VMT, and investments in GHG reductions within the project’s region that contribute potential air quality, health, and economic co-benefits locally. Examples of investments in GHG reductions in the project’s region include financing installation of regional electric vehicle (EV) charging stations, solar panels, solar water heaters, smart meters, energy efficient lighting, energy efficient appliances, energy efficient windows, insulation, and water conservation measures for homes within the geographic area of the project. However, CARB also recognized that where further project design or regional investments are infeasible or not proven to be effective, it may be appropriate and feasible to mitigate project emissions through purchasing and retiring carbon offset credits issued by a recognized and reputable voluntary carbon registry. CARB also recognizes that achieving net zero increases in GHG emissions, resulting in no contribution to GHG impacts, may not be feasible or appropriate for every project, however, and the inability of a project to mitigate its GHG emissions to net zero does not imply the project results in a substantial contribution to the cumulatively significant environmental impact of climate change under CEQA (CARB 2017). Achieving no net additional increase in GHG emissions, resulting in no contribution to GHG impacts, is an appropriate overall objective for new development. This is consistent with the CAP SEIR Mitigation Measure M-GHG-1 to reduce cumulative impacts from future GPAs.

California Air Pollution Control Officers Association’s (CAPCOA) also recognized that many projects that achieve no net additional GHG emissions may only be deemed less than significant with offsite reductions or the opportunity to purchase GHG emissions reduction credits. As explained by CAPCOA in the *Quantifying Greenhouse Gas Measures Report* (2010):

“Since CEQA requires mitigation to a less than significant level, it is conceivable that many projects subjected to a zero threshold could only be deemed less than significant with offsite reductions or the opportunity to purchase greenhouse gas emission reduction credits. GHG emission reduction credits are becoming more readily available however, the quality of the credits varies considerably. High-quality credits are generated by actions or projects that have clearly demonstrated emission reductions that are real, permanent, verifiable, enforceable, and not otherwise required by law or regulation. When the pre- or post-project emissions are not well quantified or cannot be independently confirmed, they are considered to be of lesser quality. Similarly, if the reductions are temporary in nature, they are also considered to be poor quality. Adoption of a zero threshold should consider the near-term availability and the quality of potential offsets.”

In a related action which demonstrates the legitimacy of carbon offsets by a State agency, the Natural Resources Agency in their *Final Statement of Reasons for Regulatory Action*

(2009) which amended the CEQA Guidelines to address GHG emissions pursuant to Senate Bill 97, addresses carbon offsets as follows:

The Natural Resources Agency finds that the offset concept is consistent with the existing CEQA Guidelines' definition of "mitigation," which includes "[r]ectifying the impact by repairing, rehabilitating, or restoring the impacted environment" and "[c]ompensating for the impact by replacing or providing substitute resources or environments."

Therefore, the County determined that the use of carbon offset credits is a well-established method for mitigating project-level GHG emissions and as such, provides this option under the circumstances described below.

Determining GHG Emissions at the Project Level

After adoption of the CAP, all discretionary projects that are subject to CEQA would be evaluated for consistency with the CAP. The CAP Consistency Review Checklist (Checklist) has been incorporated as an appendix to the Guidelines for Determining Significance Related to Climate Change, and would be the mechanism that is used to demonstrate compliance with the CAP. The determination of consistency with the CAP would be evaluated utilizing the following two approaches:

- First Approach: If the project is consistent with the County's General Plan (2011 GPU), then the project could use the CEQA streamlining provision, CEQA Guidelines Section 15183.5, which would allow the project to tier from and incorporate by reference the GHG emissions analysis presented in the Draft SEIR, upon certification. To show consistency with the CAP, the project would be required to implement applicable GHG reduction measures as adopted in the CAP and outlined in the Checklist.
- Second Approach: If the project is not consistent with the 2011 GPU and would require a GPA, then the project would not qualify for the CEQA streamlining provision and would be required to prepare a project-specific GHG emissions analysis. If the project is requesting a GPA but not requesting an increase in density or intensity beyond that assigned by the 2011 GPU, then the project could achieve consistency with the CAP by implementing applicable GHG reduction measures as adopted in the CAP and outlined in the Checklist. The analysis conducted in the Checklist should demonstrate how the project would achieve consistency with the CAP through implementation of the measures outlined in the Checklist. Projects that do not comply with the underlying assumptions of the CAP would be required to mitigate in compliance with CAP Mitigation Measure M-GHG-1, any additional GHG emissions that would result above and beyond what was considered by the CAP for that property and land use as designated in the 2011 GPU.

The County requires projects to mitigate incremental GHG emissions to ensure that CAP emission forecasts are not substantially altered in a way that could impede the attainment

of the GHG reduction targets that are established by the CAP. As a result, projects would need to either achieve no net increase in GHG emissions from additional density above the 2011 GPU or reduce all project GHG emissions to zero to achieve no net increase over baseline conditions (i.e., carbon neutrality).

Mitigation Hierarchy and the Use of Carbon Offset Credits

The Natural Resources Agency in their Final Statement of Reasons for Regulatory Action (2009) which amended the CEQA Guidelines to address GHG emissions pursuant to Senate Bill 97, expressly rejected invitations to establish any sort of mitigation hierarchy for GHG emissions in CEQA Guidelines Section 15126.4(c):

“OPR and the Resources Agency recognize that there may be circumstances in which requiring on-site mitigation may result in various co-benefits for the project and local community, and that monitoring the implementation of such measures may be easier. However, CEQA leaves the determination of the precise method of mitigation to the discretion of lead agencies.”

It is important to note that GHG emissions represent a global, cumulative impact. This was recently acknowledged by the California Supreme Court (see *Center for Biological Diversity et al., v. California Department of Fish and Wildlife, and The Newhall Land and Farming Company*, 62 Cal. 4th 204 (2015)). Page 11 of the Supreme Court ruling states that “First, because of the global scale of climate change, any one project’s contribution is unlikely to be significant by itself...With respect to climate change, an individual project’s emissions will most likely not have any appreciable impact on the global problem by themselves, but they will contribute to the significant cumulative impact caused by greenhouse gas emissions from other sources around the globe...Second, the global scope of climate change and the fact that carbon dioxide and other greenhouse gases, once released into the atmosphere, are not contained in the local area of their emission means that the impacts to be evaluated are also global rather than local.”

While the County recognizes the global scale and context of GHG emissions, CAP Mitigation Measure M-GHG-1 includes a geographic priority for GHG reduction features and GHG reduction projects and programs as follows:

- 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.

Geographic priorities would focus first on local reduction features (including projects and programs that would reduce GHG emissions) to ensure that reduction efforts achieved locally would provide co-benefits. All feasible on-site measures must be incorporated into the project and an analysis must be provided that clearly demonstrates how all feasible

on-site measures have been incorporated. Only upon exhaustion of all on-site feasible mitigation options can an applicant consider off-site mitigation options. As specified in CAP Mitigation Measure M-GHG-1, international offsets would be last on the geographic hierarchy and would only be allowed if the applicant demonstrates infeasibility of the other options in the order of hierarchy. Only after all feasible measures have been incorporated and analyzed can the purchase of carbon offset purchases, be considered.

The County requires use of CARB-approved registries, such as the Climate Action Reserve, Verified Carbon Standard, and American Carbon Registry (see SEIR Section 2.7.5.1). The County performed a search of these registries for the locations of projects that are listed to sell carbon credits. At the time of this writing, there is one project out of approximately 650 projects listed on CARB-approved registries located within San Diego County. The project is a reforestation project located in Cuyamaca State Park and the credits are not listed because the trees have not reached maturity. Therefore, there is very little opportunity currently to purchase carbon offset credits within San Diego's unincorporated area and the County will allow the use of offset credits from outside of the boundaries of unincorporated area as directed under CAP Mitigation Measure M-GHG-1.

8.4.13 Master Response 13 - GHG Reduction Measures, CAP Mitigation Measures, and 2011 General Plan Update PEIR Mitigation Measures

This Master Response has been prepared to clarify the intent, application, and separate functions of the CAP's GHG Reduction Measures, the CAP SEIR's Mitigation Measures, and the 2011 General Plan Update PEIR (2011 GPU PEIR) Mitigation Measures. Several commenters have confused the purpose of these project components and when each would apply to actions that are implemented under the CAP.

Intent and Application of the CAP's GHG Reduction Measures

The CAP is a comprehensive plan to achieve county-wide GHG emissions reductions for the existing land use map approved with adoption of the 2011 GPU. As discussed in more detail below, preparation of the CAP was identified as a mitigation measure by the 2011 GPU PEIR. The CAP contains 11 strategies, 30 GHG reduction measures, and associated supporting efforts that are organized under five GHG emissions categories, namely built environment and transportation, energy, solid waste, water and wastewater, and agriculture and conservation. Implementation of the CAP would include a combination of regulations, programs, incentives, and outreach and educational activities that would result from each of the GHG reduction measures.

The County will monitor the effectiveness of the GHG reduction measures through an annual progress report, and will ensure substantial progress toward meeting emissions reduction targets through emissions inventory updates every two years and updates made to the CAP every five years. If any GHG reduction measure becomes infeasible or less effective than anticipated, the County will be in the position to adjust the measure(s) as needed to ensure that emissions reduction targets are met. Conversely, if any GHG reduction measure proves to be more effective, the County would have the flexibility to

adjust those measures. Finally, if new GHG reduction measures become available in future years because of technological advancements, the CAP's mandatory monitoring and update mechanism will ensure these measures can be considered for incorporation.

Regular monitoring will allow the County to track the effectiveness of the GHG reduction measures, update the emissions inventory, and make adjustments to keep on track towards the 2020 and 2030 emissions reduction targets, and the 2050 emission reduction goal.

Therefore, GHG reduction measures are the project components of the CAP and represent specific actions that would be implemented to reduce GHG emissions county-wide as part of the overall mitigation strategy of the 2011 GPU PEIR. However, the CAP's GHG reduction measures themselves are not specifically "mitigation measures" as defined under CEQA, nor are they specifically identified as mitigation in either the 2011 GPU PEIR or the Draft SEIR for the CAP. Rather, the CAP's GHG reduction measures are the actions that have been identified to reduce GHG emissions consistent with the 2020 and 2030 GHG reduction targets and the 2050 reduction goal by the County. Please also see Master Response 9.

Intent and Application of CAP SEIR Mitigation Measures

The CAP meets the CEQA definition of a project for a program of activities. Specifically, as described in CEQA Guidelines Section 15168(a), the CAP consists of "one large project" that covers of "a series of actions" that are linked "geographically, as logical parts in a chain of contemplated actions; in connection with issuance of rules, regulations, plans, or other general criteria to govern the conduct of a continuing program; or as individual activities carried out under the same authorizing statutory or regulatory authority and having generally similar environmental effects which can be mitigated in similar ways."

Because the CAP is a program of related activities, the County has prepared a Program EIR (Draft SEIR), consistent with the requirements of CEQA Guidelines Section 15168.

Consistent with CEQA Guidelines Section 15126.2, the Draft SEIR evaluated the potential for significant direct, indirect, and cumulative environmental impacts to occur because of implementation of the 30 GHG reduction measures identified in the CAP. For some measures, the Draft SEIR identified potentially significant impacts in several resource areas. Consistent with the requirements of CEQA, the County incorporated all feasible CAP SEIR Mitigation Measures to reduce the identified significant impacts as described in each issue area of the Draft SEIR. Consistent with CEQA Guidelines Section 15370 and 15126.4, the CAP SEIR Mitigation Measures would feasibly reduce direct, indirect, and cumulative impacts resulting from implementation of the CAP's 30 GHG Reduction Measures. The CAP SEIR Mitigation Measures would be required as specific development projects are implemented after adoption of the CAP. The CAP SEIR Mitigation Measures would reduce or avoid environmental impacts that could occur with implementation of the CAP GHG reduction measures and from potential cumulative

impacts, and are therefore separate and distinct from the CAP's GHG reduction measures.

Intent and Application of 2011 GPU PEIR Mitigation Measures

The 2011 GPU included Goal COS-20 and Policy COS-20.1 which required the County to comply with legislative GHG requirements in place at the time of its adoption (i.e., AB 32). Since adoption of the 2011 GPU, SB 32 was implemented by the State Legislature and is now the most recent governing legislation addressing GHG emissions. The County has prepared the CAP to be consistent with current legislative targets under both AB 32 and SB 32.

The County prepared the 2011 GPU PEIR to evaluate environmental impacts from implementing the 2011 GPU (e.g., the goals and policies contained therein). In evaluating the GHG impacts of the 2011 GPU, the 2011 GPU PEIR determined that significant impacts could occur and included Mitigation Measures (MM) CC-1.2, CC-1.7, and CC-1.8 to reduce GHG impacts to a less-than-significant level. Mitigation Measure CC-1.2 required that the County prepare a CAP designed to meet reduction targets in place at that time, and Mitigation Measures CC-1.7 and CC-1.8 required the adoption of a GHG Threshold and Guidelines for Determining the Significance of Climate Change that demonstrated a project's consistency with this CAP. Again, this analysis was based on regulatory requirements in place at the time of adoption of the GPU (i.e., 2011).

Current regulations and technology have advanced beyond 2011 targets, and the County has prepared the current CAP to be consistent with existing (i.e., 2017) GHG legislative targets under both AB 32 and SB 32. In preparing a CAP that meets these requirements, it became necessary for the County to change and update the goal and policy of the 2011 GPU and mitigation measures of the 2011 GPU PEIR to more accurately reflect current requirements. As such, modifications to 2011 GPU Goal COS-20, Policy COS-20.1, and 2011 GPU PEIR Mitigation Measures CC-1.2, CC-1.7 and CC-1.8 are proposed and have been evaluated in the Draft SEIR. Previously adopted language for the goal, policy, and mitigation measures would no longer apply. Further, by changing this language and evaluating the impacts of those changes in the Draft SEIR, the County has appropriately considered the environmental effects of potential policy changes to the 2011 GPU. Finally, the proposed changes to the goal and policy of the 2011 GPU and the mitigation measures of the 2011 GPU PEIR establish more stringent requirements for GHG emission reductions because they will require the proposed CAP to meet both the requirements of AB 32 in place at the time of adoption of the 2011 GPU, and also the more stringent and updated statewide compliance target for 2030 GHG emissions established by SB 32.

If the language of 2011 GPU PEIR Mitigation Measures CC-1.2, CC-1.7, and CC-1.8 were not changed as currently proposed, the County would not be required to prepare a CAP that reduces GHG emissions from the 2011 GPU consistent with current legislative requirements. That is, the County would not have a CAP that meets the more stringent 2030 reduction target established under SB 32, and the CAP could not serve as a qualified plan for GHG reductions consistent with CEQA Guidelines Section 15183.5.

For the full text revisions of the goal and policy of the 2011 GPU, and mitigation measures of the 2011 GPU PEIR, please refer to pages 7 through 9 of the Draft SEIR, Project Description.

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From: Samantha.Seikkula@lw.com
To: CAP
Cc: CHRISTOPHER.GARRETT@LW.com; Andrew.Yancey@lw.com
Subject: CAP Comment Letter
Date: Monday, September 25, 2017 3:29:16 PM
Attachments: Golden Door - CAP Comment Letter.pdf

Letter
014

Dear Ms. Soffel,

Please find attached the Golden Door's comments on the draft Climate Action Plan.

Thank you,

Samantha K. Seikkula

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Latham & Watkins LLP

I 014-1

Response to Comment Letter O14

Golden Door Properties LLC
Christopher W. Garrett of Latham & Watkins LLP
September 25, 2017

O14-1 This comment provides introductory remarks. No further response is required.

LATHAM & WATKINS LLP

September 25, 2017

Maggie Soffel
Land Use/Environmental Planner
5510 Overland Avenue, Suite 310
San Diego, CA 92123

Re: San Diego County Draft Climate Action Plan

Dear Ms. Soffel:

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 world’s best destination spas. 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, but are seeking to further enhance the Golden Door according to guiding principles, including the extensive sustainable agriculture on the surrounding acres. Reducing greenhouse gas (“GHG”) emissions to combat the threat of global climate change is an important issue for the Golden Door.

As such, we appreciate the opportunity to participate in the Climate Action Plan (“CAP”) process and provide input on the County’s efforts to reduce GHG emissions. The Golden Door is particularly concerned about GHG emissions from the proposed Newland “Sierra” Project (the “Newland Project”), a revised Merriam Mountains project on property located near Deer Springs Road. The Newland Project would implement urban residential density in a rural area of the unincorporated County, far from job and urban centers and from transit infrastructure. This unplanned development would contradict modern planning principles and the County’s General Plan and would result in long single-occupant vehicle trips causing significant GHG emissions in contrast to the County’s stated goal in the CAP. We submit the following comments on the draft CAP and draft Supplemental Environmental Impact Report (“DSEIR”).

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- O14-2** The comment provides information about Golden Door Properties LLC and expresses support for efforts to reduce GHG emissions. The County acknowledges this comment. No further response is required.
- O14-3** The comment is related to a separate project that is being processed within the County. The commenter asserts that this project is contrary to the County’s stated goal in the CAP. The County acknowledges this comment. However, the comment does not address the adequacy of the SEIR. Therefore, no further response is required or necessary. This comment will be included in the Final EIR and made available to decision makers prior to a final decision on the project.

O14-2

O14-3

September 25, 2017
Page 2

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I. THE COUNTY SHOULD HALT PROCESSING PROJECTS UNTIL THE CAP IS COMPLETED

As an initial matter, the County should cease processing and approving projects until the CAP is completed. While the CAP provides avenues for General Plan Amendments not already considered within the CAP and considers pending projects within its cumulative impacts analysis, the CAP is in draft form and is subject to revisions following the public comment process.

In particular, the County should refrain from processing the Newland Project prior to the adoption of the CAP, as doing so may result in impermissible tiering. We are concerned that the Newland Project may be attempting to tier off the CAP prior to its approval. An environmental impact report ("EIR") may not tier off of an incomplete or future environmental document. (*Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 440.) Newland's proposed "net zero" mitigation measures—in its draft EIR published in June—do not meet the requirements of the CAP's offset mitigation measures as currently drafted. Further, the CAP's offset measures may be revised to provide stronger environmental protection prior to approval. As such, the Newland Project should not be allowed to tier off of the unapproved CAP, and the County should refrain from processing the Newland Project until the CAP is completed.

The Newland Project purports to be "net zero" but does not provide adequate assurances that its offsets will actually achieve the required emissions reductions. The Golden Door provided more fulsome comments on the Newland Project's draft EIR and its various deficiencies in its August 14, 2017 comment letter on the Newland Project's draft EIR.

In particular, the CAP's offset mitigation measures provides geographic priorities for GHG offset projects, beginning with: "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." (DSEIR at p. 2.7-37.) The Newland draft EIR provides a list of priorities for projects, including a "true up" provision for its operational GHG emissions offset requirement. The Newland EIR's "true up" provision allows the County's Planning & Development Services ("PDS") Director to, after Project approval and without additional public input, decrease the volume of operational emissions that Newland is required to offset. This "true up" provision renders the Newland Project's offset mitigation measure illusory.

In contrast, the CAP does not contain any such illusory "true up" provision. The Newland Project should not be allowed to bypass more stringent offset requirements in the CAP simply by being approved prior to the adoption of the CAP. Such an approach would be improper here, where the CAP is required mitigation for the County's General Plan EIR from 2011. (*Lincoln Place Tenants Assn. v. City of Los Angeles* (2007) 155 Cal.App.4th 425, 445 [mitigation measures must be implemented, not "merely adopted and then neglected or disregarded"].) Sprawl projects, such as the Newland Project, that cause significant GHG emissions from long automobile trips in contrast to modern planning principles, should not be allowed to bypass any GHG reduction measures in the CAP simply by seeking approval

O14-4

O14-5

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O14-7

O14-8

O14-4 The comment suggests that the County should stop processing projects until the CAP is complete. The County acknowledges this comment. However, the commenter does not address the adequacy of the Draft SEIR or support the assertion that project processing should be halted. There is no basis presented to support the assertion that the County should not process or approve projects until a CAP is approved. Therefore, no further response is provided or necessary. This comment will be included in the Final EIR and made available to decision makers prior to a final decision on the project.

O14-5 The comment suggests that the County should not continue to process a project, which is currently under review by the County. The commenter also suggests that that project may be attempting to tier off the CAP prior to its approval. The commenter expresses concern but does not provide any evidence that tiering is occurring. Furthermore, the referenced project is not tiering from the CAP. The Newland Sierra project released a Draft EIR that was circulated for public review from June 15, 2017 to August 14, 2017. As described therein, it does not tier from or otherwise use a draft document (the Draft CAP) to evaluate its GHG emissions. The comment does not address the adequacy of the SEIR and, therefore, no further response is required or necessary.

O14-6 The comment asserts an opinion about a project under review by the County and the adequacy of that project's mitigation. This comment is not related to the CAP or adequacy of the Draft SEIR and, therefore, no further response is required or necessary. This comment will be included in the Final EIR and made available to decision makers prior to a final decision on the project.

O14-7 The comment sets forth the mitigation framework for projects that would not comply with the underlying land use assumptions of the CAP (i.e., GPAs). This portion of the comment does not raise issue with the analysis within the Draft SEIR. It also asserts an opinion about a project under review by the County. The County acknowledges this comment. This comment is not related to the CAP or adequacy of the Draft

	<p>SEIR and, therefore, no further response is required. This comment will be included in the Final EIR and made available to decision makers prior to a final decision on the project.</p> <p>O14-8 The comment states that the CAP does not contain a “true up” provision. The commenter is conflating the analysis of a development project to the project at hand. The CAP is a programmatic document intended to reduce GHG emissions from County operations and new and existing development and activities occurring within the jurisdiction. The CAP, however, is inherently designed to be adaptable. As newer technologies become available, the CAP is afforded the flexibility to take credit for those emissions reductions. The commenter also states that sprawl projects that cause significant GHG emissions from long automobile trips should not be allowed to bypass GHG reduction measures included in the CAP. The County disagrees with this assertion. The CAP is not adopted at this time, and therefore the County does not have the ability to require the project to comply with the CAP. Additionally, the project that the commenter refers to is not included in the baseline GHG emissions inventory or in future GHG emissions projections. As described on pages 2.7-37 through 2.7-40 of the Draft SEIR, General Plan Amendments (GPAs) would be required to mitigate for all incremental GHG emissions that would result above what the 2011 GPU PEIR evaluated. Therefore, GPA projects would not threaten the achievement of GHG emissions reduction targets established by the CAP. This comment does not address the adequacy of the Draft SEIR, and, therefore, no further response is required or necessary. This comment will be included in the Final EIR and made available to decision makers prior to a final decision on the project.</p>
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September 25, 2017
Page 3

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subsequent to the time in which the County set the requirement for the CAP but prior to actual approval almost seven years later.

The offset requirements and assurances in the CAP provide more certainty of achieving GHG emissions reductions than in Newland's flawed "net zero" approach. Thus, the County should abstain from processing the Newland Project until the CAP is completed.

II. GHG REDUCTIONS SHOULD BE PRIORITIZED WITHIN THE COUNTY

The County's General Plan prioritizes GHG emissions reductions within San Diego County. In 2011, following approximately ten years of substantial input from numerous stakeholders and citizen groups, the County approved an update to its General Plan. (San Diego County General Plan at pp. 1-2.) In the EIR for the General Plan, the County concluded that the GHG and climate change impacts from the County's operations and from community sources were "potentially significant"—that without mitigation the County would fail to comply with AB 32, which requires the State to lower its GHG emissions to 1990 levels by 2020. As a result, the General Plan EIR included mitigation measures for GHG and climate change impacts, including the adoption of a CAP. (San Diego County General Plan, Mitigation Measure CC-1.2.) The CAP, therefore, was intended to mitigate impacts from GHG emissions *within San Diego County*. In addition, Goal COS-20 of the General Plan prioritizes "[r]eduction of *local* GHG emissions contributing to climate change that meet or exceed requirements of the Global Warming Solutions Act of 2006." (Emphasis added.)

The CAP provides the following 2020 and 2030 adjusted reduction targets and 2050 goal for emissions *in the County*: two percent below 2014 levels by 2020; 40% below 2014 levels by 2030; and 77 percent below 2014 levels by 2050. (CAP at 2-11.) "[T]o meet the 2030 target and 2050 goal, the County will need to achieve a reduction of 897,237 MTCO₂e by 2030 and 2,253,066 MTCO₂e by 2050 beyond legislative-adjusted projections. To close the emissions gap shown in Figure 2.3, this CAP proposes 11 strategies and 29 measures that the County would implement to reduce GHG emissions." (CAP at 2-14.)

The State of California has set an example for all other jurisdictions by making bold commitments to reduce greenhouse gas emissions. The County has explicitly made commitments to reduce emissions in the County consistent with its share of reductions needed for the State to achieve its goals. However, we note that the County has not demonstrated substantial evidence to support the availability of offsets within the County. While the language in the CAP states that the County will fund and implement investment projects, there is no evidence or assurance to suggest that the County is making the investment. Allowing payment for offsets to occur outside of the County is akin to the medieval payment for indulgences. A one-time payment should not absolve emitters for their GHG emissions that occur within the County. The County made a promise to reduce emissions within the County; it should uphold that promise for the benefit of its residents who expect a local reduction in GHGs and copollutants based on the County's plans. There must be some assurance that offset projects will occur within the project site or the County. While we understand each project is unique, the County should incorporate a standard into its offset priorities to promote GHG reductions within the County; otherwise project proponents may be incentivized to devote all or almost all of the

O14-8
cont.

O14-9

O14-10

O14-11

O14-9 The comment asserts the CAP offset requirements and assurances in the CAP provide certainty of achieving GHG emissions reductions. In addition, the commenter asserts an opinion about a project under review by the County. The comment is about another project and is not related to the CAP or adequacy of the Draft SEIR and, therefore, no further response is required. This comment will be included in the Final EIR and made available to decision makers prior to a final decision on the project.

O14-10 The comment provides background information about the 2011 GPU. It also paraphrases 2011 GPU Mitigation Measure CC-1.2 and Goal COS-20 that require measures to reduce local GHG emissions. The CAP does this through inclusion of the 30 GHG reduction measures that would meet the 2020 and 2030 targets as required in the 2011 GPU. Please also see Master Response 13 and Response to Comment O22-8. This comment is not related to the CAP or adequacy of the Draft SEIR and no further response is required.

O14-11 The comment restates information provided in the CAP and asserts that the County has not provided substantial evidence to support the availability or funding of local direct investments in the County. The commenter suggests issues with allowing payment for carbon offset credits to occur outside of the County. The commenter confuses GHG Reduction Measure T-4.1, which requires the County to fund/implement and register local direct investment projects in the unincorporated county, with the CAP Mitigation Measure M-GHG-1 within the Draft SEIR. See Master Response 3 for an explanation related to GHG Reduction Measure T-4.1 and local direct investments and the attachment to the Planning Commission Hearing Report called the Preliminary Assessment of the County of San Diego Local Direct Investment Program which provides a preliminary investigation into the costs and opportunities available with regard to the establishment of a local direct investment program. Please also see The Climate Action Plan Implementation Cost Report: A Preliminary Estimate of County of San Diego Costs for the Five-Year Forecast, summarized below and attached to the Planning Commission Hearing

	<p>Report, which describes a preliminary estimate of costs and benefits related to the implementation of the CAP as a whole. Information related to the costs to implement GHG Reduction Measure T-4.1 is included in the first report.</p> <p>Separately, the CAP Mitigation Measure M-GHG-1, requires a project that increases density or intensity above what is allowed in the 2011 GPU to mitigate GHG emissions first through all feasible on-site design features and then through off-site mitigation, which may include the purchase of carbon offset credits. See Master Response 12 for an explanation of mitigation hierarchy and the use of carbon offsets for projects, which provides substantial evidence for the use of carbon offsets.</p> <p>The County initiated a Climate Action Plan Implementation Cost Report (Report), which indicates a total \$236.4 million to implement the Final CAP in the first six years. Ninety percent of the costs (\$212.1 million) are existing, funded activities and programs that the County is leveraging to achieve GHG reductions and that would be undertaken with or without a CAP. The new and expanded activities and programs, estimated at \$24.3 million, are 10% of the total cost to implement the draft Final CAP in the first six years. Key findings from the analysis include:</p> <ul style="list-style-type: none"> a. Total implementation costs are steady over the six-year period; b. Existing programs account for a significant portion of implementation costs; c. Incremental implementation costs are comparatively low; d. A limited number of incremental programs are unfunded; and e. Current staffing levels are sufficient to cover most of the implementation activities. <p>The County's consultant, the Energy Policy Initiatives Center (EPIC), developed the Report, which estimates the County costs over a six-year period from FY 2017-18 through FY 2022-23, and identifies the potential budget impacts in the first years of CAP implementation. The costs will be reflected in the</p>
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	<p>County's Operational Plan for FY 2018-19 and FY 2019-20. Through implementation and monitoring, including the five-year CAP updates and annual progress reporting, the County will track implementation efforts and reassess costs to synchronize with the budget process. The County will also leverage financing sources by monitoring funding opportunities and mechanisms.</p>
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September 25, 2017
Page 4

LATHAM & WATKINS LLP

resources to offsets occurring outside of the County. The County should consider at least the following methods for ensuring a certain level of offsets occur within the County in addition to any others that would promote offsets within the County:

- A bright-line percentage requirement for offsets to occur within San Diego County, or if this is deemed infeasible, a proportionate dollar amount or fee paid to facilitate GHG emissions reductions within the County;
- A bonus structure similar to a density bonus approach, that allows greater use of offsets for projects located in infill areas or close to existing transit;
- A more regimented set of findings describing the infeasibility of on-site offsets or offsets within the County that the County must make for a proposed project before it is allowed to use offsets outside of the County;
- A requirement that each project must specifically identify available offsets that the project will use within the County prior to approval; or
- A requirement that each project must meet a defined, impartial criteria, such as LEED Platinum.

III. THE CAP MUST PROVIDE ASSURANCES FOR OFFSETS

Regardless of where offsets occur, the County must provide assurances that the offset projects will achieve their projected reductions. The CAP provides, “[a]fter adoption, the CAP will continue to be maintained by the County Department of Planning & Development Services (PDS). Key staff in PDS, with active participation and assistance from the Sustainability Task Force, will facilitate and oversee implementation, monitoring, and reporting on the progress of each measure.” (CAP at 5-2.) It is unclear if such monitoring extends to the offsets, or how the County staff will be able to monitor offset projects that may occur on the other side of the world. In addition, it unclear if the County has any mechanism to enforce offsets in other jurisdictions; therefore, it is unclear if the mitigation is actually enforceable. The CAP should provide detailed information on how the County will ensure monitoring and reporting of the mitigation projects funded by offsets, as mere funding by itself does not equate to mitigation. (See *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692.)

Moreover, the CAP should ensure that the County is able to meet its 2050 emissions reduction goals that extend to 2050. (CAP at 1-2.) While the CAP maintains that it “demonstrates how the County will achieve GHG emissions targets for 2020 and 2030, and demonstrate progress to 2050,” (CAP at 1-13) it is unclear how the 2050 target will be met if General Plan Amendments approved in the near future only provide mitigation assurances to 2048 (assuming approval of the CAP in 2018). The Appendix B to the DSEIR provides:

Adherence to the protocols listed in this Appendix, as well as any additional protocols subject to the same standards as the protocols

O14-12

O14-13

O14-14

O14-12 The commenter suggests a list of requirements to consider to ensure a certain level of carbon offset credits are available within the County. The commenter refers to the CAP Mitigation Measure M-GHG-1, which sets forth standards for GHG mitigation, which include a geographic priority. Refer to Master Response 12 related to this topic. CAP Mitigation Measure M-GHG-1 requires the following geographic priorities for GHG reduction features, and GHG reduction projects and programs to the satisfaction of the Director of Planning & Development Services: 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.

The County requires use of California Air Resources Board (CARB)-approved registries, such as the Climate Action Reserve, Verified Carbon Standard, and American Carbon Registry (see SEIR Section 2.7.5.1). The County performed a search of these registries for location of the projects that are listed to sell carbon credits. At the time of this writing, there is one project out of approximately 650 projects listed on CARB-approved registries located within San Diego County. The project is a reforestation project located in Cuyamaca State Park and the credits are not listed because the trees have not reached maturity. Therefore, there is very little opportunity currently to purchase carbon offset credits within San Diego County.

It is also important to note that GHG emissions is a global, cumulative impact. This was recently acknowledged by the California Supreme Court (see *Center for Biological Diversity et al., v. California Department of Fish and Wildlife, and The Newhall Land and Farming Company*, 62 Cal. 4th 204 (2015)). Page 11 of the Supreme Court ruling states that “First, because of the global scale of climate change, any one project’s contribution is unlikely to be significant by itself...With respect to climate change, an individual project’s emissions will most likely not have any appreciable impact on the global problem by themselves, but they will contribute to the significant

cumulative impact caused by greenhouse gas emissions from other sources around the globe...Second, the global scope of climate change and the fact that carbon dioxide and other greenhouse gases, once released into the atmosphere, are not contained in the local area of their emission means that the impacts to be evaluated are also global rather than local." Thus, emissions released from within the County do not remain local. It is erroneous to conclude offsite offsets do not contribute to the County meetings its share of GHG reductions or mitigate GHG impacts. The CAP and Draft SEIR are also program-level documents (see Master Response 10). The commenter's recommendations are more appropriately applied at the project level at future discretionary review when feasibility of the geographic priority of GHG measures and mitigation is more appropriately determined. However, the CAP and Draft SEIR set up a mitigation framework for subsequent projects to adhere to. Please refer to Master Response 10 regarding use of a program level EIR and subsequent streamlining under CEQA.

The commenter suggests a requirement for a bright-line percentage requirement for offsets to occur within San Diego County, or if this is deemed infeasible, a proportionate dollar amount or fee paid to facilitate GHG emissions reductions in the County. At the program level, there are many variations of ways that projects can achieve GHG emissions reductions and potentially use carbon credit offsets, and many factors that projects consider in implementing GHG mitigation. Without project-level information, it would be too speculative to determine at this time how potential factors including regulations or changes in technology could impact the availability of mitigation. This is due to a wide range of offset protocols and projects that could be deployed, their reduction potential which is unknown at the CAP program-level analysis, and limited availability of offset projects locally at this time. It would not be appropriate to establish bright-line percentage requirement for offsets that would be county-wide. To set a bright-line percentage, would potentially limit the amount of GHG emissions reductions that a project would achieve and

may require the County to inappropriately weigh the GHG reductions against other benefits of a project. See Master Response 12 related to the mitigation hierarchy and use of carbon offset credits.

This requirement is more appropriately analyzed at the project level, when the specific factors of a project are known. For example, the South Coast Air Quality Management District assigned a similar bright-line threshold for the purchase of carbon offsets and carbon offset programs for the Newhall Ranch Project in Santa Clarita (see <https://www.wildlife.ca.gov/regions/5/newhall>). CAP Mitigation Measure M-GHG-1 establishes a similar geographic priority to capture co-benefits of mitigation to reduce impacts from global climate change. Further, there have been seven Assembly Bill 900 (AB 900) projects certified by the Governor of California as economic development and environmental leadership projects. All but one of these projects is required to purchase carbon offsets without a list of geographic priority. The Natural Resources Agency in their *Final Statement of Reasons for Regulatory Action* amending the CEQA Guidelines to address GHG emissions pursuant to Senate Bill 97 expressly rejected invitations to establish any sort of mitigation hierarchy for GHG emissions in CEQA Guidelines Section 15126.4(c):

“OPR and the Resources Agency recognize that there may be circumstances in which requiring on-site mitigation may result in various co-benefits for the project and local community, and that monitoring the implementation of such measures may be easier. However, CEQA leaves the determination of the precise method of mitigation to the discretion of lead agencies.”

The County believes this determination is best evaluated at the project level and CAP Mitigation Measure M-GHG-1 provides the framework for subsequent projects to implement.

Other suggestions made by the commenter include establishing a bonus structure where greater use of offsets could occur for infill areas or areas near transit; requirements for detailed findings describing the infeasibility of on-site offsets; requirements that individual projects specifically

	<p>identify the offsets within the County that the project would use within the County prior to approval; and requirements that each project must meet a defined, impartial criteria, such as LEED Platinum. As stated above, these requirements are more appropriately analyzed at the project level when the County can evaluate the feasibility of each project, when the specific factors of a project are known.</p> <p>O14-13 The comment asserts that the CAP should provide more details about the effectiveness of the carbon offset credits and where they are available. The commenter suggests that it is unclear if the monitoring required in the CAP extends to the purchase of carbon offset credits and suggest that it's unclear if the County has a mechanism to enforce offsets in other jurisdictions making CAP Mitigation Measure M-GHG-1 unenforceable. Please refer to Master Response 12 for mitigation hierarchy and use of carbon offsets. Purchase of carbon offset credits is only allowed under CAP Mitigation Measure M-GHG-1 of the Final SEIR after the established mitigation hierarchy has been applied and is required for GPAs to reduce their emissions to ensure that they do not conflict with the CAP projections. As stated in CAP Mitigation Measure M-GHG-1, carbon offset credits must be purchased through specified registries as follows: (i) a CARB-approved registry, such as the Climate Action Reserve, the American Carbon Registry, and the Verified Carbon Standard, (ii) any registry approved by CARB to act as a registry under the state's cap-and-trade program, (iii) through the CAPCOA GHG Rx and the SDAPCD, or (iv) if no registry is in existence as identified in options (i), (ii), or (iii), above, then any other reputable registry or entity that issues carbon offsets consistent with Cal. Health & Saf. Code section 38562(d)(1)), to the satisfaction of the Director of PDS. Cal. Health & Saf. Code section 38562(d)(1) specifies that carbon offsets shall achieve real, permanent, quantifiable, verifiable, and enforceable reductions. GPAs would be required to provide a comprehensive mitigation program and provide evidence of the GHG emissions that would be reduced through the implementation of project-specific mitigation measures. If carbon offset credits were</p>
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	<p>purchased to offset any remaining incremental emissions, the offsets would need to be vetted and substantiated to ensure that the offsets are representative of retired credits offsite. Monitoring of these offsets would occur under the Mitigation Monitoring and Reporting Program for the GPAs' CEQA documents.</p> <p>The commenter expresses the concern that CAP Mitigation Measure M-GHG-1 as provided in the Final SEIR is unenforceable. The County does not agree. The CARB-approved registries (e.g., Climate Action Reserve) undertake the mitigation to ensure that emissions are offset from projects listed on their registries. An activity can only generate carbon offset credits if the project developer demonstrates the environmental integrity of the activity by meeting specific standards. Carbon offset registries have developed a broad consensus around the standards that are necessary to ensure that offsets are real, permanent, quantifiable, verifiable, enforceable, and additional.</p> <p>These are further defined as follows:</p> <p><u>Real</u>: offsets may only be issued for emissions reductions that are a result of complete emissions accounting.</p> <p><u>Permanent</u>: the emissions reductions must be permanent and not be reversed. For example, in the context of forestry, offset project developers must demonstrate that the carbon sequestered in trees will not be released to the atmosphere after the fact; i.e., that the trees will not be cut down (see SEIR, Appendix B, Part 3, starting on pages 1 and pages 133; also see SEIR Page 2.7-25).</p> <p><u>Quantifiable</u>: the emissions reductions from an activity must be quantified, and offsets may only be issued in an amount that corresponds to emissions that have been quantified. This is accomplished by adhering to standardized quantification methodologies called "protocols," which are discussed in SEIR Chapter 2.7 and detailed in Appendix B of the SEIR.</p> <p><u>Validated</u>: to receive offset credits, emission reductions must be documented and transparent enough to be capable of objective review by a neutral, third party verifier.</p>
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Enforceable: to be eligible to generate offsets from reputable programs, the implementation of the activity must represent the legally binding commitment of the offset project developer. Once the developer undertakes the activity, the developer is under a legal obligation to carry it out.

Additional: the GHG emissions reductions generated by an activity must be additional, meaning that they are only eligible to generate offsets if they would not have occurred without the offset activity. This is accomplished by adhering to the applicable protocol, as detailed in SEIR Appendix B.

Carbon offset protocols (see Appendix B) have been upheld by the courts. In *Our Children's Earth Foundation v. CARB* (2015) 234 Cal.App.4th 870, 880, the First Appellate District recognized the validity of carbon offsets:

[P]rotocols developed by the Climate Action Reserve (Reserve) employ a standards-based approach for ensuring additionality. The Reserve is a national nonprofit organization that (1) develops standards for evaluating, verifying and monitoring GHG emission inventories and reduction projects in North America; (2) issues offset credits for those projects; and (3) tracks offset credits over time "in a transparent, publicly-accessible system." A primary goal of the Reserve is to establish conservative GHG accounting which will ensure that GHG emission reductions are "real, permanent, additional, verifiable, and enforceable by contract." In formulating its standards-based protocols, the Reserve identifies types of emission reduction projects that are both subject to quantification and appropriate for assessment pursuant to performance-based additionality tests.

In 2011, CARB formally adopted its own protocols (for example, see Appendix B of the SEIR, Part 5 pages 101-160 compared to Part 4, pages 220-310). CARB's protocols were challenged as violating AB 32 because they purportedly failed to accurately ensure additionality as required by the act, but the court sided with CARB, finding that CARB's protocols based on Climate Action Reserve's protocols are a "workable

	<p>method of ensuring additionality with respect to offset credits.” (Our Children’s Earth Foundation at p. 889) CARB has since expanded its program to accept carbon offsets issued under American Carbon Registry and Verified Carbon Standard methodologies (See, e.g., Cal. Code Regs., Tit. 17, Section 95990(c)(5)).</p> <p>The appropriateness of using offsets as CEQA mitigation for GHG emissions is established in CEQA Guidelines Section 15126.4(c)(3), which provides that “off-site measures, including offsets that are not otherwise required,” can be used to mitigate a project’s GHG emissions. In promulgating the CEQA Guidelines for GHG mitigation, the California Natural Resources Agency and the Governor’s Office of Planning and Research (OPR) addressed the legitimacy of offsets as follows:</p> <p style="padding-left: 40px;">The Initial Statement of Reasons...cites several sources discussing examples of offsets being used in a CEQA context. Further, the CARB Scoping Plan describes offsets as way to provide regulated entities a source of low-cost emission reductions, and ... encourage the spread of clean, efficient technology within and outside California. The Natural Resources Agency finds that the offset concept is consistent with the existing CEQA Guidelines’ definition of “mitigation,” which includes “[r]ectifying the impact by repairing, rehabilitating, or restoring the impacted environment” and “[c]ompensating for the impact by replacing or providing substitute resources or environments.”</p> <p>Moreover, under AB 900, the Jobs and Economic Improvement through Environmental Leadership Act, certain CEQA streamlining benefits were provided to “environmental leadership” projects. One of the key conditions was that such projects offset all emissions to be GHG neutral. (Pub. Resources Code Section 21183(c)) To date, seven AB 900 projects have been certified by the Governor of California and all but one of them use carbon offsets to achieve net new GHG emissions. The County of San Diego Board of Supervisors approved the Soitec Solar Energy Project (an AB</p>
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	<p>900 project) in 2015 with conditions to purchase carbon offset credits and the Park Circle, Sweetwater Place, and Sweetwater Vistas projects in 2017 with conditions of approval to purchase carbon offsets.</p> <p>For all the reasons stated above and throughout the Final SEIR, the County believes that the allowance of offsets in CAP Mitigation Measure M-GHG-1 is enforceable and monitoring would occur under the Mitigation Monitoring and Reporting Program for the GPAs' CEQA documents.</p> <p>O14-14 The comment asserts that the CAP should ensure that the County can meet its 2050 GHG emissions reduction goal. The comment erroneously characterizes the 2050 reduction goal as a "target." The CAP makes a distinction between the 2020 and 2030 reduction targets and the 2050 reduction goal (see Pages 2-10 and 3-2 of the CAP). As stated on Page 2-10 of the CAP, the plan primarily focuses on reducing emissions by 2020 and 2030, consistent with legislatively-adopted State targets. The County acknowledges that while it is important to create a long-term emissions reduction goal, it would be speculative to demonstrate achievement of a goal for 2050 with the information known today due to uncertainty around future technological advances and future changes in federal and State law beyond 2030. California's GHG reduction targets have been legislatively adopted for 2020 and 2030, while the 2050 goal is expressed in an Executive Order. In addition, <i>The 2017 Climate Change Scoping Plan Update</i> (Scoping Plan Update) is focused on meeting the 2030 reduction target, as directed in SB 32 and AB 32. Therefore, the County's CAP aligns with the State in setting a 2030 target. As climate change science and policy continues to evolve, the County will be able to apply new reductions toward meeting the long-term 2050 GHG emissions reduction goal in future CAP updates. The CAP demonstrates a good faith effort at striving to meet the 2050 goal, and discloses why it cannot be met at this time, recognizing this as a significant unmitigated impact. The comment confuses the local direct investment measure (GHG Reduction Measure T-4.1) with the requirement as stated in CAP Mitigation Measure M-GHG-1 that projects purchase</p>
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carbon offset credits for the life of the project, which is 30 years (see Page 2.7-37 of the Final SEIR). Please refer to response to comment O11-3. The commenter quotes the introduction to Appendix B out of context. Appendix B provides support for the County's local direct investment projects through CARB-approved protocols. While these same protocols may be relied upon for purchasing carbon offset credits as required under CAP Mitigation Measure M-GHG-1, the introduction to Appendix B applies only to how the County will ensure tracking and enforceability of GHG Reduction Measure T-4.1. Further, the commenter assumes that a GPA approved in 2018 would only be required to mitigate to 2048 (30-year project life). However, this does not apply to GHG Reduction Measure T-4.1, which would require the County to fund/implement local direct investments to reduce emissions in the unincorporated county by 2030. Please also see Master Response 3 related to direct investments.

September 25, 2017
Page 5

LATHAM & WATKINS LLP

herein, ensures that the carbon reductions generated by CAP Measure T-4.1 are real, permanent, quantifiable, verifiable, and enforceable. Carbon offset registries require projects to comply with approved protocols using rigorous, standardized review processes. The protocols contain rules and procedures governing the retirement or cancellation of carbon offsets. Protocols and processes ensure that offsets retired from County direct investment projects pursuant to CAP Measure T-4.1 and listed on an offset registry satisfy the environmental integrity criteria established by the offset protocols. Carbon offsets achieved through implementation of Measure T-4.1 must be complete and retired before the County can take reduction credits. A registry will ensure that carbon offsets are retired in perpetuity.

(Appendix B at p. i.)

The County should provide similar assurances for General Plan Amendments approved using offsets. The CAP prioritizes “local projects that would offset carbon emissions within the unincorporated county.” (Strategy T-4, DSEIR at p. 2.7-17.) The County must ensure General Plan Amendments are held to the same standards as the County’s own offset projects. Moreover, the County should consider whether and how to ensure mitigation for General Plan Amendment offset projects is continued beyond the 30-year out year. If there are no assurances that the offset projects will continue beyond their specified expiration date or for the full term of the County’s planning period specified in the proposed CAP then, the County is not accurately calculating what the projects’ overall GHG impacts will be for the full term of the County’s planning period specified in the CAP. If the offset projects are no longer operational after their prescribed term or potential expiration date, then the County should carefully consider whether it is still accurate for the County to assume that the GHG emissions from the offset projects can be counted as part of any project’s overall reduction in GHG emissions during the County’s full planning period specified in the CAP.

As such, the County should consider whether to provide assurances that funding for offset mitigation projects will continue, lest the County experience a significant spike in GHG emissions once the funding for offset projects has concluded and they are no longer operational. (See *Cleveland National Forest v. San Diego Assn. of Governments* (2017) 3 Cal.5th 497, 514 [an EIR must adequately describe the nature and magnitude of the adverse effect].) In any event, if the County is proposing to allow offset projects which expire or may no longer be enforceable before the end of the County’s planning period used in the CAP, then the potential increases when these offset project may “expire” should be counted in the County’s overall numerical calculations in the CAP including expected GHG increases due to expiring offset agreements. As the Court of Appeal stated in *Sierra Club v. County of San Diego* (2015) 231 Cal.App.4th 1152, 1170: “Quantifying GHG reduction measures is not synonymous with implementing them. Whether a measure is effective requires not just quantification, but also an assessment of the likelihood of implementation.” Likewise, if offsets counted on by the CAP as a GHG reduction measure are likely or possibly going to expire before the end of the CAP’s planning

O14-14
cont.

O14-15

O14-16

O14-15 The comment asserts that the County is not appropriately calculating the total emissions impacts of GPA projects and that carbon offset credits used to mitigate GPA impacts must be ensured to last for the lifetime of the project. The commenter confuses the local direct investment program required by GHG Reduction Measure T-4.1 with the requirement for GPAs to offset global emissions from cumulative impacts by using carbon offset credits. For information related to Measure T-4.1, please see Response to Comment O14-10, above and Master Response to Comment 3. Refer to Master Response 12 for mitigation hierarchy and use of carbon offset credits and comments O14-11 through 14. The commenter requests that the County consider whether and how to ensure mitigation for GPAs is continued beyond the 30-year project life. Please see Response to Comment O14-13 and O14-14. On the adequacy of the 30-year project life, see Response to Comment O12-20. The comment assumes that the 30-year project life for carbon offset credits for GPAs would not align with the plan horizon of 2050. This assumption is predicated on the premise that all in-process and future GPAs would begin purchase of offsets in 2018, concurrent with potential CAP adoption. CAP Mitigation Measure M-GHG-1 requires that evidence of offset purchase of retirement be provided prior to issuance of the project’s first grading permit for construction GHG emissions, and prior to issuance of the first building permit for operational GHG emissions. It is highly unlikely that all projects approved by the Board of Supervisors between 2018 and 2020 would also apply for grading permits and building permits in the same year(s). In reality, there is typically a lag between project approval and issuance of permits depending upon market conditions and phasing of development. CAP Mitigation Measure M-GHG-1 also applies to future GPAs. By the same token, a future GPA that may be approved in 2025 would be required to offset its emissions beyond the 2050 horizon. Therefore, the County disagrees that purchase of carbon offset credits would be misaligned with the CAP planning period. See Response to Comment O14-16 on the CAP planning period.

O14-16 This comment suggests that the County should make a commitment to funding the Local Direct Investment Program as required under GHG Reduction Measure T-4.1 through the planning period. Please refer to Master Response 3 for the Local Direct Investment Program and comment O14-13. As indicated in GHG Reduction Measure T-4.1, the County would implement the direct investment measure by establishing a local direct investment program by 2020. After the program is established in 2020, the County would implement the local direct investment measures by 2030. Therefore, the County would reduce GHG emissions from these direct investments through the planning period used in the CAP, starting in 2020 through to 2030. Please refer to Master Response 3 for more information related to GHG Reduction Measure T-4.1. On the adequacy of the 30-year life, see Response to Comment O12-20.

September 25, 2017
Page 6

LATHAM & WATKINS LLP

period in 2050, or shortly thereafter, this should be disclosed to the public, since it is relevant to whether the mitigation measure will be implemented for the full planning period.

O14-16
cont.

IV. GHG INVENTORY AND REDUCTION STRATEGIES

A. GHG Inventory

The CAP's business as usual projections include "[g]rowth from General Plan Amendments "GPAs" adopted since adoption of the 2011 General Plan Update are also included in the projections." (CAP at 2-7.) "The GHG emissions inventory for the CAP does not include emissions attributable to proposed GPAs that would increase density/intensity above what is allowed in the General Plan. Even though there were GPAs that were adopted between 2011 (adoption of 2011 General Plan Update) and 2014 (inventory baseline year), none of these GPAs were constructed by 2014 and; therefore, their GHG emissions are not included in the 2014 inventory. The 2014 inventory is based on emissions-generating activities that existed on the ground in 2014." (CAP at 2-14.)

O14-17

The Draft SEIR's Mitigation Measure GHG-1 applies to all future General Plan Amendments, including those discussed in the cumulative impacts section. The County maintains that with the inclusion of this mitigation measure, all future GPAs will not interfere with the County's reduction targets or 2050 goal. (CAP at 2-14.) The County thus concludes that "General Plan Amendments would, therefore, comply with the threshold of significance, which is consistency with the CAP." (CAP at 2-14.) However, there is not enough information presented in the DSEIR or CAP to ascertain the veracity of this conclusion. A project-by-project breakdown of emissions from each project appears to be missing from the CAP and DSEIR.

O14-18

B. Transportation Reductions

The County concludes that it "has limited options under its control for implementing transportation-based strategies," despite acknowledging that on-road transportation is the largest source of GHG emissions in the County. (CAP at 3-3.) The County should ensure future projects are located in infill locations close to existing transit, in addition to exploring additional methods of implementing transportation-based strategies to reduce the County's reliance on single-occupant vehicles. The CAP provides strategies to reduce VMTs, and notes that the General Plan provides "a framework to accommodate future development in an efficient and sustainable manner that is compatible with the character of unincorporated communities and the protection of valuable and sensitive natural resources. In accommodating growth, the County focuses on the provision of diverse housing choices while protecting the established character of existing urban and rural neighborhoods." (CAP at 3-9.)

O14-19

Further, Strategy T-1 provides, "This strategy focuses on preserving open space and agricultural lands, and focusing density in the county villages. By not developing housing in the more remote areas, the county will avoid GHG emissions from transportation and energy use associated with conveyance of water and solid waste services. Reductions in Vehicle Miles Traveled (VMT) resulting from this strategy will also improve air quality through reduced

O14-20

- O14-17** This comment restates information provided in the CAP. No further response is required.
- O14-18** The comment asserts that the Draft SEIR has not provided enough information to conclude that GPA projects will not interfere with the County's reduction targets or 2050 goal with implementation of CAP Mitigation Measure M-GHG-1 and suggests a project-by-project analysis be provided. The comment does not provide evidence that supports the assertion, therefore, no further response is required or necessary. Under CAP Mitigation Measure M-GHG-1, The County shall require in-process and future GPAs to reduce their emissions to ensure that CAP emission forecasts are not substantially altered such that attainment of GHG reduction targets could not be achieved. These projects would need to either achieve no net increase in GHG emissions from additional density above the 2011 GPU or reduce all project GHG emissions to zero to achieve no net increase over baseline conditions (i.e., carbon neutrality). The GPA would ensure that CAP emission forecasts, and therefore achievement of reduction targets, are not substantially altered under either scenario. It appears the comment suggests that the CAP should evaluate on a project-specific basis the impacts of GPAs. The CAP is a county-wide, programmatic assessment of the actions and strategies the County would implement to reduce GHG emissions to meet reduction targets. A project-by-project evaluation of emissions for existing and proposed GPAs is not appropriate within the CAP. Moreover, the mitigation measure would apply to any future GPAs, the details of which cannot be known at this time. The mitigation measure is clear that GPAs achieve no net increase in GHG emissions over the 2011 GPU or no net increase over the baseline. The commenter asserts there is not enough information "to ascertain the veracity" of the County's statement that GPAs would be consistent with the CAP. This ignores the requirements of the mitigation measure. The CAP was prepared based on a county-wide emissions inventory of existing and projected future levels of GHG emissions based in existing and approved land uses within the 2011 GPU.

- O14-19** The comment asserts that to effectively decrease on-road transportation emissions, the County should only allow infill projects or projects close to existing transit and should focus on exploring other strategies to reduce reliance on single-occupancy-vehicles. To the first point, the County has established a land use plan for future development which was adopted with the 2011 GPU. Therefore, the County has already determined where growth will occur. To the second point, the County has evaluated and brought forward feasible strategies that address single-occupant vehicles. Please refer to Master Response 6 on transportation GHG reduction measures and VMT. The comment does not suggest other strategies for consideration; therefore, no further response can be provided or is necessary.
- O14-20** The comment restates information provided in the CAP. No further response is required.

September 25, 2017
Page 7

LATHAM & WATKINS LLP

vehicle emissions and contribute to public health improvements by creating opportunities for active transportation choices.” (CAP at 3-9.)

O14-20
cont.

The County should ensure such strategies are appropriately implemented in all pending and future projects. In particular, the County should not allow the Newland Project, which would add over 28,000 daily trips in an area located far from existing transit, to move forward before the CAP is approved. This contravenes the CAP’s stated strategies and risks thwarting the CAP’s comprehensive approach. If the County allows the Newland Project to progress prior to adoption of the CAP, the County enables the Newland Project to avoid the CAP’s goal of “preserving open space and agricultural lands” by developing on a parcel currently zoned for a much lower level of density—primarily RL-20—than the project currently proposes.

O14-21

The CAP should also include requirements that land use decisions support smart growth development near existing infrastructure and transit and placing housing near jobs in order decrease GHG emissions from long automobile trips. One potential tool to support this approach would be to require General Plan Amendment projects to be consistent with the land use patterns used by SANDAG to general its Regional Transportation Plan and Sustainable Communities Strategy, which is intended reduce GHG emissions by linking land use and transportation planning pursuant to SB 375.

O14-22

C. Acquire Open Space Conservation Land

The CAP provides:

Acquisition of land by the County under the MSCP would reduce GHG emissions through preservation of land which can otherwise be developed. GHG emissions reductions are realized from reductions in transportation, energy use, waste, and water consumption. Preservation of these lands also helps protect watersheds, improve water quality, and preserves vegetation, which provides carbon sequestration benefits. Reductions for this measure are quantified based on the reduced development potential associated with preservation of lands. Future acquisitions beyond those targeted in this measure will reduce GHG emissions in the county, the benefit of which will be reflected in the County’s biennial GHG inventory updates.

O14-23

(CAP at 3-10.)

Additional details for this measure are required. For instance, how will the County calculate the reductions from this measure, but allow GPAs such as the Newland Project to move forward? Further, will the County count implementation of the North County MSCP as a potential reduction? If so, would this include a developed Newland Project? Doing so may amount to de facto project approval for the Newland Project prior to the completion of the environmental process, as the MSCP is currently in draft form. Further, the NC MSCP has not been approved and is not scheduled to go before the Board of Supervisors for a decision for

- O14-21** The comment suggests that the County should ensure that strategies to preserve open space should be implemented by current and future projects. The comment also describes a project under review by the County and suggests this project risks thwarting the CAP’s comprehensive approach. The County acknowledges this comment. The comment addresses another project and does not relate to the adequacy of the Draft SEIR and, therefore, no response is required or necessary. This comment will be included in the Final EIR and made available to decision makers prior to a final decision on the project.
- O14-22** The comment suggests that the CAP should include a requirement that land use decisions support smart growth development near existing infrastructure and transit, and places housing near jobs. The County acknowledges this comment. Please refer to Master Response 2 regarding SB 375 and consistency with regional plans. The comment does not relate to the adequacy of the Draft SEIR and, therefore, no response is required or necessary. This comment will be included in the Final EIR and made available to decision makers prior to a final decision on the project.
- O14-23** The comment requests additional details about how GHG Reduction Measure T-1.1 will be implemented but raises no issues regarding the sufficiency of the EIR analysis. Please refer to response to comment O1-14. Emissions reductions from GHG Reduction Measure T-1.1 would be realized by the removal of development potential associated with undeveloped land once it is acquired or otherwise encumbered (such as through recordation of an open space easement) and put into the Preserve for the South County or future conservation areas. The 2030 anticipated GHG reductions associated with Measure T-1.1 are based on the historical annual average County land acquisitions in these three plan areas since 2011, and the related average number of dwelling units offset by the reduction in development potential (see Page 3 of Attachment to Appendix C to Climate Action Plan). Specifically, the GHG reductions will be realized from

	<p>reductions in transportation, energy use, waste, and water consumption achieved through preclusion of development.</p> <p>GHG Reduction Measure T-1.1 does not “allow General Plan Amendments”; it recognizes the emission reduction benefits of a complementary resource conservation program, the Multiple Species Conservation Program. GHG Reduction Measure T-1.1 does not account for North County Plan implementation as an emissions reduction measure, but rather, the actions taken thereunder: acquisition or recordation of an easement on areas that contain native species of wildlife or natural communities identified for preservation that precludes development that otherwise would occur under buildout of the General Plan.</p> <p>Open space achieved as a result of mitigation for development projects does not contribute to the emissions reductions anticipated under GHG Reduction Measure T-1.1. Projects that mitigate impacts to biological resources by recording an easement on areas that contain native species of wildlife or natural communities within their project boundaries would account that acreage to the MSCP Preserve goal, but it would not account as emissions reductions to achieve the CAP targets because development in that scenario has been realized. For emission reductions associated with property acquisitions or easements in support of the MSCP Preserve goal to be accounted for under the CAP, a net reduction in development potential associated with that acquisition or easement would be necessary.</p> <p>The comment is correct that the North County Plan has not been adopted. It is also correct in noting, once adopted by the County, the California Department of Fish and Wildlife and the U.S. Fish and Wildlife Service will need to issue permits to the County before the Plan is in effect.</p> <p>Emissions reductions associated with GHG Reduction Measure T-1.1 will be realized when property is acquired or an easement is recorded against real property and demonstrates a net reduction in development potential. To qualify for the MSCP Preserve, such property must be located within the Pre-Approved Mitigation Area (PAMA). To achieve the CAP targets, such property is not required to be located within the</p>
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PAMA. Acquisition of open space is not dependent upon adoption of the North County MSCP. The County's acquisition of land or easements to achieve a net loss in development potential to support GHG Reduction Measure T-1.1 can occur independently of MSCP Preserve assembly. The CAP is designed to be flexible so that as progress is monitored, regulations change, technology advances, and in this case if the North County MSCP is not adopted by the Board of Supervisors or the County meets its preserve assembly goals for the adopted South County Plan, adjustments can be made to the measures to achieve the 2020 and 2030 reduction targets. The County would prepare an annual monitoring report to assess the CAP measures' annual performance in achieving the stated targets, in addition to two-year updates of the GHG emissions baseline inventory. Based on findings from the annual monitoring reports and inventory updates, the County will prepare a CAP update every five years to adjust measures as-needed to achieve the targets.

September 25, 2017
Page 8

LATHAM & WATKINS^{LLP}

several more years. The NC MSCP must also be approved by the State and Federal Wildlife Agencies before taking effect. It is improper for the CAP to take credit for emissions reductions to be achieved by a plan or program that has not been approved. (*Vineyard Area Citizens for Responsible Growth, Inc., supra*, 40 Cal.4th at 440.)

We thank you for your time and attention to our comments. Please do not hesitate to contact us should you have any questions or comments.

Best regards,



Christopher W. Garrett
of LATHAM & WATKINS LLP

cc: Kathy Van Ness, Golden Door
Mark Slovick, County Planning and Development Services
Ashley Smith, County Planning and Development Services
William W. Witt, Office of County Counsel
Claudia Silva, Office of County Counsel
Dan Silver, Endangered Habitats League
Stephanie Saathoff, Clay Co.
Denise Price, Clay Co.
Andrew Yancey, Latham & Watkins

O14-23
cont.

Response to Comment Letter O22

Sierra Club

Josh Chatten-Brown, Attorney for Sierra Club

September 25, 2017

From: Josh Chatten-Brown
To: CAP
Cc: George Courser; Ruben Arizmendi; Mike Bullock; Jan Chatten-Brown
Subject: Sierra Club Comments on the San Diego County Climate Action Plan and Draft Supplemental Environmental Impact Report
Date: Monday, September 25, 2017 3:47:41 PM
Attachments: [Sierra Club Comments on the San Diego County Climate Action Plan and Draft Supplemental Environmental Impact Report.pdf](#)

Letter
O22

Dear Ms. Soffel,

Please see the attached comment letter on behalf of the Sierra Club.

Thank you.

Sincerely,

Josh Chatten-Brown



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September 25, 2017

By e-mail: CAP@sdcounty.ca.gov

Planning and Development Services
County of San Diego
Attn: Maggie Soffel
5510 Overland Avenue
San Diego, CA 92123

**Re: Comments on San Diego Climate Action Plan (PDS2015-POD-15-002)
and Draft Supplemental Environmental Impact Report (PDS2016-ER-
16-00-003)**

Dear Ms. Soffel:

The law firm of Chatten-Brown & Carstens represents the Sierra Club on matters relating to the County's preparation of its revised Climate Action Plan ("Revised CAP") and Supplement to the 2011 General Plan Update Program Environmental Impact Report ("Supplemental Environmental Impact Report," or "SEIR").

As described more fully below, the Revised CAP and SEIR are legally inadequate by modifying or effectively deleting Mitigation Measure CC-1.2 without additional analysis; erroneously claiming that 2014 is the first year data was available for a greenhouse gas (GHG) inventory; allowing out-of-County offsets; failing to require a reduction in vehicle miles traveled (VMT's) for housing projects; providing only a token annual reduction of VMT's for County employees; and failing to exercise its influence to encourage the San Diego Airport Authority to reduce GHG emissions reductions from airport ground operations, increasing public transit to the airport, and reducing emissions from vehicles serving the airport. Of great importance, no open lands should be annexed or rezoned for greater development until there is an adequate CAP that actually achieves the 2020 emission reduction goals the County agreed to in its 2011 General Plan Update.

In addition to this letter addressing legal issues, we also incorporate herein the September 25, 2017 Sierra Club San Diego comment letter prepared by Mike Bullock, Chair of the Sierra Club San Diego's Transportation Subcommittee. The Sierra Club San

O22-1 The comment provides a summary of comments that follow. See responses to comments below. No further response is required or necessary.

O22-2 The comment refers to an attached letter from Mr. Bullock, Chair, Sierra Club. Responses to Mr. Bullock's letter are provided starting at response to comment O22-17 below.

O22-1

O22-2

Soffel
September 25, 2017
Page 2

Diego's comment letter, attached as **Exhibit A**, has detailed strategies that must be evaluated to assure a legally adequate Revised CAP and SEIR.

O22-2
cont

We request the County perform additional analysis of the issues described below and those set forth in Mr. Bullock's letter. Once additional analysis has been performed, this analysis, along with additional enforceable and effective mitigation measures, must be set forth in a Revised SEIR. The SEIR must then be recirculated so that the public and public agencies may comment on this information, as required by CEQA.

O22-3

I. The Revised CAP and SEIR Eliminates the Specified Greenhouse Gas Emissions Reductions from 2006 Levels by 2020.

Mitigation Measure CC-1.2 of the County's 2011 General Plan Update required the County to:

Prepare a County Climate Change Action Plan with an update[d] baseline inventory of greenhouse gas emissions from all sources, more detailed greenhouse gas emissions reductions targets and deadlines; and a 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.

O22-4

(SEIR, p. 1-14.)

However, the Revised CAP and SEIR eliminate this requirement and replace it with general reductions of GHG emissions "consistent with state-legislative targets." (SEIR, p. 1-16.) This action is proposed even though Judge Taylor specifically rejected a proposed Supplemental Writ that would have allowed the County to amend or delete GHG mitigation measures adopted in 2011.

While generally mitigation conditions can be modified or deleted, the County made a firm commitment to reducing GHG emissions by 2020 when it adopted the 2011 General plan Update. Further, measures generally can only be deleted if they have become impractical or unworkable and the conclusion that they are is supported by substantial evidence. (*Lincoln Place Tenants Ass'n v. City of Los Angeles* (2007) 155 Cal. App. 4th 425, 449.) If the County continues to seek to modify or effectively delete Mitigation Measure CC-1.2, the SEIR must analyze why this measure has become impractical or unworkable. If the County does not demonstrate that Mitigation Measure CC-1.2 is impractical or unworkable, the County must show that the pro rata share of Mitigation Measure CC-1.2's GHG reductions have been achieved for County operations and community emissions.

O22-5

O22-3 The comment requests that additional analysis be performed and that once performed the Draft SEIR should be recirculated. Please refer to Master Response 1 recirculation of the EIR. No specific issues of new analysis were raised in this comment nor did the comment address adequacy of the Draft SEIR; therefore, no further response is required or necessary.

O22-4 The comment states that the County replaced language in 2011 GPU PEIR Mitigation Measure CC-1.2 even though Judge Taylor rejected a proposed Supplemental Writ that would have allowed the County to amend or delete GHG mitigation measures adopted in 2011. The comment is referencing litigation on the County's first CAP. The County in response to that litigation has engaged in the preparation of a new CAP and Draft SEIR. In evaluating the 2011 General Plan Update (GPU) and 2011 GPU PEIR and considering recent legislation and other relevant case law including the recent *Cleveland National Forest Foundation v. SANDAG* (2017) case, the County determined that Goal CO-20 and Policy CO-20.1 of the 2011 GPU and Mitigation Measures CC-1.2, CC-1.7, and CC-1.8 of the 2011 GPU PEIR collectively need to be updated to better reflect current legislative requirements. As described on page 1-3 of the Draft SEIR, Goal CO-20 and Policy CO-20.1 were originally adopted to reduce cumulative GHG emissions within the unincorporated County to 1990 levels by 2020 to be consistent with the statewide goal established by AB 32. Similarly, 2011 GPU PEIR Mitigation Measures CC-1.2, CC-1.7, and CC-1.8 called for the preparation of a "Climate Change Action Plan" designed to reach specified GHG reduction targets consistent with regulatory requirements applicable at that time. Since adoption of the 2011 GPU, new legislative standards have been set that require jurisdictions to consider emissions reductions beyond 2020. Therefore, the County has updated the goal and policy of the 2011 GPU and associated mitigation measures of the 2011 GPU PEIR to reflect these requirements, and the Draft SEIR has adequately analyzed the potential impacts from these changes. The rejection of a *proposed* writ in the original CAP litigation as referenced by the commenter did nothing to

	<p>limit or abridge the Board of Supervisor's legislative or policy discretion to make changes to the County's own General Plan. Please also see Master Response 4 on GHG reduction targets and Master Response 13 related to 2011 GPU PEIR Mitigation Measures.</p> <p>O22-5 The comment states that if 2011 GPU PEIR Mitigation Measure CC-1.2 is modified, the Draft SEIR must evaluate why this mitigation has become impractical or unworkable. The comment also states that the County must show that the pro rata share of Mitigation Measures CC-1.2's GHG reductions have been achieved for County and community emissions. With regards to the reasons for updating mitigation measures in the 2011 GPU PEIR, please refer to response to comment O22-4.</p> <p>Please note that in the case cited in the comment (<i>Lincoln Place Tenants Ass'n v. City of Los Angeles</i> (2007) 155 Cal.App.4th 425) there was no direct effort by the lead agency to modify or delete an EIR mitigation measure. Instead, the court equated non-compliance with a mitigation measure to a deletion of the measure and found there was no evidence in the record to support this de facto deletion. Id. at 449. In contrast, here the Draft SEIR has fully and extensively described why mitigation measures of the 2011 GPU PEIR have become obsolete and require modification, not deletion, to update the text to reflect existing requirements. As such, the Draft SEIR in addition to programmatically evaluating the impacts of implementation of the CAP, has also evaluated the environmental impacts of implementing a proposed General Plan Amendment to address the proposed goal and policy change and changes to mitigation of the 2011 GPU PEIR. In addition, as indicated in the CAP on page 2-14, the County is on track to meet its 2020 target with the help of existing legislation, such as the Renewable Portfolio Standard. The County will meet the 2020 GHG target without implementation of this CAP, by relying on State efforts and efforts currently underway in the County of San Diego (see CAP pages 1-7 and 1-8).</p>
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	<p>With regard to how the changes to the 2011 GPU and the 2011 GPU EIR relate to the CAP's GHG reduction targets, please refer to Master Response 4, GHG reduction targets. As described above, Mitigation Measure CC-1.2 has been updated to reflect the preparation of a CAP that complies with the requirements of CEQA Guidelines Section 15183.5 and would establish reduction targets consistent with current legislative requirements.</p>
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Soffel
September 25, 2017
Page 3

II. The County's Claim It Does Not Have Baseline Data for Its GHG Inventory Prior to 2014 Is Belied By Its 2012 CAP, Which States the County Prepared Inventories With Baseline Years of 2005 and 2006.

In preparing its GHG inventory for the Revised CAP, the County uses baseline data from 2014. The County argues, "The County's base inventory of GHG emissions evaluated activities within the unincorporated county in the year 2014, the most recent year data is available," (SEIR, p. 1-6.) However, this conflicts with the 2012 CAP, which states the County prepared inventories with baseline years of 2005 and 2006. The 2012 CAP provides:

The County prepared baseline inventories at the community-wide and local government levels. The community-wide inventory has a baseline year of 2005, and emissions are limited to the County's unincorporated communities. The local government inventory has a baseline year of 2006 and only includes emissions related to County government operations. Each inventory is used to establish a baseline level of emissions, which then serves as the starting point for forming emissions reduction targets and as a tool to gauge the performance of emissions-reduction measures.

(2012 CAP, p. 14, emphasis added.) The SEIR must explain why the County did not use the 2005 and 2006 GHG inventories, as well as provide an analysis of how the 2014 GHG inventory compares to the previously prepared inventories.

The County's decision to use 2014 as the baseline year from which it will establish the 2020 and 2030 CAP targets and 2050 goal must demonstrate that using this baseline will result in reductions that are equal or greater to reductions using a 1990 benchmark. In the event the County argues that data prior to 2014 is inadequate, the County should address the 1990 GHG emissions inventory estimate for San Diego County that has been prepared. That estimate is discussed in the document entitled, "An Analysis of Regional Emissions and Strategies to Achieve AB 32 Targets Revised and Updated to 2010." (Available at <http://catcher.sandiego.edu/items/usdlaw/EPIC-GHG-2013.pdf>). Presumably, the County's share of the total 1990 San Diego County GHG emissions could be developed from that data.

III. The Allowance of Offsets From Outside the County of San Diego Is Inconsistent with the County General Plan's Requirement to Achieve Specified Greenhouse Gas Emissions Reductions in the County.

Mitigation Measure CC-1.2 of the County's General Plan Update requires the County to "achieve a 17% reduction in emissions from County operations from 2006 by 2020 and a 9% reduction in community emissions between 2006 and 2020."

O22-6

The commenter states that the chosen base year for the GHG emissions inventory conflicts with the County's rescinded CAP. The CAP uses a 2014 base year to establish a benchmark for estimating GHG emissions. The year 2014 is the most recent year data were available when the emissions inventory and CAP were initiated. The commenter's claim that this conflicts with the rescinded CAP, and that 2005 and 2006 should somehow be considered more recent years is confusing. The commenter also questions why 2005 and 2006 were not used as the base years for the CAP. See CAP pages 2-3 to 2-6.

This CAP does not rely on the County's rescinded CAP and has been prepared as a standalone plan. The choice of a more recent year to establish a base inventory is consistent with recommendations in GHG inventory protocols. For example, the *Local Government Operations Protocol* developed in partnership by the California Air Resources Board, California Climate Action Registry, ICLEI - Local Governments for Sustainability and The Climate Registry states that "It is good practice to compile an emissions inventory for the earliest year for which complete and accurate data can be gathered." In this context, the earliest year is 2014 as it is the most recent year for which accurate, complete, and up to date information is available. As explained further in the CAP, the County was able to collect representative and reliable data for 2014, therefore, this year was chosen as the base year. A consistent year was also used for both the community and local government emissions for comparability and tracking.

The commenter contends that the Draft SEIR must provide an analysis of how the 2014 inventory compares to the 2005 and 2006 GHG inventories. As stated above, the CAP does not rely on information in the rescinded CAP and incorporates new, updated analyses of emissions. Moreover, inventory data collection and quantification sources and methods have evolved since 2005/2006. The current inventory is based on the *U.S. Community Protocol for Accounting and Reporting of Greenhouse Gas Emissions* which represents a national standard in guidance to help local governments develop effective community GHG emissions inventories. This guide

O22-6

O22-7

O22-8

	<p>was released in 2012 by ICLEI - Local Governments for Sustainability and was not available for the 2005/2006 inventories. Data sources have also evolved to provide consistent methodologies and more accurate accounting of emissions, consistent with established protocols. For example, SANDAG's travel demand model (Series 13) has been updated to provide activity-based VMT and to reflect current land use plans and infrastructure. For these reasons, a comparison of the 2005/2006 inventories would not result in as accurate a reflection of the existing base year GHG inventory as the 2014 inventory developed for the CAP. The CAP will require the County to update inventories every two years, and this mandatory monitoring and updating will help track emissions changes from the base year of 2014 and ensure that the CAP is effective at meeting its emission reduction targets.</p> <p>O22-7 The comment states that the County must demonstrate that using the 2014 GHG inventory would result in reductions that are equal to or greater than reduction using the 1990 benchmark. Please refer to response to comment O22-6 and Master Response 4, GHG reduction targets. The commenter provides no evidence that it is appropriate to establish the inventory from the data used in the rescinded CAP.</p> <p>O22-8 The comment states that the use of carbon offset credits from outside of the County is inconsistent with the County's GPU PEIR Mitigation Measure CC-1.2. The comment cites Mitigation Measure CC-1.2 of the 2011 GPU PEIR; however, for the reasons provided in response to comment O22-4 and O22-5, this mitigation is proposed to be updated (see page 1-16 of the Draft SEIR) and the effects of this change have been evaluated throughout the Draft SEIR. The proposed changes would require that a CAP be prepared consistent with state targets and the requirements of Section 15183.5 of the CEQA Guidelines addressing requirements of a qualified CAP.</p> <p>As stated in the 2011 GPU PEIR and Section 1.2.3 of the Draft SEIR for the CAP, 2011 GPU Mitigation Measure CC-1.2 requires the County to prepare a CAP to reduce emissions from County operations and within the unincorporated County. The County disagrees with the</p>
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	<p>comment that 2011 GPU PEIR Mitigation Measure CC-1.2 requires all mitigation to reduce cumulative impacts from GPAs in the SEIR for GHG emissions to be local and that to allow mitigation to achieve GHG reductions out-of-county would conflict with the requirements of 2011 GPU PEIR Mitigation Measure CC-1.2. The mechanism by which specific reductions would be achieved is left to the discretion of the lead agency but must be through “measures or groups of measures, including performance standards, that substantial evidence demonstrates, that if implemented on a project-by-project basis, would collectively achieve the specified emissions level” (CEQA Guidelines Section 15183.5 (b)(1)(E)).” The County has full discretion to allow the achievement of GHG emissions reductions within or out-of-county as long as those measures can be demonstrated through substantial evidence to feasibly reduce GHG emissions. All 30 GHG Reduction Measures proposed within the CAP will achieve GHG reductions locally (i.e., from County operations and within the unincorporated County) in full compliance with 2011 GPU PEIR Mitigation Measure CC-1.2. In addition, the Draft SEIR identified that future development projects (e.g., General Plan Amendments) may be inconsistent with the CAP and could result in significant cumulative impacts. CAP Mitigation Measure M-GHG-1 would reduce this impact to less than significant. As detailed in the Draft SEIR, throughout the record, and in Master Response 12, CAP Mitigation Measure M-GHG-1 is feasible, supported by substantial evidence, and is allowable within the requirements of CEQA. Therefore, CAP Mitigation Measure M-GHG-1 will effectively mitigate the significant cumulative impact by requiring all feasible on-site design features/measures and off-site GHG mitigation, which may include the purchase of carbon offset credits.</p> <p>For information regarding the mitigation hierarchy and use of carbon offset credits to reduce cumulative impacts in the Final SEIR (as distinguished from the CAP’s GHG Reduction Measures), please refer to Master Response 12. Please also refer to Response to Comment O14-12 and O14-13. The</p>
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	<p>geographic priority listed under CAP Mitigation Measure M-GHG-1 in Section 2.7.5.1 of the Draft SEIR applies to carbon offset credits that will be used to mitigate significant cumulative impacts from future GPAs. The CAP does not include a GHG reduction measure specifically calling for carbon offset credits. The geographic priority for these offset credits first requires on-site reduction measures and then follows the mitigation hierarchy referenced in the comment and as addressed in the Draft SEIR on pages 2.7-37 through 2.7-39. As described in Master Response 12, carbon offset credits must be purchased through recognized and reputable carbon registries such as those described on pages 2.7-38 through 2.7-39, and the use of carbon offset credits is a well-established method for mitigating project-level GHG emissions that is expressly authorized for use in CEQA. As such, the County provides this option under the circumstances specified within CAP Mitigation Measure M-GHG-1.</p> <p>The use of carbon offset credits from outside the County in compliance with the mitigation hierarchy outlined in the Draft SEIR for cumulative GPA projects, is consistent with the intent of 2011 GPU Policy COS-20 and 2011 GPU PEIR Mitigation Measure CC-1.2 to address <i>global</i> warming as required by the State in legislation including AB 32 and SB 32 (Global Warming Solutions Act). In fact, both COS-20 and the 2011 GPU PEIR mitigation specifically refer to AB 32, the Global Warming Solutions Act, and global warming in general (2011 GPU EIR pages S-20, 2.17-1 et seq., and 7-80; 2011 GPU pages 5-31-33, 38). It is important to note that GHG emissions are a global, cumulative impact. This was recently highlighted by the California Supreme Court (see <i>Center for Biological Diversity et al., v. California Department of Fish and Wildlife, and The Newhall Land and Farming Company</i>, 62 Cal. 4th 204 (2015)). Page 219 of this case states that: “First, because of the global scale of climate change, any one project’s contribution is unlikely to be significant by itself...With respect to climate change, an individual project’s emissions will most likely not have any appreciable impact on the global problem by themselves, but they will contribute to the significant</p>
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cumulative impact caused by greenhouse gas emissions from other sources around the globe...Second, the global scope of climate change and the fact that carbon dioxide and other greenhouse gases, once released into the atmosphere, are not contained in the local area of their emission means that the impacts to be evaluated are also global rather than local". Further, as stated on pages 219-220 "[f]or many air pollutants, the significance of their environmental impact may depend greatly on where they are emitted; for greenhouse gases, it does not." Therefore, the use of carbon offset credits to mitigate significant cumulative impacts from future GPA projects is consistent with the purpose and intent of 2011 GPU Policy COS-20 and 2011 GPU PEIR Mitigation Measure CC-1.2 to address *global* climate change impacts.

Soffel
September 25, 2017
Page 4

The Revised CAP and SEIR authorize the use of offsets from outside the County of San Diego. The Draft EIR identifies the County's "priority" list for consideration of GHG reduction features as follows:

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.

(DEIR, 2.7-48.) These offset priorities, which allow offsets outside of the County, outside of the state, and even outside of the United States, only have to be considered "to the satisfaction of the Director of Planning Development Services." (SEIR, p. 2.7-38.) This provision would impermissibly purport to give the County wide latitude to allow essentially unrestricted use of international credits to balance out local GHG emissions created by County projects. The use of offsets is inconsistent with the County's Mitigation Measure CC-1.2 to reduce GHG emissions *within the County of San Diego* by specified reduction amounts.

IV. The CAP Lacks A Requirement to Reduce VMT's from Newly Planned Housing Projects.

The CAP identifies Strategy T-1, which is intended to "Reduce Vehicle Miles Traveled." The CAP contains three measures designed to reduce achieve Strategy T-1: Measure T-1.1 - Acquire Open Space Conservation Land; Measure T-1.2 - Acquire Agricultural Easements; and Measure T-1.3 - Update Community Plans.

The CAP's strategy is an important one. The CAP purports to focus on density in the county villages. (CAP, p. 3-9.) "Focusing new development in and around existing unincorporated communities allows the County to maximize existing infrastructure ... By not developing housing in the more remote areas, the county will avoid GHG emissions from transportation ..." (*Ibid.*) The Sierra Club fully supports this goal.

However, none of the three measures the County identifies contains any enforceable requirements to locate residential housing closer to major sources of employment and transit. Mitigation Measure CC-1.15 does not include anything about limiting VMT's from newly planned housing projects. In fact, as discussed below, by allowing developers to purchase "carbon offsets" instead – which may even be based upon GHG emission reductions outside of the United States – the CAP actually facilitates sprawl.

The County may argue that Measure T-1.3 – Update Community Plans will assist in locating residential housing closer to jobs and transit. However, updating Community Plans does not address residential housing on a countywide basis. Additionally, the

O22-8
cont

O22-9

O22-10

O22-11

O22-9 The comment states it supports Strategy T-1. The County acknowledges this comment. The comment will be included as part of the Final EIR and made available to the decision makers prior to a final decision on the project.

O22-10 The comment states that none of the measures in Strategy T-1 contains enforceable requirements to locate residential housing closer to major sources of employment and transit. The commenter then states that the 2011 GPU PEIR Mitigation Measure CC-1.15 does not include anything about limiting VMT's from newly planned housing projects. The 2011 GPU PEIR Mitigation Measure CC-1.15 includes efforts and strategies to reduce VMT and encourage alternative modes of transportation. This comment, however, does not address the adequacy of the CAP or Draft SEIR, and the project does not include any revisions to the 2011 GPU PEIR Mitigation Measure CC-1.15. Therefore, no further response is required. Please refer to Master Response 6 on GHG transportation measures, Master Response 5 related to community plan updates, and Master Response 2 on the CAP and SB 375.

O22-11 The comment states that updating community plans does not address residential housing on a countywide basis and improperly passes land use planning responsibility to individual communities. The County does not agree with the comment. Updating Community Plans does not address residential housing on a county-wide basis as the 2011 GPU is the approved land use plan for the unincorporated County only. Similarly, the CAP does not address county-wide emissions, only those emissions that occur within the unincorporated County boundaries or from County operations. Emissions from cities and incorporated areas within the County are addressed through those jurisdiction's local planning processes. The commenter also appears to be confused on the process required by which community plans are approved and updated. Community plans are land use plans designed for individual communities in the unincorporated County that implement the 2011 GPU, consider local community factors, and are reviewed and approved by the Board of Supervisors. Community plans are not approved by individual communities.

	<p>Rather, the Board of Supervisors has ultimate land use authority in implementing community plans. Please refer to Master Response 5, Community Plan Updates.</p>
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Soffel
September 25, 2017
Page 5

County improperly passes responsibility for something that is clearly within its control – land use planning in the County – to individual communities.

O22-11
cont

The CAP's failure to address VMT's from newly planned housing projects is inconsistent with the Sustainable Communities and Climate Protection Act of 2008 (Sustainable Communities Act, SB 375, Chapter 728, Statutes of 2008), which supports the State's climate action goals to reduce GHG emissions through coordinated transportation and land use planning with the goal of more sustainable communities. The County should use its power to establish land use planning priorities for residential housing development in order to reduce VMT's.

Pursuant to SB 375, Metropolitan Planning Organizations, including the San Diego Association of Governments (SANDAG), are required to adopt strategies that show prescribed land use allocation in their regional transportation plans. SANDAG's Regional Plan (available at http://www.sdforward.com/pdfs/RP_final/The_Plan_-_combined.pdf; October 2015) states, "More than 80 percent of new housing in the region will be attached multifamily" (p. 34). The plan also states, "By 2050, 87 percent of the region's new housing and 79 percent of new jobs will be situated within a half-mile of public transit." (p.75) "The projected increase in new housing capacity is generally higher for areas with densities above 20 dwelling units per acre." (Appendix C, Table C.3.) The County should analyze how SANDAG's estimates are impacted by the County's land use planning.

O22-12

V. The CAP's 1.5% Annual Reduction of VMT's for County Employees Is Inadequate.

The County is one of the largest employers in San Diego County, and thus, the County has a huge amount of leverage to make significant GHG emissions reductions by taking actions to reduce VMT's for its employees. For example, San Luis Obispo County found that "two-thirds of the county government's greenhouse gas emissions are caused by employees commuting to and from work." ("SLO County Supervisors Approve Flex-time, Telecommuting Policies," available at <http://www.sanluisobispo.com/news/local/article39123279.html>.)

O22-13

The CAP proposes Mitigation Measure T-2.3 to "[r]educe County employee commute Vehicle Miles Traveled (VMT) by 20% by 2030." However, this amounts to an annual reduction of VMT's of merely 1.5%. Facing a huge challenge to achieve significant GHG emissions reductions, a 1.5% annual reduction of VMT's is minimal and additional reductions of VMT's are feasible and necessary. Please see additional analysis of this issue in the Sierra Club San Diego's comment letter attached as **Exhibit A**.

O22-12 The comment states that the CAP is inconsistent with SB 375. The County does not agree with this assertion. Please refer to Master Response 2, CAP and SB 375. The commenter also suggests that the County should analyze how SANDAG's estimates are affected by the County's land use planning. This comment seems to misinterpret the purpose and intent of the CAP. It is unnecessary for the County to document how the CAP would change SANDAG's estimates for VMT. The CAP assesses emissions from projected growth in the County; it is not a land use plan. The CAP incorporates VMT projections provided by SANDAG, which in turn, incorporate the County's General Plan land uses to account for achievement of regional SB 375 targets as accepted by CARB. Thus, the CAP's forecasted VMT, which was provided by SANDAG after the adoption of the Regional Transportation Plan/Sustainable Communities Strategy (RTP/SCS), and the CAP's related emissions forecasts through 2050, are consistent with SB 375. More simply put, the County provides SANDAG land use forecasts based on the adopted 2011 General Plan. These forecasts are then incorporated into SANDAG's travel demand model. The CAP then uses this information for the reductions measures in the Built Environment and Transportation category. The intent of these measures is to reduce VMT beyond the GHG and VMT projections already accounted for in the Regional Plan.

O22-13 The comment states that GHG Reduction Measure T-2.3 provides inadequate reductions for County employee VMT. Please refer to Master Response 6 related to transportation GHG reductions measures. Please also refer to response O22-17. The 2030 reductions shown for this measure are equal to a 20% reduction from the 2030 business-as-usual (BAU) forecast of the emissions from County's employee commute VMT. These BAU 2030 emissions were based on 1) projection of the County's employee existing commute VMT out to 2030 using the municipal growth rates suggested in the County's Five-Year Capital Improvement Plan and 2) changes in vehicle emission factors as modeled in EMFAC2014. Methodologies

	<p>used to calculate the County's 2014 commute VMT are included in Appendix B of the CAP. Please refer to Master Response 9 regarding the selection of GHG reduction measures.</p>
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Soffel
September 25, 2017
Page 6

VI. The Revised CAP and SEIR Must Account for GHG Emissions from County Airport Ground Operations.

San Diego International Airport is owned and operated by the San Diego County Regional Airport Authority. (<http://www.san.org/Airport-Authority/About-the-Authority>.) The Board of Supervisors appoints a representative to that Board. (<http://www.sandiegocounty.gov/dpw/airports.html>.)

Cities and counties that have an airport and an adopted CAP, frequently include the GHG generation of the airports' ground operations. Examples include the County of Sacramento, the City/County of San Francisco, and the cities of Fullerton and Livermore. These emissions are often significant. Sacramento County Airport, owned and operated by the Sacramento County Airport System, provides a useful comparison to San Diego County. The County of Sacramento prepared a CAP that included GHG emissions from airport ground operations in the GHG inventory. (http://www.ca-ilg.org/sites/main/files/file-attachments/sac_030843.pdf, p. 26.) The Sacramento County CAP concluded that 31% of total government emissions in the County came from operation of the Sacramento International Airport, including ground support equipment, roadways, and parking (but excluding aircraft emissions).

San Diego County should include airport ground operations in its GHG inventory, and provide an analysis of what percentage of total government emissions in the County stem from airport ground operations and work with the Airport Authority to reduce those emissions.

VII. The County Should Show Compliance with the 2011 General Plan Update's Mitigation Measures Prior to Annexations or Rezoning of Open Lands.

Finally, until a valid, legally adequate CAP is in place that demonstrably will achieve the 2020 emission reduction goals set out in the 2011 General Plan Update, no lands that are currently "greenfields" should be annexed and no General Plan Amendment should be authorized that would allow more intense development of those lands.

CONCLUSION

The SEIR must be revised with this new information and then recirculated for public comment. (CEQA Guidelines section 15088.5.) Pursuant to Public Resources Code section 21092.2, we request all notifications regarding this Project.

Thank you for your consideration.

O22-14

O22-15

O22-16

O22-14 The comment states that the CAP should include airport ground operations in its GHG inventory and provide an analysis of what percentage of total government emissions these account for and reduce these emissions. The GHG inventory and forecasts in the CAP already include airport ground operations in the off-road sector under "airport ground support equipment" and airport energy use within the energy sector. As shown in Table 2 of Appendix B of the CAP, airport operations accounted for less than 0.2% of the 2014 GHG inventory for County operations. Thus, County airport operations do not constitute a substantial portion of the County's local government operations GHG inventory. Unlike Sacramento County, which the comment cites as a comparison, San Diego County does not operate a major international airport. The County operates eight small municipal airports used mostly for private and recreational flights. The County does not have jurisdiction over the San Diego International Airport. As the comment notes, the San Diego International Airport is owned and operated by the San Diego County Regional Airport Authority. The County of San Diego does not have the authority to implement GHG reduction measures at the San Diego International Airport, therefore, emissions from that airport are not included in the inventory. Please also refer to response to comment O5-7.

O22-15 The comment states that until a legally valid CAP is in place that no greenfield lands should be annexed and no GPAs should be authorized. The comment does not address the adequacy of the Draft SEIR. Nonetheless, there is no legal reason preventing the County from processing or approving GPA projects prior to adoption of the CAP. In addition, as indicated in the CAP on page 2-14, the County is on track to meet its 2020 target with the help of existing legislation, such as the Renewable Portfolio Standard. The County will meet the 2020 GHG target without implementation of this CAP, relying on State efforts and efforts currently underway in the County of San Diego (see CAP pages 1-7 and 1-8).

O22-16 The comment provides concluding remarks and states the Draft SEIR should be recirculated. The County disagrees with

this comment. Please refer to Master Response 1, Recirculation of the EIR.

Soffel
September 25, 2017
Page 7

Sincerely,

A handwritten signature in black ink, appearing to read 'JC' or 'JCB' with a stylized flourish.

Josh Chatten-Brown
Attorney for Sierra Club

ENDANGERED HABITATS LEAGUE
DEDICATED TO ECOSYSTEM PROTECTION AND SUSTAINABLE LAND USE

Letter
X22



November 30, 2017

Maggie Soffel
Planning and Development Services
County of San Diego
5510 Overland Avenue, Suite 310
San Diego, CA 92123

Ashley Smith
Planning and Development Services
County of San Diego
5510 Overland Avenue, Suite 310
San Diego, CA 92123

RE: San Diego County Climate Action Plan (SCH# 2016101055), Newland Sierra Project (SCH# 2015021036), and the CARB 2017 Climate Change Scoping Plan

Dear Ms. Soffel and Ms. Smith:

Endangered Habitats League (EHL) wishes to supplement its comments on the draft Climate Action Plan (CAP) due to new and previously unavailable information released from the California Air Resources Board (CARB). That agency's revised October 27, 2017 Climate Change Scoping Plan (2017 Climate Change Scoping Plan) is highly pertinent to the County's own efforts. See: <<https://www.arb.ca.gov/cc/scopingplan/revised2017spu.pdf>>. As this new information also affects the proposed Newland Sierra project and its draft environmental impact report (DEIR), please submit this letter into the administrative record for that project.

Please note that these comments are also submitted on behalf of California Native Plant Society San Diego Chapter, Environmental Center of San Diego, Escondido Neighbors United, Southwest Wetlands Interpretive Association, San Diego Audubon Society, Preserve Wild Santee, Buena Vista Audubon Society, and San Pasqual Valley Preservation Alliance. All our organizations respectfully request your consideration.

The 2017 Climate Change Scoping Plan identifies how the State may reach its 2030 climate change target to reduce GHG emissions by 40 percent below 1990 levels, and substantially advance towards the State's 2050 climate goal to reduce GHG emissions by 80 percent below 1990 levels. The 2017 Climate Change Scoping Plan seeks to integrate efforts already underway to reduce the State's GHG emissions. Given the importance of the 2017 Climate Change Scoping Plan's guidance in reaching the State's GHG emissions reductions goals, it is critical that the County analyzes its recommendations within the County's environmental review for the County's CAP and the Newland Sierra Project.

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Response to Comment Letter X22

Endangered Habitats League
Dan Silver, Executive Director
November 30, 2017

- X22-1** The comment provides introductory remarks about the commenting organization, Endangered Habitats League, and its interest in the CAP project as well as a project that is in process at the County's Planning & Development Services. The comment requests that the comment letter be included in the administrative record for both projects and notes that these comments are submitted on behalf of the California Native Plant Society San Diego Chapter, Environmental Center of San Diego, Escondido Neighbors United, Southwest Wetlands Interpretive Association, San Diego Audubon Society, Preserve Wild Santee, Buena Vista Audubon Society, and San Pasqual Valley Preservation Alliance. No further response is required.
- X22-2** The comment summarizes the intent of the 2017 Climate Change Scoping Plan (2017 Scoping Plan) prepared by the California Air Resources Board (CARB) and adopted on December 14, 2017. It also states the CAP should analyze the recommendations of the 2017 Scoping Plan. Please refer to comments below for specific responses. Please refer to Master Response 4 regarding the CAP's consistency with the 2017 Climate Change Scoping Plan. No further response is required.

X22-1

X22-2

2

It is expected that this 2017 Climate Change Scoping Plan will be adopted in final form by CARB within the next few months, perhaps at CARB's December meetings.¹ Assembly Bill 398 directs CARB to update the Scoping Plan no later than January 1, 2018. Therefore, the new Climate Change Scoping Plan will be in effect before the County considers the proposed CAP and proposed Newland Sierra Project. Rather than simply waiting until after the County finalizes the EIRs for both projects, we submit this letter now to make sure that County staff is aware of all of the information regarding the Scoping Plan that must be included in the County's two EIRs. The relevant information is summarized below.

I. VEHICLE MILES TRAVELED IS AN ESSENTIAL COMPONENT OF REDUCING GHG EMISSIONS

A. CARB Policy

The 2017 Climate Change Scoping Plan states that VMT reduction serves as an essential part of GHG emissions reductions, enabling the State to meet its climate change goals:

Stronger SB 375 GHG reduction targets will enable the State to make significant progress toward the goal of reducing total light-duty VMT by 15 percent from expected levels in 2050, but alone will not provide all of the VMT reductions that will be needed. The gap between what SB 375 can provide and what is needed to meet the State's 2030 and 2050 goals needs to be addressed through additional VMT reduction measures.

(2017 Climate Change Scoping Plan at p. 116.)

The 2017 Climate Change Scoping Plan repeatedly emphasizes the importance of VMT reductions. (2017 Climate Change Scoping Plan at pp. 74 [VMT reductions result in important health benefits]; 113 [transportation sector reduction goals include: "Promote all feasible policies to reduce VMT, including: Land use and community design that reduce VMT; Transit oriented development"].)

With regard to local actions, the 2017 Climate Change Scoping Plan recognizes that local decisions to reduce VMT are necessary to achieve the 2030 target under SB 32:

While the State can do more to accelerate and incentivize these local decisions, local actions that reduce VMT are also necessary to meet transportation sector-specific goals and achieve the 2030 target under SB 32. *Through developing the Scoping Plan, CARB staff is more convinced than ever that, in addition to achieving GHG reductions from cleaner fuels and vehicles, California must also reduce VMT.* Stronger SB 375 GHG reduction targets will enable the State to make significant progress toward needed reductions, but alone will not provide the VMT

¹ The first draft of the Plan was released on January 20, 2017.
https://www.arb.ca.gov/cc/scopingplan/2030sp_pp_final.pdf

X22-2
cont.

X22-3

X22-3 The comment summarizes policies and language included in the 2017 Scoping Plan related to the topic of vehicle miles traveled (VMT). The County acknowledges the summarized content and no additional response is required.

3

growth reductions needed; there is a gap between what SB 375 can provide and what is needed to meet the State's 2030 and 2050 goals. In its evaluation of the role of the transportation system in meeting the statewide emissions targets, CARB determined that *VMT reductions of 7 percent below projected VMT levels in 2030 (which includes currently adopted SB 375 SCSs) are necessary. In 2050, reductions of 15 percent below projected VMT levels are needed. A 7 percent VMT reduction translates to a reduction, on average, of 1.5 miles/person/day from projected levels in 2030.* It is recommended that local governments consider policies to reduce VMT to help achieve these reductions, including: land use and community design that reduces VMT; transit oriented development; street design policies that prioritize transit, biking, and walking; and increasing low carbon mobility choices, including improved access to viable and affordable public transportation and active transportation opportunities. It is important that VMT reducing strategies are implemented early because more time is necessary to achieve the full climate, health, social, equity, and economic benefits from these strategies

(2017 Climate Change Scoping Plan at p. 150 [emphasis added].)

The 2017 Climate Change Scoping Plan makes clear that VMT reduction stands alone as separate and distinct from any plan for mitigating project GHG emissions impacts or other land use policies, including the potential for allowing the purchase of GHG emissions offsets and "offshore offsets." Because CARB is "more convinced than ever" that VMT reduction is necessary to achieve State GHG reduction targets, local land use decisions may not mitigate increased GHG emissions resulting from VMT generated by new development projects merely by implementing GHG reduction policies that do not also reduce projects' VMT. The 2017 Climate Change Scoping Plan does not allow for VMT mitigation through measures, such as purchasing offsets, that do not reduce projects' VMT.

B. Climate Action Plan

The CAP draft supplemental environmental impact report (DSEIR) fails to describe how the proposed action will affect San Diego County's overall VMT either by total miles or per person miles. Further, the DSEIR does not provide separate metrics for measuring VMT, nor does it describe how the CAP will impact the region as a whole. While the CAP analyzes GHG emissions impacts sector-by-sector within the County, it should provide an overall consideration of the impacts as a whole to accurately ascertain consistency with the 2017 Climate Change Scoping Plan, and compliance with Assembly Bill (AB) 32, Senate Bill (SB) 32, and other GHG reduction requirements. The DSEIR must provide this information.

For General Plan Amendments (GPAs) approved after the adoption of the CAP, the CAP proposes mitigating GHG impacts through the reliance on offsets that do not result in VMT reductions. GPAs would inherently produce GHG emissions over and above those considered in the General Plan and mitigated in the CAP. Similarly, any VMT from GPAs approved

X22-3
cont.

X22-4

X22-5

X22-6

X22-4

The comment asserts that the 2017 Scoping Plan clearly identifies VMT reductions as "separate and distinct" elements of a plan for mitigating project GHG emission impacts. The commenter also asserts that because the 2017 Scoping Plan includes language related to VMT, that the County must not utilize carbon offset credits to reduce cumulative GHG emissions from GPAs. The County disagrees with this assertion for the following reasons.

The County has incorporated VMT reductions as a "separate and distinct" element of the CAP. The County agrees with CARB that "...local actions that reduce VMT are also necessary to meet transportation sector-specific goals and achieve the 2030 target under SB 32" and has included VMT reduction measures in line with the State's vision while accounting for the local, rural setting and land use patterns.

As reflected in the CAP, the County is committed to reducing VMT within its jurisdiction beyond VMT projections already accounted for in the Regional Plan. GHG Reduction Measures T-1.1 through T-1.3 specifically reduce VMT from planned developments either through elimination of development potential in more remote areas of the unincorporated county or through improved design of community plan areas. For example, a Community Plan Update could refine and change the land use designations within a certain community to establish a mixed-use village, increase density, or include specific roadway improvements that provide for enhanced multi-modal use. All of these actions within a Community Plan Update would serve to reduce VMT.

Other measures in the CAP focus on reducing commute VMT through transportation demand management and parking strategies, which will be required for certain types of projects that are implemented after the adoption of the CAP. In addition, GHG Reduction Measures T-1.1 and T-1.2 focus on conserving open space and agricultural lands and in turn limit future growth in the more remote areas of the county. The extinguished future development potential under these measures serves to eliminate VMT that would otherwise be generated from a developed land use. This reduction in development potential will result in VMT reductions above and

	<p>beyond those contemplated in the current Regional Plan and SB 375 targets and will also be reflected in future updates provided to SANDAG based on land use changes that occur in the unincorporated county.</p> <p>The comment also contends that CARB's Scoping Plan does not allow use of carbon offset credits to mitigate projects' GHG emissions. This is not accurate. CARB's Scoping Plan states that "...it may be appropriate and feasible to mitigate project emissions through purchasing and retiring carbon credits" where further project design or regional investments are infeasible or not proven to be effective (CARB 2017). The County acknowledges this in the framework of CAP Mitigation Measure M-GHG-1 whereby off-site mitigation, including purchase of carbon offset credits, would be allowed after all feasible on-site design features and mitigation measures have been incorporated. This is consistent with guidance in the Scoping Plan which does not prohibit use of carbon offset credits.</p> <p>Regarding the reference to the 7 percent reduction below projected VMT referenced in the Scoping Plan, it should be noted that CARB identifies that as a <i>statewide</i> figure:</p> <p>In its evaluation of the role of the transportation system in meeting the <i>statewide</i> emissions targets, CARB determined that VMT reductions of 7 percent below projected VMT levels in 2030 (which includes currently adopted SB 375 SCSs) are necessary (emphasis added)</p> <p>While it is true that CARB discloses the VMT reductions they anticipate are needed beyond adopted SB 375 targets, they do not set these as reduction targets for local jurisdictions. The County's CAP follows CARB's recommendations on overall per-capita GHG reduction targets. The anticipated VMT reductions needed, as reported in the Scoping Plan, are based on statewide data and do not account for local context and land use patterns. In addition, there are regions of the State that are not within the jurisdiction of an MPO and do not have established SB 375 reduction targets. The San Diego region is exceeding its targets as described below. Moreover, CARB acknowledges that the guidance is voluntary when it states the following in the Scoping Plan (page 99):</p>
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	<p>While this guidance is provided out of the recognition that local policy makers are critical in reducing the carbon footprint of cities and counties, the decision to follow this guidance is voluntary and should not be interpreted as a directive or mandate to local governments.</p> <p>Furthermore, as described in Master Response 2, SANDAG's analysis in the Regional Plan and associated CEQA documentation demonstrated that it would achieve a reduction of 15% in per capita GHG emissions from 2005 levels by 2020 (SANDAG was tasked by CARB to achieve a 7% reduction in per capita GHGs from passenger cars and light trucks by 2020), and 21% in per capita GHG emissions from 2005 levels by 2035 (SANDAG was tasked by CARB to achieve a 13% reduction in per capita GHGs from passenger cars and light trucks by 2035) from light-duty vehicles, thereby exceeding its SB 375 targets. The CAP includes GHG reduction measures that would serve to reduce VMT by 4% below projected amounts. Refer to Master Responses 2 and 6 for details on VMT reduction measures identified in the CAP. The comment will be included in the administrative record and provided to decision makers for consideration.</p> <p>X22-5 The comment asserts that the Draft SEIR fails to describe how the CAP will affect the County's overall VMT, nor does it provide a metric for measuring VMT, nor does it describe how the CAP will impact the region as a whole. The County disagrees with these assertions. Please refer to Master Response 2 and response to comment X29-6 which addresses how the CAP is consistent with the County's 2011 GPU land use plan and SANDAG's regional planning efforts. The Draft SEIR evaluates the environmental impacts related to the implementation of the CAP's 11 strategies, 30 GHG reduction measures and supporting efforts. It should also be noted that there is no current requirement pursuant to CEQA to analyze VMT at this time. Senate Bill (SB) 743 was signed in 2013, requiring a move away from vehicle delay and level of service (LOS) under CEQA transportation analysis. It requires the Governor's Office of Planning and Research (OPR) to identify new metrics for identifying and mitigating transportation impacts. OPR identified VMT per capita, VMT per employee,</p>
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	<p>and net VMT as new metrics for transportation analysis and in November 2017 released a CEQA Guidelines update package. It is anticipated that regulatory language changes to CEQA will be adopted in 2018 by the Natural Resources Agency and that statewide implementation will occur on January 1, 2020. Nevertheless, as described in the response to X22-4 above, the CAP is committed to reducing VMT through numerous measures that are achievable and enforceable.</p> <p>The comment also suggests that the Draft SEIR should provide an overall consideration of impacts “as a whole” to accurately ascertain consistency with the 2017 Scoping Plan, compliance with AB 32, SB 32, and other GHG reduction requirements. Please see Master Response 2. As stated above, the CAP will reduce VMT through its identified measures (see also response to X22-4). It is unclear what is meant by the comment suggesting that the Draft SEIR analyze how the CAP will impact the region as a whole. The Draft SEIR adequately describes the potential environmental impacts related to implementation of the CAP and its 11 strategies, 30 GHG reduction measures, and supporting efforts. The commenter does not provide specific examples of the Draft SEIR inadequately describing the environmental impacts, therefore no further response can be provided. The CAP establishes GHG emissions targets that are consistent with the State’s GHG emission reduction targets, therefore, the CAP is consistent with those regulations. The comment will be included in the administrative record and provided to decision makers for consideration.</p> <p>X22-6 The comment suggests that General Plan Amendments (GPAs) approved after the adoption of the CAP would result in additional GHG emissions above and beyond what was considered by the 2011 GPU and mitigated in the CAP and which cannot be mitigated through the use of carbon offset credits. The County disagrees with this assertion. As described on pages 2.7-36 through 2.7-41 of the Final EIR, CAP Mitigation Measure M-GHG-1 would require the use of a comprehensive mitigation program that would include onsite and offsite mitigation and could be supplemented as needed upon the exhaustion of all feasible mitigation, with carbon</p>
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	<p>offset credits. The mitigation program would result in no new net GHG emissions above what was considered by the 2011 GPU and would include all GHG emissions associated with project-related VMT. The Sustainable Communities and Climate Protection Act of 2008 (Sustainable Communities Act, SB 375, Chapter 728, Statutes of 2008) supports the State's climate action goals to reduce GHG emissions through coordinated transportation and land use planning with the goal of more sustainable communities. The purpose of SB 375 is to reduce GHG emissions. The Final SEIR provides feasible mitigation through Mitigation Measure M-GHG-1 that would require GPAs to reduce their GHG emissions. The use of carbon offset credits is supported through previous case law as described in Master Response 12. Additionally, individual GPA projects would be evaluated for project-level VMT and consistency with the SCS at the time of discretionary review. Speculation regarding the level of impacts and whether impacts could be mitigated is not appropriate as the project-level analysis for these projects is not completed. Please also refer to response to comment X29-7. The comment will be included in the administrative record and provided to decision makers for consideration.</p>
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subsequent to the CAP would be additive and must be appropriately mitigated. This cannot be achieved through the use of offsets alone.

C. Newland Sierra Project

The Newland Sierra Project's DEIR does not describe how the development will affect San Diego County's overall VMT either by total miles or per person miles. Although the Newland Sierra DEIR argues that a VMT analysis is not required, it provides a cursory analysis of the Newland Sierra Project's VMT: it states that the Newland Sierra Project's per capita VMT would be greater than the threshold for the County as a whole but less than the threshold for its rural subregion. Here, the appropriate metric would be the Countywide comparison, which corresponds to SANDAG's jurisdiction and the area to which the RTP/SCS applies. Also, the higher VMT in the subregion than the County as a whole is indicative that the Newland Sierra Project is proposed in a rural area requiring long car trips, which is contrary to smart planning.

Similar to the CAP, the Newland Sierra Project mitigates approximately 82% of its GHG emissions through the use of offsets. The offset program will not result in VMT reduction, and therefore is inconsistent with the 2017 Climate Change Scoping Plan. Moreover, the Newland Sierra Project only proposes Project Design Features, not mitigation measures, aimed at reducing VMT, and is therefore inconsistent with the 2017 Climate Change Scoping Plan.

II. THE CAP EIR AND THE NEWLAND EIR EACH MUST ANALYZE HOW THEY COMPLY WITH THE STATEWIDE METRIC FOR GHG EMISSIONS

A. CARB Policy

As mentioned above: "CARB determined that VMT reductions of 7 percent below projected VMT levels in 2030 (which includes currently adopted SB 375 SCSs) are necessary. In 2050, reductions of 15 percent below projected VMT levels are needed. A 7 percent VMT reduction translates to a reduction, on average, of 1.5 miles/person/day from projected levels in 2030." (2017 Climate Change Scoping Plan at p. 150.) CARB "also recognized that GHG determinations in CEQA should be consistent with the statewide Scoping Plan goals, and that CEQA documents taking a goal-consistency approach may soon need to consider a project's effects on meeting the State's longer term post-2020 goals." (*Id.* at p. 151) As such, CARB has established that local decisions impacting VMT and GHG are key to meeting the State's climate change goals.

B. Climate Action Plan DEIR Deficiencies

The CAP's DSEIR does not provide information which compares how the CAP will result in GHG emission metrics that compare to the GHG metrics in the 2017 Climate Change Scoping Plan. In addition, the DSEIR does not indicate whether the CAP's assumptions are consistent with the projected San Diego County population figures and projections used by CARB to derive the statewide metrics for per person GHG emissions.

The need for this information to be made available to the public is underscored by the fact that the CAP is a mitigation measure for the County's General Plan Update from 2011,

X22-6
cont.

X22-7

X22-8

X22-9

X22-10

X22-11

X22-12

X22-7

The comment is related to a project that is currently being evaluated by the County's Planning & Development Services Department and does not pertain to the adequacy of the Final CAP or Final SEIR. No further response is required.

X22-8

The comment is related to a project that is currently being evaluated by the County's Planning & Development Services Department and does not pertain to the adequacy of the Final CAP or Final SEIR. No further response is required.

X22-9

The comment summarizes policies contained within the 2017 Scoping Plan related to VMT reductions that are required to meet the State's goals. Please see Master Response 2. The County acknowledges the summarized content and no further response is required.

X22-10

The comment asserts that the Draft SEIR does not provide information related to how the CAP's GHG emissions metrics will compare to the 2017 Scoping Plan GHG emissions metric. It is unclear what the comment means by "GHG metrics" in the Scoping Plan. As described in Chapter 2 of the CAP and in Master Response 4 – GHG Baseline and Reduction Targets, the reduction targets and goal used in the CAP were prepared in a manner consistent with the methodology of CARB's 2017 Scoping Plan. The Draft SEIR evaluates the physical impacts that would occur as a result of the implementation of the 11 strategies, 30 GHG reduction measures, and supporting efforts. Specifically, Chapter 2.7 GHG, evaluates the emissions impacts of implementing the CAP. It is unclear what type of comparison the commenter is describing. The comment will be included in the administrative record and provided to decision makers for consideration.

X22-11

The comment asserts that the Draft SEIR does not indicate whether the CAP's population assumptions are consistent with the statewide metrics used by the CARB in constructing per-person GHG emissions. The per-person GHG emissions metrics in the Scoping Plan are described by CARB as the statewide targets consistent with State goals. As described in Master Response 4, the CAP's GHG reduction targets are aligned with CARB's per-person GHG metrics. Chapter 2 and Appendix A to the CAP describe how GHG projections were developed. The projections are based on forecasted

	<p>population, employment, and housing data for the San Diego region. The Draft SEIR evaluates the physical impacts that would occur as a result of the implementation of the 11 strategies, 30 GHG reduction measures, and supporting efforts. The discussion of population methodologies is not a subject that would typically be evaluated in the Draft SEIR because it is not relevant to the analysis of physical environmental impacts. The comment will be included in the administrative record and provided to decision makers for consideration.</p> <p>X22-12 The comment states that the population comparison referenced above in response to comment X22-11 is important because the 2011 GPU utilized population assumptions that are different than that which the CAP used. The CAP uses growth projections from the 2011 GPU, with the only exception being GPAs that have been <i>approved</i> since the adoption of the 2011 GPU. Other GPAs that have not been approved were included in the cumulative impact analysis of the Draft SEIR, and appropriate mitigation was then identified. The CAP does not presuppose any of the GPAs to be approved or not approved; it merely includes them as “reasonably” foreseeable in line with how the CEQA Guidelines requires cumulative project analysis to be presented. The CAP projections do not include GPAs that have not been adopted by the decision-makers. In-process and future GPAs represent reasonably foreseeable probable future projects that need to be evaluated in the context of cumulative impacts. These impacts are discussed in the Chapter 2.7 of the SEIR. The comment will be included in the administrative record and provided to decision makers for consideration.</p>
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which assumed the amount of growth planned for within the General Plan. By contrast, the current proposed version of the County's CAP contemplates additional GPAs, which would add population and associated GHG emissions on top of the amounts planned for in the 2011 General Plan as adopted. The CAP's DSEIR must fully analyze the additional population and GHG emissions that are now going to be authorized by the latest proposed CAP. In addition, the CAP DSEIR must analyze whether GPAs that exceed the metric set forth in CARB's 2017 Climate Change Scoping Plan may nonetheless be "cured" by the purchase of offsets without separate VMT mitigation.

C. Newland Sierra Project DEIR Deficiencies

The Newland DEIR does not provide information which compares how the development will result in GHG emissions that compare to the GHG metrics in the 2017 Climate Change Scoping Plan. Also, the DEIR does not indicate whether the DEIR's assumptions are consistent with the projected San Diego County population figures and projections used by CARB to derive the Statewide metrics for per person GHG emissions. The Newland Sierra Project is unplanned growth that was not accounted for in the County's General Plan. Because SANDAG's RTP/SCS is based on the County's General Plan land uses, new emissions and VMT from the Newland Sierra Project were not considered therein, and additional analysis is required. It is unclear whether Newland's approximately 6,000 new residents will meet the RTP/SCS metric, or if there will be greater emissions. The DEIR must state whether or not the metric may be exceeded but "cured" by the purchase of offsets without separate VMT mitigation. It must also analyze whether the Project's VMT will comply new Statewide metrics and allow SANDAG to comply with them.

III. THE CAP DSEIR AND NEWLAND DEIR MUST ANALYZE HOW THEY COMPLY WITH SENATE BILL 375 COMPLIANCE EFFORTS

A. CARB Policy

The 2017 Climate Change Scoping Plan describes the compliance efforts and GHG reductions from SB 375 and CARB's recently released targets² for Metropolitan Planning Organizations (MPOs) such as SANDAG:

Local land use decisions play a particularly critical role in reducing GHG emissions associated with the transportation sector, both at the project level, and in long-term plans, including general plans, local and regional climate action plans, specific plans, transportation plans, and supporting sustainable community strategies developed under SB 375.

(2017 Climate Change Scoping Plan at p. 150.)

Further, CARB recently proposed new GHG emissions reduction targets for MPOs in order to reach the Statewide SB 375 GHG emission reduction targets. The targets are currently

² Available at: https://www.arb.ca.gov/cc/sb375/final_staff_proposal_sb375_target_update_october_2017.pdf.

X22-12
cont.

X22-13

X22-14

X22-13 The comment is related to a project that is currently being evaluated by the County's Planning & Development Services Department and does not pertain to the adequacy of the Final CAP or Final SEIR. No further response is required.

X22-14 The comment summarizes a policy from the 2017 Scoping Plan related to compliance with SB 375 and describes how regional GHG emissions targets have been established for the San Diego Association of Regional Governments (SANDAG) as a result of the legislation. The commenter asserts that because of the County's unique rural land use pattern, new development is likely to result in additional VMT which would be inconsistent with SANDAG's targets. Consistency of the CAP with SB 375 and the relationship between the countywide analysis and SANDAG's data are described at length in Master Response 2. Please refer to Master Response 2. The comment further makes reference to CARB's proposed updates to GHG emissions reduction targets under SB 375. CARB's proposal for updated targets is currently in draft form and has not been adopted. Consequently, an updated analysis demonstrating consistency with the draft targets is not available. The CAP appropriately relies on the currently adopted San Diego Forward: The Regional Plan (SANDAG) that has been determined to be consistent with SB 375 targets by CARB. Moreover, SANDAG's analysis in the Regional Plan and associated CEQA documentation demonstrated that it would achieve a reduction of 15% in per capita GHG emissions from 2005 levels by 2020 (SANDAG was tasked by CARB to achieve a 7% reduction in per capita GHGs from passenger cars and light trucks by 2020), and 21% in per capita GHG emissions from 2005 levels by 2035 (SANDAG was tasked by CARB to achieve a 13% reduction in per capita GHGs from passenger cars and light trucks by 2035) from light-duty vehicles, thereby exceeding its SB 375 targets. The CAP proposes a rigorous implementation and monitoring component whereby the County will prepare a CAP update every 5 years beginning in 2025. Updated SB 375 targets, once adopted, and SANDAG's updated analysis will be incorporated in future CAP updates. Please refer to Master Response 6 for details on actions being taken by the County

	<p>to reduce VMT. The comment will be included in the administrative record and provided to decision makers for consideration.</p>
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slated to take effect in 2018. SANDAG originally recommended a seven percent GHG emissions reduction in 2020 and a thirteen percent GHG emissions reduction in 2035 relative to 2005 emissions. SANDAG now proposes an 18 percent reduction target in 2035 relative to 2005 emissions. SANDAG's current RTP/SCS anticipates cities will continue to grow within existing urban boundaries, bringing people and destinations closer in mixed-use, compact communities that facilitate walking and transit use. SANDAG anticipated the additional GHG reductions would need to come from increasing the cost of driving and the number of zero-emission passenger vehicles, which CARB noted are outside the control of SANDAG and SB 375. CARB recommended a SB 375 target of 15 percent in 2020 and 21 percent in 2035, three percentage points higher than SANDAG's target recommendation due to CARB's quantification of the potential for additional land use and transportation strategies. Of note, CARB's targets for SANDAG (which has jurisdiction that is coterminous with County boundaries) are higher than other regional MPO targets, which indicates SANDAG's GHG emissions reduction efforts must go over and above efforts in other parts of the State. VMT reduction within the unincorporated County, therefore, takes on particular importance. Because of the unincorporated County's rural nature, new development there is likely to add more VMT than new development in the incorporated cities. Allowing unplanned sprawl development in the unincorporated County would thwart efforts throughout the County (SANDAG's jurisdiction) to reduce VMT consistent with SB 375 and CARB's new targets.

B. Climate Action Plan

The CAP must take into account how its adoption may affect SANDAG's ability to adopt a new RTP/SCS that complies with CARB's new targets. Given the increase in reductions from San Diego County under the new SB 375 targets, CARB has indicated that it believes San Diego County has additional work to do to reduce GHG emissions in order to ensure the State reaches its climate change goals. The CAP DSEIR should analyze how the CAP helps or hinders reaching SANDAG's targets, as it cannot merely assume that SANDAG will meet them.

The CAP DSEIR must identify how the CAP and its various alternative strategies and mitigation measures will affect regional compliance with CARB's updated targets, as well as regional VMT. The County's DSEIR fails to do so. Therefore, the public has not been given crucial information as to how the mitigation measures and alternatives in the proposed CAP will affect the SB 375 regulatory regime. The California Supreme Court recently overturned a local agency's project approval for similarly failing to identify potential environmentally sensitive habitat areas (ESHA) under the California Coastal Act, and account for those areas in their analysis of the project's mitigation. (*Banning Ranch Conservancy v. City of Newport Beach* (2017) 2 Cal.5th 918.) The Court concluded the absence of ESHA information failed to provide decision makers with the necessary information on a proposed project, although ESHA impacts were outside of the city's purview. Consistent with the new *Banning Ranch* decision, the CAP DSEIR must identify and analyze how it complies with State regulations which inform the CAP DSEIR's implementation of GHG mitigation measures.

Under *Banning Ranch*, it is crucial that an EIR on a project present information on how "related regulatory regimes" may apply to the proposed project, such as how the various mitigation measures and alternatives may help the County reach compliance with other related regulatory requirements such as SB 375 and CARB's updated GHG emission reduction targets

X22-14
cont.

X22-15

X22-16

X22-15 The comment states that the CAP and Draft SEIR should evaluate how the CAP may affect the ability of SANDAG to reach its updated regional GHG emissions reduction targets. As stated in response to comment X22-14, the updated targets are in draft form and have not been adopted by CARB. It would be speculative for the County to contemplate SANDAG's future actions to achieve these yet to be adopted targets and the CAP's effect on the process until the rulemaking process is complete. As stated in response to comment X22-14, the CAP will incorporate SANDAG's analysis in compliance with updated SB 375 targets, once adopted, in future CAP updates. The comment also alleges that CARB has indicated that it believes San Diego County has additional work to do to reduce GHG emissions the State reaches its climate change goals. The commenter provides no reference to where this statement was made. Please refer to Master Response 2.

X22-16 The comment states that the CAP and Draft SEIR should address how the GHG reduction measures affect the ability of SANDAG to meet regional GHG emissions reduction targets and the lack of this information deprives the public of the ability to comment on such information. Please refer to Master Response 2, response to comment X22-14, and response to comment X22-15.

It also states that the County "should be able to provide such information regarding VMTs to accurately disclose how the CAP will affect SANDAG's RTP/SCS process given the proposed land uses under the CAP." The commenter is again mistaken in their interpretation of what the CAP fundamentally does (reduces GHG emissions from existing planned development based on the 2011 GPU and existing County operations) and how the MPO and its RTP/SCS interfaces with the existing 2011 GPU land uses. The commenter is again encouraged to review Master Response 2.

Additionally, the comment refers to the case of *Banning Ranch Conservancy v. City of Newport Beach*, 2 Cal. 5th 918 (2017), in support of its statement that the Draft SEIR must analyze how the CAP will affect the ability of SANDAG to meet SB 375 targets. The *Banning Ranch Conservancy* case addressed the City of Newport Beach's failure to analyze the environmental

	<p>impacts of a development project, and the City's improper reliance upon the argument that those impacts would be considered during a subsequent permit application to a different agency. By contrast, the CAP does not propose any changes to land use, and is consistent with the RTP/SCS. Please refer to Master Response 2. Furthermore, as stated above, any proposed GPAs would be reevaluated for project-level VMT and consistency with the SCS at the time of discretionary review.</p> <p>Finally, the commenter suggests that the Draft SEIR must provide a description of consistency with environmental review and consultation requirements. Consistency of the CAP with existing environmental review requirements is found within each environmental topic issue area throughout the Final SEIR. The commenter does not provide examples where the Final SEIR is inadequate with regard to this topic, therefore no specific response can be provided. Please see response to comment X22-4 related to the issue of evaluating VMTs and SANDAG's GHG emissions targets. The comment will be included in the administrative record and provided to decision makers for consideration.</p>
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for SANDAG. In *Banning Ranch*, the Supreme Court stated that “[a]n EIR project description must include ‘[a] list of related environmental review and consultation requirements [found in] federal, state, or local laws, regulations, or policies. To the fullest extent possible, the lead agency should integrate CEQA review with these related environmental review and consultation requirements.’” Failure to present this information results in an information deficiency in the DSEIR, and the County should be able to provide such information regarding VMTs to accurately disclose how the CAP will affect SANDAG’s RTP/SCS process given the proposed land uses under the CAP.

Further, the County’s General Plan itself requires collaboration with local and State agencies, including SANDAG. General Plan Policy COS-20.3 states that the County must “[c]oordinate air quality planning efforts with federal and State agencies, SANDAG, and other jurisdictions.” Therefore, the County should collaborate with SANDAG to analyze consistency with the updated targets in the DSEIR.

C. Newland Sierra Project

The Newland Sierra Project fails to meet SANDAG’s current per capita VMT threshold and will generate new VMT that was not included in SANDAG’s adopted 2015 RTP/SCS, which was based on the assumption that the County would not approve a new urban level of development on the Newland site. In the new 2017 Updated Scoping Plan, CARB has indicated that VMT in San Diego County must be further reduced to comply with SB 375. As a result, if the County were to approve the Newland Sierra Project with its unplanned additional VMTs and the amount of VMT’s per person, the County’s action would cause the San Diego County region to fall short of SANDAG’s updated total VMT and per capita VMT reduction goals set forth in the adopted 2015 RTP/SCS and likely as well the upcoming 2020 RTP/SCS now be being prepared by SANDAG.

The Newland Sierra Project DEIR falls victim to many of the same errors as the CAP DSEIR. The Newland DEIR has failed to present information on how the Project will impact cumulative County-wide VMT averages. The DEIR merely discusses VMT, and provides information on the unincorporated County and the project’s subregion, without providing information on how the Project will impact the overall averages for the County, and therefore whether or not the Project will help or hinder the County in reaching its VMT reduction goals recommended by CARB. Under *Banning Ranch*, the County cannot simply leave this analysis for SANDAG to figure out how it will meet the required targets. Further, based on the limited analysis provided in the Newland DEIR, it appears that the Project would increase the County’s overall per person VMT because it exceeds the County’s VMT threshold. This would make it more difficult to comply with SB 375 and CARB’s new targets, making it even more important that the DEIR analyze the Project’s impacts on SANDAG’s ability to comply with SB 375. The County should have coordinated with SANDAG to ensure the required analysis took place. It does not appear the County has done so, and instead presents the Newland Sierra Project’s approval as *fait accompli*, whether or not it allows SANDAG to actually meet its regional GHG and VMT reduction requirements.

X22-16
cont.

X22-17

X22-18

X22-17: The comment suggests that the County is required to collaborate with local and State agencies, including SANDAG. Please refer to Master Response 2. The regional MPO does not have control over each jurisdiction’s land use planning or the designation of land uses. As detailed in Master Response 2, concerning the relationship between the County’s land use plans and the Regional Plan, the County provided SANDAG land use forecasts based on the GPU, which SANDAG then incorporated into the adopted Regional Plan. SANDAG uses these land use forecasts to determine VMT projections within the region. The County coordinates closely with SANDAG on regional efforts. Again, the CAP does not change any land uses within the County and provides 30 measures to reduce approximately 900,000 MTCO₂E by 2030, which further helps the MPO reach their mandated targets.

X22-18: The comment is related to a project that is currently being evaluated by the County’s Planning & Development Services Department and does not pertain to the adequacy of the Final CAP or Final SEIR. The County has not approved the project, as suggested by the comment. No further response is required.

IV. THE CAP DSEIR AND THE NEWLAND DEIR MUST ANALYZE ENVIRONMENTAL JUSTICE IMPACTS

A. CARB Scoping Plan

CARB's 2017 Climate Change Scoping Plan rejects reliance on "offshore offsets" as a primary means for GHG mitigation. CARB explicitly recommends prioritization of on-site design features to reduce GHG emissions and direct investment in GHG reduction within a project's own region in order to achieve co-benefits. CARB also emphasizes the need for project features that reduce VMT and planning new development with access to affordable transit opportunities:

To the degree a project relies on GHG mitigation measures, *CARB recommends that lead agencies prioritize on-site design features that reduce emissions, especially from VMT, and direct investments in GHG reductions within the project's region that contribute potential air quality, health, and economic co-benefits locally.* For example, on-site design features to be considered at the planning stage include land use and community design options that reduce VMT, promote transit oriented development, promote street design policies that prioritize transit, biking, and walking, and increase low carbon mobility choices, including improved access to viable and affordable public transportation, and active transportation opportunities.

(2017 Climate Change Scoping Plan at p. 152 [emphasis added].)

In addition to its focus on on-site features to reduce GHG emissions and VMT, CARB provides examples of regional investment to reduce VMT that also create jobs and benefit the local economy. These include "local building retrofit programs that can pay for cool roofs, solar panels, solar water heaters, smart meters, energy efficient lighting, energy efficient appliances, energy efficient windows, insulation, and water conservation measures for homes within the geographic area of the project." (2017 Climate Change Scoping Plan at p. 152.) Other examples include "financing installation of regional electric vehicle (EV) charging stations, paying for electrification of public school buses, and investing in local urban forests." (*Ibid.*) Further, the 2017 Climate Change Scoping Plan recognizes that VMT and GHG emissions reductions are an environmental justice issue, as the Environmental Justice Advisory Committee recommended that CARB restrict sprawl and examine regional transportation issues. (*Id.* at p. 25.)

Finally, CARB emphasizes that offset investments cannot merely pay lip service to GHG reduction, but must provide clear evidence of follow through and monitoring to make sure such reductions are achieved: "Local direct investments in actions to reduce GHG emissions should be supported by quantification methodologies that show the reductions are real, verifiable, quantifiable, permanent, and enforceable." (2017 Climate Change Scoping Plan at p. 152.) Only if project design features and regional investments are found "infeasible" should a lead agency consider mitigation through retiring carbon credits. (*Ibid.*) CARB's emphasis on GHG

X22-19

X22-20

X22-19: The comment asserts that the 2017 Scoping Plan rejects the use of "offshore offsets" as a primary means for GHG mitigation. The comment summarizes language within the 2017 Scoping Plan related to this topic as well as CARB's policy statement regarding the preferred inclusion of project design features that reduce VMT by providing access to affordable transit opportunities. Please see Master Response 3 on opportunities for the County to implement local direct investment projects. The County acknowledges this information and no response is required. The comment will be included in the administrative record and provided to decision makers for consideration.

X22-20: The comment summarizes CARB's 2017 Scoping Plan language related to the appropriate use of carbon offset credits as a mechanism to mitigate GHG emissions and asserts that the language utilized by CARB emphasizes the importance of the use of on-site project design features and direct investments in regional offsets prior to the use of retired carbon credit offsets. The County acknowledges this mitigation hierarchy and refers the commenter to Master Response 3 related to local direct investments and Master Response 12 related to the appropriate use of mitigation and carbon offset credits. The comment will be included in the administrative record and provided to decision makers for consideration.

9

reductions through on-site features and direct investment within a project's region is an important public policy and environmental justice issue and should not be discarded lightly.

B. Climate Action Plan

The CAP fails to meet CARB's criteria for GHG mitigation as described above. As described in EHL's prior comments on the draft CAP, as an *initial* measure, all GPAs should attain a minimum threshold of VMT reduction, for example, at least achieving compliance with regional RTP/SCS VMT reduction targets. While *after* this, offsets might be considered, the CAP provides only a loose priority system for availability of offsets and sets no criteria for a project's analysis of feasibility of on-site reduction activities or regional direct investment. In fact, the CAP does not even disclose whether or to what extent projects exist in San Diego County that would be candidates for local direct investment. As a programmatic document, the County's CAP should provide clear guidance for subsequent project-specific analyses regarding the availability of local direct investment opportunities. The CAP should also require a clear finding of infeasibility, based on up-front standards, for additional on-site measures before a project moves to local direct investment and a clear finding of infeasibility, based on up-front standards, for local direct investment before moving to more distant or "offshore" offsets.

In addition, the CAP does not provide criteria for GPA projects relying on offsets to demonstrate with substantial evidence that reductions are "real, verifiable, quantifiable, permanent, and enforceable." In fact, the CAP lacks provisions requiring that the County as lead agency be a party to any contract relating to offsets or that clarifying the duties of any entity providing such offsets.

The CAP's loose priority structure would allow a project to move forward with 100% "offshore offsets" with little or no certainty that any would ever be achieved. This failure only serves to deprive the citizens of San Diego County of the economic opportunity brought by local direct investment and the health and air quality co-benefits of on-site GHG emissions reductions and local direct investment. This ignores sound public policy and environmental justice. Further, County roadways could become even further clogged with traffic due to greenfield developments that add GHG emissions and VMT while relying on "offshore offset" projects for mitigation.

C. Newland Sierra Project

The Newland Sierra DEIR repeats and builds upon many of the CAP's failings with allowing 100% "offshore offsets" while polluting San Diego County air and adding to San Diego County traffic congestion in exchange for a vague and unenforceable promise to seek GHG reduction activities across the globe. Newland Sierra fails to account for environmental justice in its analysis, and instead proposes a project that would result in greater sprawl rather than more infill development located near transportation hubs. Also, the use of offsets as an apparent replacement for specified on-site mitigation measures to reduce the Project's GHG emissions impacts contradicts the 2017 Climate Change Scoping Plan's emphasis on VMT reductions in order to "contribute potential air quality, health, and economic co-benefits locally." (2017 Climate Change Scoping Plan at p. 152.) The Newland Sierra Project's proposed offset scheme will not reduce the Project's overall VMT, and therefore cannot provide the necessary co-

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cont.

X22-21

X22-22

X22-21: The comment asserts that the CAP should establish a minimum VMT threshold for all GPA projects, as included in previously submitted comments. The County disagrees and refers the commenter to responses to comment letter O22 related to this topic. To the commenter's second point related to the potential for use of local direct investments, the commenter confuses the County's potential to invest in projects related to GHG Reduction Measure T-4.1 and the ability of GPA projects to use carbon offset credits as may be required under CAP Mitigation Measure M-GHG-1. Please refer to Master Response 3 related to local direct investments and Master Response 12 related to the use of carbon offset credits. Please also refer to Attachment H3, the Preliminary Assessment of the County of San Diego Local Direct Investment Program. The comment will be included in the administrative record and provided to decision makers for consideration.

X22-22: The comment is related to a project that is currently being evaluated by the County's Planning & Development Services Department and does not pertain to the adequacy of the Final CAP or Final SEIR. No further response is required.

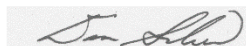
10

benefits to the area's health and economy. The DEIR should require real investment in on-site GHG reductions to "generate real demand side benefits and local jobs." (*Ibid.*) Before resorting to the use of offsets, the Newland Sierra DEIR should consider and analyze the options outlined in the 2017 Climate Change Scoping Plan. Further, the Newland Sierra Project is proposed far from any existing or planned transit infrastructure and fails to provide any meaningful proposal to eliminate long automobile trips necessitated by sprawl development.

Newland's proposal is contrary to the public policy and environmental justice principles emphasized in the 2017 Climate Change Scoping Plan. The Newland Sierra Project would set a low bar for efforts in San Diego County and across the State to reduce GHG emissions by opening the floodgates to greenfield development based on vague and unenforceable promises of developers purchasing carbon credits overseas. CARB's emphasis on GHG reduction through VMT reduction followed by on-site measures and local direct investment sets a path forward for responsible balancing of development and GHG emissions reduction. The net zero concept must not become a paper tiger that shirks California's and San Diego County's commitment and responsibility as leaders in the fight to curb the effects of global climate change. The goal should be a carbon efficient economy *in San Diego*.

Thank you for your time and attention to these comments. Please include them in the CAP's administrative record and the Newland Sierra Project's administrative record, and please provide response to the points raised above. While the public comment periods for both the CAP's DSEIR and Newland DEIR have closed, this important development in State and regional GHG emissions and VMT reduction efforts was not available previously and warrants additional comment and response at this time. As always, we would look forward to collaborating with you on solutions. Please do not hesitate to contact me with questions or comments.

Yours truly,



Dan Silver
Executive Director

Pam Heatherington
Environmental Center of San Diego

Laura Hunter
Escondido Neighbors United

NeySa Ely
San Pasqual Valley Preservation Alliance

Jim Peugh
San Diego Audubon Society

X22-22
cont.

X22-23

X22-23: The comment provides closing comments and requests that the comment letter and responses be included in the administrative record. No further response is required.

11

X-22-23
cont.

Van Collinsworth
Preserve Wild Santee

Natalie Shapiro
Buena Vista Audubon Society

Frank Landis
California Native Plant Society
San Diego Chapter

Mike McCoy
Southwest Wetlands Interpretive
Association

LATHAM & WATKINS LLP

December 1, 2017

VIA U.S. MAIL AND EMAIL

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Letter
X23

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Re: Concerns Regarding Unstable Project Description Following County Staff Statements at the October 20, 2017 Planning Commission Informational Meeting on the Climate Action Plan

Dear Commissioners Brooks, Pallinger, Barnhart, Beck, Edwards, Seiler, and Woods:

We represent the Golden Door Spa ("Golden Door"). The Golden Door is committed to reducing greenhouse gas ("GHG") emissions to combat the threat of global climate change. This is an important issue for the Golden Door, and we have been in communication with the County about its Climate Action Plan ("CAP") and potential GHG emissions from the proposed Newland Sierra Project since January 2015. We submitted comments on the CAP's draft supplemental environmental impact report ("DSEIR") and draft environmental impact report for the proposed Newland Sierra Project.

We attended the recent Planning Commission informational meeting on the CAP on October 20, 2017, and are concerned about comments made by County staff at that meeting indicating that GHG emissions reduction measures included in the County's draft CAP have not yet been finally identified or determined. Staff indicated in their comments that they were still in the process of deciding what measures would be included in the staff-proposed CAP project based on a cost-benefit analysis that was not included in the CAP's DSEIR because the cost-benefit analysis is currently being drafted.

Staff's comments at the Planning Commission meeting suggest that County staff has not yet decided on the contents of the proposed project—despite staff previously releasing the DSEIR for the project. We have several concerns about staff's continuing efforts to define the "project" that is being studied in the DSEIR. We are providing these concerns now, before the County staff completes the Final EIR and then makes decisions on the contents of the CAP based on their later cost benefit studies, to allow the County staff the maximum time to recirculate the draft EIR without further delaying the CAP process.

X23-1

X23-2

Response to Comment Letter X23

Golden Door Properties LLC
Samantha Seikkula of Latham & Watkins LLP

December 1, 2017

X23-1 The comment provides introductory information related to the commenting organization, the Golden Door Spa, and reasons for commenting on the project. No environmental issues were raised in this comment; therefore, no response can be provided.

X23-2 The comment expresses concern regarding information provided by the County at a meeting on October 20, 2017. The comment states that the County expressed that the GHG reduction measures selection process of the CAP was ongoing even as the Draft SEIR had been released, which may result in a CEQA violation. The County disagrees with this assertion. The Draft SEIR which was released for public review on August 25, 2017 appropriately described the elements of the project and evaluated and disclosed the potential environmental impacts associated with implementation of the CAP. As described in "Chapter 1, Project Description, Location, and Environmental Setting," the project consists of the CAP, a General Plan Amendment and revision to the associated mitigation monitoring and reporting program (collectively referred to as the GPA), a threshold of significance for GHG, and a revised Guidelines for Determining Significance for Climate Change (Guidelines).

It appears the comment is suggesting that the elements and measures in the CAP are still being determined. This is not correct. The County wishes to reiterate that the CAP, as described in Chapter 1 of the Draft SEIR, consists of 11 strategies, 30 GHG reduction measures, and supporting efforts that will be considered by decision makers. Regarding decisions about specific GHG reduction measures in the CAP, the County acknowledges that its decisionmakers will review

and contemplate the full suite of feasible and enforceable reduction measures and actions that are proposed and will ultimately determine what measures are approved as part of the CAP. That policy discretion appropriately lies with the decisionmakers. Nonetheless, the County has put forth a stable and well-defined project description for the Draft SEIR and the CAP and the commenter offers no evidence to dispute this. Further, the CAP has been prepared through a transparent, iterative process that includes considerations of many factors, including public input, feasibility and cost considerations, and stakeholder concerns. The fact that the CAP consists of multiple GHG reduction measures, as required for a qualified GHG reduction plan pursuant to CEQA Guidelines Section 15183.5, does not result in an unstable project description. Even if some measures are removed after public review, the underlying fundamental purpose of the project, which is to reduce County GHG emissions consistent with state legislative requirements through implementation of a CAP, has not changed and will be met. This comment will be included in the administrative record and provided to decision makers.

December 1, 2017
Page 2

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Such an approach risks repeating the same errors noted by the Court of Appeal in *Sierra Club v. County of San Diego* (2014) 231 Cal.App.4th 1152 which invalidated the County's first attempt to prepare a CAP for failure to accurately quantify GHG reduction measures:

Quantifying GHG reduction measures is not synonymous with implementing them. Whether a measure is effective requires not just quantification, but also an assessment of the likelihood of implementation. There is no evidence in the record that the above referenced mitigation measures will make any contribution to achieving GHG emissions reductions by 2020.

(*Id.* at 1170.)

At the October 20 meeting, which was noticed as an opportunity to provide information on the Draft CAP and its environmental impact report to the Planning Commission, County staff noted that its main intent in the meeting was "to listen" as it would only "be able to provide some responses" because "not all of the information that [they are] working on now is complete." (See October 20, 2017 Transcript at p. 1, attached hereto as **Exhibit A.**) Staff's comments indicate that County staff is actually determining whether implementation of policies and measures in the CAP are feasible:

When the planning commission considers those measures, you may wish to de-emphasize some policies versus others. It will have to end up resulting in that same quantified reduction over that period of time, knowing that we'll have some amount of time in those 12 years to have a reasonable implementation program. . . . So, when one segment of this pie moves, when we de-emphasize one policy program, then it emphasizes another. And so the challenge is how do we have a balanced program that's providing cost effective strategies and a reasonable policy perspective through the range of subjects that have to be categorized. So that will be the challenge throughout this program about who's paying for it, is it effective, and is it advancing or holding back other policies of the county. So it will be a difficult subject to balance.

(October 20, 2017 Transcript at p. 15.)

Based on County staff's comments, it appears that studies are underway by staff to determine what measures will be included in the CAP and that such studies will not be presented to the public until early next year. There is no indication staff plans to provide the public review and comment period required by the California Environmental Quality Act ("CEQA") for these studies or any other documentation or analyses used to determine which GHG emissions reduction measures will be implemented as part of the CAP.

The county is completing two technical studies to analyze the cost associated with implementing the draft climate action plan. We're

X23-2
cont.

X23-3

X23-3

The comment expresses concern that studies related to the cost and feasibility of GHG reduction measures have not been released for public review prior to publication of the Draft SEIR. It appears the commenter is referencing statements from County staff indicating that two technical studies for certain GHG reduction measures were in preparation as of the date of that meeting. The studies that the commenter has expressed concerns about were released with the Final CAP and Final SEIR on January 8, 2018 and are included as attachments to the Planning Commission Hearing Report. These studies, the Climate Action Plan Implementation Cost Report and Climate Action Plan Cost-Effectiveness Analysis address the cost effectiveness of proposed measures and do not relate to or change the environmental analysis prepared for these measures, nor do they change the conclusions in the Draft SEIR previously circulated for public review. These studies were not pertinent nor required in preparation of the Draft SEIR. Nonetheless, the County proceeded with preparation of the studies to inform decision makers of the costs and benefits associated with the implementation of the CAP. This comment will be included in the administrative record and provided to decision makers.

December 1, 2017
Page 3

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preparing a cost effectiveness study to quantify the net benefits received from implementing the proposed measures. The study will develop an estimate of county implementation costs for the CAP and quantify the net benefits received from implementing the proposed measures evaluated against the net cost to participants over the lifetime of all the measures. We're also in the process of conducting an assessment of direct investments to evaluate the cost effectiveness of possible local projects. This study will identify local project types for potential direct investment as detailed in the draft supplemental environmental impact report. And this feasibility study will evaluate the cost effectiveness of direct investments. These studies will be completed before the end of the year and presented to the planning commission and the board in early 2018.

X23-3
cont.

(October 20, 2017 Transcript at p. 8.) It is unclear why this analysis to determine which measures will be used to implement the CAP is only being performed after the close of the public comment period.

In addition, the County stated that it would be "conducting a more rigorous assessment of the methodologies associated with one of the large programmatic measures in the CAP" and would be "preparing a cost effectiveness study to quantify the net benefits received from implementing the proposed measures." (October 20, 2017 Transcript at p. 8.) It is unclear why this information was not included with the draft CAP published in August or its DSEIR.

The County Appears to Have Presented a "Menu" of Options, in Violation of *Sierra Club v. County of San Diego*. In light of the statements above, it appears the County staff is unclear which strategies described in the CAP may actually be deployed, as the CAP was presented as a "menu" of strategies that the County *could* use if it decided to do so following additional analysis. In *Sierra Club v. County of San Diego*, *supra*, 231 Cal.App.4th at 1173, the Court of Appeal invalidated the first CAP for failing to incorporate precise mitigation measures directly into the CAP. Here, the County appears to be making the same mistakes as it did in the first CAP. Rather than providing stable mitigation measures, the County appears to have drafted aspirational "options" from which they may now pick and choose to implement the CAP. The mitigation measures included in the CAP may not be actually adopted if the County's later analysis determines that they are cost prohibitive, and therefore are not "fully enforceable" as required by CEQA. (*Ibid.*)

X23-4

In addition, the Court of Appeal criticized the County's first CAP for failure to provide an analysis of the effectiveness of a mitigation measure by "not just quantification, but also an assessment of the likelihood of implementation." (*Sierra Club*, *supra*, 231 Cal.App.4th at 1169.) Additional information regarding the likelihood of implementation, therefore, must be included in the Draft CAP and be subject to CEQA's public review and comment requirements.

Here, CEQA's requirements that mitigation be enforceable and that a lead agency ensures implementation are even more pronounced because the CAP is a mitigation measures in its own

X23-4

The comment expresses concern that the County is providing a menu of options that may or may not be deployed to reach the GHG reduction targets which could result in mitigation measures that are not "fully enforceable" and would be in violation with CEQA. The County disagrees with this assertion for several reasons. As described in response to comment X23-2 above, the County has put forth a detailed and stable project description for the Draft SEIR and the CAP. The commenter offers no evidence to dispute this. However, the County recognizes that decisionmakers, at the time of CAP adoption, have the ultimate authority in determining what specific GHG reduction measures would be approved with the CAP to achieve the CAP's reduction targets. The CAP provides a comprehensive set of strategies, measures, and supporting efforts that have been determined to feasibly achieve the established targets. The County has provided a good-faith effort in defining the elements of the CAP, but also recognizes that it is a planning document that will guide the process for managing and implementing GHG reduction measures over time. Where updates to the plan are required, the CAP appropriately describes the process and the specific future discretionary and environmental steps that would be required.

Regarding the assertion that the CAP provides a menu of options that the County selects from at its discretion, is not accurate. The 11 strategies and 30 GHG reduction measures proposed in the CAP have been proposed as a combination of actions and activities that together will achieve proposed reduction targets. Therefore, all 11 strategies, and 30 GHG reduction measures would need to be implemented as proposed in the CAP to meet the reduction targets. However, the County recognizes that over time and as technology advances, some measures may be more or less effective in achieving GHG reductions that have been identified in the CAP. The CAP, as a planning-level document, requires future updates that will provide some flexibility in allowing changes in the level of implementation of the GHG reduction measures to ensure that the CAP meets its targets. In these situations, the

County must also follow a process by which it would determine whether new or substantially more severe environmental impacts would occur with these changes consistent with the requirements of CEQA Guidelines Sections 15162-15164. This is an appropriate pathway for considering planning-level changes and is the recommended pathway for supplemental analysis as identified in CEQA.

Regarding the enforceability of reduction measures, each of the 30 GHG reduction measures in the CAP are achievable, measurable, and enforceable. The commenter offers no specific evidence to dispute this.

December 1, 2017
Page 4

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right. The County's General Plan Update EIR included Mitigation Measure CC-1.2, which required preparation of a CAP. The CAP, therefore, is a "project" under CEQA, but is also a mitigation measure for the General Plan Update's climate change impacts. The CAP's GHG emissions reduction measures must be enforceable, and the County must ensure their implementation. A mere hodgepodge buffet-style menu of mitigation proposals from which the County will later pick and choose falls short of CEQA's requirements. (See *Environmental Council of Sacramento v City of Sacramento* (2006) 142 Cal.App.4th 1018, 1035; *Federation of Hillside & Canyon Ass'ns v City of Los Angeles* (2000) 83 Cal.App.4th 1252, 1261.)

The Project Description Must Be Stable. Our second concern is that a stable project description is required under CEQA to inform decision makers and the public during the CEQA process. An agency may not prepare a Draft EIR without first deciding what the proposed project will be that is going to be studied in that Draft EIR.

A curtailed or distorted project description may stultify the objectives of the reporting process. Only through an accurate view of the project may affected outsiders and public decision-makers balance the proposal's benefit against its environmental cost, consider mitigation measures, assess the advantage of terminating the proposal (i.e., the 'no project' alternative) and weigh other alternatives in the balance. An accurate, stable and finite project description is the *sine qua non* of an informative and legally sufficient EIR.

(*County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 192, 193.)

By stating publicly that the County is still analyzing the implementation of the strategies and mitigation measures contained in the CAP, it appears as if the County staff is unsure what measures will actually be included in the CAP, because they will be relying on additional analysis later to determine the exact content. As a result, County staff has indicated that they anticipate changes to the project description based on the cost benefit analysis that was not available to the public during the circulation of the initial DSEIR, depriving the public the ability to accurately analyze the proposed measures.

The recent decision in *Washoe Meadows Community v. Department of Parks and Recreation*, California Court of Appeal Case No. A145576 (Nov. 15, 2017) emphasized this point. There, the Court of Appeal ruled that simply providing several different potential alternative actions as the agency's proposed project violated CEQA. It appears that San Diego County staff has done the same thing with the proposed CAP based on staff's description of the CAP to the Planning Commission. As described by the staff, the CAP at this point appears to be a "grab bag" of various alternative GHG control measures, rather than an accurate, stable and finite plan of action to control GHGs. "When an EIR contains unstable or shifting descriptions of the project, meaningful public participation is stultified." (*Washoe Meadows*, Slip Opinion at p. 11, quoting *San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645, 656.) We urge the staff to complete their cost benefit analysis, and then reach a decision as

X23-4
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X23-5

X23-5

The comment expresses concern related to the Project Description and asserts that because the GHG reduction measure selection process was iterative, that this caused the public to be deprived of a stable Project Description. The County disagrees with this assertion. Please refer to response to comments X23-2 and X-23-3 above. The case cited by the commenter, *Washoe Meadows Community v. Department of Parks and Recreation*, 17 Cal.App.5th 277 (2017), involved an EIR that included no project description, instead presenting the public and decisionmakers with detailed analysis of five separate and vastly different project alternatives, none of which were identified as a preferred alternative prior to public review of the EIR. The court in that case found the EIR failed to include a stable project description, and instead required commenters "to offer input on a wide range of alternatives that may not be in any way germane to the project ultimately approved." *Id.* at 288. In contrast, the Final SEIR sets forth a clear, stable, and well-defined project description of the CAP's 11 strategies and 30 GHG reduction measures. Minor changes made to the CAP's GHG reduction measures in response to comments received from the public do not change the analysis of the project in the Draft SEIR, nor do they change the conclusion that the measures will meet the CAP's reduction targets. As discussed above, the studies related to the cost and feasibility of the CAP's GHG reduction measures address the cost effectiveness of proposed measures and do not relate to or change the environmental analysis prepared for these measures, nor do they change the conclusions in the Draft SEIR previously circulated for public review. These studies were not pertinent to nor required in preparation of the Draft SEIR, but simply provide the public and decisionmakers with additional information regarding the reduction measures included in the CAP and analyzed in the Draft SEIR.

In addition, the fundamental purpose of the project is to reduce County GHG emissions consistent with state legislative requirements through implementation of a CAP, which includes strategies and measures to reduce community and County local government operations (County operations) GHG

emissions. Even if some measures are changed or removed after public review, the underlying fundamental purpose of the project, which is to reduce County GHG emissions consistent with state legislative requirements through implementation of a CAP, has not changed and will be met. See also Master Response 9 on selection of GHG reduction measures in the CAP. The comment will be included in the administrative record and provided to decision makers.

December 1, 2017
Page 5

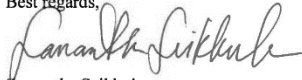
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to a single proposed project. At that point, the identified proposed project should be described in a recirculated DSEIR to allow for public participation.

Adding or Removing Mitigation Measures and Additional Analysis May Require Recirculation. We are also concerned that the County did not analyze the feasibility of the mitigation measures in advance of publishing the Draft CAP and its EIR. The public should be granted the opportunity to comment on the additional information the County is preparing to present to the Planning Commission for their approval, and should have had this opportunity during the initial public comment period on the Draft CAP. If the County substantially changes the measures contained in the Draft CAP, it may need to recirculate the Draft CAP's EIR for additional public comment. (*Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70, 95 [adoption of a mitigation plan required recirculation as approval of the project should have been deferred "until proposed mitigation measures were fully developed, clearly defined, and made available to the public and interested agencies for review and comment."]; see also CEQA Guidelines § 150855.5 [where a mitigation measure becomes feasible that the agency declines to adopt, recirculation is required].)

Thank you for your time and attention to our comments. We ask that you include these comments in the CAP's administrative record and request that staff provide responses to the points raised above and recirculate the CAP's DSEIR once the project description becomes stable. Please do not hesitate to contact us should you have any questions or comments.

Best regards,



Samantha Seikkula
of LATHAM & WATKINS LLP

cc: Kathy Van Ness, Golden Door
Maggie Soffel, County Planning and Development Services
Mark Slovick, County Planning and Development Services
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Dan Silver, Endangered Habitats League
Stephanie Saathoff, Clay Co.
Denise Price, Clay Co.
Christopher Garrett, Latham & Watkins
Andrew Yancey, Latham & Watkins

X23-5
cont.

X23-6

X23-7

x23-7

X23-6

The commenter expresses concern that the County did not adequately analyze the feasibility of mitigation measures in the Draft SEIR and suggests that any changes to mitigation measures after the close of the public review process may require recirculation. The commenter appears to confuse the GHG reduction measures included in the Draft CAP with CAP Mitigation Measures developed to reduce impacts from the GHG reduction measures. This topic is thoroughly addressed in Master Response 13. Additionally, each of the CAP's 30 GHG reduction measures are achievable, measurable, and enforceable. The Final CAP does not contain any new GHG reduction measures that have not been adequately evaluated in the Final EIR, nor have any of the Draft SEIR Mitigation Measures been changed since the close of public review. The Recirculation Findings which are provided as an attachment to the Planning Commission Hearing Report thoroughly describe the revisions which have been made to the Draft SEIR and substantiate the County's decision not to recirculate the SEIR.

X23-7

The comment provides closing remarks and requests that the comment letter be included in the administrative record. This comment letter is included with the Final SEIR and will be provided to decision makers for consideration prior to adoption of the project.

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Letter
X33

January 16, 2018

Via e-mail (Lisa.Fitzpatrick@sdcounty.ca.gov); original to follow by first-class mail

San Diego County Planning Commission
5510 Overland Avenue, Suite 110
San Diego, CA 92123

Re: Supplemental Comments on San Diego Climate Action Plan (PDS2015-POD-15-002), Draft Supplemental Environmental Impact Report for the Climate Action Plan (PDS2016-ER-16-00-003) and Pending General Plan Amendments

Dear Chair Brooks and Honorable Planning Commissioners:

The law firm of Chatten-Brown & Carstens represents the Sierra Club on matters relating to the County's environmental review of its revised Climate Action Plan ("Revised CAP"), Supplement to the 2011 General Plan Update Program Environmental Impact Report ("Supplemental Environmental Impact Report," or "SEIR"), and pending General Plan Amendment (GPA) projects.

The Sierra Club has consistently opposed any new GPAs until the County adopts a legally adequate CAP, and that is particularly important now. The County must act aggressively in attaining the goals that the County adopted in 2011. California is an international leader in addressing climate change and it is particularly important for the state to achieve its goal to prevent an erosion of international efforts. The consequences of the State failing to do so are dire in terms of sea level rise, more extreme weather, fires, water supply, and habitat loss. The CAP acknowledges that transportation is by far the largest contributor (45%) to its GHG emissions, yet the CAP only proposes to implement measures that would produce a 13% GHG reduction from this sector by 2030. The County must not authorize additional development through GPAs until the County demonstrates it has complied with the reductions it agreed to as mitigation for the development previously authorized in the 2011 General Plan Update.

The Sierra Club previously commented on the Draft CAP in its September 25, 2017 letter to the County's Planning and Development Services. (A complete copy of this letter is attached as **Exhibit A.**) Unfortunately, the deficiencies identified in that

X33-1

Response to Comment Letter X33

Sierra Club
Josh Chatten-Brown, Attorney for Sierra Club
January 16, 2018

X33-1 The comment provides a summary of comments that follow. See responses to comments below. No further response is required or necessary.

San Diego County Planning Commission
January 16, 2018
Page 2

letter have not been adequately addressed. The following discussion amplifies the prior points made, but also raises concerns regarding the County's lack of analysis of whether the revised CAP conflicts with CARB's Updated Scoping Plan and Updated Regional SB 375 Targets, and the lack of coordination with the San Diego Association of Governments (SANDAG). Additionally, the Sierra Club is concerned that the County, in its October 20, 2017 Planning Commission informational meeting and after the release of the Draft Supplemental EIR, indicated it was conducting cost-benefit studies for greenhouse gas emission reduction policies and may "de-emphasize some policies versus others."

There has been an undue delay in the County complying with the promises it made in 2011, including to prepare a Climate Action Plan (CAP) within six months of adopting the General Plan Update. After waiting for more than six years, the County proposes to achieve its GHG emission reduction goals primarily through carbon offsets. For the reasons discussed in this letter and the Sierra Club's prior letter, the County's use of out-of-County offsets violates CEQA. While the County has failed to move aggressively in addressing climate change up to the present time, there is now an opportunity for the San Diego County Board of Supervisors and Planning Commission to comply with the County's 2011 promises and show leadership on this important issue.

I. The Sierra Club Endorses the Arguments Made in Detail By Other Organizations.

In addition to the points made in the Sierra Club's initial letter on the Draft Revised CAP and EIR, and those points contained with some detail in this letter, there are numerous reasons given by other commenters why the CAP and EIR are not legally adequate. The Sierra Club endorses those comments, but will not repeat them here except to briefly mention them. The Club believes the County must address these issues in an updated CAP before the CAP is acted upon by the Supervisors. These issues include, but are not limited to, the following:

1. The failure of the County to consider the incompatibility of additional GPA's with the SANDAG Regional Transportation Plan (RTP) and Sustainable Communities Strategy (SCS), which documents are based on the development contemplated in the 2011 GPU. This issue is discussed in considerable detail by counsel for Golden Door, among others.

2. The County's General Plan Land Use and Conservation Elements require coordination of planning efforts with federal and State agencies, SANDAG, and other jurisdictions. The County's Conservation and Open Space Element provides:

COS-20.3. Regional Collaboration. Coordinate air quality planning efforts with federal and State agencies, SANDAG, and other jurisdictions.]

X33-1
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X33-2

X33-2

The comment states that it supports the comments of other commenters and provides a summary of those comments including assertion that the County did not consider the compatibility of GPAs with SANDAG's RTP and SCS; the County is failing to participate in the SANDAG regional planning process and the provisions of SB 375; reliance on GHG credits under the CAPCOA GHG Rx as mitigation is not appropriate; and the CAP should show how streamlined permitting will achieve reductions associated with installing solar photovoltaics on existing homes.

The County disagrees that it has not addressed compatibility of GPAs with SANDAG's RTP and SCS and is not participating in their regional planning process. The County is an active participant in SANDAG's regional planning process. As detailed in Master Response 2, concerning the relationship between the County's land use plans and the Regional Plan, the County provided SANDAG land use forecasts based on the GPU, which SANDAG then incorporated into the adopted Regional Plan. SANDAG uses these land use forecasts to determine VMT projections within the region. If a project proposes a land use change from what was established in the 2011 GPU (i.e., a General Plan Amendment (GPA)), it is the responsibility of the GPA project to determine how it affects VMT projections and in turn how that affects the ability of the Regional Plan to meet SB 375 targets. Currently, however, the VMT projections within the Regional Plan align with the 2011 GPU. These projections were also used to establish the GHG inventory within the Draft CAP. As explained in the Draft CAP, to conservatively account for GHG emissions in the unincorporated county, the Draft CAP's GHG inventory includes GPAs adopted between August 2011 (adoption of 2011 GPU) and March 28, 2017 (date at which the inventory technical reports were prepared). GPAs with pending applications with PDS have not been adopted by the Board of Supervisors and, therefore, are included in the SEIR cumulative impacts analysis because they are current or reasonably foreseeable. Again, however, the CAP itself does not propose any changes to land use. Therefore, it is inherently consistent with the

	<p>VTM projections in the Regional Plan, which in turn is consistent with SB 375.</p> <p>The commenter claims that approving new development outside of the designated “Smart Growth” areas will cause VMT to violate SANDAG’s adopted SCS/RTP. This is incorrect. First, the CAP does not “approve” new development. Second, SANDAG uses the General Plan land use designations to inform the Regional Plan (which includes the SCS/RTP), including all land uses within the unincorporated county that are located outside of “Smart Growth” areas. Thus, contrary to commenter’s assertion, there is not a General Plan inconsistency.</p> <p>The comment states that many of the CAP’s “mitigation measures” are speculative and not supported by substantial evidence, then goes on to discuss a GHG reduction measure, Measure T-4.1. Measure T-4.1 is a GHG reduction measure, one measure of the overall CAP, consistent with CEQA Guideline section 15183.5, and incorporated into the CAP consistent with <i>Sierra Club v. County</i>, 231 Cal.App.4th 1152 (2014). Please see Master Response 3. The commenter appears confused regarding the local direct investment program (all protocols will be used to reduce GHG locally) and the cumulative impacts CAP Mitigation Measure M-GHG-1 that references carbon offset credits. Please see Master Response 3 for further explanation of the differences.</p> <p>Regarding GHG credits under the CAPCOA GHG Rx, the County would use an existing registry to track GHG reductions from the local direct investment program. It appears the commenter misunderstands the reference to the CAPCOA GHG Rx. The local direct investment program is a GHG Reduction Measure identified in the CAP and is one element of the comprehensive CAP to reduce GHG emissions. The CAP as a planning document serves as a mitigation measure for the 2011 GPU related to significant GHG impacts identified in the 2011 GPU PEIR (GPU PEIR Mitigation Measure CC-1.2). As described in Chapter 1 of the Final SEIR, GPU Mitigation Measure CC-1.2 has been updated as part of the Project and would require the preparation of a CAP that meets the performance standard of reducing GHG emissions consistent with</p>
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	<p>state-legislative targets and that meets the content requirements of CEQA Guidelines Section 15183.5. This update results in GHG reductions that exceed (i.e., results in overall more GHG reductions within the County) the outdated language of CC-1.2 which only sought reductions through 2020. Please see Master Response 4 regarding use of the CARB 2017 Scoping Plan methodology to establish targets in the CAP. As indicated in Master Response 4, the targets used in the CAP are more stringent (i.e., require more reductions in GHG emissions) compared to using the previous targets established in General Plan Mitigation Measure CC-1.2.</p> <p>The comment appears to suggest that individual GHG Reduction Measures in the CAP (such as the local direct investment program) are mitigation measures within the meaning of CEQA Guidelines Section 15126.4 (a). As described above, CC-1.2 required the adoption of a climate action plan, which requirement is consistent with CEQA Guidelines section 15126.4(c), and the CAP, as a plan to reduce greenhouse gas emissions, satisfies mitigation measure CC-1.2. The CAP consistent with and as authorized by CEQA Guidelines section 15183.5, is an adaptive management plan that includes a variety of strategies, GHG reduction measures, and supporting efforts, will be implemented and monitored to ensure that the identified performance standard (i.e., meeting state-legislative targets) is achieved and the County will enforce the achievement of these standards. The CAP contains the elements specified in CEQA Guidelines section 15183.5, including a group of measures (the GHG reduction measures) with performance standards that substantial evidence demonstrates when implemented will achieve the specified emissions level. These group of measures to reduce greenhouse gases have been incorporated into the CAP, are enforceable, and are consistent with <i>Sierra Club v. County of San Diego</i>, 231 Cal.App.4th 1152 (2014). Please refer to Master Response 13 for a comprehensive discussion of the functional differences among the different types of measures referenced in the CAP and SEIR.</p> <p>The comment also suggests that the direct investment program (GHG Reduction Measure T-4.1) would rely upon credits from the</p>
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CAPCOA GHG Rx. This is incorrect. As stated on page 2.7-24 of the SEIR and throughout the record for the project, the County “will not purchase carbon offset credits from a registry in the carbon offset market, but will use the registry to track carbon offsets achieved through County direct investment projects.” The County will not use the existing credits on the CAPCOA GHG Rx or any other CARB-approved registry. The County is not relying upon credits from the CAPCOA GHG Rx. Rather, the CAPCOA GHG Rx was identified as a registry to track GHG reductions from GHG Reduction Measure T-4.1. Further, the County would determine which of the identified protocols to implement in the County, and would undertake a separate CEQA evaluation at the time of the establishment of the program, if required. Because the project-level detail and locations of protocols are unknown at this time, the Draft SEIR evaluates at a programmatic level, the potential physical impacts that could result from the local direct investment projects that may be considered by the County. The potential physical impacts that could occur because of implementing direct investments are evaluated within each subtopic of the Draft SEIR. For additional information about the direct investment program, please refer to Master Response 3.

Regarding how GHG reductions would be achieved through streamlined permitting associated with the installation of solar photovoltaics on existing homes, please refer to response to comment O23-28.

San Diego County Planning Commission
January 16, 2018
Page 3

(County of San Diego General Plan, Conservation and Open Space Element, p. 5-39.)
The County's Land Use Element also requires this coordination:

LU-4.1 Regional Planning. Participate in regional planning to ensure that the unique communities, assets, and challenges of the unincorporated lands are appropriately addressed with the implementation of the planning principles and land use requirements, including the provisions of SB375.

(County of San Diego General Plan, Land Use Element, p. 3-26.)

By approving new development outside of the designated Smart Growth areas, which will cause VMT to violate SANDAG's adopted SCS/RTP, the County is failing to participate in the SANDAG regional planning process and the provisions of SB 375. This General Plan inconsistency was not analyzed in the Final Supplemental EIR (FSEIR).

3. Many of the CAP's mitigation measures are speculative and not supported by substantial evidence.

a. The Direct Investment Program.

The Direct Investment Program (DIP) is proposed as a discretionary action. In response to concerns raised by the California Native Plant Society, San Diego Chapter regarding the Direct Investment Program, the County states:

[T]he direct investment program would be established by the County by 2020 as a future discretionary action. If the CAP is adopted the County would determine which protocols would be feasible to implement in the County, and would undertake a separate CEQA evaluation at the time of the establishment of the program if required.

(Response to Comment Letter O9, p. 19.) The County relies heavily on the DIP as a mitigation measure. However, the County would have to ensure the DIP is funded and implemented. There are currently no projects identified for either the DIP or GPA offsets. For the large amount of credits that would be needed to achieve the 2030 targets, it is speculative that a sufficient amount of "in-County" created credits will be available. There is not substantial evidence to support future availability of these offset credits. The County must analyze feasible mitigation measures in advance of adopting the CAP, not after the fact.

X33-2
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San Diego County Planning Commission
January 16, 2018
Page 4

b. The California Air Pollution Control Officers Association Registry.

The California Air Pollution Control Officers Association (CAPCOA) is merely a list of credits that one of the member air pollution districts has adopted. CAPCOA has a disclaimer about the use of such credits for CEQA purposes.

The GHG credits listed on the website, the CAPCOA GHG Rx, were validated by an air district of CAPCOA. District validation means that the particular district concluded the GHG credits met the CAPCOA protocol for such credits. Neither CAPCOA nor the district make any representations, warranties or guarantees of any kind as to the use or applicability of any GHG credit listed on the CAPCOA GHG Rx for any specific project, program, plan, compliance with the California Environmental Quality Act (CEQA; Pub. Res. Code § 21000 et seq. and 14 CCR§ 15000 et seq.), or for any other use. Please note that if a GHG credit listed on the CAPCOA GHG Rx is proposed to be used as part of a CEQA mitigation measure, the respective CEQA lead agency for the subject project is responsible for determining if the use of such GHG credit is appropriate (as mitigation) and satisfies its project conditions and other applicable requirements. The CAPCOA GHG Rx only lists available GHG credits so that interested parties may make private inquiries into obtaining those GHG credits. CAPCOA does not offer any other services beyond this listing service. The validation by the district, and the listing of GHG credits by CAPCOA, shall in no way create a property right.

In light of CAPCOA's disclaimer, the County's reliance upon the GHG credits on the CAPCOA GHG Rx is misplaced.

c. Installing Solar Photovoltaics on Existing Homes.

The measure as described is about streamlined permitting, not financial incentives to encourage a transition to green energy. The CAP should show how streamlined permitting will achieve the measure's reductions but in any case commit to implementing the wide range of measures available to encourage the development and installation of clean energy technologies.

II. The County's Contention It Has Limited Options to Control Transportation Emissions Is Belied by Its Control Over General Plan Amendments, Which Would Contribute to Sprawl and Increased VMT.

The CAP states:

On-road internal combustion transportation is the largest contributor to the unincorporated county's GHG emissions. Emissions from on-road

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X33-3

X33-3

The comment disagrees that the County has limited options under its control for implementing transportation-based strategies and suggests that not approving greenfield GPAs until the County is on target to achieve 2030 emission targets is one option. The CAP does not propose and/or facilitate the development of new land uses or changes in land use density, nor does it propose to change land use designations that were adopted with the 2011 General Plan. The authority for land use policy and regulations continues to be governed by the 2011 General Plan. Consideration of whether to approve or deny GPAs lies with the discretion of County decision-makers. As such, a strategy that would regulate the processing of GPAs would not be appropriate. The CAP through the CAP Consistency Review Checklist and the Final SEIR through CAP Mitigation Measure M-GHG-1 provides a framework to be followed and performance standards to be met when GPAs are under consideration by decision-makers. GPAs do not receive the streamlining benefits pursuant to CEQA Guidelines Section 15183.5. At the time GPAs are considered, those project's must demonstrate to the County's satisfaction that they would not conflict with implementation of the CAP (i.e., that GPAs would not result in increase in GHG emissions above what is allowed in the General Plan land use designations), if adopted, and where significant impacts would occur, must demonstrate how they would reduce impacts in alignment with the mitigation hierarchy identified in Mitigation Measure M-GHG-1 of the Final SEIR. Regarding the use of out-of-county offsets, in accordance with the identified hierarchy in Mitigation Measure M-GHG-1 of the Final SEIR, only when projects have demonstrated that no other feasible onsite or within County offsets are feasible, could out-of-county offsets be proposed. Please refer to Master Response 5 regarding transportation-based GHG reduction strategies and Master Response 12 regarding mitigation hierarchy and use of carbon offset credits. This comment will be included with the Final SEIR and provided to decision makers.

San Diego County Planning Commission
January 16, 2018
Page 5

transportation sources accounted for 45% of the unincorporated county's total emissions in 2014.

(CAP, Chapter 3-8.) The CAP continues:

Given that on-road transportation is the largest source of GHG emissions in the county (see Table 2.1), the County has proposed several measures to reduce the number and length of vehicle trips. However, the County has limited options under its control for implementing transportation-based strategies.

(CAP, Chapter 3-3, emphasis added.) The County is wrong.

The County has the discretion to approve or deny General Plan Amendments ("GPAs"), and as the Sierra Club has repeatedly argued, no GPAs to allow greenfield developments which would result in significant GHG emissions should be allowed until the County is on target to achieve the 2030 emission targets.

The County acknowledges the significant role GPAs have on "the ability of the County to meet its targets and goal." (CAP, Chapter 2-14.) Yet, the County concludes that Mitigation Measure GHG-1, which would accomplish GHG reductions primarily through carbon offsets for large projects, including out-of-County, out-of-state, and even international offsets, solves this problem for the County.

With incorporation of Mitigation Measure GHG-1, GPAs listed in the cumulative impact discussion of the Draft SEIR and all future GPAs that propose increased density/intensity above what is allowed in the General Plan will comply with the CAP and; therefore, will not interfere with the County's 2020 and 2030 GHG reduction targets or 2050 goal.

(CAP, Chapter 2-14.) The County's proposed use of out-of-County offsets, which appear to be an easy solution for the County, should not enable the County to continue authorizing large-scale projects, like Newland Sierra, which create sprawl and increase vehicle miles traveled (VMTs). Instead, the County must place strict restrictions on the type of GPAs the County will authorize in order to not dramatically increase emissions through increased VMTs. As described above, the CAP should contain explicit language limiting further growth through GPAs to growth in SANDAG Smart Growth areas.

III. There Is Powerful Evidence That the County's Yet To Be Adopted New CAP Will Not Meet the Requirement to Be Comprehensive.

The December 1, 2017 letter from counsel for Golden Door Spa provided a transcript of statements made by County staff at the October 20, 2017 Planning

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The comment summarizes comments from the Golden Door suggesting that the elements and measures in the CAP are still being determined. This is not correct. Please refer to the responses to comments made after the public review deadline by Golden Door in Letter X23 (specifically, responses to comments X23-2 through X23-6). The CAP, as described in Chapter 1 of the Draft SEIR, consists of 11 strategies, 30 GHG reduction measures, and supporting efforts that will be considered by decision makers. Regarding decisions about specific GHG reduction measures in the CAP, the County acknowledges that its decision-makers will review and contemplate the full suite of reduction measures and actions that are proposed and will ultimately determine what measures are approved as part of the CAP. That discretion appropriately lies with the decision-makers. All GHG reduction measures in the CAP will achieve CAP targets, contain deadlines, and will be enforceable and measurable. The County has put forth a stable and well-defined project description for the Draft SEIR and the CAP and the commenter offers no evidence to dispute this. Further, the CAP has been prepared through a transparent, iterative process that includes considerations of many factors, including public input, feasibility and cost considerations, and stakeholder concerns.

The comment also expresses concern that studies related to the cost and feasibility of GHG reduction measures have not been released for public review prior to publication of the Draft SEIR. The studies that the commenter has expressed concerns about were released with the Final CAP and Final SEIR on January 8, 2018. These studies address the cost effectiveness of proposed measures and do not relate to the environmental analysis prepared for these measures. As such, these studies were not pertinent nor required in preparation of the Draft SEIR. Nonetheless, the County proceeded with preparation of the studies to inform decision-makers of the costs and benefits associated with the implementation of the CAP, although such studies are not required for either the CAP or the Draft SEIR. This comment will be included with the Final SEIR and provided to decision makers.

	<p>The comment also asserts that the County has admitted that the CAP's GHG reduction measures do not meet the criteria for mitigation measures. The County disagrees. The commenter quotes language from page 8-53 of the Final SEIR. The cited text attempted to distinguish the CAP's GHG emission reduction measures from the mitigation measures identified in the Draft SEIR to address potential significant impacts caused by implementation of the CAP. To the extent this attempted clarification created any confusion about the nature of the CAP's GHG reduction measures, the County wishes to clarify that the reduction measures mitigate the significant GHG impact from General Plan buildout as identified in the 2011 GPU PEIR. The CAP's GHG reduction measures meet the criteria for effective mitigation measures under CEQA, and are achievable, measurable, and enforceable.</p> <p>The CAP is a mitigation measure for the 2011 GPU. The GHG reduction measures are incorporated into the CAP, consistent with <i>Sierra Club v County of San Diego</i>, 231 Cal.App.4th 1152 (2014). As described above at X33-2, the 2011 General Plan Update mitigation measure CC-1.2 required the adoption of a climate action plan, which requirement is consistent with CEQA Guidelines section 15126.4(c), and the CAP, as a plan to reduce greenhouse gas emissions, satisfies that mitigation measure to the 2011 GPU. The CAP, consistent with and as authorized by CEQA Guidelines section 15183.5, is an adaptive management plan that includes a variety of strategies, GHG reduction measures, and supporting efforts, will be implemented and monitored to ensure that the identified performance standard (i.e., meeting state-legislative targets) is achieved and the County will enforce the achievement of these standards. The CAP contains the elements specified in CEQA Guidelines section 15183.5, including a group of measures (the GHG reduction measures) with performance standards that substantial evidence demonstrates when implemented will achieve the specified emissions level. The group of measures to reduce greenhouse gases have been incorporated into the CAP, are enforceable, and are consistent with <i>Sierra Club v. County of San Diego</i>, 231 Cal.App.4th 1152 (2014).</p>
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	<p>Lastly, regarding the commenters claim that delays will make it next to impossible to meet requirements for 2020 reductions, as indicated in the CAP, SEIR, and throughout the record the County is on track to meet the 2020 target with existing State and County programs, without implementation of the CAP.</p>
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San Diego County Planning Commission
January 16, 2018
Page 6

Commission informational meeting. These statements indicate that the County is still deciding which measures would be included in the CAP based on a cost-benefit analysis.

Specifically, County staff stated: "When the planning commission considers those measures, you may wish to de-emphasize some policies versus others." County staff also said:

The County is completing two technical studies to analyze the cost associated with implementing the draft climate action plan. We're preparing a cost effectiveness study to quantify the net benefits received from implementing the proposed measures. The study will develop an estimate of county implementation costs for the CAP and quantify the net benefits received from implementing the proposed measures evaluated against the net cost to participants over the lifetime of all the measures. We're also in the process of conducting an assessment of direct investments to evaluate the cost effectiveness of possible local projects. This study will identify local project types for potential direct investment as detailed in the draft supplemental environmental impact report. And this feasibility study will evaluate the cost effectiveness of direct investments. These studies will be completed before the end of the year and presented to the planning commission and the board in early 2018.

These feasibility studies should have been prepared long ago, before the Draft Revised CAP and EIR were released to the public. A comprehensive plan should be adopted in January or February 2018, as originally represented by the County. Further delays will make it next to impossible to meet requirements for 2020 reductions. While the Sierra Club recognized that preparation of an EIR and a process to prepare a comprehensive plan would take some time, and not meet the County's original commitment, the original commitment the County made in 2011 was for the CAP to be prepared in 6 months. The Court of Appeal in *Sierra Club v. County of San Diego* stated: "As a plan-level document, the CAP is required by CEQA to incorporate mitigation measures directly into the document" [referring to the EIR]. (*Sierra Club v. County of San Diego* (2014) 231 Cal. App. 4th 1152, 1173.) The County's cost-benefit analysis should have been conducted prior to release of the Revised Draft EIR, not after it.

Additionally, the County's suggestion it may "de-emphasize" some mitigation measures is improper if the public does not have an opportunity to comment. The County did not indicate in the Draft EIR that some mitigation measures would be limited or eliminated. Adding or removing mitigation measures may require recirculation. (See, e.g., *Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70, see also CEQA Guidelines §15088.5.) Here, the public has not had an opportunity to comment on the additional analysis the County is conducting in its feasibility studies.

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San Diego County Planning Commission
January 16, 2018
Page 7

Furthermore, there is no such thing as “emphasizing” or “de-emphasizing” mitigation under CEQA. There is a legal standard of definiteness and enforceability and mitigation measures either meet the standard or do not. No sliding scale can be prospectively developed by the County for the degree of “emphasis” to be placed on each mitigation measure. The entire CAP is a mitigation measure – CC-1.2 of the 2011 GPU EIR. Therefore, all of the measures provided must meet the CEQA standards for enforceable mitigation.

The County contends, “[T]he CAP’s GHG reduction measures themselves are not specifically ‘mitigation measures’ as defined under CEQA, nor are they specifically identified as mitigation in either the 2011 GPU PEIR or the Draft SEIR for the CAP.” (FSEIR, p. 8-53.) Here, the County essentially admits in response to comments that the CAP’s GHG reduction measures do not meet the criteria for mitigation measures. This is clear legal error, as the entire CAP is a required mitigation (CC-1.2) for the 2011 General Plan’s climate change impacts.

Though some delay was reasonable in order to prepare an EIR and a more comprehensive list of strategies, the County’s delay has been inordinate. The County has not demonstrated a sense of urgency and has not dedicated the necessary resources to prepare a comprehensive and enforceable CAP. Additionally, there are many other CAPs throughout the state that the County could have drawn from but no evidence that there was a comprehensive review of such plans and adoption of all feasible GHG reduction measures. While we wish the County had done a more thorough job in identifying new strategies within the County to reduce GHG emissions, the Club believes it is important that the County act promptly but that it commit at the same time to strengthening the plan on an accelerated time frame, with new strategies being subject to environmental review.

IV. The County’s Allowance of Out-of-County Offsets Is Inconsistent with the County General Plan’s Requirement to Achieve Specified Greenhouse Gas Emissions Reductions Within the County, and Out-of-County Offsets Are Less Enforceable than Those Within the County and Do Not Generally Achieve the Same Level of Emission Reductions.

Mitigation Measure CC-1.2 of the County’s 2011 General Plan Update provided:

The County Climate Change Action Plan will achieve comprehensive and 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.

(SEIR, p. 1-14, emphasis added.) The County specifically agreed that the reductions would be “from County operations” and “community emissions.” The CAP is a

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The comment expresses dissatisfaction that the County changed the text of 2011 GPU PEIR Mitigation Measure CC-1.2 and states the County must achieve GHG reductions within the County and should include “comprehensive and enforceable GHG emissions reduction measures that will achieve the specified GHG reductions by 2020.” The County has engaged in the preparation of a new stand-alone CAP. The CAP is being prepared as a mitigation requirement associated with significant GHG impacts identified in the 2011 GPU PEIR. In preparing the CAP, the County has also proposed to update the language of 2011 GPU PEIR Mitigation Measure CC-1.2 to better reflect the current State regulatory requirement pertaining to GHG reduction targets and CEQA requirements for qualified plans for the reduction of GHG emissions (CEQA Guidelines Section 15183.5). To not update the CC-1.2 would result in a plan that only demonstrates reductions to achieve 2020 targets, as opposed to this CAP which demonstrates achieving 2020 targets, 2030 targets, and a pathway to 2050 goals. The 30 GHG reduction measures comprising the CAP will be implemented within the unincorporated area of the County and from County operations. All measures in the CAP will be achieved locally. See Master Response 4 for the targets used in the CAP. As indicated in Master Response 4, the County’s current targets for 2020 and 2030 comply with the latest CARB 2017 Scoping Plan and would be more stringent (i.e., results in more GHG reductions due to a more stringent target) than if the County left General Plan Mitigation Measure CC-1.2 unchanged as the commenter suggests.

Regarding the CAP Mitigation Measure GHG-1 that requires GPAs to mitigate their GHG emissions, this mitigation is feasible and is effective to reduce individual GPAs cumulative, global GHG impacts. Climate change is a global issue as acknowledged by the California Supreme Court (see Master Response 12). All 30 GHG Reduction Measures in the CAP will be implemented within the unincorporated County and from County operations in full compliance with General Plan Mitigation Measure CC-1.2. General Plan Mitigation Measure CC-1.2 and the Conservation and Open Space Goal-20 to reduce local GHG emissions will be satisfied with

	<p>adoption of the CAP. Reductions in the CAP are consistent with the General Plan. CAP Mitigation Measure M-GHG-1, which may include purchase of carbon offset credits from a CARB-approved registry outside of the County, are a separate regulatory scheme than what is required for the County in its CAP.</p> <p><i>Save Our Peninsula Comm. V. County of Monterey</i>, 87 Cal.App.4th 99, 142 (2001) provides that “When we review an agency’s decision for consistency with its own general plan, we accord great deference to the agency’s determination. This is because the body which adopted the general plan policies in its legislative capacity has unique competence to interpret those policies when applying them in its adjudicatory capacity. (<i>City of Walnut Creek v. County of Contra Costa</i> (1980) 101 Cal. App. 3d 1012, 1021[162 Cal. Rptr. 224].) Because policies in a general plan reflect a range of competing interests, the governmental agency must be allowed to weigh and balance the plan’s policies when applying them, and it has broad discretion to construe its policies in light of the plan’s purposes. (<i>Sequoyah Hills Homeowners Assn. v. City of Oakland</i> (1993) 23 Cal. App. 4th 704 [29 Cal. Rptr. 2d 182]; <i>Greenebaum v. City of Los Angeles</i> (1984) 153 Cal. App. 3d 391, 407 [200 Cal. Rptr. 237].) A reviewing court’s role ‘is simply to decide whether the city officials considered the applicable policies and the extent to which the proposed project conforms with those policies.’ (<i>Sequoyah Hills Homeowners Assn. v. City of Oakland</i>, supra, 23 Cal. App. 4th at pp. 719-720.)” For all the reasons previously explained, the CAP conforms to General Plan Mitigation Measure CC-1.2 and Conservation and Open Space Goal-20.</p> <p>As described in responses above, the CAP, which is an adaptive management plan, will be implemented and monitored to ensure that the identified performance standard (i.e., meeting state-legislative targets) is achieved and the County will enforce the achievement of these standards. This comment will be included with the Final SEIR and provided to decision makers.</p>
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San Diego County Planning Commission
January 16, 2018
Page 8

mitigation measure for the 2011 General Plan's climate change impacts. Because the mitigation is for impacts in San Diego County, the County acknowledged that the mitigation need to be in San Diego County.

Leaving no doubt that the GHG emission reductions must occur within the County, the original Climate Action Plan included the following explanation within the section of the CAP entitled "Purpose of the Climate Action Plan":

The CAP was designed to support the following primary functions:

- Mitigate the impacts of climate change by achieving meaningful greenhouse gas (GHG) reductions within the County ...

(County of San Diego Climate Action Plan, Adopted June 2012, p. 3, *emphasis added*.)

In affirming the trial court's conclusion that the County failed to adopt a CAP that complied with the requirements of Mitigation Measure CC-1.2, the Court of Appeal quoted this language, stating: "According to the County, the CAP was prepared for the following purposes: 1. To mitigate the impacts of climate change by achieving meaningful GHG reductions within the County ..." (*Sierra Club v. Cty. of San Diego* (2014) 231 Cal. App. 4th 1152, 1160.)

After adopting the 2011 General Plan Update, the County first attempted to free itself from the constraints of Mitigation Measure CC-1.2 by treating the strategies within the CAP as merely recommendations. (*Sierra Club, supra*, 231 Cal. App. 4th at 1168.) However, the trial court and the Court of Appeal rejected the County's approach. The Court of Appeal stated:

The County agreed to the mitigating requirement of a CAP containing 'comprehensive and enforceable GHG emissions reduction measures that will achieve' the specified GHG reductions by 2020.

(*Ibid.*) As the County now proposes to eliminate the contents of Mitigation Measure CC-1.2 and replace it with entirely new language, we remind the County of its obligation to achieve the GHG reductions *within the County* and to include "comprehensive and enforceable GHG emissions reduction measures that will achieve the specified GHG reductions by 2020." The County's proposal to allow offsets outside of the County, outside of the state, and even outside of the country is not an enforceable mitigation measure and the County has not shown that it is infeasible to achieve such emission reductions *inside* the County. Furthermore, the County has not, and could not demonstrate that it is infeasible to achieve the GHG emission reductions previously required by the County *in* the County.

X33-5
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San Diego County Planning Commission
January 16, 2018
Page 9

V. The EIRs for the Newland Sierra Project and the Property Specific Requests General Plan Amendment Show the County Intends to Allow Out-of-County Offsets, Which Does Not Meet the County's Commitment to Emission Reductions in the County and Are Not Enforceable.

Two important events occurred between the release of the Draft SEIR and the Final SEIR on the CAP. First, the County notified members of the public for the first time of the preparation of additional studies after the release of the Draft EIR. At the County's October 20, 2017 Planning Commission informational meeting, County staff indicated that the County is in the process of preparing feasibility studies, despite the fact that the Draft EIR for the Revised CAP had already been released. County staff also suggested that it may "de-emphasize" some mitigation measures, despite the fact that the public would not have an opportunity to comment on this action. Also, the California Air Resources Board (CARB) adopted its 2017 Climate Change Scoping Plan on December 14, 2017, after the release of the County Draft SEIR. The proposed CAP is inconsistent with the Scoping Plan.

As this new information also affects all other projects that require General Plan Amendments (GPAs), please submit this letter into the administrative record for the Newland Sierra Project and all other projects for which GPAs are now pending.

As discussed in Section IV above, Mitigation Measure CC-1.2 of the County's General Plan Update requires the County to achieve specified GHG reductions within San Diego County. However, the Revised CAP and SEIR authorize the use of offsets from outside the County of San Diego. The Draft EIR identifies the County's "priority" list for consideration of GHG reduction features as follows:

- 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.

(SEIR, 2.7-48.)

The Newland Sierra project Draft EIR and the Property Specific Requests General Plan Amendment EIR provide this exact same language quoted above. (Newland Sierra Draft Environmental Impact Report, p. 2.7-48; San Diego County Property Specific Requests General Plan Amendment and Rezone SEIR, pp. 2.17-18, 2.17-19.) The Newland Sierra Draft EIR then adds, "The project applicant or its designee shall first pursue offset projects and programs locally within unincorporated areas of the County of San Diego to the extent such offset projects and programs are financially competitive in the global offset market." (Newland Sierra Draft Environmental Impact Report, p. 2.7-

X33-6

The comment restates previous comments pertaining to the release of cost studies and requirements for reducing GHG emissions within the County. Please refer to response to comments X33-4 and X33-5. The comment also introduced comments on the Newland Sierra project Draft EIR and Property Specific Requests General Plan Amendment EIR and suggests the County should reject the use of out-of-county offsets. These comments are not relevant to the CAP and Final SEIR and no further response is required. See Master Response 12. The comment also references a report from the Institute of Applied Ecology regarding the effectiveness of the Clean Development Mechanism (CDM). CDM allows a country with an emission-reduction or emission-limitation commitment under the Kyoto Protocol to implement an emission reduction project in developing countries. Such projects can earn saleable certified emission reduction (CER) credits which can be counted towards meeting Kyoto targets. The cited study is not relevant to the County's CAP as the CAP does not propose to use CDM as source for direct investment protocols. The SEIR sets a hierarchy for mitigation under CAP Mitigation Measure M-GHG-1 where carbon offset credits located internationally would be the last option for a project. Any carbon offset credits purchased would need to be purchased from a reputable registry and be consistent with Cal. Health & Saf. Code section 38562(d)(1). Please see Master Response 12 regarding the use of carbon offset credits as mitigation.

None of the sources cited by the commenter pertain to any of the CARB-approved registries, which the County requires for purchase of carbon offset credits first. See Master Response 12 and Response to Comment O14-13.

X33-6

San Diego County Planning Commission
January 16, 2018
Page 10

48.) Allowing developers to purchase out-of-County offsets provided that the developer first concludes that purchasing offsets within San Diego is not “financially competitive in the global offset market” is such a weak standard that defers entirely to the subjective determination of the developer that it provides almost no restriction at all.

The Newland EIR states only 18% of its GHG reductions will come from on-site measures. Thus, 82% of Newland’s GHG emissions reductions would come from outside the County. Additionally, the County has admitted in response to comments that only one project on the CARB-approved registries is in San Diego County and credits are not listed because the trees in the deforestation project have not reached maturity. (Master Response 12 at 8-52.) CEQA’s feasibility requirements have real teeth, and the mitigation measures included in the CAP must be enforceable. The CAP should be revised to address these issues.

Though the County did not prepare the EIR for the Newland Sierra project, CEQA requires that the agency independently perform its reviewing, analytical and judgment functions and to participate actively and significantly in the preparation and drafting process. (*Found. for San Francisco’s Architectural Heritage v. City & Cty. of San Francisco* (1980) 106 Cal. App. 3d 893, 908.) Thus, County staff should have rejected the out-of-County approach.

Even if out-of-County offsets were permissible, the offsets analyzed in the CAP and EIRs for County projects would not meet the test to be effective and enforceable. A new report from the European Commission (available at https://ec.europa.eu/clima/sites/clima/files/ets/docs/clean_dev_mechanism_en.pdf) casts serious doubts about international credit schemes, concluding that the vast majority of them likely fail to actually reduce emissions. The report concluded that the international offset system in place in Europe has “fundamental flaws in terms of overall environmental integrity. It is likely that the large majority of the projects ... are not providing real, measurable and additional emission reductions.” (*Id.* at 11, emphasis added.) “Given the inherent shortcomings of crediting mechanisms, [the European Commission] recommends focusing climate mitigation efforts on forms of carbon pricing that do not rely extensively on credits,” the report said, adding that credits should play only a limited role after 2020. (*Ibid.*)

The report examined the Clean Development Mechanism, created under the Kyoto Protocol to allow countries to offset emissions by purchasing credits linked to green-energy projects on an international market. The system allows a power plant in Germany, for example, to buy credits for the emissions savings from a wind farm in India. The problem, the report says, is that the Indian wind farm likely would have been built anyway, even without the credits purchased by the Germans. In emissions-trading lingo, the reduction would be considered not “additional.” “Overall, our results suggest that 85 percent of the projects covered in this analysis and 73 percent of the potential

X33-6
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San Diego County Planning Commission
January 16, 2018
Page 11

2013-2020 Certified Emissions Reduction (CER) supply have a low likelihood that emission reductions are additional and are not over-estimated,” said the report. (*Ibid.*) “Only 2 percent of the projects and 7 percent of potential CER supply have a high likelihood of ensuring that emission reductions are additional and are not over-estimated.” (*Ibid.*) In short, the County cannot rely upon out-of-County emissions to achieve the necessary reductions. You might want to add a sentence to say that in-State but out of County reductions may be particularly difficult to obtain because governmental levels throughout the State are struggling with achieving the necessary emission reductions.

Carbon offset credits were included as part of the Kyoto Protocol, but have fallen out of favor after scandals and poor performance. (*Carbon Credits Likely Worthless in Reducing Emissions, Study Says*, available at <https://insideclimatenews.org/news/19042017/carbon-emissions-credits-paris-climate-agreement/>.) Some countries now decline to use them and the European Union plans to prohibit international trading after 2020, instead focusing on the European Union’s domestic emissions reduction target. (https://ec.europa.eu/clima/policies/ets/credits_en.) International offset programs may have other unintended environmental and social consequences. Some tree-planting projects in Guatemala, Ecuador and Uganda have been accused of disrupting water supplies; evicting thousands of villagers from their land; seizing grazing rights from farmers; cheating local people of promised income; and running plantations where the soil releases more carbon than is absorbed by the trees. (The Inconvenient Truth About the Carbon Offset Industry, available at <https://www.theguardian.com/environment/2007/jun/16/climatechange.climatechange>.)

International offset credits, which may include reductions in deforestation, should not be used to offset GHG emissions from transportation sources, which primarily burn fossil fuels. A Greenpeace report concludes “forests cannot offset fossil fuel emissions” because forest carbon is different than fossil carbon. (*Flawed Logic: Why Forests Cannot Offset Fossil Fuel Emissions*, available at <http://www.greenpeace.org/international/Global/international/briefings/forests/2013/Offs-ets-briefing-Flawed-Logic.pdf>.) The report explains, “Burning fossil fuel instantly, and almost irreversibly, releases additional CO2 into the atmosphere. Forests, on the other hand, take up CO2 only slowly, and even then only a portion of fossil emissions can be taken up. Allowing forests to be used as offsets would set us on a trajectory of burning even more of the fossil fuels that we need to leave in the ground in order to avoid catastrophic climate change. Our only chance to stop climate change is to avoid carbon emissions from all sources, meaning that we need to ultimately end burning fossil fuels while at the same time protecting forests.”

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San Diego County Planning Commission
January 16, 2018
Page 12

VI. The County's CAP Conflicts with CARB's Updated Scoping Plan and Updated Regional SB 375 Targets.

You have already been advised in a November 30, 2017 letter from the Endangered Habitats League that the CAP needs to account for the California Air Resources Board's (CARB) Scoping Plan. On December 14, 2017, CARB adopted the 2017 Climate Change Scoping Plan, the strategy for achieving California's 2030 greenhouse gas emissions target. (*California's 2017 Climate Change Scoping Plan: The Strategy for Achieving California's 2030 Greenhouse Gas Target*, available at https://www.arb.ca.gov/cc/scopingplan/scoping_plan_2017.pdf.) Developing and updating this Scoping Plan provides a road map of how the state intends to meet its climate goals with an increased focus on air quality.

The 2017 Climate Change Scoping Plan indicates that reducing vehicle miles traveled (VMT) is essential to reducing GHG emissions and enabling the State to meet its climate change goals. The Scoping Plan provides:

While the State can do more to accelerate and incentivize these local decisions, local actions that reduce VMT are also necessary to meet transportation sector-specific goals and achieve the 2030 target under SB 32. Through developing the Scoping Plan, CARB staff is more convinced than ever that, in addition to achieving GHG reductions from cleaner fuels and vehicles, California must also reduce VMT. Stronger SB 375 GHG reduction targets will enable the State to make significant progress toward needed reductions, but alone will not provide the VMT growth reductions needed; there is a gap between what SB 375 can provide and what is needed to meet the State's 2030 and 2050 goals. In its evaluation of the role of the transportation system in meeting the statewide emissions targets, CARB determined that VMT reductions of 7 percent below projected VMT levels in 2030 (which includes currently adopted SB 375 SCSs) are necessary. In 2050, reductions of 15 percent below projected VMT levels are needed. A 7 percent VMT reduction translates to a reduction, on average, of 1.5 miles/person/day from projected levels in 2030. It is recommended that local governments consider policies to reduce VMT to help achieve these reductions, including: land use and community design that reduces VMT; transit oriented development; street design policies that prioritize transit, biking, and walking; and increasing low carbon mobility choices, including improved access to viable and affordable public transportation and active transportation opportunities. It is important that VMT reducing strategies are implemented early because more time is necessary to achieve the full climate, health, social, equity, and economic benefits from these strategies.

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The comment states that the Draft SEIR and the CAP is not consistent with CARB's updated Scoping Plan, SANDAG's RTP/SCS, and SB 375, and does not provide separate metrics for measuring VMT. The County disagrees. Please refer to Master Response 4 regarding the CAP and CARB's updated Scoping Plan. Please refer to Master Response 2 regarding SB 375 and consistency with regional plans. Please refer to responses to comments X22-4 and X22-14 regarding VMT references in the Scoping Plan and proposed updates to SB 375 targets.

X33-7

San Diego County Planning Commission
January 16, 2018
Page 13

(2017 Climate Change Scoping Plan, p. 150, emphasis added.)

CEQA sets out a fundamental policy requiring agencies to “integrate the requirements of this division with planning and environmental review procedures otherwise required by law or by local practice so that all those procedures, to the maximum feasible extent, run concurrently, rather than consecutively.” (*Banning Ranch Conservancy v. City of Newport Beach* (2017) 2 Cal. 5th 918, 936 (2017), citing Pub. Res. Code § 21003, subd. (a).) The CEQA Guidelines similarly specify that “[t]o the extent possible, the EIR process should be combined with the existing planning, review, and project approval process used by each public agency.” (Guidelines, § 15080.) Thus, lead agencies should integrate CEQA review with related environmental review and consultation requirements found in federal, state or local laws. Here, the County should integrate CEQA review with the environmental review contained in the 2017 Climate Change Scoping Plan.

The Draft SEIR for the CAP does not analyze or provide separate metrics for measuring VMT. It should analyze how adoption of the CAP may impact SANDAG’s ability to adopt a Regional Transportation Plan/Sustainable Communities Strategy that complies with CARB’s new targets outlined above. Allowing unplanned sprawl development in the County would frustrate efforts to reduce VMT consistent with SB 375 and CARB’s new targets.

The failure to analyze the consistency of the CAP with CARB’s Updated Scoping Plan would make the CAP inadequate. Regardless of whether it is legally permissible for the County’s CAP to conflict with CARB’s plan, at a minimum the County has to revise its Draft EIR for the CAP to explain these conflicts with CARB policies, and provide a new public review period on the Draft EIR to inform the public of this issue.

VII. The CAP Should Show Emissions Reductions to at Least 2035, and A Trajectory to Meet the State’s 2050 Emission Reduction Goals.

The CAP should be coordinated with the efforts of SANDAG to reduce transportation emissions. In doing so, the County should consider the impact of the recently published *Cleveland National Forest Foundation v. San Diego Association of Governments* (2017) 17 Cal. App. 5th 413 (hereinafter “*CNFF v. SANDAG*”) opinion on the CAP. As background, the Legislature enacted Senate Bill 32 (2015–2016 Reg. Sess.), adding Health and Safety Code section 38566, which adopts a goal of reducing GHG emissions by 40 percent below 1990 levels by the year 2030. The legislation directs CARB to craft regulations to implement its goal. (Health & Saf. Code, § 38566.) In enacting Senate Bill 375, the Legislature found the state’s emissions reductions goals cannot be met without improved land use and transportation policy. Consequently, Senate Bill 375 (Gov. Code, § 65080, subd. (b)(2)(B)) mandates the transportation plan include a Sustainable Communities Strategy to, as the EIR at issue in *CNFF v. SANDAG*

X33-8

The comment states that the CAP should be coordinated with the efforts of SANDAG to reduce transportation emissions and should consider the impact of the recently published *Cleveland National Forest Foundation v. San Diego Association of Governments* opinion. Please refer to Master Response 2 for information on how the CAP intersects with SANDAG’s Regional Plan.

Regarding the comment’s contention that the CAP needs to be updated based on the Court of Appeals ruling in *CNFF v. SANDAG*, the County believes that there are two separate issues at hand. SANDAG’s SCS is specifically focused on reducing per capita GHG emissions related to VMT from passenger cars and light-duty trucks. The County’s CAP, on the other hand, is intended to reduce GHG emissions from a spectrum of emissions sources that include VMT, but also energy consumption, water consumption, solid waste, and agriculture. The County has established GHG reduction targets and goal consistent with recommendations in the CARB’s 2017 Scoping Plan. To demonstrate achievement of the targets, the County has proposed GHG reduction measures in the CAP across all emissions categories. The importance of reducing VMT, as highlighted in the reference to the *CNFF v. SANDAG* case in the comment, is recognized by the County. Please refer to Master Responses 2 and 4.

The comment also inquires as to whether the County has reviewed other CAPs from other jurisdictions, and why has the County not adopted similar measures from other jurisdictions, but does not identify what particular measures from other such plans would be applicable to the County’s CAP. It should be noted that the County did review other plans from a variety of jurisdictions. As part of the County’s outreach efforts and preparation of the CAP, it reviewed plans from California jurisdictions with CAPs that are qualified as that term is used in CEQA Guidelines section 15183.5 and CAPs that do not meet the qualified CAP requirements under CEQA Guidelines section 15183.5. The County reviewed over 40 different CAPs and sustainability plans from jurisdictions in California and outside of the state and country. The County reviewed measures from these other plans and engaged stakeholders through the Sustainability Task

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X33-8

Force on the selection of measures that were applicable to the unincorporated county. For example, some measures which may be feasible in urban environments would not be feasible in the unincorporated county. This is illustrated by Strategy 3, Measure 3.1—Mass Transit—of the City of San Diego’s Climate Action Plan that achieves reductions from mass transit of 138,016 MT CO₂e in 2030 (see City of San Diego Climate Action Plan, Table 3.1 at page 30). The unincorporated county cannot realize reductions from mass transit at this scale. The County’s jurisdiction covers rural and semi-rural lands, along with suburban areas, many of which have limited transportation options and are served by limited transit. Thus, proposed transportation measures in the CAP focus on reducing VMT through improved design of development, infrastructure improvements, travel demand management programs, parking code revisions, and alternative fuel use. See Master Response 6 regarding transportation GHG reduction measures. The County used Ascent Environmental to assist with preparation of this CAP and SEIR, and all supporting documents. Ascent Environmental has experience preparing CAPs for other jurisdictions in California, including the City of Sacramento, Yolo County, Napa County, City of Encinitas and City of Solana Beach, and CAP consistency checklists for the City of San Diego and City of Carlsbad.

San Diego County Planning Commission
January 16, 2018
Page 14

states, “guide the San Diego region toward a more sustainable future by integrating land use, housing, and transportation planning to create more sustainable, walkable, transit-oriented, compact development patterns and communities that meet [CARB’s greenhouse gas] emissions targets for passenger cars and light-duty trucks.” (*CNFF v. SANDAG*, 17 Cal. App. 5th at 429.)

In enacting SB 375, the Legislature found automobiles and light trucks are responsible for 30 percent of the state’s greenhouse gas emissions. (Stats. 2008, ch. 728, § 1, subd. (a).) Accordingly, SB 375 directed CARB to develop regional greenhouse gas emission reduction targets for automobiles and light trucks for 2020 and 2035. (Gov. Code, § 65080, subd. (b)(2)(A).) The targets established by CARB for the San Diego region require a 7 percent per capita reduction in carbon dioxide emissions by 2020 and a 13 percent per capita reduction by 2035 (compared to a 2005 baseline). CARB must update these targets every eight years until 2050. (Gov. Code, § 65080, subd. (b)(2)(A)(iv).)

The Court of Appeal in *CNFF v. SANDAG* concluded the Sustainable Communities Strategy EIR at issue in that case was “deficient in several respects – most particularly by focusing alternatives on traffic congestion relief rather than lower vehicle miles traveled.” (*CNFF v. SANDAG*, 17 Cal. App. 5th at 436.) The court added, “The omission of an alternative which could significantly reduce total vehicle miles traveled is inexplicable given SANDAG’s acknowledgements in its Climate Action Strategy that the state’s efforts to reduce greenhouse gas emissions from on-road transportation will not succeed if the amount of driving, or vehicle miles traveled, is not reduced.” (*Ibid.*) The court said it was reasonable to expect “at least one project alternative to have focused primarily on significantly reducing vehicle trips.” (*Id.* at 437.)

This decision highlights the importance of focusing on reducing VMTs to reduce GHG emissions. The CAP EIR’s proposed strategies to reduce VMTs are vague and undeveloped. For example, the CAP proposes to “expand community bicycle infrastructure.” (CAP SEIR, p. 2.7-13.) However, the EIR does not provide the details on how this measure, or other specified measures, would be implemented. Furthermore, the EIR neither commits the funding necessary to achieve the specified objectives, nor provides timelines for each of the measures identified. The County should commit funding now to implement the specified measures, and detail how the funds are to be spent according to a specific schedule. If the County waits until after the Community Plans are updated, this could be years.

Many other communities have adopted effective CAPs, which could be used as a guide for the County, including, for example, the County and City of San Francisco’s CAP. San Francisco’s CAP has a solid waste diversion goal of 75% diversion by 2010 and zero waste by 2020. In contrast, the County’s CAP proposes 75% diversion in another twelve years and zero waste by 2050, which is 32 years away. Why is the

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San Diego County Planning Commission
January 16, 2018
Page 15

County unable to achieve the reduction goals set in a comparable county? Yet, the County has not discussed whether staff has reviewed any other CAPs from other jurisdictions, or why similar measures adopted in other jurisdictions could not be implemented in San Diego County.

VIII. The Sierra Club's Proposed Mitigation Measures Are Feasible and Must Be Analyzed.

During the environmental review of the CAP adopted in 2012, the Sierra Club provided specific examples of feasible GHG reduction measures that would actually reduce GHG emissions and could be adopted without delay. (See, e.g., Exhibit A, September 25, 2017 Letter from Chatten-Brown and Carstens, Reference A, *A Plan to Efficiently and Conveniently Unbundle Car Parking Costs*.) These measures include reducing parking, requiring shared parking, and the best practice of unbundling the cost of parking. (*Ibid.*) In *Sierra Club v. County of San Diego* (2014) 231 Cal. App. 4th 1152, 1176, the Court of Appeal agreed with the Sierra Club, stating, "Sierra Club provided feasible mitigation measures. The County rejected these mitigation measures without substantial evidence for doing so."

The County provided the following response to the Sierra Club's proposed mitigation measure:

Upon careful consideration and evaluation, the County determined that a program to unbundle the cost of parking from County employees' salaries, as recommended in this comment and described more fully in comment O22-35, would be infeasible as a GHG reduction measure in the CAP at this time. County employees work in widely varying roles and in diverse locations where parking is either free and plentiful or expensive and precious. Calculating a fair unbundled charge applicable to all County employees would be virtually impossible under these varied conditions. Even if calculating a fair unbundled charge was possible, free or subsidized parking is currently a benefit provided to all County employees; therefore, to institute such a policy would affect County employee's Terms and Conditions of Employment, which would require negotiation and agreement from each of the County's nine labor unions, something that cannot be guaranteed at this time.

(Response to Comment Letter O22, p. 5.)

The County's defense of its refusal to unbundle the cost of parking from County employees' salaries is unavailing. The idea that the County provides free parking for employees is the problem. The fact that the County would have to negotiate with unions is not an excuse not to make this change. The County could

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X33-9

The comment states that the County must consider the commenter's feasible GHG reduction measures and cites response to comment letter O22 of the Final SEIR. The commenter argues that the County should unbundle the cost of parking from County employees' salaries. As previously explained, such a measure would violate current labor contracts. For this and other reasons stated in the record the commenter's parking plan is infeasible. In addition, the County disagrees for the reasons outlined in Master Response 9 and response to comment letter O22-19 and O22-35. Employee commute emissions from County operations form less than two percent of the County's overall GHG inventory. Under GHG Reduction Measure T-2.3, the County commits to reducing these emissions by 20% by 2030. Ultimately, emissions from employee commute would offer lower returns than other GHG reduction measures due to their lower magnitude. The County currently offers subsidies and transit passes to employees.

San Diego County Planning Commission
January 16, 2018
Page 16

provide free bus passes and phase in parking fees over time, and perhaps run buses for County employees if there are enough employees at certain locations.

The County claims it currently subsidizes monthly transit passes, vanpool, and carpool services for employees in an effort to reduce air pollution, and ease traffic and parking congestion. However, no data to support this contention is provided. This information is necessary to evaluate what percentage of employees are participating in this program and examine its efficacy. Additionally, the County should set VMT reduction goals for its own fleet and set forth strategies for meeting these goals.

IX. Faced with Significant Fire, Water Supply, and Flooding Impacts of Climate Change, the County Must Act Promptly Now to Adopt the Most Effective Climate Action Plan Possible, and Then Provide Regular Updates.

Climate change has significant impacts on fire, water supply, and flooding. A research meteorologist with Scripps Institution of Oceanography at the University of California San Diego concluded that climate change is a major culprit in the wildfires that recently raged across Southern California. (*Climate Change A Major Culprit In Explosive Wildfires, Says San Diego Researcher*, available at <http://www.kpbs.org/news/2017/dec/12/climate-change-major-culprit-explosive-wildfires-s/>.) This conclusion is supported by a body of science that has drawn connections in the West between the prevalence of major wildfires and the rising frequency of earlier springtime conditions followed by hotter and drier summers.

(*Climate Change Expected to Fuel Larger Forest Fires — If It Hasn't Already*, available at <http://www.sandiegouniontribune.com/news/environment/sd-wildfire-climate-change-20170704-story.html>.) The California Department of Forestry and Fire Protection 2017 year-end report shows that five of the top 20 most destructive fires in the state's history occurred last year. (*Cal Fire Report Shows 2017 Nearly Doubled the Number of Wildfires in 2016*, available at <https://www.nbcsandiego.com/news/local/2017-Nearly-Doubled-Wildfires-in-2016-Cal-Fire-467800333.html>; *Top 20 Most Destructive California Wildfires*, available at http://www.fire.ca.gov/communications/downloads/fact_sheets/Top20_Destruction.pdf.)

In turn, these wildfires release powerful pollutants known as black carbon. The U.S. Forest Service estimates that the 2013 Rim Fire in central California spewed out the equivalent of the carbon dioxide emissions from 3 million cars. (*In California's Wildfires, A Looming Threat To Climate Goals*, available at <http://www.kpbs.org/news/2017/dec/20/californias-wildfires-looming-threat-climate-goals/>.) That is a major setback to the state's effort to reduce GHG emissions, and the recent fires in San Diego County, as well as future wildfires in the County, will likewise

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X33-10

X33-10 The comment provides a listing and summary of studies related to wildfires and climate change. The comment also states that the CAP should be updated every two to three years and the County should develop a Scientific and Technical Advisory Committee to advise the County and a Community Advisory Committee that would recommend improvements to the CAP to the Planning Commission and the Board. The CAP does commit to ongoing review by having an annual monitoring report assessing the CAP's implementation, updates to the GHG emissions inventory every two years, and preparation of CAP updates every five years based on findings from the annual monitoring reports and inventory updates. These comments will be included with the Final SEIR and provided to decision makers.

San Diego County Planning Commission
January 16, 2018
Page 17

frustrate the County's effort to reduce GHG emissions. The massive release of carbon from wildfires not only will make it more difficult for San Diego County to achieve its GHG reduction targets, but wildfires also eliminate trees, which are an excellent natural carbon dioxide absorber. Additionally, these pollutants have significant impact on air quality.

Climate change will have a significant impact on San Diego's water as well, leading to hotter, drier weather in San Diego, but also more frequent floods caused by larger storms. Water supply will be diminished but water demand is expected to increase. (*What Climate Change Means for San Diego's Water*, available at <https://www.newsdeeply.com/water/articles/2016/06/13/what-climate-change-means-for-san-diegos-water>.) A San Diego Foundation report on climate impacts in San Diego, prepared by climate scientists from the Scripps Institution of Oceanography at the University of California, San Diego predicts a 12 percent reduction in the runoff and stream flow that replenish the area's major water sources. (*Economic Resilience: Water*, available at <https://www.sdfoundation.org/wp-content/uploads/2016/04/economic-resilience-water.pdf>.) Meanwhile, by 2035, demand for water is expected to increase by 46 percent. (*Ibid.*) Water shortages affect consumers, wildlife and crop production, and agriculture, ecosystems, and urban areas compete for reduced water. (*Ibid.*) While the San Diego region will experience fewer rainy days, there will be more rain during large, intense storms, which could lead to more frequent flooding. (*Ibid.*)

Climate change has largely been defined as an environmental issue, with the worst effects decades or centuries away. But a new report from a commission convened by the medical journal The Lancet, one of the world's most prestigious medical journals, says that climate change is already harming human health on a vast scale. (*Climate Change Is Bad for Your Health*, available at <https://www.nytimes.com/2017/10/30/opinion/climate-change-health-heat.html>; *The Lancet Countdown on Health and Climate Change: From 25 years of Inaction to a Global Transformation for Public Health*, available at [http://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(17\)32464-9](http://www.thelancet.com/journals/lancet/article/PIIS0140-6736(17)32464-9).)

In light of these significant impacts, the County must act urgently to adopt the most effective CAP possible. However, in light of the significant deficiencies described above and in the previous comment letter we submitted to the Planning Department, and based upon points made by others, and the rapidly advancing science of climate change, there should be on-going updates to the CAP every two to three years. The Sierra Club recommends the County develop a Scientific and Technical Advisory Committee to advise the County. Additionally, we recommend there be a Community Advisory Committee formed, including the Sierra Club, that would regularly meet with County staff to discuss and recommend to the Planning Commission and the Board improvements to the CAP.

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San Diego County Planning Commission
January 16, 2018
Page 18

CONCLUSION

On behalf of all residents of the County of San Diego, the Sierra Club urges the County to adopt the most effective CAP possible, ensuring that the CAP puts measures in place to achieve at a minimum the comprehensive and enforceable GHG emissions reductions the County agreed to as a mitigation measure for the County's 2011 General Plan Update. The Sierra Club believes there should be no new GPAs unless the County can show it can achieved the emissions reductions it committed to pursuant to its previous increases in development. There are fundamental problems with the GPAs currently being considered, and their processing should be shelved. Until a comprehensive CAP is finally in place, no further GPA amendments should be considered.

The Sierra Club wants an enforceable CAP in place as soon as possible and hopes to avoid additional litigation. To that end, we propose the following resolution. First, the County would agree to implement the changes proposed by the Sierra Club and others that would strengthen the CAP prior to the Board of Supervisors' consideration of the CAP. Most importantly, the County must eliminate the use of out-of-County offsets. Second, the County would agree to not further process any additional GPAs until a further revision of the CAP adequately addresses the remaining issues that cannot be addressed in the short-term. Third, the County would commit to further update the CAP within one year, and thereafter reevaluate and update the CAP as necessary every three years. Finally, the County would agree to engage the Sierra Club and other interested groups in an advisory capacity for all future CAP updates.

If the County fails to adopt a plan that addresses the critical issues that have been raised from the Sierra Club and other organizations, refuses to commit to no further GPAs until the CAP is revised to address the issues raised in this letter and the Sierra Club's prior letter, and is unwilling to engage in a process for ongoing review, the Sierra Club will have no option other than to return to court to challenge the County's Revised CAP and any further GPA amendments that allow significant sources of GHG emissions to be constructed in the County. This is not in the best interest of the County, the Sierra Club, or the residents of the County. Therefore, we urge the County to adopt a legally adequate and enforceable CAP that cures the deficiencies identified in this letter, and to act quickly.

Sincerely,



Josh Chatten-Brown
Jan Chatten-Brown
Attorneys for Sierra Club

X33-11

X33-11 The comment provides a conclusion to the letter, re-summarizes points raised in the letter, and proposes terms to "avoid additional litigation." Please refer to response to comments X33-1 through X33-10. No additional response is required.

San Diego County Planning Commission
January 16, 2018
Page 19

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SUPERIOR COURT OF CALIFORNIA,

COUNTY OF SAN DIEGO

HALL OF JUSTICE

TENTATIVE RULINGS - April 27, 2017

EVENT DATE: 04/28/2017

EVENT TIME: 01:30:00 PM

DEPT.: C-72

JUDICIAL OFFICER: Timothy Taylor

CASE NO.: 37-2016-00037402-CU-TT-CTL

CASE TITLE: PETITION OF GOLDEN DOOR PROPERTIES LLC [IMAGED]

CASE CATEGORY: Civil - Unlimited

CASE TYPE: Toxic Tort/Environmental

EVENT TYPE: Hearing on Petition

CAUSAL DOCUMENT/DATE FILED:

Tentative Rulings on 1) Second Amended/Supplemental Petition for Writ of Mandate; and 2) Petition for Writ of Mandate

Sierra Club v. County of San Diego, Case No. 2012-0101054

Golden Door Properties LLC v. County of San Diego, Case No. 2016-0037402

April 28, 2017, 1:30 p.m., Dept. 72

1. Overview and Procedural Posture.

In late 2012 and early 2013, the court was required to address, in two CEQA cases, the controversial topics of greenhouse gases and global climate change. The first was *Cleveland Nat'l. Forest Foundation v. SANDAG*, Case No. 2011-00101593; that case was the subject of a learned opinion of the 4th DCA, Div. 1 [D063288, 180 Cal.Rptr.3d 548 (2014)], and remains pending review by the California Supreme Court [No. S223603, 343 P.2d 903 (2015)]. The Court has limited the issue in that case to "Must the environmental impact report for a regional transportation plan include an analysis of the plan's consistency with the greenhouse gas emission reduction goals reflected in Executive Order No. S-3-05 to comply with the California Environmental Quality Act?" As of this writing, there has been extensive party and *amicus* briefing, and the High Court has set a date early next month for oral argument.

In the second 2012 case, the Sierra Club contended that the County of San Diego's June 20, 2012 "Climate Action Plan" (CAP), was insufficient and violated CEQA in several respects: it did not comply with mitigation measures spelled out in the County's 2011 Program EIR (PEIR), adopted in connection with the 2011 General Plan Update (GPU) (AR 0441 ff); it failed to satisfy the requirements for adopting thresholds of significance for greenhouse gas emissions (GHG); and it should have been set forth in a stand-alone environmental document rather than in an addendum to the PEIR. The County denied these claims, and asserted that the CEQA challenge was time-barred, the CAP complied with all legal requirements, the use of an addendum was appropriate, and that all relief was barred by the Sierra Club's failure to notify the AG as required by Pub. Res. Code section 21167.7.

A little more than four years ago, the court ruled in favor of the Sierra Club on the original petition. ROA 33. The County appealed. ROA 44. The parties thereafter stipulated to stay the case while it was on appeal. ROA 60. But before they did, the Sierra Club had filed a supplemental petition. ROA 54. The stipulated stay prevented consideration of that document. Subsequently, the parties filed a stipulation

regarding the disposition of the supplemental petition, depending on the disposition of the appeal. ROA 64.

In October of 2014, the 4th DCA, Div. 1 issued its learned opinion affirming this court, ultimately published at 231 Cal.App.4th 1152 (2014). On March 11, 2015, the Supreme Court denied review. A remittitur thereafter issued. ROA 105.

The parties were before the court on April 15, 2015. Petitioner asked that the stay be lifted, and that the case be restored to the civil active list. These requests were granted without objection.

The Sierra Club also wanted the court to sign an order, while the County wanted the court to sign a different order. There were two problems: first, the court had not received petitioner's version of the proposed order, nor had a chance to review the County's proposed order; and second, the parties were before the court while it was in the middle of a lengthy trial with jurors arriving shortly. The court continued the matter to the regular law and motion calendar of May 1, 2015. ROA 73.

The court thereafter reviewed the parties' competing submissions. The central problem was that a dispute had arisen regarding the intent, import and meaning of the December 11, 2014 stipulation (ROA 64). The court, following several submissions and argument, resolved the dispute in May of 2015. ROA 91-92.

The Sierra Club's counsel thereafter sought an award of attorneys' fees. ROA 95-104. The amended moving papers (ROA 116, 117) made clear that the County agreed petitioner was entitled to fees; the only question was how much. Petitioner sought a lodestar of over \$661,000.00 with a multiplier of two, for a total of over \$1.3 million, plus fees necessary for the fee motion.

The County filed opposition. ROA 122-125. After presenting very focused argument, the County ended by making several specific "suggestions" for reducing the fee award: a combination of cutting hours, reducing rates, and denial of any multiplier. Petitioner filed reply. ROA 126-130. The court, after it had reviewed all the briefing and heard argument, granted a fee award in the amount of over \$961,000.00. ROA 133. Judgment was thereafter entered in this amount, plus additional costs not challenged by the County. ROA 135. This occurred in September of 2015; at this point, the court (perhaps naively) considered the case to have been concluded. Neither side sought further appellate review of the attorneys' fee ruling or the May 2015 ruling.

In early 2016 and again the following summer, the County filed returns on the supplemental writ. ROA 137, 138. Both sides changed counsel. ROA 136, 147.

The Sierra Club filed its second amended petition on September 26, 2016. ROA 140. The County demurred to it on two grounds, including non-justiciability (ripeness). ROA 142. Following briefing and argument, the court overruled the demurrer on January 6, 2017. ROA 160. The County thereafter answered. ROA 161-162.

Also at the January 6, 2017 hearing, the court allowed the parties' stipulation whereby a more recently filed case, *Golden Door Properties LLC v. County of San Diego*, Case No. 2016-0037402, would be transferred to Dept. 72 and heard with the *Sierra Club* 2012 case. ROA 160. Both the current iteration of the *Sierra Club* 2012 case and the *Golden Door* 2016 case challenge the County's 2016 Climate Change Analysis Guidance Recommended Content and Format for Climate Change Analysis Reports in Support of CEQA Documents ("2016 Guidance Document" or "2016 Significance Document") prepared by the County's Department of Planning & Development Services.

The parties subsequently stipulated to a briefing schedule, which the court also allowed. ROA 167.

The court has reviewed the following briefing:

Sierra Club's opening brief, request for judicial notice and joinder filed February 6, 2017 (ROA 169-173).

Golden Door's opening brief and request for judicial notice filed February 6, 2017 (ROA 24-25).

The County's answering briefs and supporting documents filed March 17, 2017 (ROA 30-34 and 180-184).

Sierra Club's reply brief, supporting documents, and joinder filed April 20, 2017 (ROA 85-189).

Golden Door's reply brief filed April 20, 2017 (ROA 36).

The court has also reviewed the administrative record materials submitted January 24, 2017 and April 14, 2017 (ROA 23, 35).

With its opposition brief in both cases, the County filed the Declaration of Peter Eichar (ROA 31, 181). With its reply brief, the Sierra Club filed the Declaration of Josh Chatten-Brown and the Declaration of Corey Briggs (ROA 186, 187). The Sierra Club also filed a tardy Second Declaration of Josh Chatten-Brown. ROA 190. The submission of the declarations is inconsistent with the oft-repeated rule in CEQA cases: "If it is not in the administrative record, it does not exist." See *Sierra Club v. Coastal Comm'n* (2005) 35 Cal.4th 839, 863; Code of Civil Procedure § 1094.5; *Western States Petroleum Assn. v. Superior Court* (1995) 9 Cal.4th 559, 565. Evidentiary objections were not interposed. The declarations were therefore considered.

2. Applicable Standards.

A. The court incorporates part 2 of its own ruling of April 19, 2013. ROA 33. The court incorporates the learned opinion of the Fourth District Court of Appeal, Div. 1, published at 231 Cal.App.4th 1152 (2014). The court also incorporates its own rulings from May of 2015. ROA 91-92.

B. The ripeness element of the doctrine of justiciability is intended to prevent courts from issuing purely advisory opinions. *Pacific Legal Foundation v. California Coastal Com.* (1982) 33 Cal.3d 158, 170. It is "primarily bottomed on the recognition that judicial decisionmaking is best conducted in the context of an actual set of facts so that the issues will be framed with sufficient definiteness to enable the court to make a decree finally disposing of the controversy." (*Ibid.*) In an action for declaratory relief under Code of Civil Procedure section 1060, an " 'actual controversy' ... is one which admits of definitive and conclusive relief by judgment within the field of judicial administration, as distinguished from an advisory opinion upon a particular or hypothetical state of facts. The judgment must decree, not suggest, what the parties may or may not do. [Citations.]" *Selby Realty Co. v. City of San Buenaventura* (1973) 10 Cal.3d 110, 117; *Wilson & Wilson v. City Council of Redwood City* (2011) 191 Cal.App.4th 1559, 1573-74. During the summer of 2016, the Court of Appeal considered ripeness in the context of a CEQA petition in *California Bldg. Indus. Ass'n v. Bay Area Air Quality Mgmt. Dist.* (2016) 2 Cal.App.5th 1067, 1088-89 (Cal. BIA):

District relies on inapposite case law in which the courts declined to use the remedy of mandamus to set aside interim actions by an agency during a multilayered review process. (*California High-Speed Rail Authority v. Superior Court* (2014) 228 Cal.App.4th 676, 708-713, 175 Cal.Rptr.3d 448 [no present duty to redo preliminary funding plan]; *California Water Impact Network v. Newhall County Water Dist.* (2008) 161 Cal.App.4th 1464, 1486, 75 Cal.Rptr.3d 393 [water assessment report providing information to be included in EIR was not final determination as necessary to obtain relief by mandamus].) The District Guidelines are not interim steps in a larger review process; rather, they are interpretive guidelines for CEQA analyses promulgated by an air district that acts as either the lead agency or a responsible agency on projects within its jurisdictional boundaries.

For purposes of assessing the propriety of a writ of mandate, the District Guidelines are akin to the guidelines issued by the California Coastal Commission and challenged in *Pacific Legal Foundation*,

supra, 33 Cal.3d at page 163, 188 Cal.Rptr. 104, 655 P.2d 306. Those guidelines, though not binding on any agency, explained the Commission's interpretation of the public beach access provisions of the Coastal Act, and were asserted to be invalid on their face because they required property owners to dedicate easements giving beach access to the public as a condition of obtaining permit approval for proposed developments. Noting that the promulgation of the access guidelines was a quasi-legislative act reviewable by an action for declaratory relief or traditional mandamus (as opposed to administrative mandamus), the court went on to consider whether a ripe controversy existed. (*Id.* at p. 169, 188 Cal.Rptr. 104, 655 P.2d 306.)

Turning to the question of whether the challenge to the Coastal Commission's guidelines was ripe, the court applied a standard used by the federal courts and considered " 'both the fitness of the issues for judicial decision and the hardship to the parties of withholding court consideration.' " (*Pacific Legal Foundation, supra*, 33 Cal.3d at p. 171, 188 Cal.Rptr. 104, 655 P.2d 306, italics omitted.) It concluded the facial challenge to the guidelines was not ripe: "Although it may be predicted with assurance that some of the plaintiff landowners will eventually wish to make improvements on their property, it is sheer guesswork to conclude that the Commission will abuse its authority by imposing impermissible conditions on any permits required. The guidelines are not mandatory. *They do not require the Commission to impose access conditions in any particular circumstances, but rather adopt a flexible approach: the Commission is to determine the appropriateness of access exactions on a case-by-case basis.*" (*Id.* at p. 174, 188 Cal.Rptr. 104, 655 P.2d 306, italics added.)

Unlike the Coastal Commission guidelines at issue in *Pacific Legal Foundation*, the District Guidelines do not call for the Receptor Thresholds to be applied to projects on a case-by-case basis. Instead, they suggest a routine analysis of whether new receptors will be exposed to specific amounts of toxic air contaminants. Given the clarity of the Supreme Court's decision that such an analysis oversteps the bounds of CEQA except in specified circumstances (*Building Association, supra*, 62 Cal.4th at p. 392, 196 Cal.Rptr.3d 94, 362 P.3d 792), the issue is fit for judicial determination. The ripeness requirement "should not prevent courts from resolving concrete disputes if the consequence of a deferred decision will be lingering uncertainty in the law, especially when there is widespread public interest in the answer to a particular legal question." (*Pacific Legal Foundation, supra*, 33 Cal.3d at p. 170, 188 Cal.Rptr. 104, 655 P.2d 306.)

C. "Under the law-of-the-case doctrine, the determination by an appellate court of an issue of law is conclusive in subsequent proceedings in the same case. [Citation.] The doctrine applies only if the issue was actually presented to and determined by the appellate court. [Citation.] The doctrine is one of procedure that prevents parties from seeking reconsideration of an issue already decided absent some significant change in circumstances." *People v. Yokely* (2010) 183 Cal.App.4th 1264, 1273. Furthermore, "the law-of-the-case doctrine governs only the principles of law laid down by an appellate court, as applicable to a retrial of fact" *People v. Boyer* (2006) 38 Cal.4th 412, 442. "[T]he doctrine applies only to an appellate court's decision on a question of law; it does not apply to questions of fact." *People v. Barragan* (2004) 32 Cal.4th 236, 246. The doctrine applies only to rulings by appellate courts and not trial courts. *Yokely*, at p. 1273; *Boyer*, at p. 442; *Barragan*, at p. 246.

D. Since the court decided the first Sierra Club petition in April of 2013, and since the court's May 2015 ruling, the Supreme Court has decided two cases of importance to the current inquiry, particularly as they relate to the standard of review:

In *Center for Biological Diversity v. Calif. Dept. of Fish and Wildlife*, (November 30, 2015) 62 Cal.4th 204, the High Court held that the lead agency did not abuse its discretion in using AB 32 as a significance criterion in analyzing the GHG-related effects of a large, mixed use development. *Id.* at 222-223.

In *Banning Ranch Conservancy v. City of Newport Beach* (March 30, 2017) __ Cal.5th __, 2017 WL 1174436, the Court held that, in "punting" to the Coastal Commission, the City had failed to use its best efforts to investigate and disclose what it had discovered about environmentally sensitive areas in the project site. *Id.* at *11.

E. An injunction is appropriate in a CEQA case where activities will prejudice the implementation of a mitigation measure. *Californians for Alternatives to Toxics v. Department of Food and Agriculture* (2005) 136 Cal.App.4th 1, 21 ("a court can issue an order enjoining activities that could adversely change or alter the environment, if it finds that such activities 'will prejudice the consideration or implementation of particular mitigation measures or alternatives to the project' ")

3. Requests for Judicial Notice.

The Sierra Club seeks (ROA 170) judicial notice of two documents: (A) the October 20, 2016 Notice of Preparation of the County of San Diego Climate Action Plan and General Plan Amendment; and (B) a chart, prepared by the County, of the proposed and in-process General Plan Amendment applications within San Diego County.

Golden Door seeks (ROA 25) judicial notice of the County's October 21, 2009 CEQA Guidelines.

The petitioners' requests are made pursuant to Evid. Code section 452(c), official acts of a state political subdivision.

The County seeks judicial notice (ROA 32* and 182) of 20 documents (three in the *Golden Door* case and 17 in the *Sierra Club* case). These requests are made pursuant to Evid. Code sections 452(c), official acts of a state political subdivision, and 452(d), court records.

Courts of appeal review a trial court's ruling granting a request for judicial notice pursuant to the abuse of discretion standard of review. *In re Social Services Payment Cases* (2008) 166 Cal.App.4th 1249, 1271.

Evidence Code section 453 provides that a trial court must take judicial notice of any matter specified in Evidence Code section 452, upon a party's proper request.

In *People v. Harbolt* (1997) 61 Cal.App.4th 123, 126-127, the court discussed the limited purposes for which a court may take judicial notice of a court record:

"Evidence Code sections 452 and 453 permit the trial court to 'take judicial notice of the *existence* of judicial opinions and court documents, along with the truth of the results reached-in the documents such as orders, statements of decision, and judgments-but cannot take judicial notice of the truth of hearsay statements in decisions or court files, including pleadings, affidavits, testimony, or statements of fact.' [Citations.]

The County did not oppose either petitioner request, and they are granted. With regard to the County's requests, the court rules as follows:

Ex. 1, April 19, 2013 reporter's transcript: Granted
Ex. 2, April 24, 2013 Judgment: Granted
Ex. 3, April 19, 2013 Minutes: Granted
Ex. 4, April 24, 2013 Writ: Granted
Ex. 5 and Ex. 2, Nov. 7, 2013 Guidelines: Granted
Ex. 6, Supplemental Petition: Granted
Ex. 7, Stipulation and Order (ROA 64): Granted
Ex. 8, May 4, 2015 supplemental writ of mandate: Granted
Ex. 9 and Ex. 3, June 4, 2015 Initial Return: Granted
Ex. 10, January 5, 2016 Second Return: Granted
Ex. 11, June 29, 2016 Third Return: Granted
Ex. 12, Dec. 29 2016 Fourth return: Granted

Ex. 13, Second Supp. Petition: Granted
Ex. 14, opposition to demurrer: Granted
Ex. 15 and Ex. 1, Bay Area June 2010 document: Denied
Ex. 16, 2007 San Bernardino document: Denied
Ex. 17, 2011 San Bernardino document: Denied

With regard to the latter three documents, the denial is based on lack of relevance and the fact that none of the three documents was, so far as the court can discern, within the administrative record in these matters.

4. Discussion and Rulings.

A. Law of the Case.

The following are the holdings of the Fourth District Court of Appeal, Div. 1, in the 2012 *Sierra Club* case:

"[W]ith respect to the CAP as mitigation for a plan-level document, the County failed to proceed in the manner required by CEQA by proceeding with the CAP and Thresholds project in spite of the express language of Mitigation Measure CC-I.2 requiring that the CAP "include ... more detailed greenhouse gas emissions reduction targets and deadlines" and that the CAP "will achieve comprehensive and enforceable GHG emissions reduction" by 2020. With respect to the CAP as a plan-level document itself, the County failed to proceed in the manner required by law by failing to incorporate mitigation measures into the CAP as required by *Public Resources Code section 21081.6*."

231 Cal.App.4th at 1167 (italics in original).

"Instead of analyzing and making findings regarding the environmental effects of the CAP and Thresholds project, the County made an erroneous assumption that the CAP and Thresholds project was the same project as the general plan update. ... As a result, the County failed to render a "written determination of environmental impact" before approving the CAP and Thresholds project. ...This constitutes a failure to proceed in the manner required by law."

231 Cal.App.4th at 1170-71.

The "trial court did not err in finding a supplemental EIR was required."

231 Cal.App.4th at 1174.

The CAP "does not fulfill the County's commitment under CEQA and Mitigation Measure CC–1.2, to provide detailed deadlines and enforceable measures to ensure GHG emissions will be reduced."

231 Cal.App.4th at 1176.

B. Contentions of the Parties.

The Sierra Club contends the County's 2016 Guidance Document was not properly adopted, creates a threshold of significance, and violates CEQA; that the use of the 2016 Guidance Document violates the decision of the Court of Appeal and this court's supplemental writ of mandate, as well as the County's own previously adopted mitigation measure; that the County proceeded in the absence of substantial evidence; and that the County should be enjoined from processing and approving new, large-scale developments until a lawful CAP and threshold are in place to guide that development and ensure the County can meet its greenhouse gas reduction targets. In the reply brief (p. 5:19-20), the Sierra Club withdraws its request to enjoin the processing of designated projects and states it only seeks to enjoin project approvals until a lawful CAP and threshold are in place.

Golden Door's arguments are similar; it contends the County violated CEQA's procedural requirements in adopting the 2016 Significance Document; that the County violated CEQA by failing to comply with County General Plan EIR Mitigation Measures CC-1.2 and CC-1.8; and that by approving the 2016 Significance Document before the CAP is approved and without environmental review, the County is "piecemealing" and thwarting the County's commitment to comprehensive GHG mitigation. Golden Door also agrees with the Sierra Club argument regarding the absence of substantial evidence as to the County's "Efficiency Metric."

The County contends that the claims of the Sierra Club and Golden Door are not ripe; that the 2016 Guidance Document is merely an advisory document to be used on a project-by-project basis, and not a formally adopted threshold of significance; that the 2016 Guidance Document is based on substantial evidence; that it is in full compliance with the earlier decisions of this court and the 4th DCA, Div. 1; and that petitioners are not entitled to injunctive relief [either to stop all large scale ("greenfields") development (Sierra Club) or to stop the use of the 2016 Guidance Document (Golden Door)].

C. Rulings of the Court.

1. Are the Claims Ripe for Decision?

Yes. It is somewhat ironic that in 2013, the County argued the Sierra Club's claims were time-barred, and now it argues they are not ripe. As the court held in overruling the demurrer, a definite and concrete dispute is raised in the Second Supplemental Petition (SSP). The SSP pleads that the 2016 Guidance Document contains or constitutes a threshold of significance. SSP, paragraphs 1-4, 15, 34-35, 41, 52. The 2016 Guidance Document contains interpretative guidelines for CEQA analysis prepared by the County for use when it acts as the lead agency or responsible agency on projects within its jurisdictional boundaries. AR 10976-10983. This scenario is similar to *Cal. BIA, supra*, in which the court was not persuaded by the District's argument that the District's guidelines are a nonbinding, advisory document. *Cal. BIA, supra*, 2 Cal.App.5th at 1088. If the County's approach was to proceed on a project-by-project basis, as it now claims, it would just do so; it would not need the 2016 Guidance Document. If, instead, the 2016 Guidance Document was intended as an interim set of thresholds of significance for use between now and the time the County finally gets around to complying with the decisions of this court and the Fourth District Court of Appeal, the County cannot be heard to complain that there is no definite and concrete dispute. The County's apparent failure to devote sufficient resources to complying with the decisions of the courts in a timely fashion cannot be held to allow the County to invoke the ripeness doctrine.

2. Is the 2016 Guidance Document a Threshold of Significance under CEQA Guideline 15064.7, or Is It Merely Advisory?

The 2016 Guidance Document is a threshold of significance under CEQA Guideline 15064.7.

CEQA Guideline 15064.7(a) provides, "[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." CEQA Guideline 15064.7(a).

The 2016 Guidance Document meets this threshold of significance definition. It sets forth the "County Efficiency Metric" and recommends the use of the "Efficiency Metric" as a "quantitative GHG analysis." See AR 10979. It provides a "measuring stick" for the significance of GHG impacts as to the "Efficiency Metric." It sets 4.9 metric tons of CO₂e per person per year as the level above which a project's GHG impacts are found significant and below which the impacts will be found less than significant. See AR 10980. It describes the "Efficiency Metric" as a "threshold." See AR 10980. The metric is included in the 2016 Guidance Document in a section entitled "Significance Determination." See AR 10979-80.

The fact that the "Efficiency Metric" is recommended, and not mandatory, does not mean that the 2016 Guidance Document is not a threshold of significance. See *Cal. BIA, supra*, 2 Cal.App.5th at 1088-89 ("District argues writ relief is inappropriate because the District Guidelines are a nonbinding, advisory document and their review is premature given the lack of a specific controversy. We are not persuaded The District Guidelines are not interim steps in a larger review process; rather, they are interpretive guidelines for CEQA analyses promulgated by an air district that acts as either the lead agency or a responsible agency on projects within its jurisdictional boundaries.") The same is true here. The 2016 Guidance Document contains interpretative guidelines for CEQA analysis. It was drafted by the County that acts as the responsible agency on projects within its jurisdictional boundaries.

Since the 2016 Guidance Document is a threshold of significance under CEQA, the County is required to comply with the CEQA's mandated procedures for adopting it. That is, CEQA requires that a threshold of significance "be adopted by ordinance, resolution, rule, or regulation, and developed through a public review process and be supported by substantial evidence." See CEQA Guidelines 15064.7(b). Thresholds of significance that are "clearly erroneous and unauthorized under CEQA" must be set aside. *Cal. BIA, supra*, 2 Cal.App.5th at 1088.

The County failed to comply with the CEQA-required procedures in adopting the 2016 Guidance Document. It did not adopt the 2016 Guidance Document by "ordinance, resolution, rule, or regulation." It did undertake a public review process. Also, the County's rules (ignored by the County) require that the 2016 Guidance Document be subject to public review. See Golden Door's RJN, Ex. 5, County's CEQA Guidelines, p. 5 ("Processing Departments shall prepare and maintain administrative guidance for determining the significance of environmental effects. Such guidance, if available, should be utilized in the preparation of Initial Studies and EIRs and updated periodically Before any administrative guidance or revisions are approved by the Processing Department, the proposal shall be circulated for public review and comments...") Accordingly, the 2016 Guidance Document is a threshold of significance under CEQA.

Interestingly, the 2016 Guidance Document allows more GHG emissions per year (4.9 metric tons of CO₂e per year), as opposed to the County 2013 GHG Significance Document (4.3 metric tons of CO₂e per year. AR 10349. However, the lower 4.32 metric tons of CO₂e per year threshold was vacated by this court. ROA 92. CEQA was violated because there was no opportunity for public discussion of this determination.

3. Does the 2016 Guidance Document Violate Mitigation Measures CC-1.2 or CC-1.8?

Yes. In order to mitigate the climate change impacts of the 2011 GPU, the County approved mitigation measures requiring it to prepare a CAP (CC-1.2) and to revise its thresholds of significance (CC-1.8). AR 1317-1318 (CC-1.2, CC-1.8). The 2016 Guidance Document violates CC-1.2 and CC-1.8 when the County processes projects using the 2016 Guidance Document in lieu of a threshold of significance based on the CAP. The County got the cart before the horse.

4. Is the 2016 Guidance Document Supported by Substantial Evidence?

No. A threshold of significance must be based on substantial evidence. See CEQA Guideline 15064.7(c). The 2016 Guidance Document fails to bridge the analytical gap with substantial evidence, and thus is not supported by substantial evidence.

The 2016 Guidance Document relies on statewide service population and statewide GHG inventory to derive a "per person" limit of GHG emissions. AR 10981. It provides no data specific to San Diego County. It makes no effort to explain why the calculation of the "County Efficiency Metric" based only on statewide data is appropriate for San Diego County. It provides no information on what level of population was assumed for unincorporated San Diego County in the statewide service population number. It does not differentiate between various types of development, such as new, urban, and rural. Thus, it fails to bridge the analytical gap with substantial evidence explaining why calculation of the

"County Efficiency Metric" based on statewide data is proper for San Diego County.

The matter is somewhat similar to *Cal. BIA*. In that case, the Supreme Court held that an EIR's GHG analysis was insufficient given it failed to provide substantial evidence that the statewide GHG reduction levels were a "proper measuring stick" at the project level. *Cal. BIA, supra*, 62 Cal.4th at 225-227. The Supreme Court's holding was partly premised on potential differences in new and existing development and differences in assumptions used in statewide models and in local models. *Id.* Here, the "County Efficiency Metric" is somewhat similar to the *Cal. BIA* EIR. It relies on statewide service population and statewide GHG inventory to derive a "per person" limit of GHG emissions. AR 10981. It provides no data specific to San Diego County (which has topography, marine influences, and an industrial mix different from many parts of the state (not to mention an international border no other part of the state has). It makes no effort to explain why the calculation of the "County Efficiency Metric" based only on statewide data is appropriate for San Diego County.

Golden Door does not (and is not required to) discuss the evidence supporting the County's statewide service population and statewide GHG inventory. Golden Door does not challenge the sufficiency of such evidence for statewide purposes.

The court grants Sierra Club's joinder in Golden Door's supporting and reply briefs regarding the lack of substantial evidence for the 2016 Guidance Document. ROA 171, 188.

5. Is the County in Compliance with This Court's Directives as Affirmed by the Court of Appeal?

No. The Court of Appeal in the 2012 *Sierra Club* case found that the CAP and thresholds of significance based on the CAP are a single project that is subject to environmental review. 231 Cal.App.4th at 175 ("As a plan-level document, the CAP and Thresholds project was required to undergo environmental review as a matter of law.") Three years later, the County has not completed a CAP. Also, it has not performed CEQA review for the 2016 Guidance Document. Thus, the 2016 Guidance Document violates the Court of Appeal ruling and is piecemeal environmental review.

6. Are Petitioners Entitled to Injunctive Relief?

Yes, although not the extent sought by the Sierra Club.

The Sierra Club seeks an injunction prohibiting the County from processing and approving new large scale developments on undeveloped land in San Diego County until the County approves a lawful CAP and thresholds regarding GHG impacts. The Sierra Club proposes to enjoin 17 in-process projects listed in the Sierra Club's RJN, Ex. B (ROA 170).

The Sierra Club and Golden Door also seek an injunction prohibiting the County from using the 2016 Guidance Document and its "County Efficiency Metric" for CEQA review of GHG impacts for development proposals on undeveloped land in San Diego County.

The Sierra Club's request (injunction prohibiting the County from processing and approving new large scale developments on undeveloped land in San Diego County until the County approves a lawful CAP and thresholds) is denied. An injunction to prohibit the County from undertaking its planning process is too broad, and would embroil the court in County operations the court is not equipped to oversee. Further, there is the possibility that the County will deny some or all of the projects. Moreover, the Sierra Club has withdrawn its request to enjoin the processing of the designated projects. See reply brief, p. 5:18 ("The Club no longer seeks to enjoin the *processing* of the designated projects..."; italics in original).

The Sierra Club's request (injunction prohibiting the County from approving new large scale developments) is denied. The parties involved in the projects are not before the court, and thus, do not have the opportunity to address the request. This is a basic due process concern. Also, granting the request would probably prejudice the applicants in the projects. *Save Our Bay, Inc. v. San Diego Unified*

Port District (1996) 42 Cal.App.4th 686, 696 ("the test is whether the person is one whose rights must necessarily be affected by the judgment in the proceeding"). Undoubtedly, some applicants have expended time and financial resources and would be obviously impacted by an injunction prohibiting the approval. In addition, the Sierra Club has an available adequate remedy - filing an individual lawsuit with respect to each project that is approved. In addition, the Sierra Club concedes the injunction request is a "novel situation" and that "it may be unusual for a court to issue the type of injunctive ... relief sought here". See opening brief, p. 23:21; see *also* reply brief, p. 11:14-15.

However, the court is very concerned that the County has not acted expeditiously and has allowed approximately 4 years to transpire since the court ordered the preparation of a new CAP and approximately 2 years to transpire since the High Court denied the County's petition for review. As such, the injunction is denied without prejudice for the Sierra Club to renew the request if it appears within the next couple of months that the County is still avoiding its obligation to effectuate a lawful CAP and threshold.

The joint injunction request is granted. The County is prohibited from using the 2016 Guidance Document and its "County Efficiency Metric" for CEQA review of GHG impacts for development proposals on undeveloped land in San Diego County. The injunction does not enjoin planning activities. It only prevents the County from utilizing an improper threshold of significance in the CEQA review of GHG impacts on undeveloped land in San Diego County. It only enjoins an action that is inconsistent with CEQA. *Lincoln Place Tenants Ass'n v. City of Los Angeles* (2007) 155 Cal.App.4th 425, 454-55.

Accordingly, let a writ of mandate issue forthwith, directing respondent the County of San Diego to set aside and vacate the 2016 Guidance Document; and let an injunction issue wherein the 2016 Guidance Document and its "County Efficiency Metric" may not be used to provide the basis for CEQA review of GHG impacts of development proposals on unincorporated County lands. The court declares that the 2016 Guidance Document and its "County Efficiency Metric" are legally inadequate and may not be used to provide the basis for CEQA review of GHG impacts of development proposals on unincorporated County lands.

The court believes it has addressed all of the principal controverted issues of the case, and the court therefore finds it unnecessary to address the other contentions in the second amended/supplemental petition for writ of mandate and petition for writ of mandate. *Compare Natter v. Palm Desert Rent Review Com.* (1987) 190 Cal.App.3d 994, 1001; *Young v. Three for One Oil Royalties* (1934) 1 Cal.2d 639, 647-648. By proceeding in this fashion, the court aims to deliver a prompt decision, bearing in mind that the trial court is most often just a waystation in the life of a CEQA case.

Attorneys' fees, if sought, may be addressed in a future noticed motion.

The court thanks the parties for their high-quality briefs. The court expects to return the lodged AR to the parties at the hearing so that it will be available for appellate proceedings should that be deemed appropriate. Accordingly, the parties should bring an extra briefcase to the hearing.

*The County's request in the *Golden Door* case is confusing, as it refers initially to "Exhibits A-P" but then only references and attaches Exhibits 1-3.

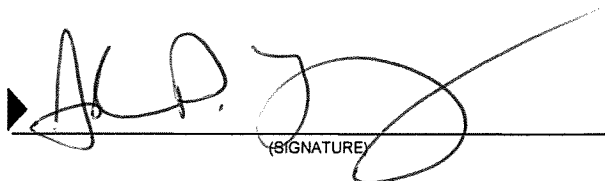
ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Christopher W. Garrett (Bar No. 100764) Andrew D. Yancey (Bar No. 287531) Latham & Watkins, LLP 12670 High Bluff Drive, San Diego, CA 92130 TELEPHONE NO.: 858.523.5400 FAX NO. (Optional): E-MAIL ADDRESS (Optional): christopher.garrett@lw.com ATTORNEY FOR (Name): Golden Door Properties, LLC	FOR COURT USE ONLY ELECTRONICALLY FILED Superior Court of California, County of San Diego 06/02/2017 at 12:24:00 PM Clerk of the Superior Court By Tamara Parra, Deputy Clerk
SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Diego STREET ADDRESS: 330 W. Broadway MAILING ADDRESS: 330 W. Broadway CITY AND ZIP CODE: San Diego, CA 92101 BRANCH NAME: Central Division	
PLAINTIFF/PETITIONER: Golden Door Properties, LLC DEFENDANT/RESPONDENT: County of San Diego, et al.	
<p style="text-align: center;">NOTICE OF ENTRY OF JUDGMENT OR ORDER</p> <p>(Check one): <input checked="" type="checkbox"/> UNLIMITED CASE (Amount demanded exceeded \$25,000) <input type="checkbox"/> LIMITED CASE (Amount demanded was \$25,000 or less)</p>	CASE NUMBER: 37-2016-00037402-CU-TT-CTL

TO ALL PARTIES :

1. A judgment, decree, or order was entered in this action on (date): May 30, 2017
2. A copy of the judgment, decree, or order is attached to this notice.

Date: June 2, 2017

Andrew D. Yancey, Esq.

(TYPE OR PRINT NAME OF ☒ ATTORNEY ☐ PARTY WITHOUT ATTORNEY)


 (SIGNATURE)

PLAINTIFF/PETITIONER: Golden Door Properties, LLC	CASE NUMBER:
DEFENDANT/RESPONDENT: County of San Diego, et al.	37-2016-00037402-CU-TT-CTL

PROOF OF SERVICE BY FIRST-CLASS MAIL

NOTICE OF ENTRY OF JUDGMENT OR ORDER

(NOTE: You cannot serve the Notice of Entry of Judgment or Order if you are a party in the action. The person who served the notice must complete this proof of service.)

1. I am at least 18 years old and **not a party to this action**. I am a resident of or employed in the county where the mailing took place, and my residence or business address is (*specify*):

2. I served a copy of the *Notice of Entry of Judgment or Order* by enclosing it in a sealed envelope with postage fully prepaid and (*check one*):

- a. ☐ deposited the sealed envelope with the United States Postal Service.
- b. ☒ placed the sealed envelope for collection and processing for mailing, following this business's usual practices, with which I am readily familiar. On the same day correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service.

3. The *Notice of Entry of Judgment or Order* was mailed:

- a. on (*date*): June 2, 2016
- b. from (*city and state*): San Diego, CA

4. The envelope was addressed and mailed as follows:

a. Name of person served:

Claudia G. Silva, Assistant County Counsel

Street address: 1600 Pacific Highway, Room 355

City: San Diego

State and zip code: CA 92101

c. Name of person served:

Jan Chatten-Brown, Chatten-Brown & Carstens LLP

Street address: 302 Washington Street, #710

City: San Diego

State and zip code: CA 92103

b. Name of person served:

Street address:

City:

State and zip code:

d. Name of person served:

Street address:

City:

State and zip code:

☐ Names and addresses of additional persons served are attached. (*You may use form POS-030(P).*)

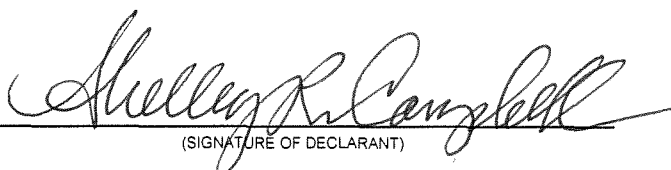
5. Number of pages attached _____.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: June 2, 2017

Shelley R. Campbell

(TYPE OR PRINT NAME OF DECLARANT)

► 

(SIGNATURE OF DECLARANT)

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

05/30/2017 at 04:00:00 PM
Clerk of the Superior Court
By Jenitta Vrissimo, Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO, CENTRAL DIVISION

GOLDEN DOOR PROPERTIES, LLC, a
California limited liability company, and
DOES 1-10, inclusive,

Petitioner and Plaintiff,

v.

COUNTY OF SAN DIEGO, a political
subdivision of the State of California; and
DOES 11-20, inclusive,

Respondent and Defendant.

CASE NO. 37-2016-00037402-CU-TT-CTL

[Related to Case No. 37-2012-00101054-CU-TT-CTL]

[PROPOSED] FINAL JUDGMENT

[IMAGED FILE]

Hearing Date: April 28, 2017

Time: 1:30 p.m.

Dept.: C-72 – Honorable Timothy B. Taylor

Action Filed: October 24, 2016

1 The hearing on the Merits of the Verified Petition and Complaint for Injunctive and Declaratory
2 Relief ("Petition") was heard April 28, 2017, at 1:30 p.m., in Department C-72 of the above-entitled
3 court, before the Honorable Timothy B. Taylor, presiding without a jury. Appearances were made by
4 Christopher W. Garrett and Andrew D. Yancey of Latham & Watkins LLP for Petitioner and Plaintiff
5 Golden Door Properties, LLC, Assistant County Counsel Claudia Silva for Respondent and Defendant
6 County of San Diego ("County"), and in related Case No. 37-2012-00101054-CU-TT-CTL, Jan
7 Chatten-Brown and Josh Chatten-Brown of Chatten-Brown & Carstens, LLP on behalf of Sierra Club.

8 At the conclusion of the hearing, the Court affirmed its modified minute order ("Minute Order"),
9 attached hereto as Attachment A. The Minute Order represents the Court's final decision on the merits
10 of the Petition.

11 **IN ACCORDANCE WITH THE MINUTE ORDER, IT IS HEREBY ORDERED,**
12 **ADJUDGED AND DECREED THAT:**

- 13 1. Judgment on the Petition is hereby entered in favor of Petitioner;
- 14 2. A writ of mandate is issued directing Respondent to set aside and vacate the "2016 Climate
15 Change Analysis Guidance: Recommended Content and Format for Climate Change Analysis
16 Reports in Support of CEQA Documents" ("2016 Guidance Document");
- 17 3. An injunction is issued stating that the 2016 Guidance Document and its "County Efficiency
18 Metric" may not be used to provide the basis for California Environmental Quality Act
19 ("CEQA") review of greenhouse gas ("GHG") impacts of development proposals on
20 unincorporated County lands;
- 21 4. This Court declares that the 2016 Guidance Document and its "County Efficiency Metric" are
22 legally inadequate and may not be used to provide the basis for CEQA review of GHG impacts
23 of development proposals on unincorporated County lands; and
- 24 5. Attorneys' fees, if sought by Petitioner, may be addressed in a future noticed motion.

25 IT IS SO ADJUDGED

26 Dated: 05/30/2017 —

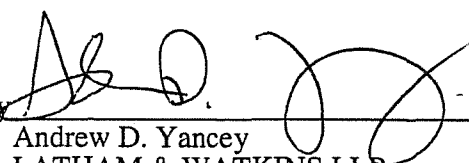
27 
28 Hon. Timothy B. Taylor
JUDGE OF THE SUPERIOR COURT

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Judgment entered on: _____, 2017

Clerk of the Superior Court

1 Respectfully submitted by,

2
3 
4 By _____
5 Andrew D. Yancey
6 LATHAM & WATKINS LLP
7 Attorneys for Petitioner and Plaintiff
8 Golden Door Properties, LLC
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Attachment A

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO
CENTRAL

MINUTE ORDER

DATE: 04/28/2017

TIME: 01:30:00 PM

DEPT: C-72

JUDICIAL OFFICER PRESIDING: Timothy Taylor

CLERK: Kelly Breckenridge

REPORTER/ERM: Paula Rahn CSR# 11510

BAILIFF/COURT ATTENDANT: O. Godoy

CASE NO: **37-2016-00037402-CU-TT-CTL** CASE INIT.DATE: 10/24/2016

CASE TITLE: **Petition of Golden Door Properties LLC [IMAGED]**

CASE CATEGORY: Civil - Unlimited CASE TYPE: Toxic Tort/Environmental

EVENT TYPE: Hearing on Petition

APPEARANCES

Andrew Yancey, counsel, present for Petitioner(s).

Christopher W Garrett, counsel, present for Petitioner(s).

CLAUDIA GACITUA SILVA, counsel, present for Respondent(s).

The Court hears oral argument and MODIFIES AND CONFIRMS the tentative ruling as follows:

Rulings on 1) Second Amended/Supplemental Petition for Writ of Mandate; and 2) Petition for Writ of Mandate

Sierra Club v. County of San Diego, Case No. 2012-0101054

Golden Door Properties LLC v. County of San Diego, Case No. 2016-0037402

April 28, 2017, 1:30 p.m., Dept. 72

1. Overview and Procedural Posture.

In late 2012 and early 2013, the court was required to address, in two CEQA cases, the controversial topics of greenhouse gases and global climate change. The first was *Cleveland Nat'l. Forest Foundation v. SANDAG*, Case No. 2011-00101593; that case was the subject of a learned opinion of the 4th DCA, Div. 1 [D063288, 180 Cal.Rptr.3d 548 (2014)], and remains pending review by the California Supreme Court [No. S223603, 343 P.2d 903 (2015)]. The Court has limited the issue in that case to "Must the environmental impact report for a regional transportation plan include an analysis of the plan's consistency with the greenhouse gas emission reduction goals reflected in Executive Order No. S-3-05 to comply with the California Environmental Quality Act?" As of this writing, there has been extensive party and *amicus* briefing, and the High Court has set a date early next month for oral argument.

In the second 2012 case, the Sierra Club contended that the County of San Diego's June 20, 2012 "Climate Action Plan" (CAP), was insufficient and violated CEQA in several respects: it did not comply with mitigation measures spelled out in the County's 2011 Program EIR (PEIR), adopted in connection with the 2011 General Plan Update (GPU) (AR 0441 *ff*); it failed to satisfy the requirements for adopting thresholds of significance for greenhouse gas emissions (GHG); and it should have been set forth in a stand-alone environmental document rather than in an addendum to the PEIR. The County denied these claims, and asserted that the CEQA challenge was time-barred, the CAP complied with all legal requirements, the use of an addendum was appropriate, and that all relief was barred by the Sierra Club's failure to notify the AG as required by Pub. Res. Code section 21167.7.

A little more than four years ago, the court ruled in favor of the Sierra Club on the original petition. ROA 33. The County appealed. ROA 44. The parties thereafter stipulated to stay the case while it was on appeal. ROA 60. But before they did, the Sierra Club had filed a supplemental petition. ROA 54. The stipulated stay prevented consideration of that document. Subsequently, the parties filed a stipulation regarding the disposition of the supplemental petition, depending on the disposition of the appeal. ROA 64.

In October of 2014, the 4th DCA, Div. 1 issued its learned opinion affirming this court, ultimately published at 231 Cal.App.4th 1152 (2014). On March 11, 2015, the Supreme Court denied review. A remittitur thereafter issued. ROA 105.

The parties were before the court on April 15, 2015. Petitioner asked that the stay be lifted, and that the case be restored to the civil active list. These requests were granted without objection.

The Sierra Club also wanted the court to sign an order, while the County wanted the court to sign a different order. There were two problems: first, the court had not received petitioner's version of the proposed order, nor had a chance to review the County's proposed order; and second, the parties were before the court while it was in the middle of a lengthy trial with jurors arriving shortly. The court continued the matter to the regular law and motion calendar of May 1, 2015. ROA 73.

The court thereafter reviewed the parties' competing submissions. The central problem was that a dispute had arisen regarding the intent, import and meaning of the December 11, 2014 stipulation (ROA 64). The court, following several submissions and argument, resolved the dispute in May of 2015. ROA 91-92.

The Sierra Club's counsel thereafter sought an award of attorneys' fees. ROA 95-104. The amended moving papers (ROA 116, 117) made clear that the County agreed petitioner was entitled to fees; the only question was how much. Petitioner sought a lodestar of over \$661,000.00 with a multiplier of two, for a total of over \$1.3 million, plus fees necessary for the fee motion.

The County filed opposition. ROA 122-125. After presenting very focused argument, the County ended by making several specific "suggestions" for reducing the fee award: a combination of cutting hours, reducing rates, and denial of any multiplier. Petitioner filed reply. ROA 126-130. The court, after it had reviewed all the briefing and heard argument, granted a fee award in the amount of over \$961,000.00. ROA 133. Judgment was thereafter entered in this amount, plus additional costs not challenged by the County. ROA 135. This occurred in September of 2015; at this point, the court (perhaps naively) considered the case to have been concluded. Neither side sought further appellate review of the attorneys' fee ruling or the May 2015 ruling.

In early 2016 and again the following summer, the County filed returns on the supplemental writ. ROA 137, 138. Both sides changed counsel. ROA 136, 147.

The Sierra Club filed its second amended petition on September 26, 2016. ROA 140. The County demurred to it on two grounds, including non-justiciability (ripeness). ROA 142. Following briefing and argument, the court overruled the demurrer on January 6, 2017. ROA 160. The County thereafter answered. ROA 161-162.

Also at the January 6, 2017 hearing, the court allowed the parties' stipulation whereby a more recently filed case, *Golden Door Properties LLC v. County of San Diego*, Case No. 2016-0037402, would be transferred to Dept. 72 and heard with the *Sierra Club* 2012 case. ROA 160. Both the current iteration of the *Sierra Club* 2012 case and the *Golden Door* 2016 case challenge the County's 2016 Climate Change Analysis Guidance Recommended Content and Format for Climate Change Analysis Reports in Support of CEQA Documents ("2016 Guidance Document" or "2016 Significance Document") prepared by the County's Department of Planning & Development Services.

The parties subsequently stipulated to a briefing schedule, which the court also allowed. ROA 167.

The court has reviewed the following briefing:

Sierra Club's opening brief, request for judicial notice and joinder filed February 6, 2017 (ROA 169-173).

Golden Door's opening brief and request for judicial notice filed February 6, 2017 (ROA 24-25).

The County's answering briefs and supporting documents filed March 17, 2017 (ROA 30-34 and 180-184).

Sierra Club's reply brief, supporting documents, and joinder filed April 20, 2017 (ROA 85-189).

Golden Door's reply brief filed April 20, 2017 (ROA 36).

The court has also reviewed the administrative record materials submitted January 24, 2017 and April 14, 2017 (ROA 23, 35).

With its opposition brief in both cases, the County filed the Declaration of Peter Eichar (ROA 31, 181). With its reply brief, the Sierra Club filed the Declaration of Josh Chatten-Brown and the Declaration of Corey Briggs (ROA 186, 187). The Sierra Club also filed a tardy Second Declaration of Josh Chatten-Brown. ROA 190. The submission of the declarations is inconsistent with the oft-repeated rule in CEQA cases: "If it is not in the administrative record, it does not exist." See *Sierra Club v. Coastal Comm'n* (2005) 35 Cal.4th 839, 863; Code of Civil Procedure § 1094.5; *Western States Petroleum Assn. v. Superior Court* (1995) 9 Cal.4th 559, 565. Evidentiary objections were not interposed. The declarations were therefore considered.

The court published a detailed tentative ruling on April 27, and heard well prepared oral argument on April 28.

2. Applicable Standards.

A. The court incorporates part 2 of its own ruling of April 19, 2013. ROA 33. The court incorporates the

learned opinion of the Fourth District Court of Appeal, Div. 1, published at 231 Cal.App.4th 1152 (2014). The court also incorporates its own rulings from May of 2015. ROA 91-92.

B. The ripeness element of the doctrine of justiciability is intended to prevent courts from issuing purely advisory opinions. *Pacific Legal Foundation v. California Coastal Com.* (1982) 33 Cal.3d 158, 170. It is "primarily bottomed on the recognition that judicial decisionmaking is best conducted in the context of an actual set of facts so that the issues will be framed with sufficient definiteness to enable the court to make a decree finally disposing of the controversy." (*Ibid.*) In an action for declaratory relief under Code of Civil Procedure section 1060, an " 'actual controversy' ... is one which admits of definitive and conclusive relief by judgment within the field of judicial administration, as distinguished from an advisory opinion upon a particular or hypothetical state of facts. The judgment must decree, not suggest, what the parties may or may not do. [Citations.]" *Selby Realty Co. v. City of San Buenaventura* (1973) 10 Cal.3d 110, 117; *Wilson & Wilson v. City Council of Redwood City* (2011) 191 Cal.App.4th 1559, 1573-74. During the summer of 2016, the Court of Appeal considered ripeness in the context of a CEQA petition in *California Bldg. Indus. Ass'n v. Bay Area Air Quality Mgmt. Dist.* (2016) 2 Cal.App.5th 1067, 1088-89 (*Cal. BIA*):

District relies on inapposite case law in which the courts declined to use the remedy of mandamus to set aside interim actions by an agency during a multilayered review process. (*California High-Speed Rail Authority v. Superior Court* (2014) 228 Cal.App.4th 676, 708-713, 175 Cal.Rptr.3d 448 [no present duty to redo preliminary funding plan]; *California Water Impact Network v. Newhall County Water Dist.* (2008) 161 Cal.App.4th 1464, 1486, 75 Cal.Rptr.3d 393 [water assessment report providing information to be included in EIR was not final determination as necessary to obtain relief by mandamus].) The District Guidelines are not interim steps in a larger review process; rather, they are interpretive guidelines for CEQA analyses promulgated by an air district that acts as either the lead agency or a responsible agency on projects within its jurisdictional boundaries.

For purposes of assessing the propriety of a writ of mandate, the District Guidelines are akin to the guidelines issued by the California Coastal Commission and challenged in *Pacific Legal Foundation, supra*, 33 Cal.3d at page 163, 188 Cal.Rptr. 104, 655 P.2d 306. Those guidelines, though not binding on any agency, explained the Commission's interpretation of the public beach access provisions of the Coastal Act, and were asserted to be invalid on their face because they required property owners to dedicate easements giving beach access to the public as a condition of obtaining permit approval for proposed developments. Noting that the promulgation of the access guidelines was a quasi-legislative act reviewable by an action for declaratory relief or traditional mandamus (as opposed to administrative mandamus), the court went on to consider whether a ripe controversy existed. (*Id.* at p. 169, 188 Cal.Rptr. 104, 655 P.2d 306.)

Turning to the question of whether the challenge to the Coastal Commission's guidelines was ripe, the court applied a standard used by the federal courts and considered " 'both the fitness of the issues for judicial decision and the hardship to the parties of withholding court consideration.' " (*Pacific Legal Foundation, supra*, 33 Cal.3d at p. 171, 188 Cal.Rptr. 104, 655 P.2d 306, italics omitted.) It concluded the facial challenge to the guidelines was not ripe: "Although it may be predicted with assurance that some of the plaintiff landowners will eventually wish to make improvements on their property, it is sheer guesswork to conclude that the Commission will abuse its authority by imposing impermissible conditions on any permits required. The guidelines are not mandatory. *They do not require the Commission to impose access conditions in any particular circumstances, but rather adopt a flexible approach: the Commission is to determine the appropriateness of access exactions on a case-by-case basis.*" (*Id.* at p. 174, 188 Cal.Rptr. 104, 655 P.2d 306, italics added.)

Unlike the Coastal Commission guidelines at issue in *Pacific Legal Foundation*, the District Guidelines do not call for the Receptor Thresholds to be applied to projects on a case-by-case basis. Instead, they suggest a routine analysis of whether new receptors will be exposed to specific amounts of toxic air contaminants. Given the clarity of the Supreme Court's decision that such an analysis oversteps the bounds of CEQA except in specified circumstances (*Building Association, supra*, 62 Cal.4th at p. 392, 196 Cal.Rptr.3d 94, 362 P.3d 792), the issue is fit for judicial determination. The ripeness requirement "should not prevent courts from resolving concrete disputes if the consequence of a deferred decision will be lingering uncertainty in the law, especially when there is widespread public interest in the answer to a particular legal question." (*Pacific Legal Foundation, supra*, 33 Cal.3d at p. 170, 188 Cal.Rptr. 104, 655 P.2d 306.)

C. "Under the law-of-the-case doctrine, the determination by an appellate court of an issue of law is conclusive in subsequent proceedings in the same case. [Citation.] The doctrine applies only if the issue was actually presented to and determined by the appellate court. [Citation.] The doctrine is one of procedure that prevents parties from seeking reconsideration of an issue already decided absent some significant change in circumstances." *People v. Yokely* (2010) 183 Cal.App.4th 1264, 1273. Furthermore, "the law-of-the-case doctrine governs only the principles of law laid down by an appellate court, as applicable to a retrial of fact" *People v. Boyer* (2006) 38 Cal.4th 412, 442. "[T]he doctrine applies only to an appellate court's decision on a question of law; it does not apply to questions of fact." *People v. Barragan* (2004) 32 Cal.4th 236, 246. The doctrine applies only to rulings by appellate courts and not trial courts. *Yokely*, at p. 1273; *Boyer*, at p. 442; *Barragan*, at p. 246.

D. Since the court decided the first Sierra Club petition in April of 2013, and since the court's May 2015 ruling, the Supreme Court has decided two cases of importance to the current inquiry, particularly as they relate to the standard of review:

In *Center for Biological Diversity v. Calif. Dept. of Fish and Wildlife*, (November 30, 2015) 62 Cal.4th 204, the High Court held that the lead agency did not abuse its discretion in using AB 32 as a significance criterion in analyzing the GHG-related effects of a large, mixed use development. *Id.* at 222-223.

In *Banning Ranch Conservancy v. City of Newport Beach* (March 30, 2017) __ Cal.5th __, 2017 WL 1174436, the Court held that, in "punting" to the Coastal Commission, the City had failed to use its best efforts to investigate and disclose what it had discovered about environmentally sensitive areas in the project site. *Id.* at *11.

E. An injunction is appropriate in a CEQA case where activities will prejudice the implementation of a mitigation measure. *Californians for Alternatives to Toxics v. Department of Food and Agriculture* (2005) 136 Cal.App.4th 1, 21 ("a court can issue an order enjoining activities that could adversely change or alter the environment, if it finds that such activities 'will prejudice the consideration or implementation of particular mitigation measures or alternatives to the project' ")

3. Requests for Judicial Notice.

The Sierra Club seeks (ROA 170) judicial notice of two documents: (A) the October 20, 2016 Notice of Preparation of the County of San Diego Climate Action Plan and General Plan Amendment; and (B) a chart, prepared by the County, of the proposed and in-process General Plan Amendment applications within San Diego County.

Golden Door seeks (ROA 25) judicial notice of the County's October 21, 2009 CEQA Guidelines.

The petitioners' requests are made pursuant to Evid. Code section 452(c), official acts of a state political subdivision.

The County seeks judicial notice (ROA 32* and 182) of 20 documents (three in the *Golden Door* case and 17 in the *Sierra Club* case). These requests are made pursuant to Evid. Code sections 452(c), official acts of a state political subdivision, and 452(d), court records.

Courts of appeal review a trial court's ruling granting a request for judicial notice pursuant to the abuse of discretion standard of review. *In re Social Services Payment Cases* (2008) 166 Cal.App.4th 1249, 1271.

Evidence Code section 453 provides that a trial court must take judicial notice of any matter specified in Evidence Code section 452, upon a party's proper request.

In *People v. Harbolt* (1997) 61 Cal.App.4th 123, 126-127, the court discussed the limited purposes for which a court may take judicial notice of a court record:

"Evidence Code sections 452 and 453 permit the trial court to 'take judicial notice of the *existence* of judicial opinions and court documents, along with the truth of the results reached-in the documents such as orders, statements of decision, and judgments-but cannot take judicial notice of the truth of hearsay statements in decisions or court files, including pleadings, affidavits, testimony, or statements of fact.' [Citations.]

The County did not oppose either petitioner request, and they are granted. With regard to the County's requests, the court rules as follows:

Ex. 1, April 19, 2013 reporter's transcript: Granted
Ex. 2, April 24, 2013 Judgment: Granted
Ex. 3, April 19, 2013 Minutes: Granted
Ex. 4, April 24, 2013 Writ: Granted
Ex. 5 and Ex. 2, Nov. 7, 2013 Guidelines: Granted
Ex. 6, Supplemental Petition: Granted
Ex. 7, Stipulation and Order (ROA 64): Granted
Ex. 8, May 4, 2015 supplemental writ of mandate: Granted
Ex. 9 and Ex. 3, June 4, 2015 Initial Return: Granted
Ex. 10, January 5, 2016 Second Return: Granted
Ex. 11, June 29, 2016 Third Return: Granted
Ex. 12, Dec. 29 2016 Fourth return: Granted
Ex. 13, Second Supp. Petition: Granted
Ex. 14, opposition to demurrer: Granted
Ex. 15 and Ex. 1, Bay Area June 2010 document: Denied
Ex. 16, 2007 San Bernardino document: Denied
Ex. 17, 2011 San Bernardino document: Denied

With regard to the latter three documents, the denial is based on lack of relevance and the fact that none of the three documents was, so far as the court can discern, within the administrative record in these

matters.

4. Discussion and Rulings.

A. Law of the Case.

The following are the holdings of the Fourth District Court of Appeal, Div. 1, in the 2012 *Sierra Club* case:

"[W]ith respect to the CAP as mitigation for a plan-level document, the County failed to proceed in the manner required by CEQA by proceeding with the CAP and Thresholds project in spite of the express language of Mitigation Measure CC-1.2 requiring that the CAP "include ... more detailed greenhouse gas emissions reduction targets and deadlines" and that the CAP "will achieve comprehensive and enforceable GHG emissions reduction" by 2020. With respect to the CAP as a plan-level document itself, the County failed to proceed in the manner required by law by failing to incorporate mitigation measures into the CAP as required by *Public Resources Code section 21081.6*."

231 Cal.App.4th at 1167 (*italics in original*).

"Instead of analyzing and making findings regarding the environmental effects of the CAP and Thresholds project, the County made an erroneous assumption that the CAP and Thresholds project was the same project as the general plan update. ... As a result, the County failed to render a "written determination of environmental impact" before approving the CAP and Thresholds project. ... This constitutes a failure to proceed in the manner required by law."

231 Cal.App.4th at 1170-71.

The "trial court did not err in finding a supplemental EIR was required."

231 Cal.App.4th at 1174.

The CAP "does not fulfill the County's commitment under CEQA and Mitigation Measure CC-1.2, to provide detailed deadlines and enforceable measures to ensure GHG emissions will be reduced."

231 Cal.App.4th at 1176.

B. Contentions of the Parties.

The Sierra Club contends the County's 2016 Guidance Document was not properly adopted, creates a threshold of significance, and violates CEQA; that the use of the 2016 Guidance Document violates the decision of the Court of Appeal and this court's supplemental writ of mandate, as well as the County's own previously adopted mitigation measure; that the County proceeded in the absence of substantial evidence; and that the County should be enjoined from processing and approving new, large-scale developments until a lawful CAP and threshold are in place to guide that development and ensure the County can meet its greenhouse gas reduction targets. In the reply brief (p. 5:19-20), the Sierra Club withdraws its request to enjoin the processing of designated projects and states it only seeks to enjoin project approvals until a lawful CAP and threshold are in place.

Golden Door's arguments are similar; it contends the County violated CEQA's procedural requirements

in adopting the 2016 Significance Document; that the County violated CEQA by failing to comply with County General Plan EIR Mitigation Measures CC-1.2 and CC-1.8; and that by approving the 2016 Significance Document before the CAP is approved and without environmental review, the County is "piecemealing" and thwarting the County's commitment to comprehensive GHG mitigation. Golden Door also agrees with the Sierra Club argument regarding the absence of substantial evidence as to the County's "Efficiency Metric."

The County contends that the claims of the Sierra Club and Golden Door are not ripe; that the 2016 Guidance Document is merely an advisory document to be used on a project-by-project basis, and not a formally adopted threshold of significance; that the 2016 Guidance Document is based on substantial evidence; that it is in full compliance with the earlier decisions of this court and the 4th DCA, Div. 1; and that petitioners are not entitled to injunctive relief [either to stop all large scale ("greenfields") development (Sierra Club) or to stop the use of the 2016 Guidance Document (Golden Door)].

C. Rulings of the Court.

1. Are the Claims Ripe for Decision?

Yes. It is somewhat ironic that in 2013, the County argued the Sierra Club's claims were time-barred, and now it argues they are not ripe. As the court held in overruling the demurrer, a definite and concrete dispute is raised in the Second Supplemental Petition (SSP). The SSP pleads that the 2016 Guidance Document contains or constitutes a threshold of significance. SSP, paragraphs 1-4, 15, 34-35, 41, 52. The 2016 Guidance Document contains interpretative guidelines for CEQA analysis prepared by the County for use when it acts as the lead agency or responsible agency on projects within its jurisdictional boundaries. AR 10976-10983. This scenario is similar to *Cal. BIA, supra*, in which the court was not persuaded by the District's argument that the District's guidelines are a nonbinding, advisory document. *Cal. BIA, supra*, 2 Cal.App.5th at 1088. If the County's approach was to proceed on a project-by-project basis, as it now claims, it would just do so; it would not need the 2016 Guidance Document. If, instead, the 2016 Guidance Document was intended as an interim set of thresholds of significance for use between now and the time the County finally gets around to complying with the decisions of this court and the Fourth District Court of Appeal, the County cannot be heard to complain that there is no definite and concrete dispute. The County's apparent failure to devote sufficient resources to complying with the decisions of the courts in a timely fashion cannot be held to allow the County to invoke the ripeness doctrine.

2. Is the 2016 Guidance Document a Threshold of Significance under CEQA Guideline 15064.7, or Is It Merely Advisory?

The 2016 Guidance Document is a threshold of significance under CEQA Guideline 15064.7.

CEQA Guideline 15064.7(a) provides, "[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." CEQA Guideline 15064.7(a).

The 2016 Guidance Document meets this threshold of significance definition. It sets forth the "County Efficiency Metric" and recommends the use of the "Efficiency Metric" as a "quantitative GHG analysis." See AR 10979. It provides a "measuring stick" for the significance of GHG impacts as to the "Efficiency Metric." It sets 4.9 metric tons of CO₂e per person per year as the level above which a project's GHG

impacts are found significant and below which the impacts will be found less than significant. See AR 10980. It describes the "Efficiency Metric" as a "threshold." See AR 10980. The metric is included in the 2016 Guidance Document in a section entitled "Significance Determination." See AR 10979-80.

The fact that the "Efficiency Metric" is recommended, and not mandatory, does not mean that the 2016 Guidance Document is not a threshold of significance. See *Cal. BIA, supra*, 2 Cal.App.5th at 1088-89 ("District argues writ relief is inappropriate because the District Guidelines are a nonbinding, advisory document and their review is premature given the lack of a specific controversy. We are not persuaded The District Guidelines are not interim steps in a larger review process; rather, they are interpretive guidelines for CEQA analyses promulgated by an air district that acts as either the lead agency or a responsible agency on projects within its jurisdictional boundaries.") The same is true here. The 2016 Guidance Document contains interpretative guidelines for CEQA analysis. It was drafted by the County that acts as the responsible agency on projects within its jurisdictional boundaries.

Since the 2016 Guidance Document is a threshold of significance under CEQA, the County is required to comply with the CEQA's mandated procedures for adopting it. That is, CEQA requires that a threshold of significance "be adopted by ordinance, resolution, rule, or regulation, and developed through a public review process and be supported by substantial evidence." See CEQA Guidelines 15064.7(b). Thresholds of significance that are "clearly erroneous and unauthorized under CEQA" must be set aside. *Cal. BIA, supra*, 2 Cal.App.5th at 1088.

The County failed to comply with the CEQA-required procedures in adopting the 2016 Guidance Document. It did not adopt the 2016 Guidance Document by "ordinance, resolution, rule, or regulation." It did not undertake a public review process. Also, the County's rules (ignored by the County) require that the 2016 Guidance Document be subject to public review. See Golden Door's RJN, Ex. 5, County's CEQA Guidelines, p. 5 ("Processing Departments shall prepare and maintain administrative guidance for determining the significance of environmental effects. Such guidance, if available, should be utilized in the preparation of Initial Studies and EIRs and updated periodically Before any administrative guidance or revisions are approved by the Processing Department, the proposal shall be circulated for public review and comments...") Accordingly, the 2016 Guidance Document is a threshold of significance under CEQA.

Interestingly, the 2016 Guidance Document allows more GHG emissions per year (4.9 metric tons of CO₂e per year), as opposed to the County 2013 GHG Significance Document (4.3 metric tons of CO₂e per year). AR 10349. However, the lower 4.32 metric tons of CO₂e per year threshold was vacated by this court. ROA 92. CEQA was violated because there was no opportunity for public discussion of this determination.

3. Does the 2016 Guidance Document Violate Mitigation Measures CC-1.2 or CC-1.8?

Yes. In order to mitigate the climate change impacts of the 2011 GPU, the County approved mitigation measures requiring it to prepare a CAP (CC-1.2) and to revise its thresholds of significance (CC-1.8). AR 1317-1318 (CC-1.2, CC-1.8). The 2016 Guidance Document violates CC-1.2 and CC-1.8 when the County processes projects using the 2016 Guidance Document in lieu of a threshold of significance based on the CAP. The County got the cart before the horse.

4. Is the 2016 Guidance Document Supported by Substantial Evidence?

No. A threshold of significance must be based on substantial evidence. See CEQA Guideline

15064.7(c). The 2016 Guidance Document fails to bridge the analytical gap with substantial evidence, and thus is not supported by substantial evidence.

The 2016 Guidance Document relies on statewide service population and statewide GHG inventory to derive a "per person" limit of GHG emissions. AR 10981. It provides no data specific to San Diego County. It makes no effort to explain why the calculation of the "County Efficiency Metric" based only on statewide data is appropriate for San Diego County. It provides no information on what level of population was assumed for unincorporated San Diego County in the statewide service population number. It does not differentiate between various types of development, such as new, urban, and rural. Thus, it fails to bridge the analytical gap with substantial evidence explaining why calculation of the "County Efficiency Metric" based on statewide data is proper for San Diego County.

The matter is somewhat similar to *Cal. BIA*. In that case, the Supreme Court held that an EIR's GHG analysis was insufficient given it failed to provide substantial evidence that the statewide GHG reduction levels were a "proper measuring stick" at the project level. *Cal. BIA, supra*, 62 Cal.4th at 225-227. The Supreme Court's holding was partly premised on potential differences in new and existing development and differences in assumptions used in statewide models and in local models. *Id.* Here, the "County Efficiency Metric" is somewhat similar to the *Cal. BIA* EIR. It relies on statewide service population and statewide GHG inventory to derive a "per person" limit of GHG emissions. AR 10981. It provides no data specific to San Diego County (which has topography, marine influences, and an industrial mix different from many parts of the state (not to mention an international border no other part of the state has)). It makes no effort to explain why the calculation of the "County Efficiency Metric" based only on statewide data is appropriate for San Diego County.

Golden Door does not (and is not required to) discuss the evidence supporting the County's statewide service population and statewide GHG inventory. Golden Door does not challenge the sufficiency of such evidence for statewide purposes.

The court grants Sierra Club's joinder in Golden Door's supporting and reply briefs regarding the lack of substantial evidence for the 2016 Guidance Document. ROA 171, 188.

5. Is the County in Compliance with This Court's Directives as Affirmed by the Court of Appeal?

No. The Court of Appeal in the 2012 *Sierra Club* case found that the CAP and thresholds of significance based on the CAP are a single project that is subject to environmental review. 231 Cal.App.4th at 175 ("As a plan-level document, the CAP and Thresholds project was required to undergo environmental review as a matter of law.") Three years later, the County has not completed a CAP. Also, it has not performed CEQA review for the 2016 Guidance Document. Thus, the 2016 Guidance Document violates the Court of Appeal ruling and is piecemeal environmental review.

6. Are Petitioners Entitled to Injunctive Relief?

Yes, although not to the extent sought by the Sierra Club.

The Sierra Club seeks an injunction prohibiting the County from processing and approving new large scale developments on undeveloped land in San Diego County until the County approves a lawful CAP and thresholds regarding GHG impacts. The Sierra Club proposes to enjoin 17 in-process projects listed in the Sierra Club's RJN, Ex. B (ROA 170).

The Sierra Club and Golden Door also seek an injunction prohibiting the County from using the 2016 Guidance Document and its "County Efficiency Metric" for CEQA review of GHG impacts for development proposals on undeveloped land in San Diego County.

The Sierra Club's request (injunction prohibiting the County from processing and approving new large scale developments on undeveloped land in San Diego County until the County approves a lawful CAP and thresholds) is denied. An injunction to prohibit the County from undertaking its planning process is too broad, and would embroil the court in County operations the court is not equipped to oversee. Further, there is the possibility that the County will deny some or all of the projects. Moreover, the Sierra Club has withdrawn its request to enjoin the processing of the designated projects. See reply brief, p. 5:18 ("The Club no longer seeks to enjoin the *processing* of the designated projects..."; italics in original).

The Sierra Club's request (injunction prohibiting the County from approving new large scale developments) is denied. The parties involved in the projects are not before the court, and thus, do not have the opportunity to address the request. This is a basic due process concern. Also, granting the request would probably prejudice the applicants in the projects. *Save Our Bay, Inc. v. San Diego Unified Port District* (1996) 42 Cal.App.4th 686, 696 ("the test is whether the person is one whose rights must necessarily be affected by the judgment in the proceeding"). Undoubtedly, some applicants have expended time and financial resources and would be obviously impacted by an injunction prohibiting the approval. In addition, the Sierra Club has an available adequate remedy - filing an individual lawsuit with respect to each project that is approved. In addition, the Sierra Club concedes the injunction request is a "novel situation" and that "it may be unusual for a court to issue the type of injunctive ... relief sought here". See opening brief, p. 23:21; see also reply brief, p. 11:14-15..

However, the court is very concerned that the County has not acted expeditiously and has allowed approximately 4 years to transpire since the court ordered the preparation of a new CAP and approximately 2 years to transpire since the High Court denied the County's petition for review. As such, the injunction is denied without prejudice for the Sierra Club to renew the request if it appears within the next couple of months that the County is still avoiding its obligation to effectuate a lawful CAP and threshold. In the event appellate review is sought by the County, the parties will have to wrestle with CCP § 916 if the Sierra Club pursues further relief in this court.

The joint injunction request is granted. The County is prohibited from using the 2016 Guidance Document and its "County Efficiency Metric" for CEQA review of GHG impacts for development proposals on undeveloped land in San Diego County. The injunction does not enjoin planning activities. It only prevents the County from utilizing an improper threshold of significance in the CEQA review of GHG impacts on undeveloped land in San Diego County. It only enjoins an action that is inconsistent with CEQA. *Lincoln Place Tenants Ass'n v. City of Los Angeles* (2007) 155 Cal.App.4th 425, 454-55.

Accordingly, let a writ of mandate issue forthwith, directing respondent the County of San Diego to set aside and vacate the 2016 Guidance Document; and let an injunction issue wherein the 2016 Guidance Document and its "County Efficiency Metric" may not be used to provide the basis for CEQA review of GHG impacts of development proposals on unincorporated County lands. The court declares that the 2016 Guidance Document and its "County Efficiency Metric" are legally inadequate and may not be used to provide the basis for CEQA review of GHG impacts of development proposals on unincorporated County lands.

The court believes it has addressed all of the principal controverted issues of the case, and the court therefore finds it unnecessary to address the other contentions in the second amended/supplemental

petition for writ of mandate and petition for writ of mandate. *Compare Natter v. Palm Desert Rent Review Com.* (1987) 190 Cal.App.3d 994, 1001; *Young v. Three for One Oil Royalties* (1934) 1 Cal.2d 639, 647-648. By proceeding in this fashion, the court aims to deliver a prompt decision, bearing in mind that the trial court is most often just a waystation in the life of a CEQA case.

Attorneys' fees, if sought, may be addressed in a future noticed motion.

The court thanks the parties for their high-quality briefs. The court expects to return the lodged AR to the parties at the hearing so that it will be available for appellate proceedings should that be deemed appropriate. Accordingly, the parties should bring an extra briefcase to the hearing.

IT IS SO ORDERED.

*The County's request in the *Golden Door* case is confusing, as it refers initially to "Exhibits A-P" but then only references and attaches Exhibits 1-3.



Judge Timothy Taylor

1 **PROOF OF SERVICE**

2 I am employed in the County of San Diego, State of California. I am over the age of 18 years
3 and not a party to this action. My business address is Latham & Watkins LLP, 12670 High Bluff Drive,
4 San Diego, California 92130.

5 On May 24, 2017, I served the following document described as:

6 **[PROPOSED] FINAL JUDGMENT**

7
8 by serving a true copy of the above-described document in the following manner:

9 **BY U.S. MAIL**

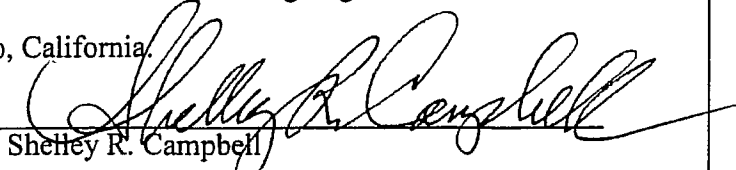
10 I deposited a sealed envelope or package containing the document in accordance with the
11 office practice of Latham & Watkins for collecting and processing documents for mailing. I am
12 familiar with the office practice of Latham & Watkins for collecting and processing documents
13 for mailing. Under that practice, documents are deposited with the Latham & Watkins personnel
14 responsible for depositing documents with the United States Postal Service and such documents
15 are delivered to the U.S. Postal Service on that same day with postage thereon fully prepaid in the
16 ordinary course of business. The sealed envelope or package containing the document was
17 addressed as set forth above.

18
19 Claudia G. Silva, Esq.
20 Assistant County Counsel
21 Office of County Counsel
22 1600 Pacific Highway
23 San Diego, California 92101

CHATTEN-BROWN & CARSTENS LLP
Jan Chatten-Brown
Josh Chatten-Brown
302 Washington Street, #710
San Diego, Ca 92103

24 I declare that I am employed in the office of a member of the State Bar of California, or
25 permitted to practice before, this Court at whose direction the service was made and declare under
26 penalty of perjury under the laws of the State of California that the foregoing is true and correct.

27 Executed on May 24, 2017, at San Diego, California.

28

Shelley R. Campbell

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