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May 8, 2017

Via E-Mail and Federal Express

Michelle Irace
San Diego County
Planning & Development Services
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Re: Draft SEIR for Otay 250 Sunroad – East Otay Mesa Business Park Specific Plan Amendment SCH No. 2016031028; Project Numbers PDS2015-SPA-15-001, PDS2015-GPA-15-008, PDS2015-REZ-15-007, PDS2015-TM-5607; LOG No. PDS2015-ER-15-98-190-13G

Dear Ms. Irace:

This firm represents the Endangered Habitats League ("EHL") in connection with the proposed Otay 250 Sunroad – East Otay Mesa Business Park Specific Plan Amendment Project ("Project ") and its associated Draft Supplemental Environmental Impact Report ("DEIR"). EHL is southern California's only regional conservation organization and a long-term stakeholder in County planning efforts. It and its members have a direct stake in maintaining the health of Southern California's unparalleled biodiversity and the native ecosystems that support it. EHL is deeply concerned about the far-ranging environmental impacts that would result from implementation of the proposed Project.

O2-1

After reviewing the DEIR, we have concluded that the Project fails to comply with the requirements of the California Environmental Quality Act ("CEQA"), Public Resources Code section 21000 et seq. As described below, the DEIR violates CEQA because it fails to properly analyze the Project's environmental impacts, in particular its impacts on climate change. It also fails to include adequate mitigation for the Project's significant climate change impacts. Such fundamental errors undermine the integrity of the DEIR.

Response to Comment Letter O2

Endangered Habitats League
Joseph Petta - Shute, Mihaly & Weinberger LLP
May 8, 2017

O2-1 The County disagrees that the SEIR is inadequate or fails to properly analyze the Project's environmental impacts and provide adequate mitigation relative to climate change. The *Greenhouse Gas Evaluation* prepared by Scientific Resources Associated (February 3, 2017) for the proposed Project, included as Appendix E of this SEIR, relies on an efficiency metric based on the future statewide GHG emissions reductions goals divided by the statewide service population as a guideline for evaluating potential GHG emissions impacts. Since the time that the *Greenhouse Gas Evaluation* was prepared and the Draft SEIR was issued for public review, it has been determined that the service population efficiency metric cannot be used as the appropriate guideline. Therefore, the analysis in Section 2.4 of the Final SEIR relies on CEQA's guidance relative to evaluating GHG emissions.

Pursuant to Section 15064.4(b) of the State CEQA Guidelines, when addressing the significance of impacts from GHG emissions on the environment, the following factors were considered:

(1) The extent to which the project may increase or reduce GHG emissions as compared to the existing environmental setting;
(2) Whether the project emissions exceed a threshold of significance that the lead agency determines applies to the project; and
(3) The extent to which the project complies with regulations or requirements adopted to implement a statewide, regional, or local plan for the reduction or mitigation of GHG emissions.

The County does not currently have thresholds of significance for evaluating GHG emissions impacts. Additionally, the County has not yet adopted a Climate Action Plan for the reduction of GHG emissions; although the Draft CAP and Draft SEIR were released for public review in August 2017. Therefore, the analysis in the Final EIR relies on the first guideline outlined above: *the extent to which the project may increase or reduce GHG emissions as compared to the existing*

	environmental setting as the guideline for evaluating GHG emissions impacts. With the revisions incorporated into the Final SEIR, the SEIR properly analyzes the proposed Project's impacts on climate change. Section 2.4 of the SEIR includes a detailed analysis of the proposed Project's GHG emissions. The Final SEIR provides an adequate analysis potential impacts associated with GHG emissions, in conformance with CEQA Guidelines Appendix G and Section 15064.4(b). In addition, subsequent to publishing and public review of the Draft SEIR, the Project applicant has voluntarily committed to achieve carbon neutrality. As concluded in Section 2.4.2 of the Final SEIR, the Project would result in significant GHG emissions impacts. To fully mitigate the project's impacts relative to GHG emissions, mitigation measures have been expanded to include a requirement for net zero emissions from future developments within the Otay 250 Sunroad – East Otay Mesa Business Park Specific Plan Amendment area. As detailed in Section 2.4.5 within the Final SEIR, CARB recommends that lead agencies prioritize on-site design features and direct investments in GHG reductions in the vicinity of the project. CARB also recommends that where further project design or regional investments are infeasible or not proved to be effective, it may be appropriate and feasible to mitigate project emissions through purchasing and retiring carbon credits issued by a recognized and reputable accredited carbon registry. Examples of off-site mitigation can include, among other mechanisms, the purchase of verifiable carbon "offsets" from a carbon registry that will undertake mitigation. Table 2.4-7 lists the proposed project's on-site project design features to reduce GHG emissions. Based on the emissions inventory data presented in Table 2.4-8, the project will result in 37,554 MT CO2E with the incorporation of project design features. Note that this calculation under-represents the percentage of GHG emissions reductions that will be achieved through on-site features and measures because, as provided in Table 2.4-7, many of the features and measures conservatively were not assigned quantitative emissions reductions values.

	Each phase of the project (i.e., implementing site plans) would be required to undergo a site plan review, and at that time, shall require the development to have net zero emissions. Because the project would result in a significant impact, mitigation measures (as fully detailed in Section 2.4 of the Final EIR) would reduce GHG impacts to less than significant. With mitigation, the Project would result in net zero GHG emissions and, therefore, would be consistent with the goals of Executive Order B-30-15 and SB 32 that requires the state to reduce its GHG emissions to 40 percent below 1990 levels by 2030. Thus, GHG emissions impacts would be reduced to below a level of significance.

The Environmental Impact Report ("EIR") is "the heart of CEQA." *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 392 ("*Laurel Heights I*") (citations omitted). It "is an environmental 'alarm bell' whose purpose it is to alert the public and its responsible officials to environmental changes before they have reached ecological points of no return. The EIR is also intended 'to demonstrate to an apprehensive citizenry that the agency has, in fact, analyzed and considered the ecological implications of its action.' Because the EIR must be certified or rejected by public officials, it is a document of accountability." *Id.* (internal quotations and citations omitted).

O2-2

Where, as here, the environmental review document fails to fully and accurately inform decisionmakers, and the public, of the environmental consequences of proposed actions, it does not satisfy the basic goals of either statute. *See* Pub. Res. Code § 21061 ("The purpose of an environmental impact report is to provide public agencies and the public in general with detailed information about the effect which a proposed project is likely to have on the environment; to list ways in which the significant effects of such a project might be minimized; and to indicate alternatives to such a project."). As a result of the DEIR's numerous and serious inadequacies, there can be no meaningful public review of the Project. San Diego County must revise and recirculate the DEIR in order to permit an adequate understanding of the environmental issues at stake.

I. The DEIR's Analysis of and Mitigation for the Climate Impacts of the Proposed Project Are Inadequate.

O2-3

The discussion of a proposed project's environmental impacts is at the core of an EIR. *See* Cal. Code Regs., tit. 14 (CEQA "Guidelines") §15126.2(a) ("[a]n EIR *shall* identify and focus on the significant environmental effects of the proposed project") (emphasis added). As explained below, the DEIR's environmental impacts analysis is deficient under CEQA because it fails to provide the necessary facts and analysis to allow the County and the public to make informed decisions about the Project. An EIR must effectuate the fundamental purpose of CEQA: to "inform the public and its responsible officials of the environmental consequences of their decisions before they are made." *Laurel Heights Improvement Assn. v. Regents of University of California* (1993) 6 Cal.4th 1112, 1123 (citation omitted) ("*Laurel Heights II*"). To do so, an EIR must contain facts *and* analysis, not just an agency's bare conclusions. *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 568. Thus, a conclusion regarding the significance of an environmental impact that is not based on an analysis of the relevant facts fails to fulfill CEQA's informational mandate.

O2-2 The County disagrees that the SEIR's analysis fails to provide the necessary facts and analysis to allow the County and the public to make informed decisions about the proposed Project. With the revisions incorporated into the Final SEIR, the SEIR fully and accurately informs decision makers and the public with detailed information about the effect of the proposed Project on climate change. Section 2.4 in the Final SEIR has been revised in regard to significance criteria and mitigation measures, as discussed in response to comment O2-1. The Final SEIR accurately identifies the significant impact associated with GHG emissions and provides mitigation measures that, in concert with the Project's design features presented in the Final SEIR, would reduce the GHG impacts to less than significant. As discussed in response to comment O2-1 above, the Project applicant has voluntarily agreed to condition the proposed Project to further reduce GHG emissions to a net-zero level. The addition of mitigation measures and other text revisions to Section 2.4 do not constitute significant new information. The new information clarifies and amplifies information in the SEIR. A new significant impact would not result from the project or from a new mitigation measure proposed to be implemented. A substantial increase in the severity of an environmental impact would not result. Thus, in accordance with CEQA, Section 15088.5, the Final SEIR does not require recirculation.

O2-3 Comment O2-3 is a restatement of the law and does not pertain to the adequacy of the EIR. Furthermore, the County disagrees that the SEIR's analysis fails to provide the necessary facts and analysis to allow the County and the public to make informed decisions about the proposed Project. Refer to responses to comments O2-1 and O2-2 above. The Final SEIR includes feasible mitigation measures to reduce GHG emissions associated with the proposed Project to net zero.

O2-3

Additionally, an EIR must identify feasible mitigation measures to mitigate significant environmental impacts. CEQA Guidelines §15126.4. Under CEQA, "public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental effects of such projects . . . ." Pub. Res. Code § 21002.

O2-4

The proposed Project has the potential to significantly contribute to GHG emissions, yet neither the public nor decisionmakers have any way of knowing the magnitude of this impact. As we explain below, the DEIR simply fails to provide detailed, accurate information about the Project's significant environmental impacts or to analyze mitigation measures that would reduce or avoid such impacts.

A. The DEIR Fails to Adequately Analyze and Mitigate Climate Change Impacts.

O2-5

The DEIR concludes that the Project would result in significant impacts related to climate change but that those impacts would be reduced to less than significant levels with proposed mitigation measures. As detailed below, the DEIR's analysis is fundamentally flawed. It unlawfully relies on the County's July 2016 GHG guidance, which itself was recently ruled to be in violation of CEQA in *Sierra Club v. County of San Diego*, San Diego County Superior Court Case No. 37-2012-00101054-CU-TT-CTL. As directed by the *Sierra Club* case and the County General Plan, the DEIR should have analyzed climate impacts pursuant to thresholds developed under the County's Climate Action Plan ("CAP"). But the County has failed to adopt a legally adequate CAP. In addition, the DEIR's analysis violates the California Supreme Court's direction in *Center for Biological Diversity v. California Dept. of Fish & Wildlife* (2015) 62 Cal.4th 204 ("*Newhall Ranch*") because it relies on statewide thresholds without any evidence that they are relevant to individual projects. The DEIR's proposed mitigation—based primarily on installation of solar photovoltaic panels on rooftops of new homes—fails to sufficiently mitigate for GHG emissions resulting from the Project's increase in VMT.

1. The County May Not Rely On Its July 2016 GHG Guidance Recommending Use of the Efficiency Metric to Determine Significance.

O2-6

The DEIR analyzes GHG impacts based on guidance that its Planning and Development Services department issued in July 2016. *See* DEIR at 2.4-7 (failing to mention the Guidance by name but relying on its recommended thresholds verbatim). This guidance sets forth the County's recommended CEQA threshold of significance for GHG emissions. *See* County of San Diego, 2016 Climate Change Analysis Guidance,

O2-4 The County disagrees that the public and decision makers have no way of knowing the magnitude of the impact. Please see the response to comment O2-1. The County evaluated the proposed Project's GHG emissions impacts by first calculating the Projects sources of greenhouse gas, as discussed in Section 2.4.2.5 of the Draft SEIR. As shown in Table 2.4-8 in the SEIR, the proposed Project's total CO_2 equivalent emissions were calculated to be 37,554 MTCO2e per year. After calculating the proposed Project's emissions, the County considered the following factors, which are outlined in CEQA Guidelines 15064.4 in the Final SEIR: (1) whether the project increases or reduces GHG emissions compared to the existing setting; (2) where the project emissions exceeded an applicable threshold of significance; and (3) whether the project complies with applicable regulations, plans or policies that have been adopted to reduce GHG emissions. As discussed in Section 2.4 of the Final SEIR, the proposed Project would have a potentially significant impact. Mitigation measures were then set forth in order to reduce the impact to less than significant. .

O2-5 The commenter is correct in that the Draft SEIR relied on the 2016 Climate Change Analysis Guidance document. However, the SEIR was changed to reflect the outcome of *Sierra Club v. County of San Diego*; and the Final SEIR changes no longer relies on the County's' 2016 Guidelines for its significance analysis but rather uses CEQA Guidelines Section 15064.4.

The commenter incorrectly states that the SEIR should have analyzed climate impacts pursuant to thresholds developed under a County Climate Action Plan (CAP). Please refer to Section 2.4.2.1 of the Final EIR.

Pursuant to Section 15064.4(b) of the State CEQA Guidelines, when determining the significance of impacts from GHG emissions on the environment, the following factors should be considered:

(1) The extent to which the project may increase or reduce GHG emissions as compared to the existing environmental setting;
(2) Whether the project emissions exceed a threshold of significance that the lead agency determines applies to the project; and

	(3) The extent to which the project complies with regulations or requirements adopted to implement a statewide, regional, or local plan for the reduction or mitigation of GHG emissions. The County cannot consider factor (2), because the County does not currently have thresholds or guidelines for significance for GHG emissions. The County adopted a Guidance Document in 2016. However, the Superior Court in 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) ruled that the 2016 Guidance Document and its "County Efficiency Metric" may not be used to provide the basis for CEQA review of GHG impacts for development proposals within the unincorporated County lands. Factor (3) is also not considered due to the parallel processing of the proposed project and the County's Climate Action Plan (CAP). Although the CAP was very recently adopted by the Board of Supervisors on February 14, 2018, it has been determined that a standalone analysis independent of the Draft CAP is more appropriate at this time. Therefore, in the context of this project, when determining the significance of GHG emissions, the County may only use factor (1): the extent to which the project may increase or reduce GHG emissions as compared to the existing environmental setting. **O2-6** The efficiency metric analysis previously included in the Draft SEIR has been removed in the Final SEIR. See response to comment O2-1.

Michelle Irace
May 8, 2017
Page 4

July 29, 2016 ("July 2016 GHG guidance"), attached as Exhibit 1. However, the July 2016 GHG guidance and thresholds were not developed through a public review process or adopted by ordinance, resolution, rule, or regulation, as required by CEQA. Guidelines § 15064.7. For this among other reasons, the July 2016 GHG guidance is currently the subject of four pending lawsuits, including one in which the San Diego County Superior Court ruled the July 2016 GHG guidance violated CEQA and may not be relied on for approval of any pending or future development projects in the County. *See* April 28, 2017 Decision in San Diego County Superior Court Case No. 37-2012-00101054-CU-TT-CTL, attached as Exhibit 2.[1]

O2-7

Even absent the *Sierra Club* court's injunction, the County could not rely on its July 2016 GHG guidance because it is substantively invalid under *Newhall Ranch*. There, the Court held that while a "Business As Usual" approach was not categorically unlawful, the agency's application of that methodology failed to comply with CEQA because the EIR "simply assume[d]" that the level of reduction effort required in the statewide context would be sufficient for the specific land use development at issue, failing to support its finding of no significant GHG impacts with substantial evidence. 62 Cal.4th at 226. The Court explained:

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

O2-8

Id. Similarly, the County may not assume that the July 2016 GHG efficiency metric based on *statewide* reduction targets would be sufficient to attain those targets when applied to individual projects.

The County's July 2016 GHG guidance does exactly what the Supreme Court forbids. The DEIR explains that the efficiency metric "represents the rate of emissions

O2-9

[1] *Sierra Club v. County of San Diego* (SDSC Case No. 37-2012-00101054); *Golden Door Properties, LLC v. County of San Diego* (SDSC Case No. 37-2016-00037402); *Cleveland National Forest Foundation et al. v. County of San Diego* (SDSC Case No. No. 37-2017-00001628); *Sierra Club v. County of San Diego* (SDSC Case No. No. 37-2017-00001635).

SHUTE, MIHALY & WEINBERGER LLP

O2-7 The Draft SEIR relied on the 2016 Climate Change Analysis Guidance document. However, the SEIR was changed to reflect the outcome of *Sierra Club v. County of San Diego.* The GHG analysis in the Final SEIR is consistent with CEQA Guidelines Section 15064.4. The CEQA Guidelines offer two paths to evaluating GHG emissions impacts in CEQA documents: 1) Projects can tier off a "qualified" GHG Reduction Plan (CEQA Guidelines Section 15183.5); or 2) Projects can determine significance by calculating GHG emissions and assessing their significance (CEQA Guidelines Section 15064.4). Neither the CARB nor the San Diego Air Pollution Control District (SDAPCD) has adopted significance criteria applicable to land use development projects for the evaluation of GHG emissions under CEQA. OPR's Technical Advisory *CEQA and Climate Change: Addressing Climate Change through CEQA Review* states, "public agencies are encouraged, but not required to adopt thresholds of significance for environmental impacts. Even in the absence of clearly defined thresholds for GHG emissions, the law requires that such emissions from CEQA projects must be disclosed and mitigated to the extent feasible whenever the lead agency determines that the project contributes to a significant, cumulative climate change impact." Furthermore, OPR's advisory document indicates, "in the absence of regulatory standards for GHG emissions or other scientific data to clearly define what constitutes a 'significant impact,' individual lead agencies may undertake a project-by-project analysis, consistent with available guidance and current CEQA practice."

O2-8 The Draft SEIR relied on the 2016 Climate Change Analysis Guidance document. However, the SEIR was changed to reflect the outcome of *Sierra Club v. County of San Diego.* The climate change analysis in the Final SEIR does not rely on efficiency metric based on statewide reduction targets. Instead, the analysis in Section 2.4 of the Final SEIR relies on CEQA's guidance relative to evaluating GHG emissions. Discussion and references to the efficiency metric previously included in the Draft SEIR have been removed.

O2-9 The Draft SEIR relied on the 2016 Climate Change Analysis Guidance document. However, the SEIR was changed to reflect the outcome of *Sierra Club v. County of San Diego.* The SEIR does not rely on the 2016 Climate Change Analysis Guidance document. Discussion, and references to the efficiency metric previously included

	in the Draft SEIR have been removed. Instead, the analysis in Section 2.4 of the Final SEIR relies on CEQA's guidance relative to evaluating GHG emissions. Furthermore, this comment does not address the adequacy of the EIR, therefore, no further response is required.

O2-10

needed to achieve a fair share of the State's emission mandate embodied in AB 32." DEIR at 2.4-7. The DEIR goes on to say that the use of "fair share" in this instance indicates the GHG efficiency level that, if applied statewide, would meet the AB 32 emissions target and support efforts to reduce emissions beyond 2020. *Id.* The DEIR then states that if the emissions per capita for the Project are lower than the state's average efficiency metric of 3.0 $MTCO_2e$ per service population in year 2028, the impact would be considered less-than-significant. *Id.*; *id.* at 2.4-8. However, it fails to provide evidence that new projects, like this one, need only meet the statewide per capita average for the statewide GHG targets to be met.

O2-11

The County should have bridged this analytic gap by preparing a legally sufficient CAP before embarking on this analysis. Without the CAP, the statewide metrics have only questionable relevance to San Diego County or its ability to achieve compliance with AB 32 and SB 32, and Executive Orders EO S-03-05 and B-30-15. In fact, the available San Diego County-specific data show that the County must do more to meet 2028 targets, and presumably *much* more to meet the 2050 target. *See* attached University of San Diego's 2013 GHG inventory (Exhibit 3), which shows that even in the rosiest of scenarios, the County is not on track to meeting AB 32 targets in 2020. To the extent the DEIR provides some of this analysis for the San Diego region, it is deemed "preliminary" since the County is still in the process of preparing the CAP and refining the emissions inventories. DEIR at 2.4-14. In short, the DEIR and the July 2016 GHG guidance both fail to explain why cumulative targets for the entire state or San Diego region should be presumptively sufficient for individual projects like this one.

O2-12

To be consistent with AB 32, SB 32 and the Executive Orders, any new individual project will likely need to provide significantly greater emission reductions than merely meeting a statewide target. Contrary to the methodology applied by the DEIR, there is no reason to presume without evidence that the Project's "fair share" of reductions would match a state or even regional average. The Court explained this point in *Newhall Ranch*: new projects may require a greater level of reduction because "[d]esigning new buildings and infrastructure for maximum energy efficiency and renewable energy use is likely to be easier, and is more likely to occur, than achieving the same savings by retrofitting of older structures and systems." 62 Cal.4th at 226. The DEIR ignores this reality and directly imports the statewide standards, assuming the reduction rate for new and existing development should be the same. The Scoping Plan, on which these methodologies are all based, is silent on the distinction between new and existing development in terms of the capacity to reduce emissions, but it stands to reason that new developments will need to reduce at a greater rate, as older development will continue to exist and emit at levels higher than the average. As the DEIR blindly assumes the same emissions reductions

O2-10 Section 2. 4.1.2 Methodology of the Final SEIR has been revised to remove the evaluation of the Proposed Project based on the efficiency metric. The analysis in Section 2.4 of the Final SEIR relies on CEQA's guidance relative to evaluating GHG emissions.

O2-11 The County disagrees that a CAP must be prepared prior to conducting a GHG analysis for the proposed Project; see response to comment O2-5 above and O2-13 below. The text previously included in the Draft SEIR has been revised to remove the evaluation of the proposed Project based on statewide metrics. Instead, the analysis in Section 2.4 of the Final SEIR relies on CEQA's guidance relative to evaluating GHG emissions. The analysis in the Final SEIR is consistent with CEQA Guidelines Section 15064.4; refer to response to comment O2-7.

O2-12 The proposed Project will reduce its contribution to greenhouse gas emissions through the Project applicant's commitment to achieve carbon neutrality. The Final SEIR includes several mitigation measures to reduce greenhouse gas emissions to a net-zero level. See response to comment O2-1.

O2-12, (cont.)

levels for statewide and project-specific compliance with AB 32, its GHG analysis is not supported by substantial evidence and the EIR is deprived of its "sufficiency as an informative document." *Id.* at 227 (citing *Laurel Heights*, 47 Cal.3d at 392).

2. The County's Failure to Adopt a Legally Sufficient Climate Action Plan is the Root of the Problem.

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

> [Mitigation Measure] CC-1.2 requires the preparation of a County Climate Change Action Plan within six months from the adoption date of the General Plan Update. The Climate Change Action Plan will include a baseline inventory of greenhouse gas emissions from all sources and more detailed greenhouse gas emissions reduction targets and deadlines. The County Climate Change Action Plan will achieve comprehensive and enforceable GHG emissions reduction of 17% (totaling 23,572 $MTCO_2e$) from County operations from 2006 by 2020 and 9% reduction (totaling 479,717 $MTCO_2e$) in community emissions from 2006 by 2020.

O2-13

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

Without the Climate Action Plan, the Project cannot be found consistent with the General Plan's climate-related policies. For example, the General Plan requires the CAP to establish thresholds:

> CC-1.8 Revise County Guidelines for Determining Significance based on the Climate Change Action Plan. The revisions will include guidance for proposed discretionary projects to achieve greater energy, water, waste, and transportation efficiency.

O2-13 This comment states that because the County of San Diego does not have an adopted CAP and that the Draft EIR does not have sufficient impact thresholds to analyze the project's GHG emissions and impacts. Relatedly, comment O2-21 states the Draft EIR will have to be recirculated following adoption of a County CAP. The County does not agree with either of these comments for the reasons stated below.

First, the Program EIR (PEIR) for the General Plan Update (GPU) includes a mitigation measure that requires preparation of a CAP. Following certification of the Program EIR and adoption of the General Plan Update, the County prepared and adopted a CAP. However, litigation successfully challenged the validity of the County's CAP, the CEQA compliance documentation prepared for the CAP, and the thresholds of significance derived from the CAP. The County is working to issue and adopt an updated CAP, including thresholds of significance for GHG emissions in CEQA analysis, consistent with the mitigation parameters of the set forth in the GPU PEIR. It should be noted that the San Diego County Superior Court recently rejected arguments from the Sierra Club et al. to prevent the County from processing and approving projects prior to the adoption of a lawful CAP and corresponding CEQA significance thresholds. The Superior Court held that an injunction prohibiting the "County from undertaking its planning process is too broad." See Sierra Club v. County of San Diego (Case No. 2012-0101054) and Golden Door Properties LLV v. County of San Diego (Case No. 2016-0037402).

Second, the Draft EIR for the project has thresholds consistent with the parameters of CEQA Guidelines Section 15064.4. Specifically, as set forth in Section 2.4, Greenhouse Gas Emissions, the Final SEIR includes feasible mitigation measures to reduce GHG emissions associated with the proposed Project to net zero. Mitigation measure GHG-1a requires that the Project buildings will exceed Title 24 as of 2016 by 20 percent. Mitigation measure GHG-1b requires the Project to include photovoltaic solar panels designed to provide 50 percent of

	the Project's commercial electricity use needs and 50 percent of the residential dwelling units' electricity needs. Therefore, the environmental analysis for the project has been developed to comply with the requirements of CEQA, which exist independent of the County's CAP. Further, the requirement to achieve no net increase in GHG emissions ensures that the project will not conflict with the CAP that is under development because it fully eliminates project-related GHG emissions.

O2-14 The Project is flatly inconsistent with Policies CC-1.2 and CC-1.8, and the County has failed to comply with these mitigation measures. These policies prohibit the County from approving major development projects at this time. The County must first adopt a legally adequate CAP (as required by CC-1.2) and adopt thresholds based on that CAP (as required by CC-1.8).

O2-15 The County's backwards approach is also unfair and bad public policy. When the County ultimately completes the analysis required by the General Plan, the thresholds may need to be made more stringent. Ironically, future applicants proposing projects that are *consistent* with the General Plan will bear a greater burden of reducing GHG emissions than projects like this one that are *inconsistent* with the General Plan.

O2-16 In sum, the County puts the cart before the horse by analyzing impacts based on the July 2016 GHG guidance, not on thresholds developed by the CAP. The DEIR's analysis violates CEQA because it relies on a threshold of significance that: (1) the County is enjoined by court order from applying; (2) violates the Supreme Court's guidance in *Newhall Ranch*; and (3) violates the express policies of the General Plan.

O2-17 In addition, until the CAP is completed, the DEIR cannot adequately analyze the cumulative GHG impacts of the Project together with those of existing and reasonably foreseeable future development. The CAP will presumably include information on the cumulative GHG emissions under potential buildout of the General Plan. Until such information is developed, the County lacks the information upon which a meaningful cumulative analysis can be based.

3. The DEIR Proposes Inadequate Mitigation and Ignores Other Feasible Mitigation Measures, Including Retirement of Development Rights at Other Sites.

O2-18 The DEIR states that the Project's significant effects on climate change will be mitigated to a less-than-significant level by exceeding "by 20 percent" the Title 24 building standards for energy efficiency, and by including solar panels ("or their equivalent") designed to provide 50 percent of the Project's commercial use electricity needs, and on 50 percent of the residential dwelling units to provide those units' entire electricity needs. DEIR at 2.4-22. For the reasons discussed above, the DEIR lacks any basis for determining that this measure will eliminate the Project's significant GHG impacts because the analysis of those impacts is based on a legally inadequate threshold of significance (the 2016 Climate Change Analysis Guidance).

O2-14 See responses to comments O2-5 and O2-13 above.

O2-15 This comment does not address the adequacy of the EIR. Concerning the project at hand, as described in the response to comment O2-1, the Project applicant has committed to achieve a net-zero level of emissions. With incorporation of mitigation, impacts would be less than significant.

O2-16 The Draft SEIR relied on the 2016 Climate Change Analysis Guidance document. However, the SEIR was changed to reflect the outcome of *Sierra Club v. County of San Diego.* The proposed Project has been designed and conditioned with additional mitigation to achieve carbon neutrality (i.e., net zero emissions), and thus does not violate CEQA. See responses to comments O2-1, O2-4, O2-6, and O2-13.

O2-17 See responses to comments O2-5 and O2-13.

O2-18 The Final SEIR includes mitigation measures to achieve carbon neutrality. The efficiency metric analysis has been removed from the Final SEIR. Instead, the analysis in Section 2.4 of the Final SEIR relies on CEQA's guidance relative to evaluating GHG emissions. Subsequent to publishing and public review of the Draft SEIR, the Project applicant has voluntarily committed to achieve carbon neutrality. To fully mitigate the project's impacts relative to GHG emissions, mitigation measures have been expanded to include a requirement for net zero emissions from future developments within the Otay 250 Sunroad – East Otay Mesa Business Park Specific Plan Amendment area.

Table 2.4-7 lists the proposed project's on-site project design features to reduce GHG emissions. Based on the emissions inventory data presented in Table 2.4-8, the project will result in 37,554 MT CO2E with the incorporation of project design features. Note that this calculation under-represents the percentage of GHG emissions reductions that will be achieved through on-site features and measures because, as provided in Table 2.4-7, many of the features and measures conservatively were not assigned quantitative emissions reductions values.

	Each phase of the project (i.e., implementing site plans) would be required to undergo a site plan review, and at that time, shall require the development to have net zero emissions. With mitigation, the Project would result in net zero GHG emissions and, therefore, would be consistent with the goals of Executive Order B-30-15 and SB 32 that requires the state to reduce its GHG emissions to 40 percent below 1990 levels by 2030. Thus, GHG emissions impacts would be reduced to below a level of significance.

Furthermore, the DEIR ignores the fact that the mitigation proposed—building energy efficiency and solar panels on rooftops—addresses only energy use in the Project's buildings. While solar panels are laudable, they do nothing to mitigate the climate change impacts associated with Project's increase in vehicle miles traveled ("VMT"), the source of the largest share of the Project's GHG emissions by far. *See* DEIR at 2.4-33.

O2-19

EHL urges the County to require mitigation that will begin to address the most serious threat of increased VMT facing the County—proposed sprawl development that is auto-dependent and far from urban centers. EHL proposes that the Project mitigate emissions generated from increased VMT by acquiring and retiring development rights at other sites in the County that, if developed, could otherwise generate a comparable increase in VMT. Such a requirement would not only provide substantial mitigation for this Project, but could provide a model for addressing VMT at other sites in the County, and a framework for preventing development in the more remote parts of the County where it does not belong.

O2-20

II. The DEIR Must Be Recirculated.

Under California law, the present EIR cannot properly form the basis of a final EIR. CEQA and the CEQA Guidelines describe the circumstances that require recirculation of a draft EIR. Such circumstances include: (1) the addition of significant new information to the EIR after public notice is given of the availability of the DEIR but before certification, or (2) the draft EIR is so "fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded." Guidelines § 15088.5.

O2-21

Here, both circumstances apply. Decisionmakers and the public cannot possibly assess the Project's impacts, or even its feasibility, through the present DEIR. In order to resolve these issues, the County must prepare a revised EIR that would necessarily include substantial new information.

III. Conclusion

As set forth above, the Project DEIR is inadequate under CEQA. The deficiencies of the DEIR necessitate extensive revision of the document and recirculation for public comment. EHL respectfully requests that the County reevaluate the Project and make changes to the design to reduce the Project's serious environmental impacts.

O2-22

O2-19 The County disagrees with the contentions within this comment. See to response to comment O2-1 above.

There are a number of guiding documents that provide possible on-site design measures that subsequent site plans will be required to implement or otherwise prove to be infeasible in a subsequent GHG analysis, including requirements that future development achieve net zero emissions levels in addition to building efficiency and solar panels (see M-GHG-2). Additionally, as detailed in Section 2.4.2.5, it is important to recognize that the proposed Project is part of the planned and approved East Otay Mesa Business Park Specific Plan community, which contains a mix of residential, commercial, civic, recreational, and public facilities, all of which reduce the amount of vehicle miles traveled and corresponding GHG emissions. The proposed Project would further reduce the amount of vehicle miles traveled by incorporating into the Specific Plan an increase in residential units at high densities mixed with supporting retail and employment uses, adding to what was previously a primarily light industrial/technology center to create a mixed-use village setting. In addition to being part of a larger Specific Plan area, the proposed Project itself contributes a more integrated and balanced mix of uses, including community-serving commercial, light industrial employment uses, a 50.3-acre open space preserve, and trail amenities. The Project's mix of uses allows for the Project to internally capture approximately 15.04 percent of all vehicle trips. Further, the Project's mix of land uses, including residential in conjunction with the retail and employment, is coupled with an integrated pathway and trail plan and traffic calming features along internal streets and roads that promote a pedestrian experience for the Project's residents and visitors and facilitate non-vehicular travel.

O2-20 See response to comment O2-19 above. VMT is not a metric used for traffic analysis in this SEIR. LOS is used for the traffic analysis, and the Project fully mitigates its impacts. The State has not provided final guidance for VMT.

O2-21 The Final SEIR accurately identifies the significant impact associated with greenhouse gas emissions and provides mitigation measures that, in concert with the Project's design features presented in the SEIR, will reduce impacts to a net-zero level. The revisions in

	the Final SEIR do not constitute significant new information that would require recirculation, in accordance with the CEQA, Section 15088.5. See response to comment O2-2. **O2-22** See responses to comments O2-1 and O2-2.

Very truly yours,

SHUTE, MIHALY & WEINBERGER LLP

Joseph Petta

cc: Dan Silver, Endangered Habitats League

List of Exhibits:

Exhibit 1: County of San Diego, 2016 Climate Change Analysis Guidance, July 29, 2016.

Exhibit 2: April 28, 2017 Decision in San Diego County Superior Court Case No. 37-2012-00101054-CU-TT-CTL.

Exhibit 3: University of San Diego's 2013 GHG inventory, Executive Summary, March 2013.

892155.3

SHUTE, MIHALY & WEINBERGER LLP

EXHIBIT 1

County of San Diego

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2016 CLIMATE CHANGE ANALYSIS GUIDANCE

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

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

Background

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

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

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

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

Climate Change Analysis Guidance
County of San Diego

Determination of Need for Climate Change Analysis

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

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

The annual 900 metric ton carbon dioxide equivalent (MT CO_2e) screening level referenced in the CAPCOA white paper[1] is recommended by the County as a conservative screening criterion for determining which projects require further analysis and identification of project design features or potential mitigation measures with regard to GHG emissions. The CAPCOA white paper reports that the 900 metric ton screening level would capture more than 90 percent of development projects, allowing for mitigation towards achieving the State's GHG reduction goals. Table 1 shows the sizes of projects that would generally require additional analysis and mitigation.

Table 1
Project Sizes that Would Typically Require a Climate Change Analysis *

Project Type**	Project Size Equivalency
Single Family Residential	50 units or more
Apartments/Condominiums	70 units or more
General Commercial Office Space	35,000 square feet or more
Retail Space	11,000 square feet or more
Supermarket/Grocery Space	6,300 square feet or more

Source: The screening levels are published in California Air Pollution Control Officers Association. 2008 (January). *CEQA & Climate Change: Evaluating and Addressing Greenhouse Gas Emissions from Projects Subject to the California Environmental Quality Act*. Available at http://www.capcoa.org/wp-content/uploads/downloads/2010/05/CAPCOA-White-Paper.pdf
*A determination on the need for a climate change analysis for project types not included in the table will be made on a case-by-case basis considering the 900 metric ton criterion.
**A project with a combination of types may demonstrate compliance with the screening threshold through addition of the ratios of each contribution by the associated equivalency threshold.

If a proposed project is the same type and smaller than the project sizes listed in the table above, it is presumed that the construction and operational GHG emissions for that project would not exceed 900 MT CO_2e per year, and there would be a less-than-cumulatively considerable impact. It should be noted that the screening level assumes that the project does not involve unusually extensive construction activities and does not involve operational characteristics that would generate unusually high GHG emissions. The applicability of the screening criteria presented in Table 1 will be evaluated by County staff on a project-by-project basis to determine if there is evidence to suggest that a project's

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

2

unique attributes would lead to emissions that are higher than 900 MT CO_2e per year, thus justifying the need for a complete Climate Change Analysis.

Though CAPCOA's recommended project size-based screening criteria are based on the mass emissions level of 900 MT CO_2e per year, it does not mean that project-generated GHG levels greater than 900 MT CO_2e per year are automatically deemed cumulatively considerable. Instead, the screening levels presented in Table 1 are to be used to determine whether it is necessary to conduct further analysis to quantify a project's GHG emissions and evaluate its GHG efficiency.

Contents of Climate Change Analysis Reports

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

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

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

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

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

The analysis must also quantify the loss in sequestered carbon, expressed in CO_2e that would result from any vegetation permanently removed as a result of project development. The total loss of sequestered carbon can be estimated using the Vegetation module in CalEEMod.

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

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

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

Significance Criteria

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

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

Would the project:

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

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

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

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

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

Horizon Year 2020. For projects that exceed the screening criterion of 900 MT CO_2e, as determined through the screening levels in Table 1 or emissions quantification, and that would be operational (buildout) on or before 2020, the Climate Change Analysis must analyze and determine the significance of project emissions in 2020. The County recognizes the quantitative efficiency metric for 2020 to be 4.9 MT CO_2e/SP/year (where SP refers to the project's service population [residents + employees]).

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

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

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

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

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

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

Climate Change Analysis Guidance
County of San Diego

2020 Efficiency Metric
The GHG efficiency metric is 4.9 MT CO_2e/SP/year for 2020.

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

ARB's 1990 California GHG Inventory	
1990 Total Emissions =	431 MMT CO_2e
1990 Non-land Use Emissions =	144.3 MMT CO_2e
1990 Land Use Emissions =	286.7 MMT CO_2e

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

Sources:
*California Department of Finance, Demographic Research Unit
Report P-2, State and County Population Projections by Race/Ethnicity and Age (5-year groups)
2010 through 2060 (as of July 1); December 15, 2014
**California Department of Finance, Employment Development Department
Industry Employment Projections, Labor Market Information Division, 2010-2020; May 23, 2012

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

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

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

6

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

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

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

Service Population Data Sources
SANDAG Demographics and Other Data:
http://www.sandag.org/index.asp?classid=26&fuseaction=home.classhome

SANDAG Data Surfer for existing and forecasted socio-economic data:
http://datasurfer.sandag.org/

Mitigation Measures

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

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

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

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

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

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

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

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EXHIBIT 2

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.: 37-2012-00101054-CU-TT-CTL

CASE TITLE: SIERRA CLUB VS. COUNTY OF SAN DIEGO [E-FILE]

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

EVENT TYPE: Motion Hearing (Civil)
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

Event ID: 1763106 TENTATIVE RULINGS Calendar No.: 32
Page: 1

CASE TITLE: SIERRA CLUB VS. COUNTY OF SAN DIEGO [E-FILE] CASE NUMBER: 37-2012-00101054-CU-TT-CTL

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:

Event ID: 1763106 TENTATIVE RULINGS Calendar No.: 32
Page: 2

CASE TITLE: SIERRA CLUB VS. COUNTY OF SAN DIEGO [E-FILE] CASE NUMBER: 37-2012-00101054-CU-TT-CTL

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*,

Event ID: 1763106 TENTATIVE RULINGS Calendar No.: 32
Page: 3

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.

CASE TITLE: SIERRA CLUB VS. COUNTY OF SAN DIEGO [E-FILE] CASE NUMBER: 37-2012-00101054-CU-TT-CTL

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

Event ID: 1763106 TENTATIVE RULINGS Calendar No.: 32
Page: 5

CASE TITLE: SIERRA CLUB VS. COUNTY OF SAN DIEGO [E-FILE] CASE NUMBER: 37-2012-00101054-CU-TT-CTL

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 dicern, 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-l.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.

Event ID: 1763106 TENTATIVE RULINGS Calendar No.: 32
Page: 6

CASE TITLE: SIERRA CLUB VS. COUNTY OF SAN DIEGO [E-FILE] CASE NUMBER: 37-2012-00101054-CU-TT-CTL

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.

Event ID: 1763106 TENTATIVE RULINGS Calendar No.: 32
Page: 7

CASE TITLE: SIERRA CLUB VS. COUNTY OF SAN DIEGO [E-FILE] CASE NUMBER: 37-2012-00101054-CU-TT-CTL

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

Event ID: 1763106 TENTATIVE RULINGS Calendar No.: 32
Page: 8

CASE TITLE: SIERRA CLUB VS. COUNTY OF SAN DIEGO [E-FILE] CASE NUMBER: 37-2012-00101054-CU-TT-CTL

"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 Serra 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*

Event ID: 1763106 TENTATIVE RULINGS Calendar No.: 32
Page: 9

CASE TITLE: SIERRA CLUB VS. COUNTY OF SAN DIEGO [E-FILE] CASE NUMBER: 37-2012-00101054-CU-TT-CTL

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.

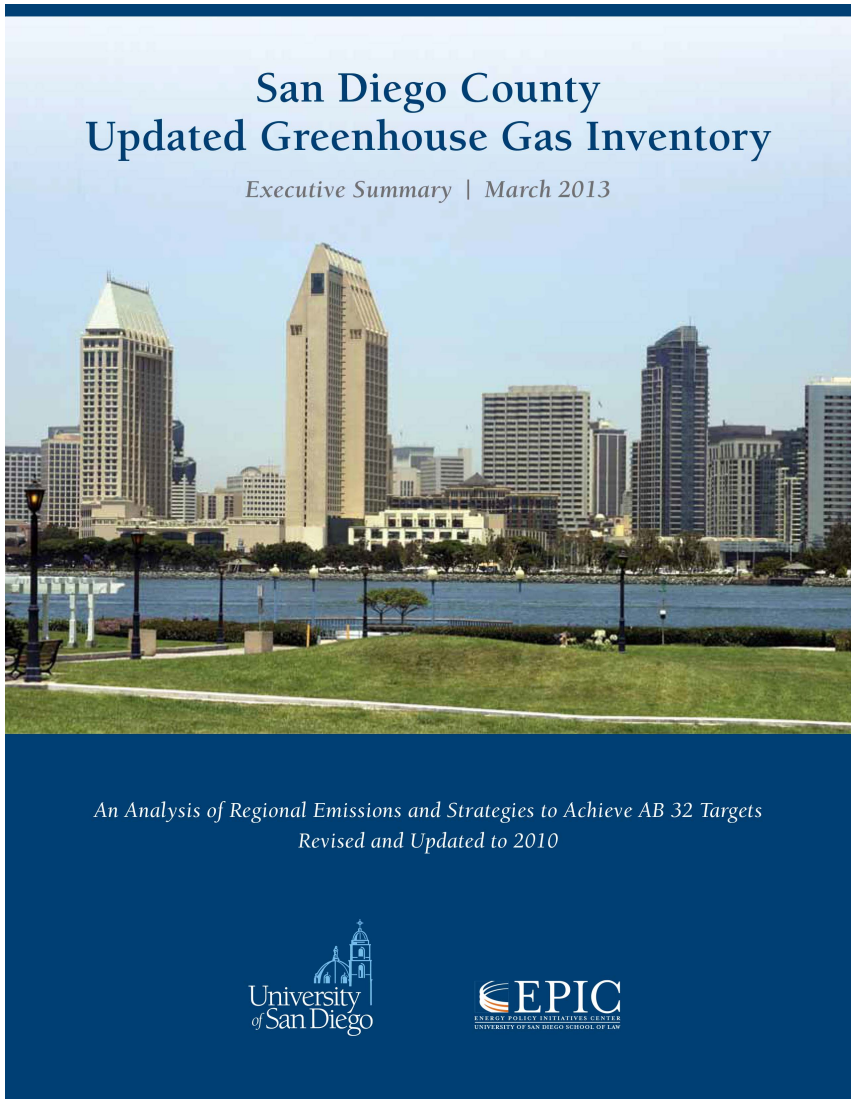
Attorneys' fees, if sought, may be addressed in a future noticed motion.

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.

Event ID: 1763106 TENTATIVE RULINGS Calendar No.: 32
Page: 10

EXHIBIT 3


San Diego County
Updated Greenhouse Gas Inventory
Executive Summary | March 2013
An Analysis of Regional Emissions and Strategies to Achieve AB 32 Targets
Revised and Updated to 2010
University of San Diego
EPIC
ENERGY POLICY INITIATIVES CENTER
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Energy and Environment Research Scientist and Engineer, Tanaka Research.

For an electronic copy of this summary report and the full documentation of the San Diego Greenhouse Gas Inventory project, go to www.sandiego.edu/epic/ghginventory.

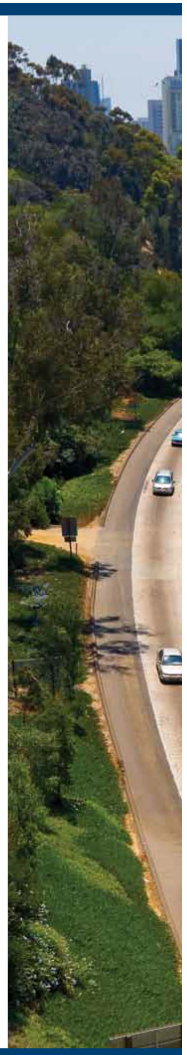
Table of Contents

List of Figures

List of Tables

1. Key Findings

- Estimated emissions in San Diego County in 2010 were 32 million metric tons of carbon dioxide equivalent (MMT CO2e) – about 9% more than in 1990.
- In 2010, per-capita emissions for San Diego County were approximately 10 MMT CO2E.
- In 2010, emissions from cars and light duty trucks represented about 44% of total greenhouse gas emissions in San Diego County, approximately the average of the years 2005-2010.
- The projection in 2020 – assuming no change in policy from 2009 – is about 37 MMT CO2e, significantly lower than the previous (2008) projection of 43 MMT CO2e, due in large part to the economic downturn.
  - » If reductions from state Pavley I standards (implemented 2010) and the state Renewable Portfolio Standard (RPS, 33% in 2020) were included, the projection for 2020 would be approximately 31.5 MMT CO2e, about 7% above 1990 levels.
  - » If reductions from the Low Carbon Fuel Standard (LCFS) were also included, the projection for 2020 would be approximately 30 MMT CO2e, about 3% above 1990 levels.
- State and federal policies would account for more than 70% of the total greenhouse gas emissions reductions needed for the San Diego region to reach 1990 levels of emissions by 2020.
  - » The Pavley I standards are expected to reduce emissions by an estimated 2.4 MMT CO2e in 2020.
  - » The RPS is expected to reduce emissions by an estimated 3.1 MMT CO2e reduction in 2020.
  - » The LCFS is expected to reduce emissions an estimated 1.1 CO2e reduction in 2020.



2. Total Greenhouse Gas Emissions in San Diego County (2010)

In 2010 San Diego County emitted an estimated 32.1 million metric tons of carbon dioxide equivalent (MMT CO2E), 3.1 MMT CO2E (9%) more than 1990 emissions[1] Figure 1 shows San Diego County greenhouse gas emissions from 1990 through 2010. San Diego County greenhouse gas emissions by category is shown in Figure 2.

Figure 1. Net San Diego County Emissions, Revised Estimates (1990-2010)

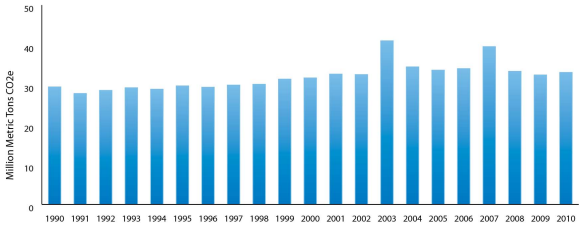
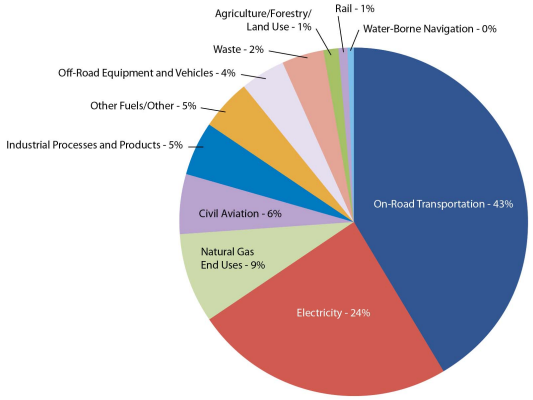


Figure 2. San Diego County Greenhouse Gas Emissions by Sector (2010)

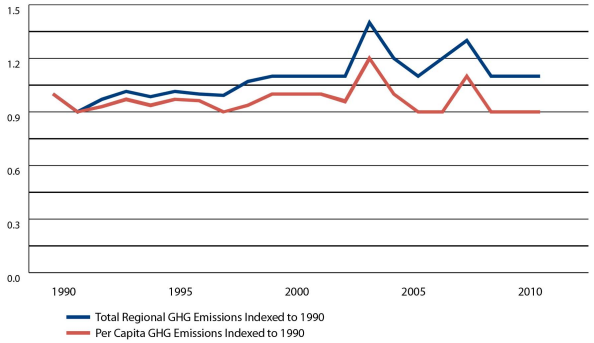


1. Carbon dioxide equivalent includes the sum of all greenhouse gases converted to the global warming potential (GWP) of carbon dioxide. For example, the GWP for methane is 21. This means that 1 million metric tons of methane is equivalent to emissions of 21 million metric tons of carbon dioxide.

San Diego County GHG Inventory Executive Summary 3

In 2010, per-capita greenhouse gas emissions for the San Diego region were 10.1 metric tons of CO2E, less than the 1990-2006 average of 11.2 metric tons. This decrease is explained partly by the economic downturn.

Figure 3. Greenhouse Gas Emissions, Indexed to 1990, San Diego County



2.1. Emissions Projections to 2020

At the time of the first (2008) regional greenhouse gas inventory, the state Pavley I standards were not in force and the Low Carbon Fuel Standard (LCFS) had not yet been adopted. By 2010, the Pavley I standards were being implemented and the Renewable Portfolio Standard (RPS) target was increased to 33% renewable electricity by 2020. For purposes of projecting emissions to 2020, we therefore present three scenarios:

- No Policy Changes - The first projection scenario is based on the policies in existence in 2009 and does not include reductions expected from the Pavley I standards and the increased RPS target. In this scenario, greenhouse gas emissions from San Diego County are estimated at 37 MMT CO2E in 2020
- Pavley I + RPS 33% - The second projection includes reductions expected from implementation of Pavley I and the RPS 33%. In this scenario, San Diego County greenhouse gas emissions are estimated at 31.5 MMT CO2e in 2020.
- Pavley I + RPS 33% + LCFS - The third projection scenario includes reductions expected from Pavley I, the RPS of 33%, and the LCFS. In this scenario, greenhouse gas emissions from San Diego County are estimated to be approximately 30.3 MMT CO2E in 2020. Note that although the LCFS was adopted in 2010, its future is uncertain at this time due to litigation.[2]

2. Two cases challenge the LCFS. In *Poet, LLC v. California Air Resources Board, (2009)*, Poet, the largest ethanol producer in the world, challenges the LCFS on the basis that CARB failed to comply with the California Environmental Quality Act. Poet's petition for writ of mandate was denied and has been appealed to the California Court of Appeals in November 2011. No further dates have been set. *Rocky Mountain Farmers Union v. Goldstene (2010)* challenges the LCFS rule as violating the Commerce Clause of the United States Constitution. In December 2011 the Eastern District of California invalidated parts of the LCFS rule. Federal district court stayed enforcement upon appeal in April 2012. The parties are now awaiting a decision.

4 San Diego County GHG Inventory Executive Summary

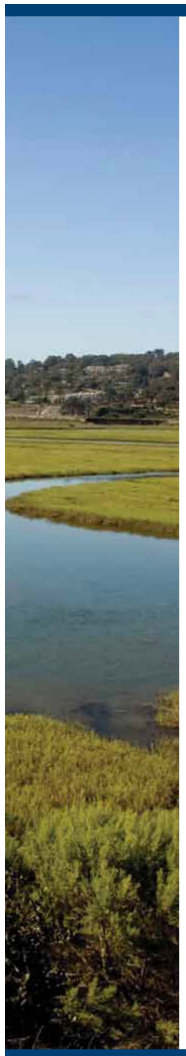
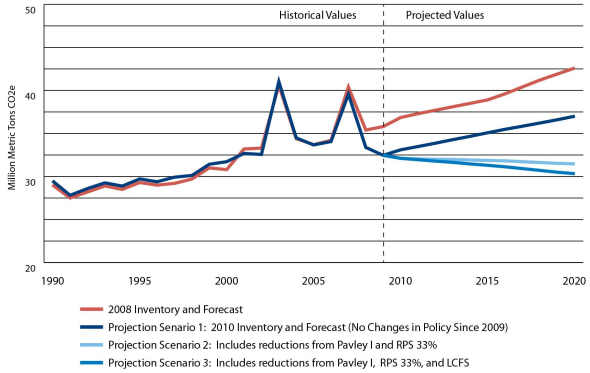


Figure 4 shows the emissions levels in 2020 under the three projection scenarios, as well as the previous (2008) forecast.

Figure 4. Projection Scenarios to 2020 for San Diego County



2.2. Emission Reduction Targets

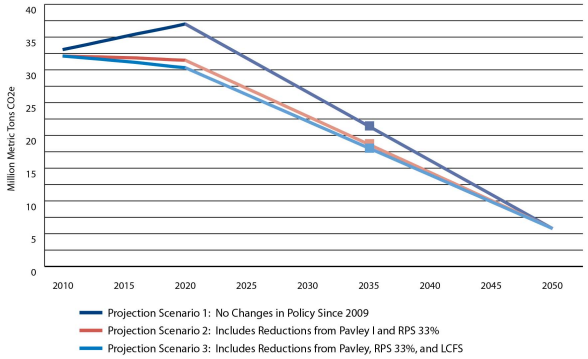
In 2006, California Governor Arnold Schwarzenegger signed the Global Warming Solutions Act (AB 32), establishing statutory limits on greenhouse gas emissions in California. AB 32 seeks to reduce statewide emissions to 1990 levels by the year 2020. While AB 32 does not specify reduction targets for specific sectors or jurisdictions, this study calculated theoretical reductions targets for San Diego County based on AB 32.

In 2005, Governor Schwarzenegger signed Executive Order S-3-05, which establishes long-term targets for greenhouse gas emissions reductions to levels 80% below 1990 levels in 2050. While this reduction target is not mandatory, it is generally accepted as the long-term target of California regulations. Like AB 32, Executive Order S-3-05 is intended to be applied statewide, but if applied hypothetically to San Diego County, total emissions would have to be 5.8 MMT CO2e in 2050.

In 2009, California Senate Bill 375 came into effect as another regulatory tool to help California achieve its AB32 target. SB 375 requires regional planning agencies to achieve greenhouse gas emissions reductions through land use and transportation policy, specifically requiring a target for these emissions in 2020 as well as in the 2035 planning year. The year 2035 has therefore become another planning horizon year for cities and the region.

Figures 5 illustrates the theoretical decrease in emissions needed if San Diego County were required to meet both AB 32 and Executive Order S-3-05 targets along a linear trajectory. The 2035 planning year and its theoretical goals are also shown and depend on the projection chosen for 2020. The emissions goal for 2035 based on this linear trajectory varies, depending on the projection scenario, between 18.1 MMT CO2e and 21.4 MMT CO2e in order to achieve the 2050 target of 5.8 MMT CO2e.

Figure 5. Applying Statewide Greenhouse Gas Reduction Targets in San Diego County



3. Summary Methodology

EPIC updated historical greenhouse gas emissions to 2010 using the best available data and made revised estimated projections for future emissions to 2020 for San Diego County based on the updated information. To be consistent with revisions and refinements in methodology at the California Air Resources Board (CARB), EPIC revised some historical data used to calculate the 2008 inventory. For example, the electricity sector data were revised back to 1990. On-road transportation emissions were revised from 2008 based on revised vehicle miles traveled data from the regional transportation agency SANDAG. Waste emissions were revised from 2008 based on refined emissions factors obtained from CARB. The "Other Fuels", and "Industrial Processes" sectors were adjusted according to economic activity data through 2008. Civil aviation was updated using departure air miles through 2008. For the wildfire category, an average of emissions based on fires occurring since 1990 was used to project 2020 emissions levels. The "Off-road" and "Waterborne" category projections to 2020 remain the same as in the previous forecast of 2006. A summary of the methods is provided in Table 1. For a detailed presentation of the methods used, please see documents published in support of the 2008 inventory.[3]

3. See http://www.sandiego.edu/epic/ghginventory

6 San Diego County GHG Inventory Executive Summary

Table 1. Summary of Inventory Methods and Data Sources

Inventory Catetory	Method	Data Sources
ON-ROAD TRANSPORTATION	CARB EMFAC2007 Model for San Diego County	1990-2008 CO_2E Emissions from CARB On-Road EMFAC2007 Model, based on Series 12 Input data from SANDAG, and VMT forecast data from SANDAG for 2020, 2035
ELECTRICITY	Fuel-based, CARB emissions factors (lbs/MWh) and average emisions for power suppliers used where fuel data unavailable (CARB Method); 2020 2035 projection based on CEC forecast trend	FERC FORM 1, CEC Energy Forecast 2010-2020, SEC Form 10-K, EIA Form 861
NATURAL GAS END USES	Fuel-based (CARB Method); 2020-2035 projection based on CEC forecast trend	FERC FORM 1, CEC Energy Forecast 2010-2020
OFF-ROAD EQUIPMENT AND VEHICLES	CARB OFFROAD Model for San Diego County; linear projection from 2020 to 2035	CO_2E Emissions from CARB OFFROAD Model
CIVIL AVIATION	Fuel-based (Average of jet fuel sold and passenger miles traveled methods), interstate emissions included (Modified CARB Method); linear projection from 2020 projection to 2035	Two main jet fuel and aviation gas suppliers to San Diego Int'l Airport, Bureau of Transportation Statistics Department (BTS RITA), San Diego Air Pollution Control District (natural gas)
WASTE	IPCC Mathematically Exact First Order Decay Model (CARB Method); linear projection from 2020 to 2035	CARB (waste water factors) , City of San Diego (waste disposed), San Diego County Public Works Department, CARB (waste disposed), CIWMB, USD EPA
INDUSTRIAL PROCESSES AND PRODUCTS	Source-based, some scaled from statewide inventory data (CARB Method); projection based on US Census Bureau economic forecast data to 2035	CARB, US EPA, US Census Bureau, US Geological Survey, CA Dept. of Transportation, CEC
WATER-BORNE NAVIGATION	Based on CARB estimate (CARB Method); linear projection to 2035	CARB estimate, adjusted by local port business plan to 2020
RAIL TRANSPORTATION	Scaled from statewide inventory (CARB Method); linear projection from 2020 to 2035	CARB statewide GHG inventory, US Census Bureau (economic data)
OTHER/OTHER FUELS	Scaled from statewide inventory (CARB Method); linear projection from 2020 to 2035	CARB statewide GHG inventory, US Census Bureau (economic data)
AGRICULTURE (LIVESTOCK)	Scaled from statewide inventory (CARB Method); linear projection from previous 2020 value to 2035	CARB statewide GHG inventory, US Department of Agriculture, and San Diego County (crop reports)
EMISSIONS FROM DEVELOPMENT (Loss of Vegetation)	GIS analysis of developed areas from 1990-2007 (Modified CARB); linear projection from previous 2020 value to 2035	SANDAG and CA Dept of Forestry and Fire Protection (GIS data), Winrock International and C. Wiedenmyer paper (biomass data)
WILDFIRES	GIS analysis of burned areas from 1990-2007 (Modified CARB; annual projections from previous 2020 value to 2035 based on average annuals from 1990-2010.	SANDAG and CA Dept of Forestry and Fire Protection (GIS data), Winrock International and C. Wiedenmyer paper (biomass data), SANGIS (GIS burn areas)
SEQUESTRATION FROM LAND COVER	GIS analysis of San Diego County vegetation 1990-2007 (Modified CARB); linear projection from previous 2020 value to 2035	SANDAG and CA Dept of Forestry and Fire Protection (GIS data), Winrock International and C. Wiedinmyer paper (biomass data), SANGIS (GIS burn areas), H. Luo paper (carbon uptake by chaparral)

4. Conclusion

San Diego County emitted approximately 32 million MMT CO_2e in 2010 – about 9% above the 1990 level. This increase is not as large as previously projected due largely to the economic recession. Transportation remains the top emitting category, followed by electricity and natural gas. These highest emitting categories are significantly associated with activities by individuals (e.g., driving and home electricity and natural gas use); thus more than 70% of total regional emissions are associated with individual activities.

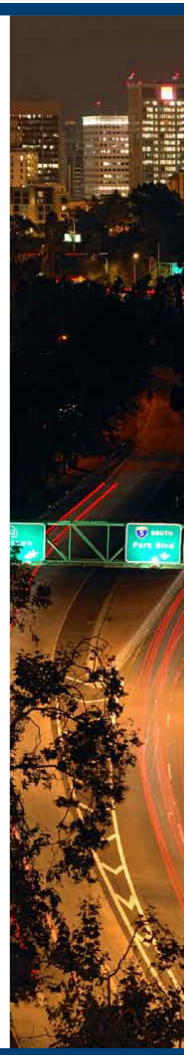
For 2020, we presented three projection scenarios. In the first, we projected emissions without changes to policy as of 2009. In the second projection scenario, we accounted for the reductions expected from Pavley I and the RPS 33%. In this second projection scenario, greenhouse gas emissions would be approximately 2 MMT CO_2e above the 1990 level, meaning that San Diego County would have to decrease emissions by about 2 MMT CO_2e in 2020 to reach the AB 32 target. In the third projection scenario, we included reductions expected from Pavley I, the RPS 33% standards reductions and the LCFS reductions by 2020. In this third projection scenario, San Diego County would need about 0.8 MMT CO_2e additional reductions to meet the AB 32 target in 2020.

5. Appendix

Table 2. San Diego County GHG Inventory and Emissions Projections (MMT Co2E)

						Projected Values				
	1990	1995	2000	2005	2010	2015	2020	2025	2030	2035
ON-ROAD TRANSPORTATION	**14.3**	**13.3**	**13.9**	**15.9**	**14.4**	**15.0**	**15.7**	**16.8**	**18.0**	**18.3**
Passenger Vehicles	7.4	6.5	6.3	6.2	5.9	6.1	6.4	6.7	7.1	7.3
Light-Duty Vehicles	5.1	5.1	5.9	7.8	7.0	7.2	7.4	7.8	8.3	8.6
Heavy-Duty Trucks and Vehicles	1.8	1.6	1.7	1.9	1.5	1.7	1.9	2.3	2.6	2.4
Motorcycles	0.04	0.03	0.02	0.06	0.04	0.05	0.05	0.05	0.05	0.05
ELECTRICITY*	**6.8**	**7.5**	**8.5**	**7.7**	**8.3**	**8.9**	**9.5**	**10.0**	**10.6**	**11.2**
Residential	2.5	2.8	2.9	2.8	3.1	3.4	3.7	3.9	4.1	4.3
Commercial	2.6	3.0	3.8	3.4	3.6	3.9	4.1	4.4	4.6	4.9
Industrial	0.7	0.7	0.8	0.6	0.6	0.7	0.7	0.7	0.8	0.8
Mining	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1
Agricultural	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1
TCU	0.6	0.7	0.8	0.7	0.7	0.7	0.8	0.8	0.8	0.9
Street lighting	0.03	0.04	0.04	0.04	0.05	0.05	0.05	0.05	0.06	0.06
NATURAL GAS END USES*	**3.0**	**2.8**	**3.1**	**2.9**	**2.9**	**3.1**	**3.3**	**3.5**	**3.7**	**3.9**
Residential	1.9	1.7	1.8	1.7	1.7	1.8	1.9	2.0	2.1	2.2
Commercial	0.9	0.6	0.5	0.9	0.8	0.9	1.0	1.1	1.2	1.3
Industrial	0.9	0.3	0.7	0.1	0.2	0.2	0.2	0.2	0.2	0.2
Mining	0.04	0.02	0.01	0.03	0.02	0.02	0.02	0.02	0.02	0.02
Agricultural	0.03	0.03	0.02	0.03	0.02	0.02	0.02	0.02	0.02	0.02
Other**	0.2	0.1	0.0	0.1	0.1	0.1	0.1	0.1	0.2	0.2
OFF-ROAD EQUIPMENT AND VEHICLES	**1.0**	**1.0**	**1.2**	**1.3**	**1.4**	**1.5**	**1.6**	**1.7**	**1.8**	**1.9**
Construction and Mining Equipment	0.4	0.5	0.6	0.6	0.7	0.7	0.8	0.8	0.9	1.0
Pleasure Craft	0.1	0.1	0.1	0.2	0.2	0.2	0.3	0.3	0.3	0.3
Industrial Equipment	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1
Agriculture Equipment	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1
Other	0.2	0.2	0.3	0.3	0.3	0.3	0.4	0.4	0.4	0.4
CIVIL AVIATION	**1.2**	**1.4**	**1.6**	**1.8**	**1.9**	**2.0**	**2.1**	**2.2**	**2.4**	**2.5**
Interstate	1.0	1.1	1.4	1.7	1.69	1.83	1.95	2.07	2.20	2.32
Intrastate	0.2	0.2	0.2	0.2	0.17	0.16	0.15	0.16	0.16	0.17
WASTE	**0.9**	**1.1**	**0.4**	**0.4**	**0.6**	**0.7**	**0.7**	**0.9**	**1.0**	**1.1**
Landfills	0.3	0.5	0.2	0.2	0.4	0.5	0.5	0.6	0.7	0.8
Wastewater Treatment	0.6	0.6	0.2	0.2	0.2	0.2	0.2	0.2	0.3	0.3
INDUSTRIAL PROCESSES AND PRODUCTS	**0.5**	**0.7**	**1.6**	**1.9**	**1.8**	**1.9**	**1.9**	**2.0**	**2.1**	**2.12**
HFCs	0.0	0.3	0.1	0.2	0.2	0.2	0.2	0.2	0.2	0.2
SF6	0.2	0.1	1.2	1.3	1.0	0.9	0.7	0.8	0.8	0.9
Other	0.3	0.2	0.3	0.4	0.6	0.8	1.0	1.0	1.0	1.0
WATER-BORNE NAVIGATION	**0.04**	**0.06**	**0.1**	**0.1**	**0.1**	**0.2**	**0.2**	**0.2**	**0.2**	**0.3**
Ocean Going Vessels (OGV)	0.03	0.05	0.1	0.1	0.1	0.1	0.1	0.2	0.2	0.2
Harbor Craft	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.1	0.1
RAIL	**0.21**	**0.22**	**0.17**	**0.30**	**0.32**	**0.39**	**0.47**	**0.54**	**0.61**	**0.68**
OTHER FUELS/OTHER	**1.83**	**1.54**	**1.41**	**1.56**	**1.58**	**1.63**	**1.71**	**1.80**	**1.88**	**1.97**
Manufacturing	0.71	0.56	0.44	0.45	0.43	0.39	0.36	0.32	0.28	0.25
Transport	0.20	0.13	0.19	0.18	0.12	0.10	0.09	0.08	0.07	0.06
Residential	0.16	0.14	0.13	0.18	0.21	0.25	0.30	0.35	0.39	0.44
Energy	0.01	0.01	0.01	0.02	0.03	0.04	0.05	0.06	0.07	0.08
Commercial	0.30	0.18	0.13	0.15	0.15	0.16	0.18	0.19	0.21	0.22
Agriculture	0.17	0.14	0.12	0.17	0.16	0.17	0.18	0.20	0.21	0.22
Cogen Adjustment (Thermal)	0.28	0.38	0.39	0.42	0.49	0.51	0.55	0.61	0.65	0.70
AGRICULTURE (Livestock)	**0.15**	**0.12**	**0.09**	**0.07**	**0.05**	**0.04**	**0.03**	**0.02**	**0.02**	**0.01**
Enteric Fermentation	0.07	0.06	0.05	0.04	0.03	0.02	0.02	0.01	0.01	0.01
Manure	0.07	0.06	0.04	0.03	0.02	0.02	0.01	0.01	0.00	0.00
LAND USE WILDFIRES	**0.18**	**0.59**	**0.23**	**0.28**	**0.28**	**0.28**	**0.28**	**0.28**	**0.28**	**0.28**
Forest	0.03	0.01	0.05	0.03	0.03	0.03	0.03	0.03	0.03	0.03
Woodland growth	0.01	0.06	0.04	0.02	0.02	0.02	0.02	0.02	0.02	0.02
Chaparral, scrub, and grasslands	0.14	0.53	0.15	0.23	0.23	0.23	0.23	0.23	0.23	0.23
DEVELOPMENT (LOSS OF VEGETATION)	**0.06**	**0.06**	**0.19**	**0.20**	**0.18**	**0.18**	**0.18**	**0.18**	**0.18**	**0.18**
Loss of farmland	0.04	0.03	0.03	0.03	0.03	0.03	0.03	0.03	0.03	0.03
Loss of native vegetation	0.02	0.03	0.17	0.17	0.15	0.15	0.15	0.15	0.15	0.15
SEQUESTRATION FROM LAND COVER	**(0.68)**	**(0.68)**	**(0.68)**	**(0.67)**	**(0.66)**	**(0.66)**	**(0.65)**	**(0.65)**	**(0.64)**	**(0.63)**
Forest growth	(0.24)	(0.23)	(0.23)	(0.23)	(0.23)	(0.23)	(0.22)	(0.22)	(0.22)	(0.22)
Woodland growth	(0.07)	(0.07)	(0.07)	(0.07)	(0.07)	(0.07)	(0.07)	(0.06)	(0.06)	(0.06)
Chaparral, scrub, and grasslands	(0.38)	(0.38)	(0.38)	(0.37)	(0.37)	(0.36)	(0.36)	(0.36)	(0.36)	(0.35)
TOTAL	**29**	**30**	**32**	**34**	**33**	**35**	**37**	**40**	**42**	**44**

*Historical Electricity and Natural Gas values based on the California Energy Commission 2009 energy forecast. Some values vary from 2008 Inventory.
**Natural Gas Other includes consumption from Civil Aviation and Waterborne Navigation categories.



8 San Diego County GHG Inventory Executive Summary

About the Energy Policy Initiatives Center (EPIC)

The Energy Policy Initiatives Center (EPIC) is a nonprofit academic and research center of the University of San Diego School of Law that studies energy policy issues affecting the San Diego region and California. EPIC integrates research and analysis, law school study and public education. The organization also serves as a source of legal and policy expertise and information in the development of sustainable solutions that meet our future energy needs.

For more information, please visit the EPIC Web site at www.sandiego.edu/epic.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