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March 1, 2019

Via E-Mail and U.S. Mail

Board of Supervisors
San Diego County
1600 Pacific Highway, Room 402
San Diego, CA 92101

Re: San Diego County's Climate Action Plan Obligations and the
Injunction Against Using Mitigation Measure GHG-1.

Dear Board of Supervisors:

This firm represents the Endangered Habitats League (EHL) in connection with pending and recently-approved development projects in San Diego County. We are writing to request that, until the Board can ensure compliance with existing law and court orders, the Board immediately stop processing projects that require General Plan Amendments, including projects that increase density/intensity above what is allowed in the 2011 General Plan or projects that were otherwise listed in the cumulative project list¹ in the County's Climate Action Plan (CAP) Supplemental EIR ("GPA projects").

As you know, on December 24, 2018, San Diego County Superior Court issued a peremptory writ of mandate and a permanent injunction against "the County, its agencies, agents, employees, representatives, supervisors, or other personnel." See Exhibit A. Among other things, the Court's writ directed the County to set aside its February 14, 2018 approvals of the CAP, the CAP Consistency Review Checklist, the CAP's SEIR, and the Guidelines for Determining Significance/Climate Change ("2018 Guidelines"). The permanent injunction further prohibited the County from "rely[ing] on Mitigation Measure M-GHG-1, which is contained within the County of San Diego Supplement to

¹ These projects include, without limitation, privately initiated GPAs like Lilac Hills Ranch, Newland Sierra, Otay Ranch Village 13, Otay Ranch Village 14 and Planning Areas 16 & 19, Star Ranch, Warner Ranch, and Warner Springs Ranch Resort, as well as the Property Specific Requests.

the 2011 General Plan Update Program Environmental Impact Report, dated January 2018.”

The Board has not followed the Court’s directive to set aside the CAP and associated approvals. Instead, on January 22, 2019, the County appealed the Court’s ruling.

Under the Code of Civil Procedure, filing an appeal automatically stays only the “mandatory” provisions of a court order; it does not stay an order’s “prohibitory” provisions. *See, e.g., Agricultural Labor Relations Bd. v. Tex-Cal Land Management, Inc.* (1987) 43 Cal.3d 696, 706 (“under the general appellate-stay provisions (§ 916 et seq.) . . . only mandatory portions of the injunctive enforcement judgment were subject to an automatic stay.”); *Paramount Pictures Corp. v. Davis* (1964) 228 Cal.App.2d 827, 835 (“It is well settled that an injunction mandatory in character is automatically stayed on appeal and that a prohibitory injunction is not so stayed ‘the object of the rule in both cases being to preserve the status quo.’”).)

Here, the County’s appeal stayed the Court’s order to set aside the CAP and associated approvals but not the injunction prohibiting on the County from “relying on” Mitigation Measure M-GHG-1. That injunction remains in effect.

Because the Board declined to set aside the CAP and related approvals, but remains enjoined from relying on the mitigation measure at the heart of the CAP, it may not approve any GPA projects without violating the CAP and associated approvals. The CAP, the CAP Consistency Review Checklist, and the 2018 Guidelines all *require* the use of the enjoined M-GHG-1. The 2018 Guidelines and Threshold state, “*As specified in Mitigation Measure GHG-1 of the CAP’s SEIR, the County shall require GPAs to reduce their emissions to ensure that CAP emission forecasts are not substantially altered such that attainment of GHG reduction targets could not be achieved.*” Exhibit B (emphasis added). The 2018 Guidelines also require that “Offsite mitigation that may include carbon offsets *must comply* with the requirements outlined in the CAP’s SEIR Mitigation Measure GHG-1.” *Id.* (emphasis added).

The CAP SEIR contains a similar obligation: “CAP Mitigation Measure M-GHG-1: The County *shall require* in-process and future GPAs to reduce their emissions.” Exhibit C (emphasis added). The GHG chapter of the SEIR states, “The approach for evaluating GPA consistency with the CAP is provided in Table 2.7-3. The County *shall implement the following mitigation measure* to reduce significant cumulative GHG impacts and to ensure that the County can achieve its reduction targets as part of the CAP: CAP Mitigation Measure M-GHG-1.” *Id.* This mitigation requirement applies to all

approved before January 2018, regardless of when the project's notice of preparation was issued. *See* CAP SEIR Table 2.7-3.

The CAP also clarifies that M-GHG-1 was intended and required for all in-process GPAs:

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

Exhibit D (emphasis added).

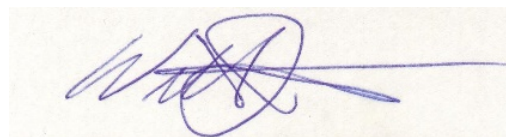
As County Counsel has recognized, the Court's prohibitory injunction ultimately does "not allow any [pending] development projects to proceed" in their current form. *See* Exhibit E. Indeed, as long as the CAP approvals remain in effect, there is no legal path for approving GPA projects. The CAP approvals require the County to use M-GHG-1, but M-GHG-1 is enjoined. And approving GPAs without relying on M-GHG-1 would violate the CAP approvals.

We urge the Board to recognize this reality and refrain from processing any additional GPAs until it adopts a new, legally defensible CAP or otherwise remedies the legal defects in M-GHG-1. Proceeding with the approval of a GPA project prior to doing so would be unlawful.

Please include this letter in the record of proceedings for all GPA projects, including, without limitation, those projects listed in note 1 above.

Very truly yours,

SHUTE, MIHALY & WEINBERGER LLP



William J. White

Board of Supervisors
March 1, 2019
Page 4

cc (*via e-mail only*):

Michael Zischke, San Diego County Outside Counsel
Joshua Heinlein, Senior Deputy County Counsel
Randall Sjoblom, Senior Deputy County Counsel
Sarah Aghassi, Deputy Chief Administrative Officer
Mark Wardlaw, Director of Planning and Development
Mark Slovick, Deputy Director of Planning and Development
Rami Talleh, Deputy Director of Planning and Development
Gregory Mattson, Planning Manager
Darin Neufeld, Planning Manager
Ashley Smith, Planning Manager
Nicolas Gustafson , Planning Manager
Kevin Johnston, Land Use Environmental Planner

EXHIBIT A

FILED
Clerk of the Superior Court

DEC 24 2018

By: K. BRECKENRIDGE

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

SIERRA CLUB, CENTER FOR
BIOLOGICAL DIVERSITY, CLEVELAND
NATIONAL FOREST FOUNDATION,
CLIMATE ACTION CAMPAIGN,
ENDANGERED HABITATS LEAGUE,
ENVIRONMENTAL CENTER OF SAN
DIEGO, and PRESERVE WILD SANTEE,

Petitioners,

v.

COUNTY OF SAN DIEGO,

Respondent.

Case No. 37-2018-00014081-CU-TT-CTL

Related Cases:

No. 37-2012-101054-CU-TT-CTL

No. 37-2016-037402-CU-TT-CTL

No. 37-2018-013324-CU-TT-CTL

Hon. Timothy Taylor, Dept. C-72

~~PROPOSED~~ PERMANENT INJUNCTION

[CALIFORNIA ENVIRONMENTAL QUALITY
ACT]

[IMAGED FILE]

Action Filed: March 20, 2018

Date of Hearing: December 21, 2018

Time of Hearing: 1:30 p.m.

1 Final Judgment on Petitioners' Petition for Writ of Mandate in favor of Petitioners and
2 Plaintiffs Sierra Club, Center for Biological Diversity, Cleveland National Forest Foundation,
3 Climate Action Campaign, Endangered Habitats League, Environmental Center of San Diego,
4 and Preserve Wild Santee, and against Respondent and Defendant County of San Diego
5 ("County"), is entered concurrently herewith.

6 This Court finds that during CEQA review of greenhouse gas ("GHG") emissions
7 impacts of development proposals on unincorporated County lands and the issuance of any
8 permits or entitlements for any General Plan amendment projects approved on or after February
9 14, 2018, the County, its agencies, agents, employees, representatives, supervisors, or other
10 personnel, should not have relied ~~rely~~ on ~~out of County GHG offsets, such as those set forth in~~ h
11 Mitigation Measure M-GHG-1, which is contained within the County of San Diego Supplement
12 to the 2011 General Plan Update Program Environmental Impact Report, dated January 2018.

13 **IT IS NOW ORDERED** that commencing immediately upon service of this Permanent
14 Injunction and until the Court determines that the County has adequately complied with CEQA,
15 the Planning and Zoning Law, and all other applicable laws, by, at a minimum, correcting,
16 avoiding, or otherwise resolving the errors identified by the Court in its statement of decision,
17 the County, its agencies, agents, employees, representatives, supervisors, or other personnel, are
18 enjoined as follows.

19 a. During review of greenhouse gas ("GHG") emissions impacts of development
20 proposals on unincorporated County lands under CEQA, including in the review of such
21 impacts prior to the issuance of any permits or entitlements for any General Plan
22 amendment projects approved on or after February 14, 2018, the County, its agencies,
23 agents, employees, representatives, supervisors, or other personnel, shall not rely on ~~out~~
24 h ~~of County GHG offsets, such as those set forth in~~ Mitigation Measure M-GHG-1, which
25 is contained within the County of San Diego Supplement to the 2011 General Plan
26 Update Program Environmental Impact Report, dated January 2018.

27 ~~b. The County, its agencies, agents, employees, representatives, supervisors, or other~~
28 h ~~personnel, shall not (i) approve any General Plan amendment projects or (ii) approve any~~

1 such applications already on file where such General Plan amendment projects increase
2 GHG emissions within the area of the unincorporated County lands, either directly or
3 through an increase in GHG emissions from increased Vehicle Miles Traveled (VMTs),
4 above that projected for the land uses designated in the 2011 General Plan Update
5 Program Environmental Impact Report.

6
7 **THE FOREGOING PERMANENT INJUNCTION IS IMMEDIATELY ISSUED.**
8 **SO ORDERED.**

9
10 Dated: 12/24/18

By 

Honorable Timothy B. Taylor
JUDGE OF THE SUPERIOR COURT

FILED
Clerk of the Superior Court

JAN 16 2019

By: Y. Terronez, Clerk

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

SIERRA CLUB, CENTER FOR
BIOLOGICAL DIVERSITY, CLEVELAND
NATIONAL FOREST FOUNDATION,
CLIMATE ACTION CAMPAIGN,
ENDANGERED HABITATS LEAGUE,
ENVIRONMENTAL CENTER OF SAN
DIEGO, and PRESERVE WILD SANTEE,

Petitioners,

v.

COUNTY OF SAN DIEGO,

Respondent.

Case No. 37-2018-00014081-CU-TT-CTL

Related Cases:

No. 37-2012-101054-CU-TT-CTL

No. 37-2016-037402-CU-TT-CTL

No. 37-2018-013324-CU-TT-CTL

Hon. Timothy Taylor, Dept. C-72

~~PROPOSED~~ AMENDED
PEREMPTORY WRIT OF MANDATE

[CALIFORNIA ENVIRONMENTAL QUALITY
ACT]

[IMAGED FILE]

Action Filed: March 20, 2018
Date of Hearing: December 21, 2018
Time of Hearing: 1:30 p.m.

1 Final Judgment on Petitioner's Petition for Writ of Mandate in favor of Petitioner and
2 Plaintiff Golden Door Properties, LLC, and against Respondent and Defendant County of San
3 Diego ("County"), is entered concurrently herewith.

4 This Court finds that during CEQA review of greenhouse gas ("GHG") emissions
5 impacts of development proposals on unincorporated County lands and the issuance of any
6 permits or entitlements for any General Plan amendment projects approved on or after February
7 14, 2018, the County, its agencies, agents, employees, representatives, supervisors, or other
8 personnel, should not have relied ~~rely on out-of-County GHG offsets, such as those set forth in~~
9 Mitigation Measure M-GHG-1, which is contained within the County of San Diego Supplement
10 to the 2011 General Plan Update Program Environmental Impact Report, dated January 2018.

11 IT IS NOW ORDERED that upon service of this Peremptory Writ of Mandate:

12 1. Respondent shall, within 30 days, set aside its February 14, 2018 approvals of (a)
13 its Climate Action Plan; (b) the County of San Diego Guidelines for Determining Significance /
14 Climate Change; (c) the Climate Action Plan Consistency Review Checklist; (d) the certification
15 of the Final Supplement to the 2011 General Plan Update Program Environmental Impact
16 Report, dated January 2018, and all attendant approvals in reliance thereon (as detailed in items 1
17 through 8 of the County's February 14, 2018 minute order, which is located at AR80:28788-89).

18 2. This Peremptory Writ of Mandate may be served upon Respondent pursuant to
19 Code of Civil Procedure section 1010.6.

20 3. Respondent shall file and serve a return within 30 days of service of this
21 Peremptory Writ of Mandate describing its compliance therewith. Petitioner shall have 20 days
22 from the date of the return to file any objections.

23 4. Respondent shall also include in its initial return an estimated schedule for
24 preparing a new Climate Action Plan and Guidelines for Determining Significance for
25 Greenhouse Gas Emissions, and complying with CEQA and the Planning and Zoning Law as it
26 applies to those actions. The schedule shall be updated by filing supplemental returns at
27 reasonable intervals not to exceed 45 days.

28 5. The Court shall retain jurisdiction over these proceedings pursuant to Public

1 Resources Code section 21168.9(b) until the Court determines that Respondent has adequately
2 complied with CEQA, the Planning and Zoning Law, and all other applicable laws.

3 6. In accordance with Public Resources Code section 21168.9(c), this writ does not
4 direct Respondent to exercise its discretion in any particular way.
5

6 **THE FOREGOING PEREMPTORY WRIT OF MANDATE IS IMMEDIATELY**
7 **ISSUED.**

8 **SO ORDERED.**

9
10 Dated: Jan. 16, 2019

By

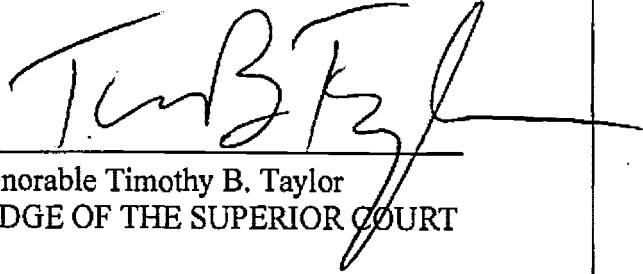

Honorable Timothy B. Taylor
JUDGE OF THE SUPERIOR COURT

EXHIBIT B

COUNTY OF SAN DIEGO
GUIDELINES FOR DETERMINING SIGNIFICANCE
CLIMATE CHANGE



LAND USE AND ENVIRONMENT GROUP

Planning & Development Services

January 2018

General Plan Amendment projects that intensify GHG emissions beyond current designations are required to provide additional analysis beyond the Checklist. As specified in Mitigation Measure GHG-1 of the CAP's SEIR, the County shall require GPAs to reduce their emissions to ensure that CAP emission forecasts are not substantially altered such that attainment of GHG reduction targets could not be achieved. Project applicants for GPAs could accomplish this through two options:

- **Option 1:** GPA projects shall achieve no net increase in GHG emissions from additional density above the 2011 GPU. Applicants shall be required to quantify the GHG emissions from their projects that exceed the GHG emissions for the 2011 GPU densities or intensities forming the basis of the CAP forecasts. This increase in emissions shall be reduced by demonstrating compliance with relevant CAP measures as identified in the Checklist first. Any additional emission reductions needed shall then be achieved through onsite design features and mitigation measures, followed by offsite mitigation. Offsite mitigation, including the purchase of carbon offset credits, would be allowed after all feasible onsite design features and mitigation measures have been incorporated.
- **Option 2:** GPA projects shall reduce all project GHG emissions to zero to achieve no net increase over baseline conditions (carbon neutrality). Project emissions shall be reduced to zero through onsite design features, mitigation measures, and offsite mitigation, including purchase of carbon offset credits. Applicants shall demonstrate compliance with relevant CAP measures as identified in the Checklist first. Any additional emission reductions needed shall then be achieved through onsite design features and mitigation measures, followed by offsite mitigation. Offsite mitigation, including purchase of carbon offset credits, would be allowed after all feasible onsite design features and mitigation measures have been incorporated.

Project specific mitigation measures, which would be in addition to all CAP Checklist items and all feasible on-site project design features, must include specific, enforceable actions to reduce project emissions, and an analysis is required to show the emission reductions achieved from each measure. Each mitigation measure should include references or a logical, fact based explanation as to why a specific mitigation measure would achieve the stated reductions. Mitigation measures and/or design features must be supported with substantial evidence showing impacts have been reduced as described in Options 1 and 2 above.

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 CEQA and Climate Change. 2008. Technical Advisory. CEQA AND CLIMATE CHANGE: Addressing Climate Change through California Environmental Quality Act (CEQA) Review. See Attachment 3, "Examples of GHG Reduction Measures." Available: <http://opr.ca.gov/docs/june08-ceqa.pdf>.
- California Air Pollution Control Officers Association (CAPCOA). 2008 (January). CEQA & Climate Change. Evaluating and Addressing Greenhouse Gas Emissions from Projects Subject to the California Environmental Quality Act. See page 79, "Mitigation Strategies for GHG." Available: <http://www.capcoa.org/wp-content/uploads/downloads/2010/05/CAPCOA-White-Paper.pdf>.
- California Air Pollution Control Officers Association (CAPCOA). 2010 (August). Quantifying Greenhouse Gas Mitigation Measures. A Resource for Local Government to Assess Emission Reduction from Greenhouse Gas Mitigation Measures. Available: <http://www.capcoa.org/wp-content/uploads/2010/11/CAPCOA-Quantification-Report-9-14-Final.pdf>.

- Attorney General of the State of California. 2008 (December) [revised January 2010]. The California Environmental Quality Act. Addressing Global Warming Impacts at the Local Agency Level. Available: http://ag.ca.gov/globalwarming/pdf/GW_mitigation_measures.pdf.

Offsite mitigation that may include carbon offsets must comply with the requirements outlined in the CAP's SEIR Mitigation Measure GHG-1, which details sources of carbon offsets, standards for acceptable carbon offsets, and the County's preferred geographic hierarchy for implementation.

Contents of Climate Change Analysis Reports

Guidance for project-specific GHG Technical Reports is outlined in the Report Format and Content Requirements for Climate Change document, provided under separate cover. The Report Format and Content Requirements document provides guidance on the outline and content of GHG analyses for discretionary projects processed by PDS that cannot show compliance with the CAP Checklist.

5. MONITORING AND UPDATE MECHANISMS

The County will prepare a CAP update every five years beginning in 2025. The CAP update will include updated baseline inventories, adjustments to reduction measures, as necessary, and any changes to land use projections, to achieve consistency with zoning and then-current General Plan land use designations and policies. Comprehensive updates to these Guidelines and associated Checklist will be coordinated with each CAP update and are subject to approval by the Board. Future updates to the CAP, Guidelines, and Checklist will comply with CEQA.

In addition to the updates to these Guidelines and Checklist that are coordinated with the comprehensive CAP updates every five years, the Guidelines and Checklist may also be administratively updated in the interim by the County to comply with amendments to State laws or court directives, or to remove measures that may become mandatory through future updates to State or local codes. Administrative revisions to the Guidelines and Checklist will be limited to changes that do not trigger a subsequent EIR or a supplement to the SEIR for the CAP pursuant to CEQA Guidelines Section 15162. Administrative revisions, as described above, will not require approval by the Board. All other changes to the Guidelines and Checklist require Board approval.

EXHIBIT C

**Final
Supplement to the 2011 General Plan Update
Program Environmental Impact Report
for the
Climate Action Plan, General Plan Amendment, GHG Threshold, and
Guidelines for Determining Significance for Climate Change
EIR # PDS2016-ER-16-00-003 | SCH # 2016101055**

**For the
County of San Diego
Planning & Development Services Department**

**PREPARED FOR
County of San Diego
Planning & Development Services Department
5510 Overland Avenue, Suite 310
San Diego, CA 92123**

**PREPARED BY
Ascent Environmental, Inc.
600 B Street, Suite 300
San Diego, CA 92101
Contact: Amanda Olekszulín, Project Manager**

JANUARY 2018

(Option 2) GHG emissions for a 30-year period.⁷ The approach for evaluating GPA consistency with the CAP is in **Table 2.7-3** and described below.

CARB recommends that “lead agencies prioritize on-site design features and direct investments in GHG reductions in the vicinity of the project” (CARB 2017a). CARB also recognizes that “[w]here further 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” (CARB 2017a). Examples of off-site mitigation include, among other mechanisms, the purchase of verifiable carbon “offsets” from a reputable carbon registry that will undertake mitigation. The use of carbon offsets to mitigate GHG emissions is expressly authorized by CEQA Guidelines section 15126.4(c)(3).

One carbon offset credit represents the past reduction or sequestration of one metric ton of carbon dioxide equivalent that is “not otherwise required” (CEQA Guidelines section 15126.4(c)(3)). Carbon offsets that reduce the net increase of GHG emissions shall achieve real, permanent, quantifiable, verifiable, and enforceable reductions (Cal. Health & Saf. Code section 38562(d)(1)).

The approach for evaluating GPA consistency with the CAP is provided in **Table 2.7-3**. The County shall implement the following mitigation measure to reduce significant cumulative GHG impacts and to ensure that the County can achieve its reduction targets as part of the CAP:

CAP Mitigation Measure M-GHG-1: The County shall require in-process and future GPAs to reduce their emissions to ensure that CAP emission forecasts are not substantially altered such that attainment of GHG reduction targets could not be achieved. Project applicants for in-process and future GPAs could accomplish this through two options, as outlined below:

Option 1 (No Net Increase): GPA project applicants shall achieve no net increase in GHG emissions from additional density above the 2011 GPU. Applicants shall be required in their respective CEQA documents to quantify the GHG emissions from their projects that exceed the GHG emissions for the 2011 GPU density or intensity forming the basis of the CAP emission forecasts (i.e., projections). This increase in emissions shall be reduced through on-site design features and mitigation measures and off-site mitigation, including purchase of carbon offset credits by the applicant. Applicants shall demonstrate compliance with relevant CAP measures as identified in the “CAP Consistency Review Checklist” in addition to all feasible on-site design features and mitigation measures. Off-site mitigation, including purchase of carbon offset credits, would be allowed after all feasible on-site design features and mitigation measures have been incorporated.

For example, if 400 residential units were allowed under the 2011 GPU and a GPA proposes 500 residential units, the emissions for the additional 100 units would be

⁷ A “project life” is 30 years. This methodology is consistent with the 30-year project life time frame used by the South Coast Air Quality Management District’s GHG guidance (SCAQMD 2008).

Table 2.7-3 Approach for Evaluating GPA Consistency with CAP

	New GPAs No Net Increase	New GPAs Net Zero	In-Process GPAs No Net Increase	In-Process GPAs Net Zero
Project submittal date	For projects submitted Post-CAP NOP (October 2016)	For projects submitted Post-CAP NOP (October 2016)	For projects submitted Pre-CAP NOP (October 2016)	For projects submitted Pre-CAP NOP (October 2016)
For density/ intensity allowed under the General Plan	Requirement: <ul style="list-style-type: none"> Comply with relevant CAP measures identified in the CAP Consistency Review Checklist 	Requirement: <ul style="list-style-type: none"> Comply with relevant CAP measures identified in the CAP Consistency Review Checklist; Implement all feasible on-site design features and mitigation measures as proposed by the project (project specific determination); and 	Requirement: <ul style="list-style-type: none"> Comply with relevant CAP measures identified in the CAP Consistency Review Checklist 	Requirement: <ul style="list-style-type: none"> Comply with relevant CAP measures identified in the CAP Consistency Review Checklist; Implement all feasible on-site design features and mitigation measures as proposed by the project (project specific determination); and
For any density/ intensity beyond the General Plan	Requirement: <ul style="list-style-type: none"> Comply with relevant CAP measures identified in the CAP Consistency Review Checklist; Implement all feasible on-site design features and mitigation measures; and Implement off-site mitigation, which may include purchase of carbon offsets for the remainder GHG emissions 	<ul style="list-style-type: none"> Implement off-site mitigation, which may include purchase of carbon offsets for the remainder GHG emissions 	Requirement: <ul style="list-style-type: none"> Comply with relevant CAP measures identified in the CAP Consistency Review Checklist; Implement all feasible on-site design features and mitigation measures; and Implement off-site mitigation, which may include purchase of carbon offsets for the remainder GHG emissions 	<ul style="list-style-type: none"> Implement off-site mitigation, which may include purchase of carbon offsets for the remainder GHG emissions
Outcome for General Plan density/ intensity	<ul style="list-style-type: none"> Consistency with CAP 	<ul style="list-style-type: none"> For all project densities/intensities: 	<ul style="list-style-type: none"> Consistency with the CAP 	<ul style="list-style-type: none"> For all project densities/intensities:
Outcome for density/ intensity beyond General Plan	<ul style="list-style-type: none"> Achieve a no net increase in GHG emissions for increased density component – to avoid conflicting with the CAP emission forecasts 	<ul style="list-style-type: none"> – Achieve net zero GHG emissions – to avoid conflicting with the CAP emission forecasts 	<ul style="list-style-type: none"> Achieve a no net increase in GHG emissions for increased density component – to avoid conflicting with the CAP emission forecasts 	<ul style="list-style-type: none"> – Achieve net zero GHG emissions – to avoid conflicting with the CAP emission forecasts

EXHIBIT D



LIVE WELL
SAN DIEGO

February 2018

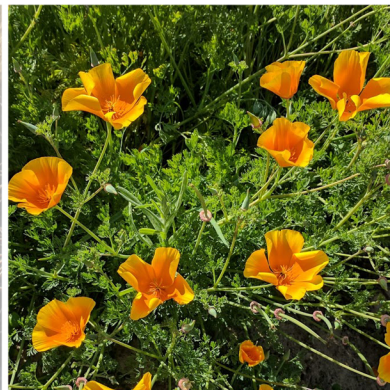
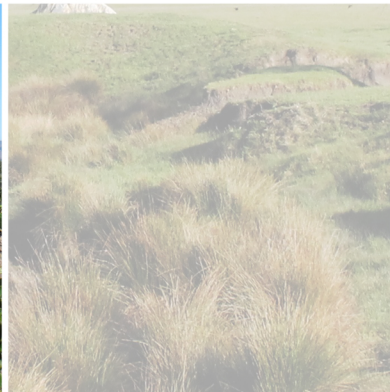


County of San Diego

CLIMATE ACTION PLAN

Final

SCH#2016101055





Emissions Gap

A comparison between the GHG reduction targets and emission projections highlights the remaining emissions gap, or reductions needed for the County to meet its future GHG reduction targets. The County is on track to meet its 2020 target with the help of existing legislation, such as the Renewables Portfolio Standard. However, to meet the 2030 target and 2050 goal, the County will need to achieve a reduction of 897,145 MTCO₂e by 2030 and

2,252,861 MTCO₂e by 2050 beyond legislative-adjusted projections. To close the emissions gap shown in Figure 2.3, this CAP proposes 11 strategies and 26 measures that the County would implement to reduce GHG emissions. Chapter 3 of the CAP discusses the GHG reduction strategies and measures aimed at closing the emissions gap for 2030.

General Plan Amendments

The GHG emissions inventory for the CAP does not include emissions attributable to proposed GPAs that would increase density/intensity above what is allowed in the General Plan. Even though there were GPAs that were adopted between 2011 (adoption of 2011 General Plan Update) and 2014 (inventory baseline year), none of these GPAs were constructed by 2014 and; therefore, their GHG emissions are not included in the 2014 inventory. The 2014 inventory is based on emissions-generating activities that existed on the ground in 2014.

The CAP GHG projections to 2020, 2030, and 2050 include GHG emissions from the GPAs that were adopted by the County between August 2011 (adoption of 2011 General Plan Update) and August 2017 (date at which the Draft CAP and CAP Draft Supplemental Environmental Impact Report [SEIR] were released for public review). See Appendix A for a detailed discussion regarding adopted GPAs, which were incorporated in the GHG projections.

General Plan Amendment projects currently in process and under County review, which have not been adopted by the San Diego County Board of Supervisors (Board)

have not been included in the 2014 GHG emissions inventory or projections. These projects are analyzed in the cumulative impact analysis of the Final SEIR, Chapter 2.7, because they represent current or reasonably foreseeable probable future projects. CEQA Guidelines Section 15130 requires discussion of cumulative impacts. As discussed in the Final SEIR, Chapter 2.7, GPAs have the potential to result in a significant cumulative impact and also impact the ability of the County to meet its targets and goal. However, Mitigation Measure GHG-1 is provided to reduce the cumulative impact to less than significant. In addition, Mitigation Measure GHG-1 would be required for all future GPAs not discussed in the Final SEIR. With incorporation of Mitigation Measure GHG-1, GPAs listed in the cumulative impact discussion of the Draft SEIR and all future GPAs that propose increased density/intensity above what is allowed in the General Plan will comply with the CAP and; therefore, will not interfere with the County's 2020 and 2030 GHG reduction targets or 2050 goal. General Plan Amendments would, therefore, comply with the threshold of significance, which is consistency with the CAP.

EXHIBIT E

1 THOMAS E. MONTGOMERY, County Counsel
County of San Diego
2 By CLAUDIA G. SILVA, Assistant County Counsel (SBN 167868)
JOSHUA M. HEINLEIN, Senior Deputy (SBN 239236)
3 1600 Pacific Highway, Room 355
San Diego, California 92101
4 Telephone: (619) 531-4860; Fax: (619) 531-6005
Email: claudia.silva@sdcounty.ca.gov
5 Email: joshua.heinlein@sdcounty.ca.gov
Exempt from Filing Fee, Gov't Code § 6103

6 Attorneys for Respondent County of San Diego
7

8 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**

9 **IN AND FOR THE COUNTY OF SAN DIEGO**

10
11 SIERRA CLUB,) No. 37-2012-00101054-CU-TT-CTL
12) Action Filed: July 20, 2012
Petitioner,)
13) Related Cases:
14 v.) No. 37-2018-00013324-CU-TT-CTL
15) No. 37-2018-00014081-CU-TT-CTL
COUNTY OF SAN DIEGO,)
16) **RESPONDENT COUNTY OF SAN DIEGO'S**
Respondent.) **OPPOSITION TO SIERRA CLUB'S MOTION**
17) **FOR STAY OR, IN THE ALTERNATIVE,**
18) **MOTION FOR PRELIMINARY INJUNCTION**
19)
20) Date: September 14, 2018
Time: 1:30 p.m.
21) Dept: C-72
Judge: Hon. Timothy Taylor
22) **IMAGED FILE**
23)
24)
25)
26)
27)
28)

Respondent County of San Diego ("County") submits the following brief in opposition to
Petitioner Sierra Club's motion for a stay order or, in the alternative, motion for preliminary injunction.

1 Finally, “[t]he judicial resistance to injunctive relief increases when the attempt is made to compel
2 the doing of affirmative acts. ... The granting of a mandatory injunction pending trial is not permitted
3 except in extreme cases where the right thereto is clearly established.” *Shoemaker v. Cty. Of L.A.*, 37
4 Cal.App.4th 618, 625 (1995) (emphasis added; internal citations and quotations omitted). A court should
5 not grant a preliminary injunction when its effect would be to grant the moving party all of the injunctive
6 relief requested in its complaint. *Santa Monica v. Superior Court of L.A. Cty.*, 231 Cal.App.2d 223, 227
7 (1964).

8 The injunction Petitioners seek would effectively grant Petitioners all of the relief they seek in the
9 litigation. The injunction would force the County to (a) not allow any development projects to proceed,
10 whether they are consistent with the 2011 GPU land uses or seek an amendment, (b) strip the Board of its
11 discretionary authority to address matters of public interest such as the widely-publicized housing crisis in
12 reviewing projects that are in process, and (c) require applicants of projects, who are not before this Court,
13 that are currently in process to revise the sections of their EIRs addressing GHG emissions. Moreover,
14 Petitioners have an adequate remedy – they can challenge the individual projects.

15 **B. M-GHG-1 Is Not a Program; It Is a Mitigation Measure for a Cumulative Impact that Will**
16 **Be Applied to GPAs Along with the Other Mitigation Measures in the 2011 GPU that**
GPAs Must Implement.

17 Before directly addressing the various claims asserted by Petitioners regarding the adequacy of the
18 SEIR, it is important to set the record straight regarding exactly what M-GHG-1 is. Sierra Club claims
19 that M-GHG-1 is “a new method of allowing essentially unlimited development in undeveloped areas of
20 the County.” (Sierra Club Motion, 7:21-22.) This characterization is disingenuous at best. M-GHG-1
21 does not authorize any development. **M-GHG-1 is a mitigation measure for cumulative impacts from**
22 **future and in-process GPAs.** (Takahashi Dec., Ex. G, pp. 278-281.)

23 A program EIR, such as the SEIR here, need not be as detailed as an EIR for a construction project
24 “because the effects of the construction can be predicted with greater accuracy.” CEQA Guidelines §
25 15146(a). “An EIR shall discuss cumulative impacts of a project when the project’s incremental effect is
26 cumulatively considerable, as defined in section 15065(a)(3). Where a lead agency is examining a project
27 with an incremental effect that is not ‘cumulatively considerable,’ a lead agency need not consider that
28 effect significant, but shall briefly describe its basis for concluding that the incremental effect is not