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Letter
X33

January 16, 2018

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

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

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

Dear Chair Brooks and Honorable Planning Commissioners:

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

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

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

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Response to Comment Letter X33

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

a. The Direct Investment Program.

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

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

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

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b. The California Air Pollution Control Officers Association Registry.

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

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

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

c. Installing Solar Photovoltaics on Existing Homes.

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

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

The CAP states:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The County Climate Change Action Plan will achieve comprehensive and enforceable GHG emissions reduction of 17% (totaling 23,572 MTC02E) from County operations from 2006 by 2020 and 9% reduction (totaling 479,717 MTC02E) in community emissions from 2006 by 2020.

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

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

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

adoption of the CAP. Reductions in the CAP are consistent with the General Plan. CAP Mitigation Measure M-GHG-1, which may include purchase of carbon offset credits from a CARB-approved registry outside of the County, are a separate regulatory scheme than what is required for the County in its CAP.

Save Our Peninsula Comm. V. County of Monterey, 87 Cal.App.4th 99, 142 (2001) provides that “When we review an agency’s decision for consistency with its own general plan, we accord great deference to the agency’s determination. This is because the body which adopted the general plan policies in its legislative capacity has unique competence to interpret those policies when applying them in its adjudicatory capacity. (*City of Walnut Creek v. County of Contra Costa* (1980) 101 Cal. App. 3d 1012, 1021[162 Cal. Rptr. 224].) Because policies in a general plan reflect a range of competing interests, the governmental agency must be allowed to weigh and balance the plan’s policies when applying them, and it has broad discretion to construe its policies in light of the plan’s purposes. (*Sequoyah Hills Homeowners Assn. v. City of Oakland* (1993) 23 Cal. App. 4th 704 [29 Cal. Rptr. 2d 182]; *Greenebaum v. City of Los Angeles* (1984) 153 Cal. App. 3d 391, 407 [200 Cal. Rptr. 237].) A reviewing court’s role ‘is simply to decide whether the city officials considered the applicable policies and the extent to which the proposed project conforms with those policies.’ (*Sequoyah Hills Homeowners Assn. v. City of Oakland*, supra, 23 Cal. App. 4th at pp. 719-720.)” For all the reasons previously explained, the CAP conforms to General Plan Mitigation Measure CC-1.2 and Conservation and Open Space Goal-20.

As described in responses above, the CAP, which is an adaptive management plan, will be implemented and monitored to ensure that the identified performance standard (i.e., meeting state-legislative targets) is achieved and the County will enforce the achievement of these standards. This comment will be included with the Final SEIR and provided to decision makers.

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

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

The CAP was designed to support the following primary functions:

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

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

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

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

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

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

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

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

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

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

- 1) project design features/on-site reduction measures; 2) off-site within the unincorporated areas of the County of San Diego; 3) off-site within the County of San Diego; 4) off-site within the State of California; 5) off-site within the United States; and 6) off-site internationally.

(SEIR, 2.7-48.)

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

X33-6

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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CONCLUSION

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

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

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

Sincerely,



Josh Chatten-Brown
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Attorneys for Sierra Club

X33-11

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

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January 16, 2018
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