

From: Livia Borak Beaudin
To: CAP
Subject: CLIMATE ACTION PLAN (PDS2015-POD-15-002), GENERAL PLAN AMENDMENT (PDS2016-GPA-16-007), DRAFT SEIR (LOG NO. PDS2016-ER-16-00-003)
Date: Monday, September 25, 2017 3:36:53 PM
Attachment: [image001.png](#)
[SD County CAP CERF Comments.pdf](#)

Please find attached Coastal Environmental Rights Foundation's comments on the County's Climate Action Plan, SEIR, CAP Checklist, and Thresholds of Significance.

O11-1

Thank you.



"Like music and art, love of nature is a common language that can transcend political or social boundaries." – Jimmy Carter

Response to Comment Letter O11

Coastal Environmental Rights Foundation
Livia Borak Beaudin, Legal Advisor
September 25, 2017

O11-1 The comment states comments are enclosed. No further response is required.



September 25, 2017

Maggie Soffel
 Land Use/Environmental Planner
 Planning and Development Services
 5510 Overland Ave, Suite 110
 San Diego, CA 92123

Via Electronic Mail
 CAP@sdcounty.ca.gov

Re: COUNTY OF SAN DIEGO CLIMATE ACTION PLAN (PDS2015-POD-15-002),
GENERAL PLAN AMENDMENT (PDS2016-GPA-16-007),
DRAFT SEIR (LOG NO. PDS2016-ER-16-00-003)

Dear Ms. Soffel,

Please accept the following comments on behalf of Coastal Environmental Rights Foundation (CERF) with regard to the County's Climate Action Plan (CAP), Supplemental EIR (SEIR), CAP Checklist, and Thresholds of Significance. CERF is a nonprofit environmental organization founded by surfers in North San Diego County and active throughout California's coastal communities. CERF was established to aggressively advocate, including through litigation, for the protection and enhancement of coastal natural resources and the quality of life for coastal residents. As detailed below, CERF has serious concerns regarding the County's reliance on the CAP as a CEQA tiering document for future projects.

O11-2

I. The CAP, Consistency Checklist and Thresholds of Significance Do Not Comply with CEQA Tiering Principles

The County CAP is intended to mitigate the 2011 General Plan Update impacts and mitigate future county-wide impacts. To achieve this goal, the County proposes to tier from the SEIR for those projects establishing consistency with the CAP. (See Guidelines for Determining Significance, p. 1). This is improper.

Beyond 2030, the CAP is insufficient to demonstrate compliance with state emission reduction goals. (SEIR, p. 2.7-42; Table 2.7-2). Despite implementation of the CAP, significant greenhouse gas impacts will result because the County will require additional (undetermined) actions to achieve the long-term 2050 goal. (*Id.*, SEIR, p. 2.7-36). However, the CAP and the Thresholds of Significance are meant to function as tiering documents for new development beyond 2030. The CAP and Thresholds of Significance allow development projects approved between now and 2030 (and built beyond 2030) to (1) avoid CEQA review for GHG emission impacts altogether if the project falls below the threshold; and (2) only demonstrate consistency with the 2020 and 2030 target. New development projects undergoing review now, however, will continue to emit GHGs well beyond 2030. Indeed, the CAP Checklist and current GHG emission models amortize construction emissions over an assumed 30-year life of new development projects. (SEIR, p. 2.7-37, footnote 7). Therefore, most – if not all – projects approved using the CAP Checklist and Thresholds of Significance will continue past the interim target without any additional mitigation measures to

O11-3



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O11-3 The comment states that the County CAP is intended to mitigate the 2011 GPU impacts, mitigate future countywide impacts, and serve as a tiering mechanism for those projects establishing consistency with the CAP. The comment further states that beyond 2030, significant and unmitigable GHG impacts would occur and; therefore, the CAP does not constitute a qualified GHG reduction plan pursuant to CEQA Guidelines Section 15183.5(b).

The County disagrees with the comment. The ability of later projects to tier from the SEIR analysis is not relevant to whether the SEIR is a valid environmental impact report. Nevertheless, the County addresses this concern below.

(a) The CAP provides mitigation required in the 2011 GPU EIR.

The purpose of the CAP is to mitigate GHG emissions resulting from buildout of the 2011 GPU in accordance with GPU Policy COS-20.1 and will serve as a qualified GHG reduction plan that provides for the mitigation identified in the 2011 GPU PEIR (Mitigation Measure CC-1.2). Additionally, the County's CAP and associated GHG reduction measures are consistent with the State's GHG reduction objectives. The CAP includes 30 GHG reduction measures which form the regulatory framework that implements the plan. The Draft CAP sets forth reductions that are achievable, enforceable, and measurable. Implementation of a CAP is adaptive and per CEQA Guidelines Section 15183.5, the County is required to monitor progress towards attaining adopted reduction targets. Also, per CEQA Guidelines Section 15183.5(b)(1)(E), the County is required to amend the CAP if it finds that the plan is not achieving those targets. In addition, the CAP specifically includes an implementation requirement for regular monitoring and updates.

Regarding the fundamental purpose and scope of the Draft SEIR, please refer to Sections 1.2.1, Project Background, and Section 1.4, Intended Uses of this EIR, of the Draft SEIR. As described therein, the County adopted the GPU and certified a Program EIR (2011 GPU PEIR) which addressed the potential

effects of implementing the 2011 GPU. Within the 2011 GPU and PEIR, the County adopted goals and policies aimed at reducing GHG emissions and adopted mitigation measures (i.e., CC-1.2, CC-1.7, and CC-1.8) that called for the preparation of a climate action plan designed to reach specified GHG reduction targets in accordance with regulatory requirements.

The County determined that the proposed CAP and changes to the policy of the 2011 GPU and mitigation in the 2011 GPU PEIR triggered the requirements for preparation of a supplement to the 2011 GPU PEIR in accordance with CEQA guidelines Section 15163(a)(2). The Draft SEIR serves as a supplement to the 2011 GPU PEIR.

(b) The Draft SEIR is intended to serve as a program EIR, which facilitates streamlining of analysis of greenhouse gas emissions.

The Draft SEIR also functions as a Program EIR under CEQA Guidelines Section 15168(c) and would be used for streamlining future projects if the County determines that subsequent actions would be within the scope of the CAP and the Draft SEIR.

The County's proposed CAP is a comprehensive plan for the reduction of GHG emissions through a series of actions and strategies that would be undertaken by the County. As such, the CAP meets the CEQA definition of a project for a program of activities. Specifically, as described in CEQA Guidelines 15168(a), the project consists of "one large project" that consists of "a series of actions" that are linked "geographically, as logical parts in a chain of contemplated actions; in connection with issuance of rules, regulations, plans, or other general criteria to govern the conduct of a continuing program; or as individual activities carried out under the same authorizing statutory or regulatory authority and having generally similar environmental effects which can be mitigated in similar ways." The Draft SEIR provides a good-faith, programmatic evaluation of the physical environmental impacts of all the strategies and actions that could be implemented under the CAP. As described in CEQA

Guidelines Section 15168(d), “a program EIR can be used to simplify preparation of subsequent environmental review on later parts of the program.” That process involves the lead agency determining, based on substantial evidence, whether the subsequent action is “within the scope” of the larger program of activities and has been evaluated with the appropriate environmental document. The approach has been consistently supported through relevant CEQA case law including: *Center for Biological Diversity v. California Department of Fish and Wildlife (2015)*; *Latinos Unidos de Napa v. City of Napa (2013)*; and *CREED v. City of San Diego Redevelopment Agency (2005)*.

When a program EIR is used to streamline subsequent environmental review, which may be the case for certain development projects within the County that wish to use the cumulative GHG analysis for the CAP, they must be determined to be within the scope of the program EIR. An agency must also examine site-specific program activities in the light of the program EIR to determine whether an additional environmental document must be prepared (CEQA Guidelines § 15168(c)). If the site-specific activity would not create effects or require mitigation measures that were not discussed in the program EIR, additional analysis would not be required.

(c) The CAP complies with CEQA Guidelines section 15183.5(b), which establishes the elements of a plan for the reduction of greenhouse gas emissions.

The CAP is intended to be used for streamlining future project-specific GHG emissions analyses by being prepared consistent with the tiering and streamlining provisions of Section 15183.5 of the CEQA Guidelines.

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

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

(A) Quantify greenhouse gas emissions, both existing and projected over a specified time period, resulting from activities within a defined geographic area;

(B) Establish a level, based on substantial evidence, below which the contribution to greenhouse gas emissions from activities covered by the plan would not be cumulatively considerable;

(C) Identify and analyze the greenhouse gas emissions resulting from specific actions or categories of actions anticipated within the geographic area;

(D) Specify measures or a group of measures, including performance standards, that substantial evidence demonstrates, if implemented on a project-by-project basis, would collectively achieve the specified emissions level;

(E) Establish a mechanism to monitor the plan's progress toward achieving the level and to require amendment if the plan is not achieving specified levels;

(F) Be adopted in a public process following environmental review.”

The proposed CAP has been prepared in accordance with the plan elements described in CEQA Guidelines Section 15183.5(b)(1). Chapter 2, GHG Emissions, Inventory, Projections, and Reduction Targets, describes the County's methodology for quantification of existing baseline and projected emissions for 2020, 2030, and 2050 (CEQA Guidelines § 15183.5(b)(1)(A)). It also describes the recommended reduction targets for 2020 and 2030 which are consistent with CARB's Scoping Plan Update's recommended community targets, the State's 2014 GHG emissions inventory, and the targets established by AB 32, SB 32, and Executive Orders' B-30-15 and S-3-05 (CEQA Guidelines § 15183.5(b)(1)(B)). For the reasons described below, it is not possible for the CAP to reduce GHG emissions below the 2050 goal with a sufficient degree of certainty. Chapter 3, GHG Reduction Strategies and Measures, describes the specific strategies and actions the County would take to reduce GHG emissions and quantifies the resultant reductions that would be

achieved by each measure (CEQA Guidelines § 15183.5(b)(1)(C,D)). Chapter 5, Implementation and Monitoring, describes how the County would implement the plan, monitor its effectiveness, and adaptively manage implementation of specific strategies to achieve reduction targets (CEQA Guidelines § 15183.5(b)(1)(E)). Finally, the County is engaging in a public review process and has prepared appropriate environmental documentation evaluating the full scope of activities that could be implemented under the plan (CEQA Guidelines § 15183.5(b)(1)(F)). The commenter offers no evidence to support that the CAP does not meet the requirements of Section 15183.5.

The County has in good-faith prepared a CAP that meets all requirements for preparation of the qualified GHG reduction plan in accordance with CEQA Guidelines Section 15183.5. The County has prepared a CAP Consistency Review Checklist for consideration that would provide a process by which subsequent development projects would demonstrate through substantial evidence how they would be consistent with the CAP (i.e., they would not hinder attainment of the 2020 and 2030 reduction targets). If they were found to be consistent with the CAP, then the environmental documents prepared for these projects could rely upon and incorporate by reference the cumulative GHG analysis for the CAP as presented in the Draft SEIR. If they were not found consistent with the CAP, or if their effects on GHG emissions were found to be cumulatively considerable notwithstanding compliance with the CAP and the checklist, CEQA Guidelines section 15183.5 provides that the project would need to prepare an EIR.

Therefore, the CAP Consistency Review Checklist process, the preparation of a program EIR for the CAP, and the preparation of a qualified CAP in accordance with CEQA Guidelines Section 15183.5 work together to provide the appropriate streamlining mechanism for the evaluation of GHG emissions for future development projects.

(d) It is not feasible to provide mitigation measures that can reduce emissions below a 2050 goal with a sufficient degree of certainty

The CAP is not required to set a 2050 reduction target; therefore, the CAP calls it a goal instead of a target. The comment suggests that because the CAP identified a 2050 GHG reduction goal and did not identify GHG reduction strategies and measures that would achieve that goal (i.e., close the gap of emissions reductions), the CAP would not constitute a qualified GHG reduction plan under CEQA Guidelines Section 15183.5. The County disagrees. As described in detail above, CEQA Guidelines 15183.5 specifies a process and the components required for a qualified CAP. Within those requirements, an agency must “establish a level, based on substantial evidence, below which the contribution to greenhouse gas emissions from activities covered by the plan would not be cumulatively considerable.” (CEQA Guidelines § 15183.5(b)(1)(B)). The County has met this requirement by identifying 2020 and 2030 reduction targets and the GHG Reduction Measures and strategies that would reduce GHG emissions to this target level. The 2020 and 2030 reduction targets have also been prepared to be consistent with the most recent regulatory guidance including CARB’s Scoping Plan Update’s recommended community targets, the State’s 2014 GHG emissions inventory, and the targets established by AB 32, SB 32, and Executive Orders’ B-30-15 and S-3-05. When CARB updates their Scoping Plan in the future with direction to attain the 2050 goal, the adaptive nature of the CAP with periodic updates will enable the County to incorporate measures as directed by CARB to attain a 2050 goal.

The County disagrees that a project that is constructed prior to and operates beyond 2030 would result in significant GHG impacts beyond 2030. Projects in demonstrating their consistency with the 2020 and 2030 reduction targets would demonstrate how their construction and operations would not result in cumulatively significant contributions to GHG emissions. Further, once constructed, projects would become part of the operational baseline (e.g., built environment) that would be monitored and influenced by County actions and new regulations (e.g., future CARB rules affecting vehicle emissions). The County recognizes that projects built in

compliance with the CAP could continue to exist beyond 2030; however, prior to and after 2030, projects would be subject to a range of existing and future regulatory standards and policies applicable to the built environment. Further, the emissions reductions from CAP requirements (e.g., solar photovoltaic) would continue beyond 2030 or be replaced in future years with more efficient features.

The CAP identifies a 2050 goal based on Executive Order S-3-05. But unlike the 2020 and 2030 emissions targets, there is no regulatory guidance on how to meet that goal, nor is it feasible for the County to identify measures that would fully close the gap in emissions reductions to 2050. Nonetheless, the County has taken good faith steps within its authority to address GHG emissions beyond 2030 to the degree that technology and regulations are currently known. Further, the CAP has an implementation and monitoring component that will allow updates and adjustments as new regulations and technology become available and could allow further reductions to meet the 2050 reduction goal.

(e) If CEQA is interpreted to prohibit tiering from program EIRs that require statements of overriding consideration, lead agencies will be discouraged from adopting climate action plans for the reduction of greenhouse gases.

The comment provides that a later project could not tier from this program SEIR with anything less than its own EIR and statements of overriding consideration. The County disagrees.

Commenter's interpretation is inconsistent with CEQA's strong presumption against requiring further environmental review once an EIR has been prepared for a project. Public Resources Code § 21166, CEQA Guidelines § 15162; *Friends of the College of San Mateo Gardens v. San Mateo County Community College Dist.* (2016) 1 Cal. 5th 937, 949-950 ("These limitations are designed to balance CEQA's central purpose of promoting consideration of the environmental consequences of public decisions with interests in finality and efficiency."); *San Diego Navy Broadway Complex Coalition v. City of San Diego* (2010) 185 Cal. App. 4th 924, 934-935; *Melom v. City of Madera* (2010) 183 Cal. App. 4th 41, 48-49;

Moss v. County of Humboldt (2008) 162 Cal. App. 4th 1041, 1049. Once an EIR is completed, the lead agency may not require a subsequent or supplemental EIR unless it finds one of the following: substantial changes in the project; substantial changes in the circumstances; or new information. Public Resources Code § 21166 and CEQA Guidelines § 15162.

CEQA extends this general preference against further environmental review to plans for the reduction of greenhouse gas emissions. It authorizes lead agencies to “analyze and mitigate the significant effects of greenhouse gas emissions at a programmatic level” and provides that such a plan, once adopted following environmental review, “may be used in the cumulative impacts analysis of later projects.” CEQA Guidelines § 15183.5(a) and (b)(2).

Commenter’s interpretation would severely limit the practical applicability of these sections. Without a streamlining benefit for later projects, lead agencies would have less reason to adopt climate action plans and the development community would have less reason to support them. Alternatively, lead agencies might downplay the substantial uncertainty associated with 2050 goals to ensure that later projects could tier from the climate action plan. These outcomes conflict with CEQA’s encouragement of tiering and CEQA’s purpose as a method of informing decision makers and the public. CEQA Guidelines §§ 15002(a)(1) and 15003.

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achieve the necessary reductions beyond 2030. Thus, all projects which tier from the SEIR and rely on the CAP to mitigate greenhouse gas emissions will likewise result in a significant impact to greenhouse gas emissions beyond 2030.

Because this impact is significant and unmitigable, each tiered project must be accompanied by its own statement of overriding considerations. (*Communities for a Better Environment v. California Resources Agency* (2002) 103 Cal.App.4th 98, 124–25, overruled on other grounds by *Berkeley Hillside Preservation v. City of Berkeley* (2015) 60 Cal.4th 1086 [“Even though a prior EIR’s analysis of environmental effects may be subject to being incorporated in a later EIR for a later, more specific project, the responsible public officials must still go on the record and explain specifically why they are approving the later project despite its significant unavoidable impacts.”]).

Further, in light of this significant and unavoidable impact, the CAP does not constitute a qualified greenhouse gas reduction plan pursuant to CEQA Guidelines Section 15183.5(b). Because the CAP will result in significant greenhouse gas impacts post-2030, it fails to: (1) establish a level below which contribution to greenhouse gas emissions would not be cumulatively considerable; and (2) specify measures that if implemented would collectively achieve the specified emissions level. Moreover, the SEIR’s admission that the CAP and associated documents will result in a significant impact (failure to meet the 2050 goal) constitutes “substantial evidence that the effects of a particular project may be cumulatively considerable, notwithstanding the project’s compliance with the specified requirements in the plan...” (CEQA Guidelines §15183.5(b)(2)). Projects relying solely on CAP consistency must therefore prepare an EIR. (*Id.*).

II. The Threshold of Significance for GPAs Is Inadequate

The primary goal of an EIR is to identify a project’s significant environmental impacts and find ways to avoid or minimize them through the adoption of mitigation measures or project alternatives. (Pub. Res. Code §§ 21002.1(a), 21061). The lead agency must adopt all feasible mitigation that can substantially lessen the project’s significant impacts, and it must ensure that these measures are enforceable. (Guidelines § 21002; Guidelines § 15002(a)(3), 15126.4(a)(2); *City of Marina v. Bd. of Trustees of the Cal. State Univ.* (2006) 39 Cal.4th 341, 359, 368-69).

Notwithstanding these requirements, the County’s Threshold of Significance allows General Plan Amendments (“GPAs”) to exceed 2011 General Plan-level greenhouse gas emissions simply by demonstrating CAP consistency. (See Guidelines for Determining Significance, p. 4 [emissions reduced first by demonstrating CAP compliance and “any additional emission reductions needed” then achieved through onsite mitigation]). First, the CAP constitutes mitigation for County emissions associated with the 2011 General Plan. Therefore, GPAs which intensify greenhouse gas emissions beyond the 2011 General Plan must be mitigated fully outside of (and in addition to) the CAP. (*Id.*). In other words, the GPAs must comply fully with the CAP first, and then also mitigate all greenhouse gas emissions above and beyond those allowed under 2011 General Plan. Thus, no greenhouse gas reduction “credit” should be given for CAP compliance measures since such measures constitute mitigation for the 2011 General Plan.

Lastly, the Guidelines for Determining Significance fail to articulate how greenhouse gas emissions are to be mitigated should a project that is not a GPA fail to ensure CAP checklist consistency.

O11-3
 cont.

O11-4



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O11-4 The comment states that the County’s Threshold of Significance allows proposed General Plan Amendments (GPAs) to exceed 2011 GPU-level GHG emissions. The County disagrees with this comment. The comment also states that GPAs need to fully mitigate their GHG emissions above and beyond those allowed under the 2011 GPU. As described in Section 2.7.4, Analysis of Project and Cumulative Impacts, page 2.7-18 of the Draft SEIR, the baseline emissions inventory for the CAP does not include emissions attributable to GPAs that propose increased density or intensity above what is allowed in the 2011 GPU. Further, the Draft SEIR concluded that GPAs could increase emissions beyond those forecasted and accounted for in the CAP; as such, absent mitigation, they could result in a substantial increase in county-wide GHG emissions and would have a considerable contribution such that a new significant cumulative 2030 GHG impact would occur (see page 2.7-31). The commenter states that GPAs must comply fully with the CAP first, and then also mitigate all GHG emissions above and beyond those allowed under the 2011 General Plan. The feasible mitigation required of GPAs as set forth in Section 2.7.5.1 of the Draft SEIR accomplishes just that. The Draft SEIR recommended mitigation (see Section 2.7.5.1) that would provide GPAs two options to mitigate GHG emissions. Option 1 would require GPA projects to achieve no net increase in GHG emissions from additional density above the 2011 GPU, which would be demonstrated through the CAP Consistency Review Checklist. GPA 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, prior to mitigating through off-site GHG mitigation to reduce the remaining emissions to zero. Option 2 would require GPA projects to reduce all project GHG emissions to zero to achieve no net increase over baseline emissions (i.e., carbon neutrality). GPA applicants using this option must 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, prior to providing off-site mitigation sufficient to reduce all emissions to zero. Therefore, with implementation of the CAP, future GPA projects would be required to fully mitigate and demonstrate that GHG emissions above what were planned for in the 2011 GPU or all emissions above baseline emissions are mitigated to less-than-significant levels. Contrary to the commenter's claim, there is no GHG reduction "credit" given for GPAs.

The comment concludes by stating the Guidelines for Determining Significance fail to articulate how GHG emissions would be mitigated should a project that is not a GPA fail to ensure CAP checklist consistency. If a project could not comply with the CAP Consistency Review Checklist, it could not use the streamlining provisions of the CAP and Draft SEIR. This is stated in the CAP Consistency Review Checklist, under Checklist Procedures, number 5. The Checklist states, "[d]evelopment projects requiring discretionary review that cannot demonstrate consistency with the CAP using this Checklist shall prepare a separate, project-level GHG analysis as part of the CEQA document prepared for the project and may be required to prepare an Environmental Impact Report." Therefore, the project would be required to conduct its own analysis of GHG emissions and if significant impacts are identified mitigate its impacts to a level that would demonstrate that the project would not conflict with implementation of the County's CAP.

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III. Conclusion

Unless the County ensures its CAP is an enforceable plan with mandatory, enforceable long-term measures for both existing and future projects it will not be sufficient as a mitigation measure to the General Plan, nor will it be adequate as a CEQA streamlining document for future greenhouse gas cumulative impacts analysis. If the County relies upon the current CAP for future project-specific analysis, significant impacts to GHG emissions will result.

O11-5

Thank you for your consideration of these comments.

Sincerely,



Livia Borak Beaudin
 Legal Advisor, CERF

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O11-5 The comment provides conclusory remarks that are addressed in this response to comment and throughout the CAP and Final EIR. No further response is required or necessary.