

**Village 13 Project's Global Response R2:
County of San Diego Climate Action Plan**

Global Response R2: County of San Diego Climate Action Plan

This response addresses comments received on the 2019 Recirculated Portions of the Draft EIR stating that the Otay Ranch Resort Village – Village 13 (proposed Project) is not consistent with the County of San Diego’s Climate Action Plan (CAP).

In order to set the appropriate context, the Notice of Preparation (NOP) for the proposed Project’s EIR was issued in October 2004. The proposed Project’s Draft EIR was circulated for public review in April and May of 2015, and two sections of the Draft EIR (including the Global Climate Change Section) were recirculated for public review in April and May of 2019.

Proceeding on a separate timeline and trajectory, the County released its draft CAP and related Draft Supplemental EIR (SCH No. 2016101055) for public review in August 2017. The final CAP was adopted by the County’s Board of Supervisors in February 2018. In March 2018, lawsuits were filed by numerous environmental organizations and a business entity challenging the County’s adoption of the CAP. In December 2018, the San Diego Superior Court issued a peremptory writ ordering the County to set aside its February 2018 approval of the CAP and certification of the related Supplemental EIR. In January 2019, the County decided to appeal the Superior Court’s decision to California’s Fourth District Court of Appeal (see *Sierra Club et al. v. County of San Diego* [Case No. D075478]). On June 12, 2020, the Fourth District published its decision in *Sierra Club v. County of San Diego*, which affirmed the Superior Court’s writ of mandate directing the County to set aside the CAP and de-certify its Supplemental EIR. The Fourth District specifically found inadequate the Supplemental EIR’s carbon offsets mitigation (see EIR Global Response R1: Carbon Offsets for additional information), and held that the Supplemental EIR’s cumulative impacts analysis, Regional Transportation Plan consistency finding, and analysis of alternatives were not supported by substantial evidence. However, the Fourth District did not affirm the Superior Court’s findings on all issues, including specifically holding that, contrary to the Superior Court’s determination, substantial evidence did in fact support the County’s determination that the CAP is consistent with the General Plan. The County did not seek Supreme Court review of the Fourth District’s decision; and, on September 30, 2020, the County rescinded its approval of the 2018 CAP, Supplemental EIR and related actions. While the County’s approval of the 2018 CAP has been rescinded, the County intends to continue implementing the greenhouse gas emission reduction measures contained therein, until a new CAP is adopted, because the Fourth District did not find any fault with those measures and because those measures will contribute to emission reductions in the County’s unincorporated areas.

In light of the CAP’s timeline and because litigation over the CAP was reasonably foreseeable and imminent during preparation of the Project EIR, the CAP was not relied upon or used to establish the analytical framework set forth in Section 2.10, Global Climate Change, of the 2019 Recirculated Portions of the Draft EIR for the proposed Project. Notably, CEQA Guidelines Section 15064.4 does not require that the County have an adopted or judicially-validated CAP in place in order to analyze, determine, and mitigate the effects of the proposed Project’s greenhouse gas (GHG) emissions.

Notwithstanding, this response addresses the proposed Project’s consistency with the County’s CAP.

Summary of the County of San Diego’s 2018 Climate Action Plan

As mentioned above, in February 2018, the County’s Board of Supervisors adopted a CAP that is intended to serve as a plan to reduce GHG emissions from the unincorporated communities of San Diego County and from County operations. The Board’s adoption of the CAP was the culmination of a multi-year plan development process that followed from the judicial invalidation (see *Sierra Club v. County of San Diego* [Case No. D064243]) of the County’s prior CAP, which was adopted in 2012.

The purpose of the County’s CAP is to reduce GHG emissions projected to occur from buildout of the County’s 2011 General Plan Update (GPU), as set forth in GPU Policy COS-20.1 and GPU EIR mitigation measures CC-1.2 and CC-1.8.

The CAP includes six chapters: (1) Introduction; (2) Greenhouse Gas Emissions Inventory, Projections, and Reduction Targets; (3) Greenhouse Gas Reduction Strategies and Measures; (4) Climate Change Vulnerability, Resiliency, and Adaptation; (5) Implementation and Monitoring; and, (6) Public Outreach and Engagement.

The CAP also sets the following County-specific GHG reduction targets: by 2020, a 2 percent reduction from 2014 levels; by 2030, a 40 percent reduction from 2014 levels; and, by 2050, a 77 percent reduction from 2014 levels. The CAP is designed to achieve those targets through the implementation of multiple strategies and measures applicable to five general categories of GHG emission sources: (1) Built Environment and Transportation; (2) Energy; (3) Solid Waste; (4) Water and Wastewater; and, (5) Agriculture and Conservation.

The CAP was prepared in accordance with CEQA Guidelines Section 15183.5 in order to afford certain projects the opportunity to use the CAP as a CEQA streamlining tool; specifically, the CAP:

- Describes the existing baseline and projected emissions for 2020, 2030, and 2050 (see CEQA Guidelines Section 15183.5(b)(1)(A));
- Describes the recommended reduction targets for 2020 and 2030, which are designed to be consistent with the recommended community targets in CARB’s 2017 Scoping Plan, the County’s 2014 GHG emissions inventory, and various targets for the reduction of statewide emissions (CEQA Guidelines Section 15183.5(b)(1)(B));
- Describes the specific strategies and actions the County will take to reduce GHG emissions and quantifies the resultant reductions that would be achieved by each strategy/action (CEQA Guidelines Section 15183.5(b)(1)(C)-(D)); and,
- Describes how the County will implement the CAP, monitor its effectiveness, and adaptively manage implementation of specific strategies/actions to achieve reduction targets (CEQA Guidelines Section 15183.5(b)(1)(E)).

The CAP was designed and developed to be an adaptive plan; as progress is made in implementing GHG reduction measures, that progress will be monitored (i.e., reductions achieved will be logged), and an assessment will be made on whether changes to the CAP would be required. The

County monitors the overall effectiveness of the CAP through annual progress reports to ensure the CAP continues to make substantial progress toward reduction targets through inventory updates every two years and with updates made to the CAP every five years.

Climate Action Plan Implementing Documents

In conjunction with its adoption of the CAP in February 2018, the County also adopted CEQA implementation tools, including the Guidelines for Determining Significance: Climate Change (Guidelines) and Appendix A: Final Climate Action Plan Consistency Review Checklist (CAP Consistency Checklist).

The Guidelines and CAP Consistency Checklist set forth the following two-step process for determining the significance of GHG emissions at the project level for CEQA purposes (County of San Diego 2018):

- Step 1: Step 1 (Land Use Consistency) assesses a project’s consistency with the growth projections and land use assumptions made in the CAP. If a project is consistent with the projections in the CAP, its associated growth (in terms of GHG emissions) was accounted for in the CAP’s emissions projections and would not increase emissions beyond what is anticipated in the CAP or inhibit the County from reaching its reduction targets. If a project is consistent with the existing General Plan land use designation(s), it can be determined to be consistent with the CAP projections and can move forward to Step 2 (CAP Measures Consistency) of the CAP Consistency Checklist. Also, a project that is inconsistent with existing General Plan or zoning designations, but which would propose an equivalent or less GHG-intensive project than that allowed by existing designations can move to Step 2.

If an amendment is needed to the existing land use and/or zoning designation, and if that land use and/or zoning designation amendment results in a more GHG-intensive project, a project is required to undertake a more detailed, project-level GHG analysis. The project also is required to demonstrate compliance with each of the CAP measures identified in the CAP Consistency Checklist. Additionally, in order to support a determination that such a project would not conflict with the CAP and would not make a cumulatively considerable contribution to global climate change, the project is required to demonstrate that it results either in “no net increase” in GHG emissions from additional density or intensity above that identified in the County’s 2011 General Plan Update or “no net increase over baseline conditions (carbon neutrality).” In doing so, the project must first demonstrate compliance with relevant CAP measures and then achieve any additional needed reductions through on-site design features and mitigation measures, followed by off-site mitigation.

- Step 2: Step 2 (CAP Measures Consistency) identifies CAP GHG reduction measures that would apply to discretionary projects and establishes clear questions that can be used to assess a project’s consistency with CAP measures. The specific applicable requirements outlined in the Checklist, shall be required as a condition of project approval. The project must provide substantial evidence that demonstrates how the proposed project would implement each applicable Checklist requirement described in Appendix A to the satisfaction of the Director of Planning & Development Services (PDS). If a question in

the Checklist is deemed not applicable (N/A) to a project, substantial evidence must be provided to the satisfaction of the Director of PDS.

Project Consistency with the Climate Action Plan

To reiterate, the proposed Project's EIR (see Section 2.10 of the 2019 Recirculated Portions of the Draft EIR) did not rely upon, tier from or use the CAP because it was not an applicable plan at the time the NOP was published (see CEQA Guidelines Section 15125) and because litigation and ongoing controversy concerning the adequacy of the CAP was likely. Instead, the EIR identified significance thresholds derived from Appendix G of the CEQA Guidelines and was informed by CEQA Guidelines Section 15064.4. Notwithstanding these facts, and for informational purposes only:

Regarding Step 1 of the CAP's two-step process for determining the significance of project GHG emissions, which considers land use consistency, the proposed Project is one component of the Otay Ranch master-planned community, which is regulated by the policies of the County-adopted Otay Ranch General Development Plan/Subregional Plan (GDP/SRP). The underlying purpose of the proposed Project, therefore, is to implement the adopted Otay Ranch GDP/SRP and complete the planned development of Village 13 therein. The Otay Ranch GDP/SRP constitutes Volume II of the County's Otay Subregional Plan, is part of the County's General Plan, and allows for 1,938 homes, an 800-room resort hotel and golf course, school, public safety building and 40,000 square feet of commercial/retail uses in Village 13 (see Appendix C-25 of the EIR).

In the County's General Plan, the Project Site is designated with Rural and Semi-Rural regional categories and has Specific Plan Area (SPA) and Open Space (Conservation) land use designations. The Project Site is zoned S80 (Open Space) and S88 (Specific Plan) by the County of San Diego Zoning Map. Because the County adopted the Otay Ranch GDP/SRP to govern development within the Otay Ranch area, the land use designations specified in the Otay Ranch GDP/SRP apply. A wide range of land use designations are specified in the Otay Ranch GDP/SRP for the Project Area: Low Density Residential (L), Low Medium Density Residential (LM), Resort, Golf Course Concept Location, Visitor Commercial (VC), Town Center (TC) Park (P), Sensitive Resource Study Area (SRS) and Open Space (OS). The proposed Project would implement development that is consistent with these designations with modifications to eliminate the golf course and provide a different mix of residential product types.

Although it would not increase overall density or intensity, the proposed Project does require several General Plan Amendments (GPAs) as described in Section 1.2.2.2, General Plan Amendment, of the EIR and the Otay Ranch Resort Village General Plan Amendment Report (July 2018). These amendments are technical in nature and pertain to the General's Land Use Element (zoning category and type of residential uses), Mobility/Circulation Element (alignment of Otay Lakes Road), and Otay SRP (changes to regional planning framework approved by the City of Chula Vista).

GHG emissions inventories were prepared for both the proposed Project and Alternative B – Existing Otay SRP (see EIR Appendix C-2 [Global Climate Change Evaluation – Otay Ranch resort Village 13] and Appendix C-25 [Otay Ranch Resort Village GHG Emissions – Alternative B Memorandum], respectively), which inventories are used here in order to assess the proposed

Project under Step 1 of the CAP Consistency Checklist. Based on those analyses, the proposed Project is less GHG intensive (i.e., emits fewer GHG emissions) than Alternative B, which reflects the existing land use parameters for the Project Site under the County-adopted GDP/SRP incorporated into the General Plan. As such, while the proposed Project would require an amendment to the County’s Land Use Element and zoning, the proposed Project would result in a less GHG-intensive project when compared to the existing designations and, therefore, would *not* be required to achieve a net zero or no net increase GHG emissions level under the County’s CAP Consistency Checklist. Accordingly, the Project EIR’s requirement to achieve net zero GHG emissions results in substantially more mitigation of GHG emissions than would have occurred if the proposed Project had relied on the CAP and streamlined its environmental analysis as a General Plan-consistent land use project.

The proposed Project’s compliance with Step 2 of the CAP Consistency Checklist is outlined in Attachment GR.R2.1 to this response. As shown in Attachment A, the proposed Project would be consistent with Step 2 of the County’s CAP through its implementation of all applicable CAP reduction measures. The proposed Project also reduces GHG emissions through the use of additional on-site environmental design considerations (EDCs) and on-site mitigation requirements (these on-site strategies would reduce Project related GHG emissions by approximately 15 percent); and further reduces emissions beyond those reductions anticipated in the County’s CAP by committing to offset all of its GHG emissions to achieve and maintain carbon neutrality (i.e., net zero emissions) for the life of the project. The proposed Project’s on-site strategies address the primary emissions-generating sources associated with the Project: transportation/vehicle use; the consumption of energy resources by buildings; water consumption; and solid waste.

Therefore, as demonstrated above, the proposed Project is consistent with the CAP *but* does not use, rely on or tier from it for purposes of its CEQA analysis.

Further, several takeaways from this discussion are notable for purposes of evaluating the proposed Project’s impact on climate change. First, the proposed Project’s land use, as referenced above, is consistent with the General Plan-allowed land use (as established by the Otay Ranch GDP/SRP approved in 1993), while resulting in a less GHG-intensive emissions inventory. More specifically, the General Plan provides for the development of 1,938 homes; an 800-room resort hotel; a 141.5-acre golf course; a school and public safety building; and 40,000 square feet of commercial/retail uses. The proposed Project proposes to reduce the number of hotel rooms from 800 to 200 (for a 600-room reduction) and eliminate the golf course, while maintaining the other land use attributes. As substantiated in EIR Appendix C-25, with these land use refinements, the proposed Project results in approximately 5,918 *fewer* metric tons of annual operational carbon dioxide equivalents—a 15 percent reduction—than Alternative B (the General Plan-allowed land use). Second, despite reducing emissions below what would occur if developed pursuant to the General Plan-allowed land use, the proposed Project goes above and beyond by committing to offset all of its GHG emissions to achieve and maintain carbon neutrality (i.e., net zero emissions) for the life of the project. (Refer to EIR Section 2.10, Global Climate Change for further discussion.)

Court Decisions Concerning the Climate Action Plan and Related Supplemental EIR, and the Relationship of Those Decisions to the Project

As mentioned above, in December 2018, the San Diego Superior Court issued a permanent injunction and peremptory writ of mandate, which set aside the County’s approval of the CAP, the related Supplemental EIR, the CAP Consistency Checklist, and Guidelines. The permanent injunction prohibits the County from relying on mitigation measure M-GHG-1 in the CAP’s Supplemental EIR when considering General Plan Amendment projects.

On June 12, 2020, the Fourth District Court of Appeal upheld the Superior Court’s grant of a writ of mandate and permanent injunction. ~~By the time the Board of Supervisors considers the Project~~ On October 9, 2020, it is anticipated that the Superior Court will have issued an new amended peremptory writ of mandate and permanent injunction similar to the original writ of mandate and injunction ordering the County to set aside its approval of the CAP, the Supplemental EIR and attendant approvals in reliance thereon.

Neither the writ of mandate nor the ~~permanent injunction~~ Superior Court’s findings affects the proposed Project because the proposed Project and its EIR do not depend upon the effectiveness of the CAP, the CAP Supplemental EIR or other CAP-related approvals. The proposed Project and its EIR also do not rely on the CAP Supplemental EIR or its mitigation measure M-GHG-1. In short, the proposed Project and its EIR – including its commitment to net zero GHG emissions – are independent of the CAP and related approvals.

Further, the proposed Project does not involve a General Plan Amendment within the CAP Supplemental EIR’s category of cumulative projects that may increase density or intensity of land uses in the General Plan. Instead, as discussed above, the proposed Project would result in a less GHG-intensive land use than permitted by the General Plan-allowed land use (see EIR Appendix C-25). Again, the proposed Project and its EIR are independent of the CAP and related approvals.

As the proposed Project and its EIR have been prepared independent of the CAP, the Fourth District Court of Appeal’s decision does not address the proposed Project nor preclude the proposed Project from moving forward. However, addressing issues similar to those raised in the Fourth District Court of Appeal’s and San Diego Superior Court’s decisions, the County notes the following:

First, the proposed Project’s carbon offset mitigation has been refined to ensure compliance with all applicable CEQA requirements and the Fourth District Court of Appeal’s opinion. Specifically, the Fourth District’s decision explained the reasons for concluding that the CAP Supplemental EIR was inadequate, which included finding that mitigation measure M-GHG-1 of the CAP Supplemental EIR – a mitigation measure authorizing general plan amendment projects to use carbon offsets to mitigate for increased GHG emissions – was deficient. EIR Global Response R1: Carbon Offsets describes the procedures and processes developed to implement project-level mitigation for the proposed Project, and provides evidence and analysis addressing how the Project’s carbon offset mitigation measures (see M-GCC-7 and M-GCC-8) have been revised to ensure they comply with all applicable CEQA requirements, including those discussed in the Fourth District’s decision. Both the Fourth District and the Superior Court have been clear that

their decisions are not intended to operate as a complete prohibition on the use of carbon offsets to reduce GHG emissions.

Second, the Project EIR addresses, at length, the evidence supporting utilization of a 30-year mitigation period, and the basis for determining that the proposed Project and the use of carbon offsets as CEQA mitigation are consistent with the County's General Plan. (See EIR Global Response R1: Carbon Offsets.) The Fourth District upheld the use of a 30-year mitigation period in its decision on the CAP Supplemental EIR, and affirmed the County's finding that the CAP was consistent with its General Plan.

Third, the Project EIR contains a comprehensive set of global and individual responses that address the environmental issues raised during the public review period on the Draft EIR, as circulated for public review in 2015 and 2019.

Fourth, the proposed Project EIR fully analyzes the proposed Project's impacts on the environmental issues raised in the CAP litigation at the project level. Information regarding the proposed Project's energy impacts is located in EIR Section 3.9, Energy Use and Conservation. Information regarding VMT can be found in ~~Appendix E and F of Appendix C-2, as well as in~~ Response to Comment RO-1-18 and Attachment RO-1.1.¹ And, information regarding the proposed Project's potential to conflict with SANDAG's RTP/SCS can be found in EIR Section 2.10, Global Climate Change. As to the subject of environmental justice, there are no environmental justice or disadvantaged communities in close proximity to the Project Site that would be impacted by Project-related development (see Attachment GR.R2.1, which contains a discussion of environmental justice issues prepared by AECOM). Further, because GHG emissions do not result in localized impacts, the location of the GHG reduction activity is of no consequence to such communities. The proposed Project's potential to result in localized impacts associated with carbon monoxide hotspots and toxic air contaminants are addressed in EIR Section 3.2, Air Quality. As to co-benefits from localized GHG reduction project options, the proposed Project's air quality impacts are being mitigated to the greatest extent feasible, as discussed in EIR Section 2.2, Air Quality.

Lastly, while the Fourth District found the CAP Supplemental EIR's analysis of alternatives was not supported by substantial evidence because it did not consider a suggested alternative that would reduce VMT, the Project EIR studied a reasonable range of potentially feasible alternatives, including alternative project locations, in EIR Section 4.0, Alternatives. EIR Subsection 4.1.2.1, Alternative Project Location, explains why an alternative location for the proposed Project was not considered feasible. Of additional relevance, the proposed Project is consistent with the General Plan-allowed land use, which has been incorporated into SANDAG's regional planning efforts, including the Regional Transportation Plan/Sustainable Communities Strategy. Further, the Project proposes to develop one of the remaining undeveloped portions of the Otay Ranch planned community and thereby complete the community vision for a series of interconnected and complementary villages that improve the efficiency of VMT and vehicle trip patterns. And, the

¹ While this EIR contains VMT analysis conducted pursuant to SB 743, that analysis is for information purposes only. The amendments to the CEQA Guidelines implementing the legislative direction set forth in SB 743 were adopted in December 2018; and, the new, SB 743-related, VMT provisions of the CEQA Guidelines do not become effective statewide until July 1, 2020.

proposed Project contains transportation demand management and emission-reduction strategies to enhance the proposed Project’s on-site, transportation-related amenities. The EIR also considered alternative/additional GHG emissions-reducing strategies recommended during the public review period on the EIR; for example, please see Responses to Comments A-4-16, O-14-11, O-14-31, RO-6-61, RO-6-107.

Conclusion

In summary, the CEQA analysis prepared for the proposed Project’s EIR did not use, rely on, or tier from the CAP to streamline the Project’s environmental analysis. Rather, as discussed above, the EIR rendered significance determinations (using the criteria contained in CEQA Guidelines Appendix G, and informed by CEQA Guidelines Sections 15064.4 and 15126.4) that are independent of the CAP. As such, regardless of the CAP’s effectiveness, the Project’s EIR provides a separate, stand-alone basis for the finding that the proposed Project’s GHG emissions would not significantly impact the environment, with implementation of its own EDCs and mitigation measures.² The Project’s EIR also demonstrates that the proposed land use is consistent with, and results in less GHG emissions than, the General Plan-allowed land use.

On this point, the County notes that the commitment of the proposed Project to achieve carbon neutrality, and the EIR’s corresponding basis to determine that impacts would be less than significant with mitigation, is supported by CEQA, State guidance, and case law. The overall approach presented in the proposed Project’s EIR (i.e., attainment of net zero GHG emissions through utilization of a portfolio of on and off-site reduction strategies) accords to the approach developed by the State of California (and specifically the California Department of Fish and Wildlife and California Air Resources Board) for the Newhall Ranch Project and AB 900 projects, as well as the approach described for project-level CEQA analysis by the California Air Resources Board in its adopted California’s 2017 Climate Change Scoping Plan.

Further, the net zero mitigation framework provided in the Project’s EIR exceeds the requirements of the County’s CAP Consistency Checklist, which would only require the Project to implement the design related reduction measures contained therein to substantiate a determination that Project impacts would be less than significant. As explained above, this is because the Project – as proposed – would result in a less GHG intensive land use development project than already is allowed by the existing General Plan land use framework (see EIR Appendix C-25), which reflects the County’s 1993 adoption of the GDP/SRP including its development of the Project Site.

² For additional information on this point, please see Attachment GR.R2.2 of these Responses to Comments, which contains a copy of Appendix 8-4 from the certified Otay Ranch Village 14 and Planning Areas 16/19 Project Final EIR (SCH No. 2016121042)(May 2019). Appendix 8-4 contains the County’s response to comments suggesting that the County cannot consider General Plan Amendment projects until final resolution of the CAP litigation.