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Devon Muto
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Department of Planning and Land Use
County of San Diego
5201 Ruffin Road, Suite B
San Diego, CA 92123-1666

RE: Comments on the Draft Environmental for the San Diego General Plan Update.

Dear Mr. Muto:

The Attorney General provides these comments on the Draft Environmental Impact Report (DEIR) for San Diego County's proposed General Plan Update (General Plan or Project).[1] We note at the outset that the County has expressed an intent to address climate change. Among other things, the County has prepared a Greenhouse Gas Emissions Inventory, and proposed a policy to draft a Climate Action Plan and mitigation measures that seek to reduce Greenhouse Gas (GHG) emissions.

Unfortunately, the documents in their current form are unlikely to achieve the County's intent and, moreover, are legally deficient under the California Environmental Quality Act (CEQA). To assist the County in revising its documents, we attempt in this letter not only to identify current legal deficiencies, but also to describe a number of potentially effective and feasible alternatives and measures that could assist the County in meeting the requirements of CEQA and the County's stated climate and sustainability goals.

I. Inadequate Disclosure and Analysis of Adverse Environmental Impacts

CEQA mandates that an EIR identify and analyze all significant adverse effects of a project. (Pub. Resources Code, § 21100; Cal. Code Regs., tit. 14, § 15126.) While the DEIR does discuss the General Plan's effect on global warming, the discussion is inadequate. For

[1] The Attorney General submits these comments pursuant to his independent power and duty to protect the natural resources of the State from pollution, impairment, or destruction in furtherance of the public interest. (See Cal. Const., art. V, § 13; Gov. Code, §§ 12511, 12600-12612; *D'Amico v. Bd. of Medical Examiners* (1974) 11 Cal.3d 1, 14-15.) While this letter sets forth some areas of particular concern, it is not intended to be an exhaustive discussion of the DEIR's compliance with the California Environmental Quality Act.

instance, the DEIR estimates projected greenhouse gas (GHG) emissions only through 2020, rather than for the time period the General Plan is meant to cover, through 2030 as required by CEQA. In addition, even if it were appropriate to focus exclusively on projected GHG emissions for 2020, the record does not substantiate how the DEIR's implementation strategy will meet the County's stated emissions reduction goal. The DEIR's discussion of GHG emissions is conclusory and does not describe the methodology used to arrive at the GHG reduction predictions.[2] Nor does it analyze how mitigation measures are expected to lead to such reductions.

In addition, the DEIR has not adequately discussed the potential impacts from the General Plan's proposal for developing "Villages" – urbanized cores in the less developed areas of the County. The County would allow more residential and commercial density in these centers, unsupported by public transit,[3] with the hope that this will limit new development in surrounding areas that are currently semi-rural or rural. This approach to lessening GHG emissions seems counterintuitive.[4] Based on past experience, it would appear just as likely that the new Villages will become commuter communities, reliant on other areas for services and jobs.[5] Studies have shown that dispersing jobs into suburban and exurban locations not served by public transit contributes to greater vehicle miles traveled (VMT)[6] and thus higher GHG emissions. The County concedes that it cannot quantify any GHG reduction associated with the Village approach. (Inventory, at p. 32.) Thus, there is insufficient evidence in the record to support the County's belief that creating new urban areas in the rural sections of the County will lead to lower VMT. If the County chooses to retain Villages as an important piece of the General Plan, much more analysis is needed to demonstrate how the County will prevent these Villages from merely becoming commuter communities far away from public transportation, thereby increasing rather than decreasing VMT.

II. Failure to Formulate and Evaluate a Range of Reasonable Alternatives

CEQA requires public agencies to refrain from approving projects with significant environmental impacts when there are feasible alternatives that can substantially lessen or avoid those impacts. (*Mountain Lion Foundation v. Fish & Game Commission* (1997) 16 Cal.4th 105,

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[2] See Table 10, p. 33, Appendix K, GHG Emissions Inventory (Inventory) and DEIR, pp. 2.17-36-37.

[3] Inventory, at p. 31.

[4] Indeed, the County briefly considered a "Village Intensification Alternative" but rejected it because it could result in "greater impacts related to air quality, traffic, noise, and land use conflicts." (DEIR, at p. 4-7.)

[5] As the County notes, "it is likely that a high percentage of residents in the unincorporated communities will need to commute over a moderate distance to access employment." (DEIR, at p. 4-7)

[6] See San Francisco Planning and Urban Research, The Future of Downtown (January 21, 2009), available at http://www.spur.org/publications/library/report/future_downtown.

134; Pub. Resources Code, § 21002; CEQA Guidelines, §§ 15002, subd. (a)(3), 15021, subd. (a)(2).) The "cursory rejection" of a proposed alternative "does not constitute an adequate assessment of alternatives as required under CEQA" and it "fails to provide solid evidence of a meaningful review of the project alternative that would avoid the significant environmental effects identified . . . ." (*Mountain Lion Foundation*, 16 Cal.4th at 136.)

The County has selected as the proposed project the Referral Map Alternative. As described in Chapter 4 of the DEIR, the Referral Map Alternative was created at the specific direction of the Board of Supervisors,[7] "because it would accommodate more development than the Draft Land Use Map." As the DEIR notes, the Referral Map Alternative would thus result in greater environmental impacts. The documents in their current form do not support adoption of the Referral Map Alternative because they do not demonstrate the infeasibility of more environmentally protective alternatives, such as the Hybrid Map (316,658 fewer VMT), the Draft Land Use Map (331,236 fewer VMT), or the Environmentally Superior Map (841,776 fewer VMT).[8]

In addition, the DEIR identifies the Project's climate change-related impacts as significant and unavoidable. This conclusion currently is unsupported, as there are many alternatives and mitigation measures that the County has not yet explored that are potentially capable of reducing those impacts. Our office has created an informational sheet that contains many useful resources and examples that the County may want to consider.[9] Below we discuss certain options in additional detail.

A. Development Phasing Requirements

The County could, for example, consider adopting a phased approach to development that limits growth over a specified time period (for example, 10 years) to an "Urban Development Area" and reserve future growth to an "Urban Reserve" that will be developed only when specific criteria are met. This approach could manage growth effectively while providing the County and developers flexibility and certainty. Phasing provides an effective approach to managing the pace and location of growth. As an example, the Attorney General's recent settlement agreement with the City of Stockton phases-in new growth in a manner that will not undermine downtown Stockton and complements existing commercial and residential zones. (A copy of the Stockton agreement is available at http://ag.ca.gov/cms_attachments/press/pdfs/n1608_stockton_agreement.pdf.)

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[7] The driving factor for the development of alternatives appears to be the population targets developed by community groups and approved by the Board. (DEIR, at p. 4-6.)

[8] Relatedly, it appears that VMT may be underestimated as a result of relying on a regional average rather than the VMT generated within County unincorporated communities further from job centers.

[9] Attorney General's Office, Sustainability and General Plans: Examples of Policies to Address Climate Change, available shortly at http://ag.ca.gov/globalwarming/ceqa/generalplans.php.

Another example of phasing the County could consider is in the Visalia General Plan. Visalia sets specific growth criteria that must be met before development can advance to the next growth area.[10] According to the City of Visalia's Assistant City Manager and Community Development Director, the phasing policy has resulted in orderly concentric growth, efficient use of land and infrastructure and revitalization of the downtown.

These types of phasing approaches, particularly in combination with a lower-carbon alternative, would provide the flexibility and certainty the County needs, while resulting in more compact, sustainable growth, fewer VMT, and fewer adverse environmental impacts. We recommend strongly that the County review these examples and analyze whether adopting similar phasing measures would be feasible.

B. City-County Coordination

The DEIR could, but does not, analyze a City-Urban Centered Alternative that would direct more of the growth projected for San Diego County to the existing cities. The DEIR does not disclose or analyze the amount of growth that could be accommodated in a City and Urban Centered Alternative (including vacant legal suburban and rural lots of record in the County). Such an alternative could be combined with the Environmentally Superior Map or the Draft Land Use Map alternatives to accommodate growth and housing. It is reasonable to assume that such an alternative could result in even lower VMT and GHG emissions than the alternatives considered by the County.

The General Plan is a golden opportunity to show leadership in developing joint efforts to coordinate with cities on promoting growth in adjacent areas that are already urbanized, or in guiding development to areas where essential services and transportation already exist. The County could work with the cities to accommodate growth projections with policies that jointly promote increasing land use densities and intensities on the land use map for urban categories, infill first policies, requirements directing new infrastructure and service dollars to infill areas, and reducing fees for high quality mixed-use infill projects in priority growth areas in the interface between cities and unincorporated urban areas.

There are many instances of county-city collaborations directed at climate change (see, e.g., the Sonoma County Climate Action Plan),[11] at more sustainable patterns of development

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[10] These criteria include: (1) adequate residential, commercial and industrial capacity for the projected population; (2) inclusion of a 30% vacancy factor (flexibility factor) for residential development and 20% for commercial development [in the growth boundary]; (3) adequacy of infrastructure and other urban services and facilities; and (4) community growth priorities, among other factors. (See http://www.ci.visalia.ca.us/civca/filebank/blobdload.asp?BlobID=3406#page=169.)

[11] See http://www.coolplan.org.

(see, e.g., Kings County Joint Housing Element)[12], and at revenue sharing (see, e.g., Yolo County's pass through agreements with its cities.)[13] The County should consider including such specific policies to facilitate collaboration with the cities. We would be happy to provide the staff with other examples that could serve as models for the County to consider.

III. Deficiencies Related to Mitigation Measures

There are several deficiencies with the DEIR's evaluation of mitigation measures relating to climate change impacts, as described below.

A. Analysis of Projected Reduction of GHG Emissions

The DEIR's discussion of the County's GHG emissions and the projected reductions in the County's GHG emissions from proposed mitigation measures does not satisfy CEQA's requirement to disclose to the public and the decisionmakers the General Plan's GHG emissions impacts. (CEQA Guidelines § 15144.) The DEIR's discussion of projected reductions merely includes tables showing projected emissions reductions from the mitigation measures in the DEIR "when combined with federal, State, and regional programs." (DEIR, at p. 2.17-29.) The source for the DEIR emissions reduction tables is listed in the Inventory. (DEIR, at p. 2.17-1, 36 and 37.) However, the Inventory provides very little detail regarding the DEIR's underlying assumptions. The DEIR should contain more detailed analysis of the projected reductions resulting from the proposed mitigation measures relating to GHG emissions impacts.

B. Unenforceable Mitigation Measures

Currently, many of the County's proposed mitigation measures, general plan policies, and implementation measures relating to climate change are not specific and enforceable. CEQA requires that mitigation measures must be "fully enforceable through permit conditions, agreements, or other measures" so "that feasible mitigation measures will actually be

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[12] Kings County and its four cities jointly prepared and adopted the current housing element and are in the process of jointly preparing a housing element update. This collaboration allows the County and its cities to share the cost of the housing element update, and to direct new housing to the best locations in the County, including within its cities. San Mateo County, an urban county like San Diego County, and its cities are collaborating on their housing element updates by sharing resources, successful strategies and best practices. (See http://www.21elements.com.)

[13] The Yolo County-Davis Pass Through Agreement has provided protection for the City of Davis against disorderly growth in its Sphere of Influence and Planning Area for over a decade. The Agreement requires that Yolo County not approve urban development in the areas surrounding the City. In return, the City has agreed to "pass through" to the County a certain share of the revenue of any development it approves in the area. Yolo County has similar agreements with each of its four cities.

implemented as a condition of development." (*Federation of Hillside & Canyon Ass'ns v. City of Los Angeles*, 83 Cal.App.4th 1252, 1261 (2000).)

The General Plan policies and the DEIR's mitigation measures aimed at addressing climate change impacts use qualifying terms such as "encourage", "when appropriate", and "facilitate," rather than enforceable or mandatory language. Many of the policies in the proposed General Plan propose "promoting" instead of "requiring" actions, and state that certain measures "should" be done instead of stating that they "shall" be done. For example, COS-14.7: "encourage development projects that use energy recovery, photovoltaic, and wind energy"; COS-15.4: "promote and as appropriate, develop standard for retrofit of existing buildings to incorporate design elements that improve environmental sustainability and reduce GHG"; LU-5.4: "undertake planning efforts that promote infill and redevelopment of uses that accommodate walking and biking within communities"; and LU-6.3: "support conservation-oriented project design when appropriate." Other policies with similar qualifying terms are LU-1.1, COS-4.2, COS-5.4, COS-6.5, COS-16.4, and COS-16.5.

As another example, COS-15.5 states that the County will "encourage energy conservation and efficiency in existing developments through energy efficiency audits and adoption of energy savings measures resulting from the audits." It is unclear whether this policy actually requires the County to conduct energy efficiency audits. The General Plan should include policies to conduct energy and water efficiency audits of water and drainage infrastructure, and implement necessary conservation measures.

C. Additional Potentially Feasible Mitigation Measures

While the EIR does include some measures that may mitigate the impacts of GHG emissions from the proposed General Plan, there are a number of additional measures that the County has not considered and that would appear to be feasible. Such measures are set forth in the California Air Pollution Control Officers Association's ("CAPCOA") "GHG Model Policies for Greenhouse Gases in General Plans" (available at http://www/capcoa.org) and the California Office of the Attorney General's Sustainability and General Plans: Examples of Policies to Address Climate Change (available shortly at http://ag.ca.gov/globalwarming/ceqa/generalplans.php) There are numerous additional measures the County might consider, including some set forth below.

i. Infill and Transit-Oriented Development

The Inventory states that "50% of the GHG emissions in the County are a result from on-road transportation." General Plan Policy COS-14.1 "require[s] that development be located and designated to reduce vehicular trips by utilizing compact regional and community-level development patterns while maintaining community character." However, it is unclear what is actually required by this policy. Given the importance of reducing VMT discussed in the

General Plan, Inventory and DEIR, the DEIR should fully explore feasible measures to reduce VMT, including land uses, policies and implementation measures.

There are numerous measures the County might consider to promote mixed-use and transit-oriented development, including rezoning commercial properties to residential and/or mixed use; expanded zoning for multifamily housing; flexible parking and building height limitations; density bonus programs; design guidelines for private and public spaces; and incentives for redevelopment of underutilized areas. The County could also consider differential fees that provide fee relief for high quality infill and higher fees for greenfield/low density development. (See Stockton Agreement, ¶¶ 6.c., 7.c.), and requiring new development to be sufficiently dense to support transit and designed to be internally accessible to all modes of transit and transportation. (See Stockton Agreement, ¶¶ 5.b., 5.d.)

Finally, creating and maintaining a jobs-housing balance has been determined to be a key factor in reducing VMT and emissions. The County could consider a jobs-housing policy such as Yolo County's Draft Policy, Policy CC-3.3, designed to ensure that jobs are created concurrent with housing to the greatest extent feasible.[14]

ii. Green Building Ordinance

General Plan Policy 15.3 "require[s] all new county facilities and the renovation and expansion of existing county buildings to meet identified 'green building' programs that demonstrate energy efficiency, energy conservation, and renewable technologies." It is unclear what is required under the "green building" programs. The County has a Green Building Program on its website, but it appears to be limited to incentives. The County could consider adopting at the same time it adopts the General Plan a mandatory green building ordinance that applies to all development above a certain threshold size, not just county buildings. Many jurisdictions have already adopted such ordinances.[15]

iii. More Specific and Enforceable CAP Policies

Although the DEIR includes a mitigation measure to prepare a County Climate Change Action Plan (CAP) with enforceable GHG emissions reduction measures (COS- 20.1; General Plan, at p. 2.17-29), we have several questions about the proposed CAP. For example, we are uncertain about the schedule for completion and implementation of the proposed CAP, and funding for CAP activities and reduction measures. Currently, there is very little detail about

[14] Policy CC-3.3 reads as follows: " Ensure that jobs are created concurrent with housing to the greatest extent feasible. Include requirements to ensure a reasonable ongoing balance housing and jobs and/or other mechanisms to constrain housing to stay balanced with job creation through buildout of the area. Each phase of housing shall be required to be accompanied by job-generating development. Strive to match overall wages to home prices. (Available at http://www.yolocounty.org/Index.aspx?page=1689).

what the CAP will contain[16] and, moreover, it is unclear whether the CAP will be integrated into the General Plan. In addition, the DEIR does not provide specifics about the reduction measures that will be part of the CAP. As such, the mitigation is inadequate because it has been deferred to the future without sufficient assurances it will be implemented and that it will mitigate climate change impacts. (See Cal. Code Regs., tit. 14, § 15126.4, subd. (a)(1)(B).)

We recognize that it may not be possible for the County immediately to adopt a fully realized CAP as described in the Governor's Office of Planning and Research's proposed CEQA Guidelines (see § 15183.5, subd. (b)(1)) and in the Attorney General's Frequently Asked Questions (attached). However, we encourage the County to (1) commit in the General Plan to adopt by a date certain a CAP with defined attributes (targets, enforceable measures to meet those targets, monitoring and reporting, and mechanisms to revise the CAP as necessary) that will be integrated into the General Plan; (2) incorporate into the General Plan interim policies to ensure that any projects considered before completion of the CAP will not undermine the objectives of the CAP,[17] and (3) for all GHG impacts the County has designated as significant, adopt feasible mitigation measures that can be identified today and that do not require further analysis. These actions will help the County avoid an argument that it is deferring climate change-related mitigation. (See CEQA Guidelines, § 15126.4, subd. (a)(1)(B).)

IV. Failure to Fully and Adequate Describe Potential Development

The proposed General Plan land use map does not include projects that are in the approval process, or have recently been approved. The DEIR refers to 148 of these projects, but because they appear only in the cumulative analysis section of the DEIR, the direct impacts flowing from these projects are treated as though their impacts are in addition to those of the General Plan. These projects involve thousands of acres, and the approvals under which they will be constructed could very well be inconsistent with the policies of the General Plan. The County should include these projects to ensure accuracy in its description of General Plan Update and to comply with CEQA.

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[16] See Attorney General, Climate Change, the California Environmental Quality Act, and General Plan Updates: Straightforward Answers to Some Frequently Asked Questions, "Is a 'Climate Action Plan' reasonable mitigation?" at p. 6, available at http://ag.ca.gov/globalwarming/pdf/CEQA_GP_FAQs.pdf.

[17] See, e.g., Stockton Agreement, ¶ 9.

CONCLUSION

The Attorney General appreciates the number of steps the County has taken to combat climate change. In their current state, however, the General Plan and DEIR are unlikely to achieve the County's objectives, and likely will not provide the CEQA streamlining benefits that an adequate and thorough programmatic document can deliver. Consistent with the purposes of CEQA, our comments are intended to assist the County in improving its General Plan and DEIR. We would be happy to discuss this matter further with staff, and look forward to assisting the County in achieving its GHG reduction goals.

Sincerely,

/ s /

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