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June 11, 2007

By Electronic Mail and Telecopy

Marilyn Mirrasoul, Environmental Planner
City of San Diego Development Services Center
1222 First Avenue, MS 501
San Diego, CA 92101

RE: Comments on Draft Environmental Impact Report for City of San Diego Draft
General Plan, Project No. 104495, SCH No. 2006091032

Dear Ms. Mirrasoul:

The Attorney General submits these comments on the Draft Environmental Impact Report ("DEIR") for the City of San Diego Draft General Plan ("General Plan"). The Attorney General provides 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; Cal. Gov. Code, §§ 12511, 12600-12; *D'Amico v. Board of Medical Examiners*, 11 Cal.3d 1, 14-15 (1974)). These comments are made on behalf of the Attorney General and not on behalf of any other California agency or office.

Introduction.

We commend the City for its efforts to address global warming. The City has shown leadership in this area by adopting a Climate Protection Action Plan ("Climate Action Plan"), signing the U.S. Mayor's Climate Protection Agreement, which commits the City to meet greenhouse gas ("GHG") reduction targets in the Kyoto Protocol, and adopting numerous "smart growth" planning measures. Obviously, the City recognizes that global warming is a serious problem that cities can help to address. We believe the new General Plan provides an opportunity for the City to continue to be a leader in California's fight against global warming.

We also commend the City for including in the DEIR a clear discussion of global warming, quantification of the project's GHG emissions, and recognition that those emissions constitute a significant cumulative environmental impact. We urge the City, however, to evaluate and, where feasible, in the EIR and General Plan adopt a broader range of enforceable mitigation measures to reduce GHG emissions from the new development authorized in the General Plan. Many of the policies in San Diego's General Plan are voluntary, which makes it impossible both to know what the GHG impacts will be, and to know whether the City has adopted all feasible mitigation measures. In some respects, the proposed General Plan reads more as a statement of preferences

and opinions, rather than a definite commitment to adopt and enforce policies and specific standards, or to use the powers the City has to enact ordinances and control development characteristics.^{1/}

The DEIR Recognizes Global Warming Impacts as a Significant Cumulative Impact of the Project that Must Be Mitigated.

The Cumulative Impacts section of the DEIR explains how GHG emissions cause global warming, the expected serious health and environmental impacts from global warming, the actions of the state that require reductions of GHG emissions (Assembly Bill 32 and Executive Order S-3-05), and the City of San Diego's programs to reduce its own GHG emissions. It discusses the City's Climate Action Plan, which requires a 15% reduction of GHG emissions from City operations by 2010. While the City has shown leadership by adopting the Climate Action Plan, the DEIR notes that most of the emission reduction measures in that Plan do not apply to the type of discretionary development addressed in the General Plan. The Climate Action Plan primarily addresses municipal GHG emissions, which represent only about 2% of total GHG emissions in the City, while 98% of emissions result from City residences and businesses.

The DEIR indicates that the development authorized in the General Plan is expected to accommodate 361,110 new residents and an increase of 7 million vehicle miles per day. The DEIR correctly concludes that, even with mitigation, at the program level of analysis, the cumulative impacts of GHG emissions from the development that is anticipated to occur under the General Plan is considered significant and unavoidable. The DEIR states that where mitigation is "determined to be necessary and feasible" mitigation measures to limit GHG emissions will be required for specific projects carried out under the General Plan. The DEIR then identifies only two specific global warming mitigation measures, but does not state that these measures will be adopted as part of the General Plan. If these mitigation measures (and other feasible measures) are not included as enforceable General Plan policies, and are not currently required by City ordinances, the City has no ability under the General Plan to impose these measures on future projects.

One of the global warming mitigation measures identified in the DEIR is that development conform to the "City of Villages" development strategy to the extent feasible. The City of Villages development strategy is already included in the General Plan. However, revisions to the "City of Villages" development strategy included in the General Plan may be needed to make sure that it is not optional, but rather, imposes binding, enforceable requirements that constitute adequate mitigation under CEQA. The other identified measure is to "include the minimization of GHG emissions to the extent feasible as an important design criterion during the pre-application and development review process." As the DEIR notes, although the proposed

1. The general plan should include "standards" and "proposals" along with the more general policies, objectives and principles. Government Code § 65302.

General Plan includes some binding policies that will reduce GHG emissions, many of the relevant policies in the Plan only express support for actions that would reduce GHG emissions, but do not require those actions; because they are not enforceable requirements, they do not constitute mitigation under CEQA. (Pub. Res. Code § 21081.6(b)).^{2/} We also believe that there are additional actions to reduce GHG emissions that the City should consider and adopt if they are feasible.

The DEIR identifies two “environmentally superior” alternatives to the proposed General Plan. One alternative would reduce energy and waste-related GHG emissions of new development, and the other would reduce GHG emissions associated with vehicle use.

The City as lead agency is required under CEQA to adopt all feasible alternatives and mitigation measures.

The City has determined in the DEIR that the global warming-related impacts of the General Plan are cumulatively significant. This triggers the lead agency’s obligation to require feasible mitigation. (Pub. Res. Code, § 21002.1(b)). The EIR must “examine reasonable, feasible options for mitigating or avoiding the project’s contribution” to the problem. (Cal. Code Regs., tit. 14, § 15130, subd. (b)(5).)

CEQA mandates that public agencies should not approve projects with significant environmental effects if there are feasible alternatives or mitigation measures that can substantially lessen or avoid those effects.^{3/} CEQA requires “[e]ach public agency [to] mitigate or avoid the significant effects on the environment of projects that it carries out or approves *whenever it is feasible to do so.*”^{4/} The agency must ensure that “measures to mitigate or avoid significant effects on the environment are fully enforceable through permit conditions, agreements, and other measures.”^{5/}

2. For example, the only policy in the General Plan that expressly refers to GHG emissions states: “Support state, federal, and local efforts to increase fuel efficiency and reduce greenhouse gas emissions.” This policy does not impose any enforceable obligations to design or build new development in a way that minimizes GHG emissions.

3. Public Resources Code §§ 21002, 21081; see also, *Mountain Lion Foundation v. Fish and Game Commission* (1997) 16 Cal.4th 105, 134.

4. *City of Marina Board of Trustees* (2006) 39 Cal.4th 341, 360 (emphasis added); Pub. Resources Code § 21002.1(b).

5. Pub. Res. Code, § 21081.6; *Federation of Hillside and Canyon Associations v. City of Los Angeles* (2000) 83 Cal.App.4th 1252, 1261.

The City Should Adopt Enforceable Mitigation Measures to Reduce the GHG Emissions.

As noted above, CEQA requires adoption of enforceable mitigation measures to reduce the significant impacts of a project. Accordingly, the policies in the proposed General Plan that express “support” for measures that would reduce GHG emissions should be revised to establish enforceable requirements. The potential revisions could include:

- o Change the proposed policy that the City will “encourage” sustainable or green building to require that new buildings and major renovations incorporate all feasible green building design principles and building materials. (This policy could require compliance with the U.S. Green Building Council’s Leadership in Energy and Environmental Design silver standard, which is the standard required for municipal buildings under the City’s own Climate Action Plan and for state buildings under Executive Order No. S-20-04).⁶
- o Change the proposed policy that the City will “encourage” sustainable landscape design and maintenance to require that new development must meet these criteria.
- o Change the proposed policy to “strive for” site design to minimize energy use by taking advantage of sun-shade patterns, prevailing winds, landscaping and sunscreens to require new development to meet these criteria.
- o Change the proposed policy to “support” self-generation of energy using renewable technologies to require that new residential development of more than 6 units shall participate in the California Energy Commission’s New Solar Homes Partnership (this program provides rebates to developers of 6 units or more who offer solar power on 50% of the new units)⁷ and new or major renovations of commercial or industrial development (that exceeds a certain square foot minimum) must incorporate renewable energy generation to provide the maximum feasible amount of the project’s energy needs.
- o Modify the proposed policy to “develop and adopt” an Urban Heat Island Mitigation policy (at some unspecified time) to impose an enforceable requirement to address this impact by using light-colored and reflective roofing materials and paint; light-colored roads and parking

6. Alternatively, feasible green building measures can be identified using the California Energy Commission’s Compliance Manuals (for Residential and Nonresidential Buildings) (www.energy.ca.gov/title24/2005standards/) to identify energy savings that exceed the 2005 Building Energy Efficiency Standards; the cost effectiveness of these measures can be evaluated using the Life Cycle Cost Assessment Model (www.green.ca.gov/LCCA/FactSheet.htm and www.green.ca.gov/EnergyEffProj/default.htm) developed by the California Department of General Services.

7. See: www.gosolarcalifornia.ca.gov/nshp/

lots; shade trees in parking lots; and shade trees on the south and west sides of new or renovated buildings.^{8/}

o Adopt requirements for expanding waste minimization efforts as recommended in the City's Climate Action Plan to address construction and demolition recycling, commercial paper recycling, and multiple family recycling. These recycling requirements can be included in the General Plan now, and later replaced by any applicable ordinances that may be adopted or become effective. For example, the General Plan could require that construction projects use all feasible opportunities to recycle unused construction materials and that demolition projects submit a plan to maximize reuse of building materials, along with the required permit application. Information about these measures is available from many sources, including: www.epa.gov/epaoswer/non-hw/debris-new/index.htm

o Review the "City of Villages" development strategy included in the General Plan and make any revisions that are necessary to ensure that it imposes binding, enforceable requirements that constitute adequate mitigation under CEQA.

In addition, we note that there appear to be additional feasible policies to reduce GHG emissions that should be analyzed in the EIR. Some of these policies could also provide public health benefits by reducing ozone levels (the City has not attained the state one-hour ozone standard or federal eight-hour ozone standard).^{9/} Some examples include:

o Require that off-road diesel- powered vehicles used for construction should be new low-emission vehicles, or use retrofit emission control devices, such as diesel oxidation catalysts and diesel particulate filters verified by the California Air Resources Board.^{10/}

8. Information about feasible measures are available from numerous sources, including the Lawrence Berkeley National Laboratory "Cool Roofing Materials Database" prepared by the Laboratory's Heat Island Project (<http://eetd.lbl.gov/coolroof/>) and EPA's Heat Island site: www.epa.gov/heatisland/

9. The U.N. Intergovernmental Panel on Climate Change notes that "near-term health co-benefits from reduced air pollution as a result of actions to reduce GHG emissions can be substantial and may offset a substantial fraction of mitigation costs." IPCC Fourth Assessment Report, Working Group III, Summary for Policymakers, Mitigation of Climate Change, at p.16.

10. See, www.arb.ca.gov/diesel/verdev/verdev.htm and www.epa.gov/ispd/pdf/emission_0307.pdf This requirement was applied to construction at LAX and O'Hare International Airports. See, www.oharemodernization.org (Sustainable Design Manual, §8.5) and www.laxmasterplan.org/cb_CBA_Exhibits.cfm. (Section X. F.) This would also reduce exposure to diesel particulate exhaust, a known carcinogen and toxic air contaminant. See "Digging Up Trouble: Health Risks of Construction Pollution in California" (Union of Concerned Scientists, November 2006).

o Add a policy to require that new residences use all Energy Star rated appliances and the most energy-efficient water heaters and air conditioning systems that are feasible, and new buildings and major renovations shall use energy efficient lighting (indoor and outdoor) that reduces electricity use by substantially more than current state building code requirements.^{11/}

We also suggest including the City's Climate Action Plan as part of the General Plan. Since that Plan only covers GHG reductions through 2010, the City may be planning to prepare an updated Climate Action Plan that would identify actions to further reduce GHG emissions from City operations after 2010, and implement programs for education and support for GHG reductions by private parties. The updated plan could be adopted as a General Plan amendment.

The City Should Adopt the Two Environmentally Superior Alternatives That Would Reduce the GHG Emissions.

We urge the City to adopt the two "environmentally superior" alternatives to the proposed General Plan identified in the DEIR. These appear to be feasible alternatives that under CEQA constitute actions that will substantially lessen the project's environmental impacts.

The Enhanced Sustainability Alternative would modify optional policies in the General Plan that "support" sustainable development, such as energy efficient design, renewable energy, and water conservation,^{12/} and convert them to enforceable requirements. This Alternative would significantly reduce the project's air pollutant emissions, would also reduce adverse impacts on hydrology and water quality, and would reduce the need for new public utility infrastructure. If the City does not adopt this alternative, many of the mitigation measures that would reduce GHG emissions, including measures that the City itself has identified in the General Plan, would not be enforceable.

The DEIR also identifies the Increased Parking Management Alternative as environmentally superior. This alternative would expand implementation of permit parking restrictions for certain neighborhoods; increase parking meter fees and extend the hours of operation of meters; and reduce free on-street parking in the City. This alternative would reduce the number of automobile trips, reduce parking demand, and increase the number of trips using carpools, transit, walking or biking. This alternative would reduce the impacts on traffic and air quality,

11. Information about energy efficient lighting is available from many sources, including: www.energy.ca.gov/efficiency/lighting/index.html; www.energy.ca.gov/efficiency/lighting/outdoor_reduction.html and www.newbuildings.org/lighting.htm.

12. Minimizing water consumption in new development is an important mitigation for GHG emissions because 60% of the City's energy use is for pumping water and wastewater.

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including reducing GHG emissions.^{13/}

Under CEQA, "feasible" means: "capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, social and technological factors." Pub. Resources Code § 21061.1. The impacts of global warming are potentially catastrophic and we cannot proceed with "business as usual" even though some of the required changes may encounter public opposition. The City must carefully consider the evidence before determining whether an alternative, or a particular element of the alternative, is feasible or not. Although a measure may be unpopular with some members of the public, if the measure can be included without substantial hardship, it should be considered feasible.

Thank you for your consideration of these comments. We would appreciate the opportunity to meet with City staff to discuss these comments further in an effort to work cooperatively on these issues.

Sincerely,



SANDRA GOLDBERG
Deputy Attorney General

For EDMUND G. BROWN JR.
Attorney General

cc: Shirley R. Edwards
Chief Deputy City Attorney

13. The report Statewide Transit-Oriented Development (TOD) Study, *Factors for Success in California, Special Report, Parking and TOD: Challenges and Opportunities* (February 2002, Business, Transportation and Housing Agency, California Department of Transportation) discusses various parking management activities that have been implemented to reduce single occupancy vehicle trips. The U.S. DOT also identifies parking pricing/management measures in its report "Multi-Pollutant Emissions Benefits of Transportation Strategies" and concludes: "All of these strategies reduce emissions by reducing the number of vehicle trips taken."

(http://www.fhwa.dot.gov/environment/conformity/mpe_benefits/index.htm#toc - Chapter.3).

Parking management programs that provide environmental benefits are also discussed in "Parking Management, Strategies, Evaluation and Planning," Todd Litman, Victoria Transport Policy Institute, April 25, 2006. (www.vtppi.org/park_man.pdf)