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Via E-Mail

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RE: San Bernardino Countywide Plan and Draft Environmental Impact Report

Dear Mr. Blum:

Thank you for the opportunity to comment on the County of San Bernardino's Draft General Plan Update ("Countywide Plan" or "Plan") and Draft Environmental Impact Report for the Countywide Plan ("DEIR").¹ The Attorney General's Office appreciates the County's efforts to comply with Senate Bill 1000 ("SB 1000") by including environmental justice goals and policies focused on reducing pollution exposure and promoting civil engagement in the Countywide Plan. (*See* Gov. Code, § 65302, subd. (h)(1)(A).) However, we are concerned that the Plan does not address several of SB 1000's requirements. We are also concerned that the DEIR, among other things, does not adequately address cumulative impacts on sensitive receptors in environmental justice communities. We submit this comment letter to urge the County to strengthen the Plan and revise the environmental analysis prior to submitting it to the San Bernardino County Board of Supervisors for consideration.

I. BACKGROUND ON ENVIRONMENTAL JUSTICE AND SB 1000

Low-income communities and communities of color often bear a disproportionate burden of pollution and associated health risks when compared to their more affluent neighbors. This inequity can be addressed through environmental justice, which is defined by California law as

¹ The Attorney General submits these comments pursuant to his independent power and duty to protect the environment and natural resources of the State. (*See* Cal. Const., art. V, § 13; Gov. Code, §§ 12511, 12600-12612; *D'Amico v. Bd. of Medical Examiners* (1974) 11 Cal.3d 1, 1415.)

“the fair treatment of people of all races, cultures, and incomes with respect to the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies.” (Gov. Code, § 65040.12, subd. (e).) Environmental justice aims to correct the legacy of concentrating pollution and other hazards in or near low-income communities of color by reducing these hazards and involving the impacted communities in any decisions that affect their environment or health.

In an effort to promote environmental justice through the local land use planning process, the California Legislature passed Senate Bill 1000 in 2016. SB 1000 ensures that local governments take into account pollution burdens and other hazards experienced by communities within their jurisdiction that are disproportionately exposed to such hazards. The purpose of SB 1000 is to make environmental justice a real and vital part of the planning process by promoting transparency and public engagement in local governments’ planning and decision-making processes, reducing harmful pollutants and associated health risks in environmental justice communities, and encouraging equitable access to health-inducing benefits, such as healthy food options, housing, and recreation.

If a city or county adopts or updates two or more elements of its general plan after January 1, 2018, SB 1000 requires the local government to first identify any “disadvantaged communities” in its jurisdiction. (Gov. Code, § 65302, subd. (h)(1)-(2).) SB 1000 defines “disadvantaged communities” as: (1) “an area identified by the California Environmental Protection Agency (CalEPA) pursuant to Section 39711 of the Health and Safety Code”;² or (2) “an area that is a low-income area that is disproportionately affected by environmental pollution and other hazards that can lead to negative health effects, exposure, or environmental degradation.”³ (*Id.* at (h)(4)(A).) Therefore, local governments have some discretion to choose the appropriate method or methods to identify disadvantaged communities.

² CalEPA designates an area as a disadvantaged community if a census tract scores at or above 75 percent on the agency’s CalEnviroScreen screening tool. *See* CalEPA and Office of Health Hazard Assessment, CalEnviroScreen 3.0, *available at* <https://oehha.ca.gov/calenviroscreen/report/calenviroscreen-30>; *see also* CalEPA, Designation of Disadvantaged Communities (April 2017), *available at* <https://oehha.ca.gov/calenviroscreen/sb535>.

³ SB 1000 defines a “low-income area” as “an area with household incomes at or below 80 percent of the statewide median income” or (2) an area with “household incomes at or below the threshold designated as low income by the Department of Housing and Community Development’s (HCD) list of state income limits adopted pursuant to Section 50093 of the Health and Safety Code.” (Gov. Code, § 65302, subd. (h)(4)(C).) After identifying low-income areas, a government must evaluate if those areas are disproportionately affected by environmental pollution or other hazards that can lead to negative health impacts. (*Id.* at (h)(4)(A).) There are various data sets that can be used for the second part of this analysis, including CalEnviroScreen, which contains specific information regarding pollution sources.

Once a local government identifies one or more disadvantaged communities in its jurisdiction, it must include either an “environmental justice element” or “related goals, policies, and objectives integrated in other elements” (collectively, “EJ policies”) in its general plan update. (Gov. Code, § 65302, subd. (h)(1).) A general plan’s EJ policies must “reduce the unique or compounded health risks in disadvantaged communities” by doing at least the following:

- 1) reduce pollution exposure;
- 2) improve air quality;
- 3) promote public facilities;⁴
- 4) promote food access;
- 5) promote safe and sanitary homes; and
- 6) promote physical activity.

(*Id.* at (h)(1)(A).) SB 1000 also requires EJ policies that “promote civil engagement in the public decision-making process” and “prioritize improvements and programs that address the needs of disadvantaged communities.” (*Id.* at (h)(1)(B)-(C).)

II. COUNTYWIDE PLAN

We appreciate the County’s ongoing communication with our office regarding SB 1000 compliance, and appreciate the opportunity to comment on the draft Countywide Plan released in May 2019. As discussed below, we have concerns about the adequacy of the County’s identification of disadvantaged communities and EJ policies, and we encourage the County to consider revising the Countywide Plan to address these concerns.

A. Identification of Disadvantaged Communities

SB 1000 requires local governments to identify any disadvantaged communities in its jurisdiction within the general plan itself.⁵ As discussed above, the objective of this requirement is to ensure that environmental justice is a real and vital part of local land use planning. Explicitly identifying communities facing disproportionate pollution burdens within the general plan ensures that future development near these communities is consistent with any relevant EJ

⁴ SB 1000 defines “public facilities” as facilities that include “public improvements, public services, and community amenities.” (Gov. Code, § 65302, subd. (h)(4)(B).)

⁵ “**The plan shall include. . . . An environmental justice element**, or related goals, policies, and objectives integrated in other elements, **that identifies disadvantaged communities** within the area covered by the general plan. . . .” (Gov. Code, § 65302, subd. (h)(1) [emphasis added].)

policies and considers potential impacts, including cumulative impacts, on these sensitive receptors. It also provides the communities with more clarity around the meaning and impact of the EJ policies, which in turn will facilitate their ability to comment on and be involved with implementing the policies once adopted.

While the Countywide Plan acknowledges the presence of disadvantaged communities subject to SB 1000 (termed “Environmental Justice Focus Areas” or EJFAs), it does not identify these communities. The detailed identification of these EJFAs is instead contained in a separate document, the Environmental Justice Background Report (“EJ Background Report” or “Report”). The Plan itself does not reference the EJ Background Report, nor does it meaningfully discuss SB 1000’s requirements. The Plan’s lone reference to SB 1000 is in the Glossary of Terms for “EJFA”—where the Plan provides a definition of EJFA that does not match the definition of the same term in the EJ Background Report.⁶ Furthermore, the EJ Background Report is not located on the main web-based portal for the Plan.⁷ Instead, the Report is hyperlinked on a side margin within the Hazards Element subpage, difficult to find even if you know what you are looking for.⁸ Further minimizing its importance, the EJ Background Report contains a disclaimer on its title page that its contents “should not be used as the sole reference for data or as confirmation of intended or desired policy direction.”⁹

Relatedly, the County should discuss the unique and compounded health risks facing EJFAs in the Countywide Plan itself. While these health risks are identified in the EJ Background Report,¹⁰ they are not referenced in the Countywide Plan—making it difficult for

⁶ Compare Draft Countywide Plan at 80 with EJ Background Report at 2-9. The two definitions use different geographic units for identifying EJFAs—the Countywide Plan appears to identify areas by census tract, while the EJ Background Report asserts that “any portion of a census tract” can meet the definition. Note that the EJ Background Report’s approach is consistent with OPR’s recommended approach. (See OPR, Public Review Draft General Plan Guidelines Chapter 4 (11/19/18) at p. 7, http://opr.ca.gov/docs/20181120-EJ_Chapter_Public_Comment.pdf (“[L]ocal governments should consider whether there are disadvantaged communities in geographic units that are smaller than a census tract to ensure that all disadvantaged communities are recognized.”).) In addition, the EJ Background Report’s definition excludes areas outside “community planning areas” or “unincorporated spheres of influence” because such lands are “typically unpopulated.” (EJ Background Report at 2-10.) The Countywide Plan does not exclude these areas.

⁷ See <http://countywideplan.com/policy-plan/beta/> (last accessed August 7, 2019).

⁸ See <https://countywideplan.com/policy-plan/beta/hz/> (last accessed August 7, 2019).

⁹ EJ Background Report at title page.

¹⁰ EJ Background Report at 3-1, 3-12 (Lucerne Valley), 3-15 (Southwest High Desert), 3-18 (El Mirage Valley / Oro Grande), 3-21 (Central Victor Valley), 3-24 (North High Desert), 3-27 (East Desert), 3-30 (Mountain Communities), 3-33 to 3-34 (Bloomington and Muscoy), and 3-37 to 3-38 (Valley Unincorporated Islands).

the public to assess whether the included EJ policies adequately reduce such risks as required by SB 1000. (Gov. Code § 65302, subd. (h)(1)(A).)

We appreciate the County's efforts to address environmental justice through its detailed EJ Background Report. However, we are concerned that the County's approach fails to meet SB 1000's minimum requirement that disadvantaged communities be identified in the general plan itself. The County's approach also interferes with disadvantaged communities' ability to meaningfully engage in the planning and implementation processes, contrary to SB 1000's purpose. We encourage the County to address the inconsistencies between the Countywide Plan and the Background Report and to incorporate identification of disadvantaged communities and their unique and compounded health risks directly in the Countywide Plan.

B. Environmental Justice Policies

As described above, local governments that identify disadvantaged communities in their jurisdiction must include EJ policies in their general plan that address specific issues. (Gov. Code, § 65302, subd. (h)(1).) SB 1000 requires these policies to be either incorporated into General Plans as a separate EJ element or integrated into other elements throughout the Plan. (Gov. Code § 65302, subd. (h)(1).) The County has chosen the latter alternative, and in email correspondence regarding the first draft Countywide Plan, the County indicated that five policies in the Health and Wellness Element address environmental justice for purposes of SB 1000, in addition to the fourteen policies in the EJ Goal within the Hazards Element.¹¹ We appreciate the County's efforts to address environmental justice in its General Plan through inclusion of EJ policies. However, we are concerned that the EJ policies are not sufficient to reduce the unique and compounded health risks to EJ communities as required by SB 1000, nor do they adequately address the specific requirements of SB 1000.

SB 1000 requires the County to identify policies that actually reduce the unique or compounded health risks experienced by disadvantaged communities. (Gov. Code § 65302, subd. (h)(1)(A).) Certain of the County's proposed EJ policies are designed to meet this requirement. For example, draft Policy HZ-3.5 will ban new hazardous waste facilities from being developed in EJFAs.¹² This policy is clear, enforceable, and prevents future pollution exposure on already over-burdened EJFAs. However, many of the County's other EJ policies do not appear designed to affirmatively reduce the unique and compounded health risks and pollution burdens facing EJFAs as required by SB 1000. For example, Policy HZ-3.2 indicates the County will "monitor pollution exposure and identify solutions" in EJFAs, but it does not

¹¹ Email from Jerry Blum, Countywide Plan Coordinator, to Tatiana Gaur, Deputy Attorney General (Nov. 21, 2018, 3:26 PM) (on file with Department of Justice) (noting that policies HW-1.12, 1.13, 3.1, 3.2 and 3.7 in the Health and Wellness Element of the Countywide Plan were designed to address EJ).

¹² Countywide Plan at 50.

require implementation of identified solutions to reduce pollution exposure, nor does it define the type of pollution, how it is to be monitored, and the timeframe on which it should be monitored.

The County has conducted a detailed assessment of each EJFA, identifying existing health risks within each SB 1000 policy area in the EJ Background Report.¹³ The Countywide Plan should include policies designed to reduce these identified health risks. For example, the EJ Background Report identifies Lucerne Valley as an EJFA that suffers from pollution exposure in the form of high levels of nitrates and total dissolved solids in its groundwater.¹⁴ The Countywide Plan contains two policies that address groundwater contamination, but neither Policy HZ-3.6 and HZ-3.7 actually “*reduce* the unique or compounded health risks.” (*Id.* [emphasis added].) Instead, these policies indicate the County will “advocate for and coordinate with local and regional agencies” and will “seek funding” for well testing.¹⁵ Generally speaking, policies that assert the County will seek funding, absent clear and enforceable conditions or benchmarks, may not meet SB 1000’s requirement that the general plan reduce pollution exposure.¹⁶ Lucerne Valley also struggles with absentee landlords and substandard housing, and would benefit from policies designed to promote safe and sanitary homes as required by SB 1000. (*Id.*) However, Countywide Plan Policy HZ-3.4 simply states the County will “pursue grant funding and other assistance” for rehabilitation and other home improvements. Lucerne Valley also does not have a wastewater treatment plant, has high food insecurity, lacks local health infrastructure, has high rates of obesity, and lacks sidewalks and other pedestrian and cycling infrastructure.¹⁷ Many of the other EJFAs likewise suffer from health risks in most SB 1000 policy focus areas,¹⁸ but the Countywide Plan does not include policies to reduce these health risks.

In particular, community organizations have identified impacts from truck traffic and the logistics industry as a primary concern in San Bernardino County.¹⁹ The EJ Background Report

¹³ See EJ Background Report at 3-13 (Lucerne Valley); 3-16 (Southwest High Desert); 3-19 (El Mirage Valley and Oro Grande); 3-22 (Central Victor Valley); 3-25 (North High Desert); 3-28 (East Desert); 3-31 (Mountain Communities); 3-35 (Bloomington and Muscoy); 3-38 to 3-40 (Valley Unincorporated Islands).

¹⁴ EJ Background Report at 3-13.

¹⁵ Countywide Plan at 51.

¹⁶ See, also, Countywide Plan at 51 (HZ-3.9, 3.10)

¹⁷ EJ Background Report at 3-13.

¹⁸ See note 13, *supra*.

¹⁹ See, e.g., Letter from Center for Community Action and Environmental Justice (CCA EJ) to San Bernardino Planning Department (Nov. 5, 2018) at 3 (“We find it imperative that the logistics industry be addressed as a pollution burden as it encompasses the freeways, railyards and truck routes that expose DACs [disadvantaged communities] to harmful toxins and

acknowledges that these impacts are a primary contributor to air pollution exposure in EJFAs leading to the “unique and compounded health risks” in these communities.²⁰ Impacts from neighborhood truck traffic was also identified as a community priority for Muscoy, one of the EJFAs in San Bernardino County, through a parallel planning process under another law, AB 617.²¹ However, the Goods Movement Goal within the Transportation & Mobility Element of the Countywide Plan does not include any policies designed to address these concerns or reduce these impacts on EJFAs. Instead, the Goods Movement goal indicates the County “supports” the establishment of regional truck routes and “may” establish local truck routes—without any mention of EJFAs.²² Policy HZ-3.1 indicates that the County will require a cumulative health risk assessment for any project that “potentially effects [sic] sensitive receptors” in EJFAs, including an evaluation of “impacts of truck traffic from the project to freeways.”²³ We commend the County for requiring an evaluation of truck traffic impacts, however, this policy fails to define which projects would trigger the health risk assessment. Furthermore, the preparation of an assessment alone will not reduce the impacts of a future project. We encourage the County to adopt policies to reduce the unique and compounded health risks caused by truck traffic in EJFAs as required by SB 1000.

We also encourage the County to coordinate with the South Coast Air Quality Management District (“SCAQMD”), which is currently developing a Community Emission Reduction Plan and Community Air Monitoring Plan for Muscoy in accordance with AB 617. AB 617 requires local air districts, through community steering committees, to develop emission reduction plans in specific areas of the state selected by the California Air Resources Board (“CARB”) based on the area’s exposure to air pollution and cumulative burdens. Muscoy and parts of the City of San Bernardino were selected in 2018 for the development of an emissions reduction plan. As part of the AB 617 process, SCAQMD has worked closely with community members to identify priority areas and develop policy recommendations in line with community concerns. A number of the policies identified in the current draft Community Emission Reduction Plan recommend actions for the County to reduce cumulative health risks on community members from truck traffic, including working with local law enforcement to enforce truck routes, developing an Automated License Plate Reader system for targeted outreach to

contribute to negative regional air quality. We also view the goods movement as a leading source of impact for DAC’s.”).

²⁰ See, e.g., EJ Background Report at 3-35 (noting high diesel particulate matter concentrations in Bloomington and Muscoy as a result of trucking routes in and around both communities).

²¹ See South Coast Air Quality Management District, Draft Community Emission Reduction Plan Chapter 3a (07.25.19 version) at 3a-6, <http://www.aqmd.gov/docs/default-source/ab-617-ab-134/steering-committees/san-bernardino/ceqp/chapter-3-draft-commprofile-july-2019.pdf>.

²² Countywide Plan at 29 (Policies TM-5.5 and 5.6).

²³ Countywide Plan at 50.

truck drivers, requiring buffer zones between warehouses and residential development, enforcing warehouse design requirements to minimize air quality impacts, and implementing designated truck routes and parking zones.²⁴ We encourage the County to look to the current draft AB 617 Community Emission Reduction Plan developed for the San Bernardino County community of Muscoy as a model for incorporating community input to develop targeted policies to address health risks. Ultimately, at a minimum, the Countywide Plan must be consistent with the AB 617 Community Emissions Reduction Plan and its emission reduction goals.

We also note reservations with respect to Policy HZ-3.3, which indicates the County intends to “pursue grant funding and other assistance to relocate residents living in residential units that are nonconforming uses in environmental justice focus areas and to eliminate those nonconforming residential units.”²⁵ We understand this policy may be intended to reduce pollution exposure for residents of EJFAs, but we are concerned this approach may result in the displacement of low-income and disadvantaged EJFA residents to areas that may be unaffordable and/or further from their places of employment. We also share the communities’ expressed concern that this policy may result in the creation of new non-conforming residential units through the future rezoning of residential areas to allow for industrial development, exacerbating the potential risk of displacement.²⁶ This policy appears to be contrary to the spirit of SB 1000, which is intended to reduce impacts on disadvantaged communities. Rather than reducing the pollution exposure for these communities, this policy places the burden on residents of EJFAs to relocate. We encourage the County to consider potential unintended consequences of this policy and include additional safeguards to protect residents of EJFAs from displacement and industrial encroachment.

In sum, we encourage the County to strengthen the Countywide Plan’s EJ policies and supplement with new policies designed to reduce the risks already identified in the EJ Background Report. We recommend the County review resources prepared by the Governor’s Office of Planning and Research and the California Air Resources Board.²⁷ We also encourage the County to consider identifying in some way all EJ policies in the Countywide Plan, for example by color coding or copying them into an appendix. We believe such identification is a best practice for ensuring the County’s EJ policies are clear and accessible.

²⁴ South Coast AQMD, San Bernardino/Muscoy Community Emission Reduction Plan (July 2019), <http://www.aqmd.gov/nav/about/initiatives/community-efforts/environmental-justice/ab617-134/san-b/community-emissions-reduction-plan> at 5b-7, 5b-9, 5c-3 to 5c-4.

²⁵ Countywide Plan at 50.

²⁶ See Letter from CCAEJ, *supra* note 19, at 3.

²⁷ OPR, Public Review Draft General Plan Guidelines Chapter 4 (11/19/18), http://opr.ca.gov/docs/20181120-EJ_Chapter_Public_Comment.pdf; CARB, Options for Cities to Mitigate Heavy-duty Vehicle Idling (May 5, 2016), https://ww3.arb.ca.gov/enf/arb_options_cities_mitigate_idling.pdf.

C. Community Engagement

SB 1000 requires governments to “[i]dentify objectives and policies to promote civil engagement in the public decisionmaking process.” (Gov. Code, § 65302, subd. (h)(1)(B).) We applaud the County for including clear and enforceable policies requiring targeted outreach in EJFAs in Policies HZ-3.12, 3.13, and 3.14. We also appreciate the County’s efforts in scheduling numerous public meetings in the lead up to issuing the Countywide Plan in 2017 and again after the first draft of the Countywide Plan was released in 2018. However, we encourage the County to more directly engage with residents in EJFAs to ensure the EJ policies being adopted directly address their concerns. At its core, SB 1000 requires that EJ policies promote public engagement in the decisions that affect environmental justice communities. Yet it does not appear that the County conducted outreach specifically to EJFAs or specifically about its EJ policies.²⁸ Furthermore, it does not appear that translation services were offered during the meetings, nor were archived videos made available for those unable to attend in-person. While not a requirement of SB 1000, these kinds of services are best practices to ensure meaningful engagement with EJ communities.²⁹

III. DRAFT ENVIRONMENTAL IMPACT REPORT

We appreciate the opportunity to review the Countywide Plan DEIR released on June 17, 2019. As noted below, we have concerns regarding the DEIR’s analysis of air quality impacts, greenhouse gas impacts, mitigation measures, and alternatives—especially as these issues intersect with environmental justice. Given that the County has prepared a detailed EJ Background Report identifying substantial health risks already burdening EJ communities in the County, we are troubled by the DEIR’s failure to analyze cumulative impacts on sensitive receptors in these communities as a result of the growth permitted under the Countywide Plan. We encourage the County to revise its environmental analysis before submitting the Countywide Plan to the Board of Supervisors for review.

²⁸ An identical presentation given at the nine regional meetings held in September 2018 (in Yucipa, Pinon Hills, Rialto, Ontario, Big Bear City, Running Springs, Lucerne Valley, Newberry Springs, and Joshua Tree) only contained one, non-substantive slide referencing environmental justice. (San Bernardino Countywide Plan Regional Open Houses (September 2018), http://countywideplan.com/wp-content/uploads/2018/09/CWP_323_OH_Presentation_Sept2018web.pdf.)

²⁹ We appreciate the County’s efforts to engage with EJ communities during the development of its “Community Action Guides.” However, community engagement through these voluntary community plans, which the County does not plan to enforce or oversee, are not a substitute for SB 1000’s requirements for community engagement for the general plan itself.

A. Air Quality Impacts

We appreciate the County's acknowledgement that the Countywide Plan's air quality impacts will be potentially significant.³⁰ However, we are concerned by the summary discussion of these significant impacts, particularly the inadequate analysis of cumulative impacts on sensitive receptors in already over-burdened EJFAs. In addition, we are concerned with the generally inadequate mitigation measures offered to reduce these impacts.

In general, the DEIR suffers from the same structural failings as the Countywide Plan: as the Plan fails to adequately identify the unique and compounded health risks facing EJFAs, so too does the DEIR fail to adequately identify the adverse effects of its significant air quality impacts. As the Plan's EJ policies fail to adequately reduce these health risks, so too do the DEIR's mitigation measures fail to adequately reduce these adverse effects. By failing to properly identify the problems intended to be solved in the first place, the County's analysis in both the Countywide Plan and the DEIR make it difficult for the public to determine if the solutions put forward are adequate.

Simply designating an environmental impact as "significant" does not excuse a lead agency from "reasonably describ[ing] the nature and magnitude of the adverse effect." (*Cleveland Nat'l Forest Found. v. SANDAG* (2017) 3 Cal.5th 497, 514.) The DEIR provides a description of possible adverse effects from exposure to criteria air pollutants and toxic air contaminants in general,³¹ and provides an emissions forecast for expected criteria pollutant emissions,³² but fails to adequately analyze potential adverse effects from these increased emissions and neglects to model potential increases of toxic air contaminants at all.³³ Description of the nature and magnitude of these adverse effects is "necessary to inform the critical discussion of mitigation measures and project alternatives." (*Id.* at p. 515; CEQA Guidelines § 15151.)

The DEIR's failure to properly document and analyze these adverse effects is particularly concerning given the detailed analysis contained in the EJ Background Report identifying the existing burden faced by residents of EJFAs from exposure to both criteria air pollutants and

³⁰ DEIR at 5.3-42 to 5.3-43.

³¹ DEIR at 5.3-9 to 5.3-12.

³² DEIR at 5.3-35 to 5.3-36.

³³ DEIR at 5.3-40 ("For this programmatic general plan-level assessment, it is not feasible to conduct dispersion modeling to determine the contribution of health risks associated with individual land use types since site-specific information on emissions and emissions quantities is not known. This is because a general plan does not directly result in development without additional approvals."). We encourage the County to review other recent programmatic EIRs which include such modeling. (*See, e.g., SANDAG, Final Environmental Impact Report: 2050 Regional Transportation Plan and Sustainable Communities Strategy at 4.3-67 to 4.3-84* (October 2011), http://www.sandag.org/uploads/2050RTP/F2050RTPEIR_all.pdf).

toxic air contaminants, especially diesel particulate matter.³⁴ The minimal cumulative impacts analysis included in the DEIR addresses only criteria air pollutants, and fails to analyze cumulative impacts of toxic air contaminant increases.³⁵ In addition, the DEIR does not mention SB 1000's requirement to incorporate EJ policies that improve air quality even once in its analysis of air quality impacts despite the state law being a part of the regulatory setting in which the Countywide Plan operates.³⁶ By neglecting this analysis of EJFAs, the DEIR does not inform the public of the potential cumulative impacts on these vulnerable communities, and makes it challenging to assess the adequacy of the included mitigation measures.

We are also concerned with the adequacy of the included mitigation measures, particularly to the extent that these measures fail to reduce significant impacts on sensitive receptors in EJFAs. Adequate mitigation measures must:

- (a) Avoid[] the impact altogether by not taking a certain action or parts of an action.
- (b) Minimiz[e] impacts by limiting the degree or magnitude of the action and its implementation.
- (c) Rectify[] the impact by repairing, rehabilitating, or restoring the impacted environment. [or]
- (d) Reduc[e] or eliminat[e] the impact over time by preservation and maintenance operations during the life of the action.

(CEQA Guidelines § 15370.)

The DEIR's air quality mitigation measures do not appear to meet this requirement. Like the EJ policies in the Countywide Plan discussed above, the DEIR's mitigation measures fail to create enforceable obligations that could actually reduce the identified impacts. For example, mitigation measure AQ-1 lists "possible" mitigation measures that should be included in approving permits for future projects, but only those projects that exceed the local air district's thresholds of significance on a project-by-project basis.³⁷ While intended to minimize potentially significant impacts on regional air quality, AQ-1 does not contain any mandatory emission reduction measures, nor does it address the potential cumulative impacts of a project. In addition, AQ-1 fails to include the County's own suggestions in the EJ Background Report,

³⁴ EJ Background Report at 3-1, 3-12 (Lucerne Valley), 3-15 (Southwest High Desert), 3-18 (El Mirage Valley / Oro Grande), 3-21 (Central Victor Valley), 3-24 (North High Desert), 3-27 (East Desert), 3-30 (Mountain Communities), 3-33 to 3-34 (Bloomington and Muscoy), and 3-37 to 3-38 (Valley Unincorporated Islands).

³⁵ DEIR at 5.3-41 to 5.3-42.

³⁶ As SB 1000's requirements extend beyond air quality into other environmental impacts analyzed in the DEIR—such as hazardous waste, water quality, public services, recreation, transportation, and utilities—we encourage the County to evaluate SB 1000 as part of the regulatory setting for those sections of the DEIR as well.

³⁷ DEIR at 5.3-43.

including that the County establish truck routes to reduce pollution in residential neighborhoods and limit development that would contribute to pollution in EJFAs.³⁸ Nor does it include the suggestions provided in the AB 617 Community Emissions Reduction Plan for Muscoy in San Bernardino County, such as working with local law enforcement and implementing a license plate reader system to enhance enforcement of truck routes and illegal idling.³⁹ We encourage the County to work together with local communities to strengthen its mitigation measures in order to ensure the significant air quality impacts expected from the Countywide Plan are minimized.⁴⁰

Mitigation measure AQ-3's requirement that health risk assessments be prepared for projects that generate "substantial diesel truck travel" (which the County defines as 100 or more diesel trucks per day) is a step in the right direction. However, we are concerned that including this threshold may encourage segmented warehouse development that intentionally avoids triggering a cumulative impacts assessment without any actual reduction in pollution exposure. We encourage the County to consider using distance to sensitive receptors or concentration of nearby warehouse development as triggering thresholds for a cumulative impact assessment. We also encourage the County to strengthen AQ-3 through the addition of conditions requiring buffering or other protections to minimize impacts on already over-burdened sensitive receptors in EJFAs.⁴¹

B. Greenhouse Gas Impacts

While the DEIR analyzes overall greenhouse gas (GHG) emissions for consistency with state climate goals and evaluates the significance of GHG emissions on both a quantitative and qualitative basis, we are concerned by the summary discussion of these significant impacts and by the generally insufficient mitigation measures offered to reduce these impacts. We encourage the County to revise its analysis in two primary respects.

First, in concluding that the Countywide Plan would result in significant GHG impacts on a quantitative, per capita basis, the County claims that it "cannot achieve the long-term efficiency targets without additional federal and state reductions" and that "[t]he state's climate stabilization goals are contingent on decarbonization of the state's transportation and energy

³⁸ EJ Background Report at 1-14.

³⁹ South Coast AQMD, San Bernardino/Muscoy Community Emission Reduction Plan, Chapters 5a through 5g, http://www.aqmd.gov/nav/about/initiatives/community_efforts/environmental_justice/ab617-134/san-b/community-emissions-reduction-plan; *see, e.g., id.* at 5b-7 & 5b-9.

⁴⁰ *See, e.g.,* Letter from CCAEJ, *supra* note 19, at 4 (listing eleven region-specific EJ policies, many of which could be adopted as mitigation measures).

⁴¹ *See, e.g.,* SANDAG RTP FEIR, *supra* note 33, at 4.3-84 to 4.3-89.

sectors.”⁴² In evaluating the significance after mitigation, the County claims it has “reduce[d] GHG emissions to the extent feasible” but cannot meet long-term GHG efficiency goals without additional state and federal measures and “major advancements in technology.”⁴³ However, the County’s own description of alternatives contradicts these assertions. The Concentrated Suburban Growth alternative presented in the Alternatives section says that the County could reduce GHG emissions by increasing density in the Valley region.⁴⁴ And the County concludes the Concentrated Suburban Growth alternative would “substantially reduce VMT-generated GHG emissions” by reducing commute length.⁴⁵ This suggests that further reduction of GHG emissions *is* within the County’s power to encourage future development into areas that will reduce vehicle miles traveled—irrespective of any technological advancements or regulatory action at the state or federal level. Thus, the County cannot claim to have mitigated GHG emissions to the maximum extent feasible if it has not evaluated the feasibility of encouraging high density development to reduce vehicle miles traveled as a mitigation measure. Instead, the County’s GHG emissions analysis actually shows that the Countywide Plan will *increase* vehicle miles traveled from the current baseline.⁴⁶ We encourage the County to revise the DEIR to account for all feasible measures to reduce GHGs, and ensure that proposed mitigation measures minimize GHG emissions to the extent feasible.

Second, we are concerned the County overstates its consistency with the CARB Scoping Plan’s Recommended Local Actions. For example, the DEIR claims the Countywide Plan contains a numeric VMT per-capita reduction goal, and cites this goal to support its consistency with the Scoping Plan’s recommended local actions to reduce VMT by adopting numeric VMT reduction targets.⁴⁷ However, the current draft of the Countywide Plan does not contain a per capita reduction goal. Rather, it has a general policy to promote development that reduces VMT.⁴⁸ In addition, many other County policies cited for consistency with CARB recommended actions are voluntary or policies that the County “supports” or “considers,” while CARB’s Scoping Plan recommends mandatory actions.⁴⁹ This overstated consistency with

⁴² DEIR at 5.7-34.

⁴³ DEIR at 5.7-60.

⁴⁴ DEIR at 7-10.

⁴⁵ DEIR at 7-14.

⁴⁶ DEIR at Appendix B-16 (showing total VMT per service population would increase from the existing baseline of 21.7 to 22.3 under the proposed Countywide Plan).

⁴⁷ DEIR at 5.7-39 to 5.7-40.

⁴⁸ Countywide Plan at 27. The tracked changes version of the Countywide Plan shows a fifteen percent per capita VMT reduction goal for each region in the County was deleted from the prior draft.

⁴⁹ *See, e.g.*, DEIR. at 5.7-43 (CARB recommended action: “Require clean vehicles be purchased as part of municipal vehicle fleet procurement” versus County policy deemed consistent: “The County considers fuel efficiency when purchasing new public vehicles.”); *id.* at

CARB's Scoping Plan misleads the public on the extent to which its policies reduce GHG emissions. We encourage the County to more carefully evaluate its consistency with the Scoping Plan's recommended local actions, and include mitigation measures to minimize any inconsistencies identified.

C. Alternatives Analysis

Finally, we are concerned the DEIR does not adequately analyze the alternatives presented. "The core of an EIR is the mitigation and alternative sections." (*Cleveland Nat'l Forest Found. v. SANDAG* (2017) 17 Cal.App.5th 413, 432 [quoting *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564].) The alternatives analysis must "evaluate the comparative merits of the alternatives" and "include sufficient information about each alternative to allow meaningful evaluation, analysis, and comparison with the proposed project." (CEQA Guidelines § 15126.6, subd. (a); subd. (d).) The DEIR fails in both of these respects.

In evaluating the Concentrated Suburban Growth Alternative, the County acknowledges this alternative would "reduce three of the proposed Project's significant, unavoidable impacts to less than significant" and would mitigate to less than significant the four impacts that would increase as compared to the proposed Project.⁵⁰ But the County fails to adequately compare the merits of the alternative with the Project to allow the public to understand why the environmentally superior alternative was not chosen. Instead, the County simply notes that while the Concentrated Suburban Growth alternative "could achieve the Project objectives," "[e]xtra effort would be required. . . to ensure that higher densities in the Valley region would not jeopardize the existing character and heritage goal for this region."⁵¹ This bare statement of opinion, with no evidence or evaluation, does not satisfy CEQA's requirement to allow "meaningful evaluation, analysis, and comparison with the proposed project." (CEQA Guidelines § 15126.6, subd. (d).) Furthermore, the Alternatives section provides only two sentences to describe the Concentrated Suburban Growth alternative: "This alternative focuses on intensifying residential development in the already urban areas in the Valley region and preserving the relatively undeveloped Desert and Mountain regions. Higher density housing types are projected. Employment growth would also be limited to the Valley region."⁵² The DEIR does not provide data or analysis demonstrating how this alternative reduces air quality, transportation, and greenhouse gas impacts. Instead, the DEIR provides only narrative

5.7-40 (CARB recommended action: "Update code of ordinances to reduce parking requirements and eliminate parking minimums" versus County policy deemed consistent: "Policy TM-4.10 identifies that the County supports the use of shared parking.").

⁵⁰ DEIR at 7-22.

⁵¹ DEIR at 7-22.

⁵² DEIR at 7-5.

description.⁵³ We encourage the County to revise its alternatives analysis to thoroughly evaluate each alternative and provide sufficient information to allow meaningful comparison.

IV. CONCLUSION

Thank you for considering our comments on the County of San Bernardino's Countywide Plan and Draft Environmental Impact Report. Please do not hesitate to reach out to me if you have any questions throughout the remainder of your planning process. We look forward to continuing our conversation about the Countywide Plan.

Sincerely,

MEREDITH HANKINS
Deputy Attorney General

For XAVIER BECERRA
Attorney General

⁵³ DEIR at 7-12, 7-14, 7-16.