



1300 I STREET, SUITE 125
P.O. BOX 944255
SACRAMENTO, CA 94244-2550

Public: 916/445-9555
Telephone: (916) 327-7877
Facsimile: (916) 327-2319
E-Mail: lisa.trankley@doj.ca.gov

November 5, 2008

Tom Pace
City of Sacramento Planning Department
New City Hall
915 I Street, 3rd Floor
Sacramento, CA 95814

RE: Draft Update to General Plan

Dear Tom:

We appreciate the opportunities we have had to meet with you, members of the Sacramento planning staff, and the City Manager and his staff on the Draft General Plan Update and Draft MEIR. In addition, it was very instructive to attend the Planning Commission meeting and hear the staff's presentation of the provisions in the Plan that are intended to address GHG and climate change. As we've discussed, however, we continue to disagree with the staff on several major issues and we would like to reiterate those for your consideration. We also would like to elaborate on some of our observations on infill that we were only able to briefly mention at our meeting.

GHG Emissions

We had raised several questions about the GHG emission figures, and just received an e-mail response from Erik de Kok on behalf of the City. We appreciate your addressing our questions, although it is difficult for us to fully understand the response without seeing the Final EIR. Our first question was: "Revised Table 8-3 in the City's draft response to our comment letter now indicates that total GHG emissions will go down from 2005 to 2030, despite the fact that population will increase by 195,000, there will be 136,000 new jobs, and 97,000 new housing units. Intuitively, that would suggest that GHG emissions would also increase. In any case, it is not clear how you reached the conclusion that GHG will decrease." Erik has responded that revisions to Table 8-3 now show an increase in GHG emissions, which will be reflected and explained in the Final EIR.

Our second question was: "The information in Table 8-3 seems to conflict with the VMT data in the City's draft response to the comment letter from the SMAQMD. The response to the SMAQMD has a table on page 5 that shows Daily VMT in 2005 as 18,318,977 and Daily VMT

under the 2030 General Plan as 25,363,131, an increase of about 7 million VMT per day. That same table also predicts a per capita VMT increase from 36.8 in 2005 to 37.5 in 2030. That seems at odds with the GHG emission numbers in Table 8-3 and the projection that GHG will decrease.” Erik has responded that this discrepancy has also been resolved.

Our third question was: “We are confused about how you are calculating that there will be a 13% VMT reduction under the 2030 General Plan. You stated to the Planning Commission that the 2030 Plan reduces VMT per capita by 13%. The table on page 5 of the City’s draft response to the SMAQMD also shows a -13.2% change in Daily VMT per capita. Since that same table shows an increase in per capita VMT from 2005 to 2030, we are wondering if the decrease in per capita VMT comes when you compare the 2030 General Plan to the buildout of the 1988 Plan. As I recall, I believe you told the Planning Commission that the 13% reduction occurred when the 2030 General Plan is compared to the no project numbers. As we pointed out in our comment letter, CEQA requires that the impacts of the 2030 General Plan must be compared to the existing environment, not what could have been built under a previous plan. We thought the City, in response to our comment letter, had decided to use 2005 as the baseline, and that Table 8-3 uses 2005 as the baseline. It appears, however, that the 1988 buildout numbers are used as the baseline in the table in the response to the SMAQMD and in your presentation to the Planning Commission. We would appreciate a clarification of these numbers and conclusions.” Erik responded that revisions to the analysis now show the baseline as 2005. He also confirmed that the decrease of 13% VMT is a comparison to the No Project scenario.

We will review the Final EIR, once it is published, to see if it clears up the issues we raised in our questions.

Lack of Significance Finding

The City has told us that it does not believe it has the tools to determine whether the GHG emissions will have a potentially significant impact. The City takes the position that because there are no published state guidelines, thresholds, or methodologies for making a significance determination, it would be speculative to attempt such a determination. It is true that no state agency has set any thresholds. As we have stated to many other jurisdictions, however, this lack of official thresholds does not relieve the City of its obligation under CEQA to determine if the project has a potentially significant cumulative impact on climate change. Our position is supported by agency guidance that has been published to date, case law, and the fact that many local agencies and project proponents have been able to make a significance determination.

As you are probably aware, the Air Resources Board has just published a preliminary proposal on significance thresholds. That proposal states, at page 1, that climate change is an

environmental effect subject to CEQA, citing Senate Bill 97, and also states that “Lead agencies therefore are obligated to determine whether a project’s climate change-related effects may be significant.”¹ The Office of Planning and Research also has directed lead agencies to determine the significance of the impact from GHG emissions in its Technical Advisory (p. 6).

As we have pointed out, the City’s failure to make a significance determination conflicts with several recent trial court decisions. For example, we sent you a copy of the case in which ECOS sued Caltrans on its proposed Highway 50 lane expansion. In that case, a Sacramento trial court judge explicitly rejected Caltrans’ argument that addressing GHG emissions was too speculative because there was no accepted methodology for analyzing GHG emissions and climate change. The court stated, “Caltrans must meaningfully attempt to quantify the Project’s potential impacts on GHG emissions and determine their significance, or at the very least explain what steps it has taken to show such impacts are too speculative for evaluation.” (p. 11.)

In contrast to the City’s assertion that it cannot make a significance determination, a number of other jurisdictions have analyzed the significance of GHG in EIR’s for their general plans or other large-scale planning documents and were able to make a significance determination. We submitted three examples to you: the Napa County General Plan, the San Diego General Plan, and the San Diego Association of Governments’ Regional Transportation Plan. Thus the City’s arguments that it need not and cannot make a significance determination are contradicted by both trial court decisions and real-world experience.

It is important to stress that making a determination of significance is not merely an exercise in wordplay. A failure to make a significance determination has serious and practical consequences. Under CEQA, a project proponent is required to mitigate all significant impacts to the extent feasible. If an EIR fails to find that impacts from GHG emissions are significant, the EIR is not required to propose any enforceable mitigation measures for those impacts. The City argues that it has addressed climate change impacts in the Plan Update by proposing to adopt policies and programs. Many of these policies, however, only aim to “encourage,” “support,” or “study the feasibility” of making changes. While hortatory GHG policies are positive, they do not count as adequate mitigation because there is no certainty that the policies will be implemented. The City needs to go further and commit to specific, enforceable measures.

¹<http://www.arb.ca.gov/cc/localgov/ceqa/meetings/102708/prelimdraftproposal102408.pdf>

Moreover, even if the City's policies and programs were adequate to address climate change, the City's failure to make a significance determination sends the signal to other project applicants that the City will accept a project EIR that contains no significance finding on, or enforceable mitigation measures for, GHG emissions. We see an example of that problem in the draft EIR for Delta Shores. That draft EIR states, "[T]he City has determined that until such time as a sufficient scientific basis exists to ascertain the incremental impact of an individual project on global climate change, and to accurately project future climate trends associated with that increment of change, and guidance is provided by regulatory agencies on the control of GHG emissions and thresholds of significance, the significance of an individual project's contribution to global GHG emissions is too speculative to be determined." (pg 5.10-18)

The draft EIR includes a table (pg 5.10-26 to 27) of "GHG emissions reduction measures/design strategies." It also says the project "will adhere to several of the mitigation measures recommended by the CA AG to address global warming." The draft EIR is careful, however, not to call these "strategies" mitigation measures because it has not made a significance determination, and none of the "strategies" are included in the Delta Shores Mitigation Monitoring Report.

The City's failure to adequately address GHG emissions in its General Plan MEIR, therefore, has important and detrimental consequences for the environment as other projects follow suit and refuse to mitigate GHG emissions.

Infill Policies

Unfortunately, we did not get an opportunity to elaborate on our infill concerns at our meeting or fully discuss your responses to our questions concerning the Plan's approach to infill versus outlying area development. First, let us acknowledge that the City has had a number of exemplary infill projects and we applaud these projects as good models. Our concerns are based on our desire that the City continue to ensure that infill is a priority in future growth and that General Plan policies and programs clearly support that priority.

The City staff and Plan Update indicate there are five total Special Study Areas – two that are greenfield in character (Natomas Joint Vision and Fruitridge Florin Study Areas), two that are largely developed (Arden Arcade and Town of Freeport Study Areas), and one that is a brownfield/former mining area (East Study Area). The City acknowledged at our meeting that there is more than enough capacity within existing infill areas to accommodate the growth that is anticipated or needed through 2030. That raises the question of why the Plan Update allows planning for and, potentially, development in two greenfield areas and three other Special Study Areas. The City has told us that if the City does not plan for and develop these areas, the County will, and that the City cannot afford not to call for development of these areas. The City also

noted that they are in the SACOG Blueprint as appropriate for development.

First, we note that the SACOG Blueprint has a 2050 planning horizon, so an area that may be suitable for development in 2050 may not be suitable for development in 2030. Second, the Draft General Plan Update states only that the City will “[phase] city expansion into Special Study Areas where appropriate.” [LLU 1.1.9]. It would be helpful to explain how the City intends to “phase” expansion, because there are no criteria spelled out for when expansion into Special Study Areas is considered “appropriate.” Neither are there policies defining the circumstances under which the City could or should expand into those outlying areas within the planning horizon of the Plan Update. We believe the General Plan needs to include specific policies setting forth the criteria for planning and developing these areas. We realize that the City intends to update its 2002 Infill Strategy, but infill policies governing growth should be in this General Plan Update.

Our second concern is that, in light of the City’s acknowledgement that it has sufficient growth capacity in infill areas, the City needs to provide an explanation of why the Reduced Footprint Alternative is not feasible. This alternative provides for future growth within the existing development footprint, and is the environmentally superior alternative in the Draft MEIR.

Green Building Ordinance

Finally, we are disappointed that the City of Sacramento, in contrast to many jurisdictions throughout the State, is proposing a green building ordinance that is merely voluntary. This decision has apparently been based on economic grounds, on the concern that if all the regional jurisdictions do not adopt a mandatory ordinance, Sacramento will be at a competitive disadvantage in attracting development.

We do not believe these objections are well-grounded, especially for commercial and residential buildings; while initial development costs may be slightly higher (although some studies suggest they are roughly the same), these costs are more than offset by energy and water savings within a few years. In addition, green buildings are becoming more and more attractive to consumers. In San Jose this spring, for example, one developer reported that new homes powered with solar electric power systems were selling more than twice as fast, on average, as new homes without solar. Numerous jurisdictions in California have adopted green building ordinances, (over two dozen, with others like Stockton committing to do so in the future), and the Air Resources Board’s Scoping Plan strongly endorsed green building measures as a way to reduce GHG emissions at the local level.

Tom Pace
November 5, 2008
Page 6

Thank you for taking the time to consider our comments. We would be happy to discuss these if you have any concerns or questions.

Sincerely,

/S/

LISA TRANKLEY
Deputy Attorney General

For EDMUND G. BROWN JR.
Attorney General

cc: Ray Kerridge, City Manager
Sabina Gilbert, Senior Deputy City Attorney
Erik de Kok., Senior Planner