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County of San Bernardino
Land Use Services Department, Advance Planning Division
385 North Arrowhead Avenue, First Floor
San Bernardino, CA 92415-0182
Attn: James Squire

RE: DEIR on San Bernardino County General Plan Revision

TRANSMITTED BY FACSIMILE AND U.S. MAIL

Dear Mr. Squire:

The Attorney General of the State of California submits the following comments regarding the San Bernardino County General Plan Revision Draft Environmental Impact Report ("DEIR"). 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. While these comments focus on some of the air quality and global warming issues raised by the DEIR, they are not an exhaustive discussion of all issues.

I. Introduction

The Plan is described as being San Bernardino County's "blueprint" for land use and development through 2030. The Plan projects population growth of about 25% by 2030 (DEIR, p. I-1), in an area that already accounts for about ten percent of the total daily trips made in the entire region. (Circulation and Infrastructure Background Report, p. 2-34.) However, the environmental analysis in the DEIR fails to adequately analyze air quality impacts and contains no analysis at all of the impact of the Plan on climate change; both omissions violate the California Environmental Quality Act ("CEQA"), Pub. Resources Code §§ 21000, et seq. As the DEIR acknowledges, San Bernardino County already has a critical air pollution problem, with state air quality standards for ozone and fine particulate matter having been exceeded on 91 days and 82 days, respectively, in 2002. (Conservation Background Report, p. 6-94.) Even though the County receives transported air pollution from the rest of the South Coast Air Basin, and from the San Joaquin Valley (Conservation and Background Report, p. 6-92), the County itself

contributes very significantly to this problem, with a very large rate of trips per day per resident, and an abysmally low rate of transit use. (Circulation and Infrastructure Background Report, p. 2-34.) The large amounts of land available for development present the probability that this problem will grow more severe during the lifetime of the General Plan revision. The environmental and public health concerns raised by the projected increases in vehicular travel under the proposed plan deserve, and CEQA requires, serious and thorough environmental analysis.

We note that the Legislature has recently enacted, and Governor Schwarzenegger has signed, AB 32, the landmark law to control and reduce the emission of global warming gases in California. We are extremely concerned that this legislation was not addressed in any way by either the draft General Plan revision or the DEIR. AB 32 requires both reporting of greenhouse gas emissions and their reduction on a brisk time schedule, including a reduction of carbon dioxide (CO₂) emissions to 1990 levels by 2020. Local governments will be called upon to help carry out the legislation's provisions, and its General Plan revision is the appropriate place for the County to identify both CO₂ and other greenhouse gas sources, as well as actions for mitigation of the increases in emissions in greenhouse gases resulting from actions set forth in the General Plan revision. Because global warming is perhaps the most serious environmental threat currently facing California, the DEIR should and must address the issue, provide full environmental disclosure of the effects on greenhouse gas emissions that the General Plan revision will cause, and adopt serious and real mitigation measures for those effects and emissions.

II. The General Plan Should Address and Include Measures to Reduce Greenhouse Gas Emissions, and the DEIR Should Discuss The Plan's Impact On Climate Change.

The General Plan revision projects that San Bernardino County's population will grow overall by about 25% by 2030, and the background documents indicate that the areas covered by Community Plans will experience about a 50% increase in population during that time. (DEIR App.C, p. 5.) The Plan relies upon on vehicular travel and improvements to freeways, roads and streets to deal with the travel needs of this expanded population, and acknowledges that the land uses permitted in the General Plan will increase traffic and may result in a substantial increase in vehicle trips unless mitigated. (DEIR, p. IV-169.) However, the DEIR never analyzes one of the most important environmental impacts of vehicle emissions -- greenhouse gases and resulting climate change.

Climate change results from the accumulation in the atmosphere of "greenhouse gases" produced by the burning of fossil fuels for energy. Because greenhouse gases (primarily, carbon dioxide("CO₂"), methane and nitrous oxide) persist and mix in the atmosphere, emissions anywhere in the world impact the climate everywhere. The impacts on climate change from

greenhouse gas emissions have been extensively studied and documented. (See Oreskes, Naomi, *The Scientific Consensus on Climate Change*, 306 *Science* 1686 (Dec. 3, 2004) [review of 928 peer-reviewed scientific papers concerning climate change published between 1993 and 2003, noting the scientific consensus on the reality of anthropogenic climate change]; J. Hansen, *et al.*, *Earth's Energy Imbalance: Confirmation and Implications*, *Scienceexpress* (April 28, 2004) (available at <http://pubs.giss.nasa.gov/abstracts/2005/HansenNazarenkoR.html>) [NASA and Department of Energy scientists state that emission of CO₂ and other heat-trapping gases have warmed the oceans and are leading to energy imbalance that is causing, and will continue to cause, significant warming, increasing the urgency of reducing CO₂ emissions].)

In AB 32, the Legislature recognized California's particular vulnerability to the effects of global warming, making legislative findings that global warming will "have detrimental effects on some California's largest industries, including agriculture, wine, tourism, skiing, recreational and commercial fishing, and forestry." (Health and Saf. Code section 38501, subd. (b).) San Bernardino County will feel the effects of climate change in many of these areas, particularly given the importance to the County of its Mountain area's economic dependence on tourism, skiing, recreational fishing, and recreational second homes. (Economic Development Background Report, App. A, pp. 57-59.) The Legislature also found that global warming will "increase the strain on electricity supplies necessary to meet the demand for summer air-conditioning in the hottest parts of the State." (Health and Saf. Code, section 38501, subd. (b).) Since San Bernardino, and especially its Desert areas, are among the parts of the State that do experience hot weather, the County will suffer acutely from any electricity shortages caused by the strains of global warming, as it will also feel the economic and public health damages from decreased snowpack and increased air pollution that a changed climate will bring -- indeed, is already bringing.

To prevent these harms, AB 32 mandates that emissions of greenhouse gases to 1990 levels must be required by whatever regulatory scheme the Air Resources Board, the agency charged with carrying out the statute, ultimately adopts. (Health and Saf. Code section 38530.) Governments are not exempt from AB 32. The County, its cities, and the businesses within its borders will all have to comply with the regulations and plans that will be adopted to achieve the reduction of greenhouse gas emissions mandated by this legislation.

Nor is AB 32 the first state-wide recognition of the ravages global warming may wreak on California. In Executive Order S-3-05, issued on June 1, 2005, Governor Schwarzenegger recognized the significance of the impacts of climate change on the State of California, noting that "California is particularly vulnerable to the impacts of climate change." And, even before AB 32, the Legislature recognized the severe impacts that come from climate change, as well as a "projected doubling of catastrophic wildfires due to faster and more intense burning associated with drying vegetation." (Stats. 2002, ch. 200, Section 1, subd. (c)(4), enacting Health & Saf.

Code § 43018.5) In the particular realm of vehicular travel and emissions from cars and truck, the California legislature went on to recognize that “passenger vehicles and light-duty trucks are responsible for *40 percent of the total greenhouse gas pollution in the state.*” (*Ibid.*, subd. (e)(emphasis added).) Our knowledge of the existence and severity of the problem of greenhouse gas emissions and global warming is not new, but was apparent and recognized before the draft General Plan revision was issued by the County.

Despite the existence of Executive Order S-3-05 and the pendency of AB 32 during the time that the General Plan revision was being prepared, the County does not even mention the issue in its General Plan revision, although that revision is meant to cover the next quarter century. Nor does the DEIR analyze, on even the most superficial level, emissions of carbon dioxide, climate change or global warming, despite the obvious connection between such emissions and land use planning, transportation planning, or even air quality. No mitigation for emissions of greenhouse gases is proposed or adopted.

Under CEQA, an environmental impact report must identify and focus on the “significant environmental effects” of a proposed project. (Public Res. Code section 21100(b)(1); Cal. Code Regs., tit. 14, §§ 15126(a), 15126.2(a), 15143.) “‘Significant effect on the environment’ means a substantial, or potentially substantial, adverse change in the environment.” (Public Res. Code section 21068). CEQA also provides that the CEQA guidelines “shall” specify certain criteria that *require* a finding that a project may have a significant effect on the environment:

“(1) A proposed project has the potential to degrade the quality of the environment, curtail the range of the environment, or to achieve short-term, to the disadvantage of long-term, environmental goals.

(2) The possible effects of a project are individually limited but cumulatively considerable. As used in this paragraph, “cumulatively considerable” means that the incremental effects of an individual project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.

(3) The environmental effects of a project will cause substantial adverse effects on human beings, either directly or indirectly.”
(Public Res. Code section 21083(b).)

The CEQA Guidelines, Cal. Code of Regs., tit. 14, section 15064, subdivision (h)(3), provide that an agency may conclude that an environmental effect is not cumulatively considerable if it complies with an existing plan to meet environmental standards, such as a state implementation plan or a basin plan. The DEIR itself includes as one of its significance criteria for air quality

the potential of the project to “[v]iolate any air quality standard or contribute substantially to an existing or projected air quality violation.”^{1/} Here, the plans to reduce global warming are still to be formulated, but after the passage of AB 32, we know, as stated above, that a reduction of emissions of greenhouse gases to 1990 levels will be required by whatever regulatory scheme is ultimately adopted. (Health and Saf. Code section 38550.) This provision of the Guidelines does not exempt the County from doing a CEQA analysis of this issue.

In other words, if the General Plan revision could allow emissions of greenhouse gases to significantly affect the environment, directly, indirectly, or cumulative, then the EIR on the revision must analyze the issue, disclose all that can feasibly be found out and disclosed, and adopt all feasible mitigation measures. The DEIR reports that currently, San Bernardino generates about 5.2 million person trips per day (about 10.35 trips per household per day), and that over 84 % of the work trips are made by car. (Circulation and Infrastructure Background Report, p. 2-34.) Given that the DEIR projects an increase in population of about 436,500 people by 2030, vehicular miles traveled by the year 2030 can be expected to grow substantially. Considering that about 40% of greenhouse gas emissions come from motor vehicles, the revision clearly “has the potential to degrade the environment” as to greenhouse gases and global warming. (*See ibid.*, subd. (b)(1).) Moreover, the cumulative effects of this project on greenhouse gas emissions, when taken in consideration with the impacts statewide of increased population and vehicular travel over the next quarter century, are undeniable. (*See ibid.*, subd. (b)(2).) When considering the impacts of climate change on California, it is impossible to ignore that the impacts of this project will have either direct or indirect effects on human beings. (*See ibid.*, subd. (b)(3).) Given the scope of the General Plan revision, the projected increase in population and vehicle travel it projects, and the fact that it projects a steady and large increase in population, there is no question that the impacts of the General Plan revision on greenhouse gas emissions and climate change may, and likely will, have significant cumulative environmental impacts for California. These impacts should have been considered, analyzed, and mitigated in the DEIR.

Such an analysis is possible; the data are obtainable. Carbon dioxide emissions from cars can be quantified. In fact, under AB 32, an inventory of greenhouse gas emissions *must* be done in time to allow the 1990 level of such emissions to be determined by the statutory deadline of January 1, 2008. (Health and Saf. Code sections 38530, 35850.)^{2/} This is such a short time that such an emissions inventory should begin immediately. However, current information on the

1. DEIR, p. IV-27.

2. The emissions inventories in the current documentation do not include greenhouse gases. (DEIR, p. IV-33; Conservation Background Report, p. 6-93.)

greenhouse gas emissions of cars, trucks and buses could be used to compile an estimated inventory. Once such an estimated inventory is completed, the projections of increased driving that are in the General Plan revision could be used to estimate future growth in greenhouse gas emissions associated with the revision. The California Air Resources Board has information that could be applied to the projected increase in driving. The impacts could be assessed as to their cumulative impact on climate change, assuming (as is highly probable based on the population growth in the General Plan revision and the widely distributed nature of that growth) that there would be a considerable impact from the increase in CO₂ resulting from the increased driving. (See Cal. Code Regs., tit. 14, § 15130(a) [“an EIR shall discuss cumulative impacts of a project when the project’s incremental effect is cumulatively considerable.”] See also Cal. Code Regs., tit. 14, § 15065(a)(3) [“‘Cumulatively considerable’ means that the incremental effects of an individual project are significant when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probably future projects.”].)

Moreover, and most importantly, the General Plan revision could and should include mitigation for these impacts. The Governor has recognized, “mitigation efforts will be necessary to reduce greenhouse gas emissions and adaptation efforts will be necessary to prepare Californians for the consequences of global warming.” (Executive Order S-3-05, June 1, 2005.) The County can both require mitigation measures from businesses and entities within its jurisdiction, through alternations to its building codes or permit requirements; e.g., it might require solar heating capabilities for all new development, or require that carbon sequestration credits be purchased for development of a certain size. The County could take direct action to offset its own carbon emissions, or those of its residents, by providing for increased public transportation service, increased support of alternative fuels and technologies, installation of electric vehicle charging stations, and other affirmative steps to reduce the transportation impacts of CO₂. These are real, achievable and available mitigation measures that could be considered when San Bernardino County recognizes its obligations to analyze greenhouse gas emissions and their impact on climate change as part of its long term transportation planning. As it currently stands, we believe that the draft EIR on the General Plan revision does not comply with CEQA.

III. The DEIR Does Not Adequately Discuss The General Plan Revision’s Impact On Air Quality.

Besides its complete failure to analyze the effects of the General Plan revision on global warming, the DEIR also fails adequately to analyze the revision’s effects on conventional air pollutants.

Air pollution is already at critical, health-endangering levels in San Bernardino County. The federal standard for ozone was exceeded on 21 days in 2002, while the state ozone standard

was exceeded on 91 days.^{3/} Similarly, the federal and state standard for respirable particulate matter was exceeded on 98 days in 2002. (*Id.*) And, while emissions trends for most pollutants show modest decreases, particulate matter emissions are projected to *increase*, in spite of the extraordinary measures being taken by the South Coast Air Quality Management District (SCAQMD).^{4/} The DEIR recognizes harm to air quality as one of the significant environmental effects of the General Plan revision that cannot be fully mitigated.^{5/}

The Air Quality section of the DEIR is extremely troubling. Air quality is well known to already damage the public health in the South Coast Air Basin, with children suffering decreased lung function simply by growing up in the area. (See Bustillo, M., "Smog Harms Children's Lungs for Life, Study Finds," *Los Angeles Times*, Sept. 9, 2004, <https://www.latimes.com/news/yahoo/la-me-smog9sep09,1,6309811.story>.) The DEIR recognizes that the increased driving that the General Plan revision projects will further damage air quality. (DEIR, p. I-21.) Yet, this effect, although recognized as significant, receives almost no analysis or discussion in the DEIR. Effects on air quality are discussed in a bare couple of pages, in the most general terms, such as statements that new growth will occur that will cause more driving, which will in turn create more pollutant emissions. The extremely brief, non-detailed discussion of air quality is very much out of proportion to the importance, and the probable public health impacts, of the expected effects. The CEQA Guidelines require that the discussion of significant effects of a project should include discussion of direct and indirect effects, impacts on public health, and effects on the resource base. (14 Cal. Code of Regs., tit. 14 sec. 15126.2.) In general, an EIR should contain discussions sufficient to advise the decision makers and the public of the nature and importance of the environmental effects being discussed, not merely the ultimate conclusion that an effect is significant. (*Assn. of Irrigated Residents v. County of Madera* (2003) 107 Cal.App.4th 1383, 1390 ("The EIR must contain facts and analysis, not just the bare conclusions of the agency. . . . An EIR must include detail sufficient to enable those who did not participate in its preparation to understand and to consider meaningfully the issues raised by the proposed project." [Internal citations and quotation marks omitted.]) As we read the DEIR, it does not conform to this standard.

Where, as here, the environmental effect is harm to human health, the EIR must clearly set out the relationship between the effects of the project and the health damage that can be expected. The CEQA Guidelines, at section 15126.2, subdivision (a), require an EIR to discuss, among other things, health and safety problems caused by the physical changes that the proposed

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3. Conservation Background Report, p. 6-94.
 4. Conservation Background Report, p. 6-95.
 5. DEIR, p. IV-27.

project will precipitate. The DEIR here gives its conclusion that the General Plan revision will have significant and unavoidable adverse impacts on air quality, but it does not actually discuss or disclose what those impacts can be expected to be on the health of the County's residents. The EIR is required by CEQA to do so. (*Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1219-1220.) The summary table in the DEIR that merely sets out general health effects from exposure to pollutants^{6/} is not sufficient; actual levels of exposure expected from execution of the General Plan revision, correlated with actual populations that will be exposed and the probable health impacts on them, is required. CEQA is not just a formal exercise, where the County can state that an effect is significant and, having set out this conclusion as though it were a magic formula, move on. The EIR must spell out what that significant effect will really consist of, to allow both the decision makers and the residents whose health, and whose children's health, will be affected, to know and understand the health damage that will result from the choices in the General Plan revision. The DEIR does not do this, and must be revised so that it does.

The DEIR also fails to adopt adequate mitigation for the significant adverse effects on air quality that it does identify. The mitigation measures for the County's own emissions are few and minor. Many of these mitigation measures in the DEIR seem to be measures that are *already* required by the South Coast Air Quality Management District (SCAQMD), including its requirements that publicly owned vehicle fleets must shop from among clean-fuel vehicles. Measures that the County is already legally obliged to take should be considered part of the General Plan revision, not mitigation for its effects. The SCAQMD Fleet Rules already require public agency vehicle fleets to acquire clean-fuel vehicles. Where the County is already legally obligated to undertake pollution-reducing measures, these measures should be considered to be part of the project, not as mitigation. Such measures do not lessen or avoid the environmentally harmful effects of a project, because they must already be incorporated into the project as originally designed.^{7/}

CEQA forbids public agencies to approve projects that will harm the environment until and unless the agency has adopted *all* feasible mitigation for that harm. (Public Res. Code section 21002, 21081, subdivision a.) The County must explore all feasible mitigation that could be adopted to lessen the effects of the General Plan revision, and cannot rely upon those features

6. DEIR, pp. IV-31-32.

7. The same principle applies to greenhouse gas emission reductions. AB 32 mandates that regulatory programs adopted under its aegis require greenhouse gas emissions reductions that are *in addition* to reductions already required by law. (Health and Saf. Code section 38560.5, subdivision (d)(2).)

of the project that are already required by law to substitute for the mitigation CEQA requires. The DEIR should be revised to adopt all feasible mitigation for its air quality effects.

Conclusion

The General Plan revision is the blueprint for development in this growing, vital area of Southern California for the next 24 years, and both current residents and the half-million additional residents expected in the County by 2030 will have to live with the choices the County makes in this revision. CEQA requires that the County fully disclose, both to the decision makers and the public, all the environmental harm that may result from this blueprint. This disclosure must include the environment effects on air quality and global warming, areas in which the DEIR is currently woefully deficient, or even totally silent. We urge the County to thoroughly revise the DEIR in these areas to bring it into compliance with CEQA.

Thank you for the opportunity to offer these comments. Any questions may be directed to the undersigned. We also request a copy of the final EIR when it is issued.

Sincerely,

/S/

SUSAN DURBIN
Deputy Attorney General

For

BILL LOCKYER
Attorney General

cc:
Kurt Weis, General Counsel
SCAQMD