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**Attorney General**

**State of California**  
**DEPARTMENT OF JUSTICE**



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May 27, 2010

**By Overnight Mail and Facsimile**

David Bryant  
Project Planner  
Tulare County Resource Management Agency  
Government Plaza  
5961 South Mooney Boulevard  
Visalia, CA 93277

RE: Tulare County General Plan and Recirculated Draft Environmental Impact

Dear Mr. Bryant:

The Attorney General submits these comments pursuant to the California Environmental Quality Act ("CEQA") on the Tulare County General Plan (General Plan) and Recirculated Draft Environmental Impact Report ("DEIR").<sup>1</sup> We applaud the County's recognition of the vital importance of directing growth and development in a manner that will preserve the special agricultural and rural nature of Tulare County. Balancing the need for sustainable development against the equally important need to preserve agriculture and the natural environment requires significant vision and leadership on the part of the County.

As discussed below, however, the General Plan and DEIR fail to further the County's goals. The General Plan relies on unenforceable policies that "encourage," but do not mandate that growth will occur in certain areas, with the result that all important development decisions are left to the marketplace.

According to the County website, Tulare County is the second leading producer of agricultural commodities in the United States, as well as a gateway to Sequoia National Park. The rural and agricultural character of the County is the backbone of its present economy and the mainstay of its future. In the past Tulare County showed remarkable foresight in developing

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<sup>1</sup> 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. Govt. Code, §§ 12511, 12600-612; *D'Amico v. Board of Medical Examiners* (1974) 11 Cal.3d 1, 14-15.) These comments are made on behalf of the Attorney General and not on behalf of any other California agency or office.

plans, like the Rural Valley Land Plan, that have protected agricultural land from conversion to non-agricultural uses and preserved the special rural character of the County. The County leaders of today should exercise similar foresight in planning, to preserve the County's unique and irreplaceable resources for its present and future generations.

## **1. Introduction**

In April, 2008, the Attorney General submitted comments to Tulare County concerning its Draft Environmental Impact Report. We appreciate the fact that the revised General Plan and the recirculated DEIR address and correct a number of the deficiencies noted in those comments. Just as one example, we note that the County has prepared a Greenhouse Gas Inventory for the planning area and has taken the first steps toward developing a Climate Action Plan.

Ultimately, however, serious and critical deficiencies remain that undermine both the Plan and the DEIR and render them legally inadequate and ineffective as tools for implementing the County's goals. The most important of these deficiencies are discussed in more detail below. Where the Plan and DEIR are deficient in the same manner as noted previously, we hereby incorporate our previous comments into this comment letter. (A copy of the Attorney General's previous letter is attached.)

## **2. Legal Background**

### **a. General Plan Requirements**

As noted in our previous letter, the general plan is "at the top of the 'hierarchy of local government law regulating land use[.]'"<sup>2</sup> As the California Supreme Court noted, this basic land use charter governing the direction of future land use is in the nature of a "'constitution' for future development,"<sup>3</sup> and taking some measure of control over future land use is the local government's affirmative duty. "The planning law . . . compels cities and counties to undergo the discipline of drafting a master plan to guide future local land use decisions."<sup>4</sup>

Thus, a general plan must be more than a statement of broad but unenforceable policies and goals for the future. It must "designate[] the proposed general distribution and general location and extent" of land uses.<sup>5</sup> Finally, a general plan must disclose information to the public in a format that is readily accessible. "A general plan which does not set forth the required elements in an understandable manner cannot be deemed to be in substantial compliance" with planning law.<sup>6</sup> The General Plan must state "with reasonable clarity" what the plan is.<sup>7</sup> Thus, a

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<sup>2</sup> *DeVita v. County of Napa* (1995) 9 Cal.4th 763, 773 (internal citation omitted).

<sup>3</sup> *Id.* (quoting *Leshar Communications, Inc. v. City of Walnut Creek* (1990) 52 Cal.3d 531, 542).

<sup>4</sup> *DeVita, supra*, 9 Cal.4th at p. 773.

<sup>5</sup> Gov. Code § 65302(a).

<sup>6</sup> *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 744.

reader consulting the general plan must be able to determine with relative ease, the amount of land available for development, the land-use designation of that land, any restrictions on development of the land, and the maximum amount of new development that can occur under the plan.

**b. CEQA Requirements**

CEQA is one of the California's most important and fundamental environmental laws. For more than 40 years, CEQA has guided the State toward sustainable development. As the Act states, it is California's policy to "create and maintain conditions under which man and nature can exist in productive harmony to fulfill the social and economic requirements of present and future generations."<sup>8</sup>

An environmental impact report (EIR) is an informational document intended to provide both the public and government agencies with detailed information about the effects of a proposed project on the environment, to list ways in which those effects can be mitigated, and to discuss and analyze alternatives to the project. A "project" is defined as "the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment. . . ."<sup>9</sup> The project must be adequately described in the EIR,<sup>10</sup> and the entirety of the project must be considered, not just some smaller portion of it.<sup>11</sup>

CEQA further mandates that public agencies not approve projects unless feasible measures are included that mitigate the project's significant environmental effects.<sup>12</sup> CEQA therefore requires that "[e]ach public agency shall mitigate or avoid the significant effects on the environment of projects that it carries out or approves whenever it is feasible to do so."<sup>13</sup> The mitigation measures must be enforceable, rather than just vague policy statements.<sup>14</sup>

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<sup>7</sup> *Concerned Citizens of Calaveras County v. Board of Supervisors* (1985) 166 Cal.App.3d 90, 97.

<sup>8</sup> Pub. Resources Code, § 21001, subd. (e).

<sup>9</sup> Cal. Code Regs., tit. 14, § 15378, subd. (a) (hereafter "Guidelines").

<sup>10</sup> Guidelines, § 15124.

<sup>11</sup> *San Joaquin Raptor/Wildlife Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645, 654.

<sup>12</sup> Pub. Resources Code, § 21002.

<sup>13</sup> Pub. Resources Code §§ 21002.1, subd. (b); *City of Marina Board of Trustees* (2006) 39 Cal.4th 341, 360.

<sup>14</sup> See Pub. Resources Code § 21081.6, subd. (b); *Federation of Hillside and Canyon Associations v. City of Los Angeles* (2000) 83 Cal.App.4th 1252, 1261 & n.4 (agency must take steps to ensure mitigation measures are fully enforceable through permit conditions, agreements, or other measures).

### 3. Analysis

#### a. **The General Plan is primarily an aspirational document that does not exercise control over growth.**

As currently drafted, with the exception of the Rural Valley Lands Plan (Rural Valley Plan),<sup>15</sup> the General Plan is not a true planning document. It states a set of unenforceable preferences and policies for how growth will occur in the County on the available non-agricultural land. The Plan purports to direct development to the designated Urban Development Boundaries (UDB) and Hamlet Development Boundaries of the existing cities, hamlets, and communities, but declines to set any criteria for determining where such growth will be permitted and in what density, thus leaving open development that can occur haphazardly in those areas. It permits development of an undetermined amount in the “Foothill Development Corridors” and within areas set aside under the “Mountain Framework Plan.” (General Plan (“GP”) 2-7.) Finally the Plan permits the development of “New Towns (Planned Communities)” on unspecified rural land “when appropriate to meet the social and economic needs of current and future residents.” (GP 2-67.) There is no indication of the standards that would make such development “appropriate,” the number of the New Towns that will be allowed “when appropriate,” where the New Towns will be located, the number of acres that will be developed, and in what densities. The Plan also permits the County to adopt as yet undetermined Corridor Plans adjacent to major transportation routes with no identification of what areas these Corridor Plans will cover, the acreage available for development, and the density.

In addition, large portions of the General Plan consist of unenforceable statements of goals and objectives, using terms like “encourage,” rather than “require.” For example: “The County shall encourage new major residential development to locate near existing infrastructure for employment centers, services, and recreation”; “The County shall encourage high-density residential development . . . to locate along collector roadways and transit routes, and near public facilities . . . , shopping, recreation, and entertainment” (GP 4-27); the County “shall strive to maintain distinct urban edges for all unincorporated communities”; and the County “shall encourage urban development to locate in existing UDBs and HDBs where infrastructure is available or may be established . . .” (GP 2-25 – 2-26.) These advisory statements do not constrain or direct growth in an enforceable manner.

The County can transform the General Plan from an aspirational document to the legally-required constitution for future development by ensuring that goals and objectives are linked to specific and enforceably worded policies and implementation measures. Such measures can include, for example, development phasing so that land is not developed until available infill (areas in or adjacent to developed areas) has been used to the maximum extent feasible, and coordination between a County and the cities in its jurisdiction about where future growth will occur. For example, the City of Stockton has entered into a settlement agreement with the

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<sup>15</sup> We recognize that the County has a strong Rural Valley Plan that significantly limits conversion of agriculture land to other uses.

Attorney General that incorporates this type of phasing approach. (Copy attached.) The agreement stipulates that Stockton will locate a specified number of new housing units in infill areas (§§ 6.a., 6.b) and will impose limits on growth outside the city limits until certain criteria are met. (§ 7.) In a similar fashion, the Livermore General Plan imposes growth boundaries for the purpose of managing growth and directing growth into the existing city limits, and specifically into the downtown. In combination with these growth boundaries, the City of Livermore and the County of Alameda have adopted a transfer of development credit system that further manages growth by providing an incentive for potential development in the unincorporated County to be transferred and built in the downtown of Livermore.

**b. The open-ended nature of the General Plan affects the County's obligation to describe the project and analyze the project's impacts under CEQA.**

The *sine qua non* of an environmental impact report is an accurate project description.<sup>16</sup> Any evaluation of the General Plan “must necessarily include a consideration of the larger project, i.e., the future development permitted by the amendment.”<sup>17</sup> In order to comply with CEQA, the DEIR therefore must describe and consider the full extent of the growth permitted by the Plan and must quantify the impacts. (*Id.*)

Because the Plan itself does not direct and control growth, the DEIR relies on market-driven projections and “Population Growth Assumptions under the General Plan,” including the assumption that certain percentages of the population growth will occur within certain areas. (DEIR 2-24). The DEIR assumes that 75% of the growth will occur within the UDBs and Spheres of Influence of incorporated cities throughout the County and that the remaining 25% of growth “is expected to occur” in unincorporated communities and hamlets, foothill development corridors, urban and regional growth corridors, and mountain service centers. (GP 2-24.)

Other outcomes are, however, also quite possible. As discussed, there is nothing in the General Plan or the DEIR that limits or caps growth to the amount projected to occur in the County during the planning period. Nor is there anything in the General Plan or DEIR that affirmatively requires that any set percentage of growth be located in particular areas. Unfocused development in rural areas of Tulare County is not only likely in the future – it is already in progress; the County is currently considering just such a development project, the Yokohl Valley Ranch, a 10,000 unit residential development to be located in the Sierra Nevada foothills on land that is currently set aside for agriculture. This is only one example of New Towns allowed by the Plan, that are not described in terms of number, location, or type of growth.

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<sup>16</sup> *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 730; *County of Inyo v. City of L.A.* (1977) 71 Cal.App.3d 185, 199.

<sup>17</sup> *City of Redlands v. County of San Bernardino* (2002) 96 Cal.App.4th 398, 409 (citation omitted).

The DEIR analysis, therefore, does not satisfy the CEQA requirements that the DEIR must consider as the “project,” the full potential for growth that is permitted under the Plan, and must evaluate the full extent of the impacts if a significant portion of that growth is accommodated, in particular, in rural, undeveloped areas, as the Plan appears to allow.<sup>18</sup> This analysis is not a “worst case scenario.”<sup>19</sup> It is simply a CEQA requirement that an EIR must evaluate the project’s potential to affect the environment, even if the project does not ultimately materialize.<sup>20</sup>

**c. The DEIR fails to consider and impose enforceable mitigation measures.**

CEQA provides that a public agency should not approve a project as proposed if there are feasible mitigation measures that would substantially lessen the significant environmental effects of the project. Further, in order to ensure that mitigation measures are actually implemented, they must be “fully enforceable through permit conditions, agreements, or other measures.”<sup>21</sup>

There are a number of areas in which the DEIR fails to impose enforceable mitigation measures. In the area of climate change alone, the DEIR notes that greenhouse gas (“GHG”) emissions *based on projected population growth* would increase nearly 1 million metric tonnes (metric tons)/year from 2007 to 2030 (DEIR 3.4-22) and that this would cause several significant and unavoidable impacts, including conflicting with the State’s goal of reducing GHG emissions.<sup>22</sup>

While the DEIR relies on a number of General Plan policies to mitigate the impact of this increase in GHG emissions, many of these policies are unenforceable. For example, the policies merely “promote” smart growth (LU 1.1); “promote” innovative development (LU 1.2); “encourage” and “provide incentives” for infill (LU 1.8.), “encourage” new development to locate near existing infrastructure (LU 3.1); “encourage” new development to incorporate energy conservation and green building practices (AQ 3.5); “encourage” high density residential development to locate along transit routes and near public facilities (LU 3.3); “encourage” school

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<sup>18</sup> We note that there is no information disclosed either in the General Plan document itself or in the incorporated area plans that would enable a reader to calculate the total acres of land available for development, and the land use designation of those acres. The County of Tulare has one of the oldest and most sophisticated geographic information mapping systems of all the counties in California. Information on land use locations, densities, and intensities is available and can be readily produced by the County and will enable the public and decision makers to determine where the actual development can occur, and in what amount.

<sup>19</sup> An EIR need not engage in speculation to analyze a “worst-case scenario.” (*Napa Citizens for Honest Government v. Napa County Bd. of Supervisors* (2001) 91 Cal.App.4th 342, 373.)

<sup>20</sup> *Bozung v. Local Agency Formation Com.* (1975) 13 Cal.3d 263, 279, 282.

<sup>21</sup> Public Resources Code, § 21081.6, subd. (b).

<sup>22</sup> We note that because this estimate is based on projected population growth focused in incorporated cities and CACUDBs, and not on the development that may occur under the Plan, the estimates of GHG emissions may be substantially understated.

districts to locate new schools in areas that allow students to walk or bike from their homes (LU 6.3), “encourage” land uses that generate higher ridership (TC 4.4); “consider” incorporating facilities for bike routes, sidewalks and trails when reviewing new development proposals (TC-5); “encourage” location of ancillary employee services near major employment centers (AQ 3.1); “encourage” the use of solar power and energy conservation in all new development (LU 7.15); “encourage” the use of ecologically based landscape design principles that improve air quality; and “encourage” LEED and LEED-ND certification for new development (AQ implementation measure 12). None of these measures are mandatory and enforceable.

Until the County adopts mitigation measures that will be imposed and enforced as conditions of all future development projects, the County has not complied with its duty under CEQA to implement mitigation measures to reduce the environmental impacts of the project. There are a number of steps that the County can take to correct these deficiencies. First, and most simply, the County can re-word its policies and implementation measures to make them mandatory and enforceable, not merely advisory. We pointed out some of these opportunities in our previous letter. In addition to the policies and programs noted previously, there are good examples of policies and implementation measures that foster energy efficiency and smart growth contained in California Air Pollution Control Officers’ Model Policies for Greenhouse Gases in General Plans (June 2009), Caltrans’s Smart Mobility Handbook (Feb. 2010), and the California Energy Commission’s Energy Aware Planning Guide (Dec. 2009), which the County should consult.<sup>23</sup>

Finally, in connection with the Draft Climate Action Plan (CAP), we recommend that the County should (1) commit in the General Plan to adopting by a date certain a CAP with defined attributes (targets, enforceable measures to meet those targets, monitoring and reporting, and mechanisms to revise the CAP as necessary) that will be integrated into the General Plan; (2) incorporate into the General Plan interim policies to ensure that any projects considered before completion of the CAP will not undermine the objectives of the CAP; and (3) for all GHG impacts the County has designated as significant, adopt feasible mitigation measures that can be identified today and that do not require further analysis. (CEQA Guidelines § 15183.5.) Such a programmatic approach would have the substantial benefit of streamlining the CEQA review for future projects. (*Id.*)

**d. The DEIR does not consider all feasible alternatives**

The CEQA Guidelines provide that an EIR must discuss a “range of reasonable alternatives to the project or to the location of the project, which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives.”<sup>24</sup> The EIR must

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<sup>23</sup> <http://www.capcoa.org/download/Model+Policies+Document>,  
[http://www.dot.ca.gov/hq/tpp/offices/ocp/smf\\_files/SmMbilty\\_v6-3.22.10\\_150DPI.pdf](http://www.dot.ca.gov/hq/tpp/offices/ocp/smf_files/SmMbilty_v6-3.22.10_150DPI.pdf)  
[http://www.energy.ca.gov/energy\\_aware\\_guide/index.html](http://www.energy.ca.gov/energy_aware_guide/index.html)

<sup>24</sup> Cal.Code Regs., tit. 14, § 15125.5, subd. (a).

include sufficient information about each alternative to provide meaningful analysis and comparison, and must consider alternatives that could eliminate significant effects or reduce them to a less than significant level, even if the alternatives could impede the attainment of the project's objectives to some degree.

CEQA requires public agencies to refrain from approving projects with significant environmental impacts when there are feasible alternatives that can substantially lessen or avoid those impacts.<sup>25</sup> The " cursory rejection" of a proposed alternative "does not constitute an adequate assessment of alternatives as required under CEQA," and it "fails to provide solid evidence of a meaningful review of the project alternative that would avoid the significant environmental effects identified . . . ." <sup>26</sup>

In light of the acknowledged significant impact the General Plan will have on multiple resources, including air, water, and greenhouse gas emissions, it is incumbent on the County to carefully consider all of the feasible alternatives to the General Plan. Based on the existing record, there appear to be at least two alternatives to the proposed General Plan which, alone or combined, would significantly reduce the impacts. The DEIR attempts to define more compact and urban alternatives with the "City Centered Development Scenario," which focuses more growth in the city UDBs, and the "Confined Growth Alternative," which would establish hard boundaries to protect important agricultural resources. Both of these alternatives protect agricultural land and maintain the rural character of the County to a greater extent than the General Plan and would have significantly lower environmental impacts, including impacts on GHG emissions. The County rejected the City Centered scenario based on its assertion that it "may make it more difficult to achieve the desired level of reinvestment within existing communities and hamlets." (DEIR 4-19.) There is no analysis or discussion, however as to why the anticipated 20% growth in the unincorporated community and hamlet areas under this alternative would not be sufficient to meet these goals.

The County notes that the Confined Growth Alternative would meet all of the project's objectives (DEIR 4-33) and is the environmentally superior alternative and would reduce the severity of most environmental impacts associated with the project. (DEIR 4-36) It is not clear, therefore, why the County has not adopted this alternative.

Further, the DEIR notes that the Planning Commission directed the staff to consider an additional City/Focused Community Alternative, one in which growth would be accommodated in vacant urban, as well as legal suburban and rural (hamlet and other existing communities) lots of record in the County, without permitting development in outlying rural areas. The DEIR summarily concludes that the suggested alternative was not significantly different from the City Centered alternative and therefore was not discussed further. (DEIR 4-18.) Since the City/Focused Community Alternative appears to meet the project goal of fostering development

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<sup>25</sup> Pub. Resources Code § 21002; CEQA Guidelines, §§ 15002, subd. (a)(3), 15021, subd. (a)(2).)

<sup>26</sup> *Mountain Lion Foundation v. Fish & Game Commission* (1997) 16 Cal.4th 105, 136.



in the communities and hamlets, while having less of an environmental impact than the project, it is not clear why the DEIR declines to discuss it in any detail.

Finally, the DEIR does not evaluate an alternative that would limit growth to the cities and existing unincorporated community (hamlet, etc.) boundaries, and does not determine whether there is sufficient capacity in these areas to accommodate growth during the period of the General Plan, without permitting further growth in rural and agricultural areas. There is no support in the record for this omission.

**e. The DEIR's conclusion that environmental impacts are significant and unavoidable is unsupported.**

The DEIR concludes that the project will result in 27 significant and unavoidable impacts including violation of air quality standards, conflicting with or obstructing implementation of an applicable air quality plans, and conflicting with the State goal of reducing greenhouse gas emissions in California to 1990 levels by 2020. (DEIR ES-13.) In light of the fact that the project is not properly defined, the impacts are not adequately quantified, enforceable mitigation measures are not imposed, and adequate alternatives are not considered, this conclusion is unsupported and contravenes CEQA.<sup>27</sup>

**4. Conclusion**

Tulare County showed remarkable foresight in enacting the Rural Valley Plan that has served for decades to protect the special rural and agricultural nature of Tulare County. The County again is in a position to exercise similar foresight and leadership for the benefit of current and future generations. We would be happy to provide examples of land use policies and mitigation measures that should be considered by the County, and to meet with you and work

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<sup>27</sup> See *Berkeley Keep Jets Over the Bay Committee v. Board of Port Commissioners* (2001) 91 Cal.App.4th 1344, 1371 (lead agency cannot simply conclude that there are overriding considerations that would justify a significant and unavoidable effect without fully analyzing the effect.)

David Bryant  
May 27, 2010  
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together in whatever way possible to achieve the goals of preservation and smart growth set by the County.

Sincerely,

/s/

SUSAN S. FIERING  
Deputy Attorney General

For EDMUND G. BROWN JR.  
Attorney General

Attachments

# **EXHIBIT A**



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April 14, 2008

**By Overnight Mail and Facsimile**

David Bryant  
Project Planner  
Tulare County Resource Management Agency  
Government Plaza  
5961 South Mooney Boulevard  
Visalia, CA 93277

RE: Draft Environmental Impact Report for Tulare County General Plan 2030 Update  
SCH # 2006041162

Dear Mr. Bryant:

The Attorney General submits these comments pursuant to the California Environmental Quality Act ("CEQA") on the Draft Environmental Impact Report ("DEIR") for the Tulare County General Plan 2030 Update ("General Plan").<sup>1</sup>

**1. Introduction**

The general plan is "at the top of the hierarchy of local government law regulating land use[.]"<sup>2</sup> As the California Supreme Court has noted, this basic land use charter governing the direction of future land use is in the nature of a planning "constitution."<sup>3</sup> Taking some measure of control over future land use is the local government's affirmative duty. "The planning law . . . compels cities and counties to undergo the discipline of drafting a master plan to guide future

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<sup>1</sup>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. Govt. Code, §§ 12511, 12600-12; *D'Amico v. Board of Medical Examiners* (1974) 11 Cal.3d 1, 14-15.) These comments are made on behalf of the Attorney General and not on behalf of any other California agency or office.

<sup>2</sup>*DeVita v. County of Napa* (1995) 9 Cal.4th 763, 773 (internal citation omitted).

<sup>3</sup>*Ibid*; *Leshar Communications, Inc. v. City of Walnut Creek* (1990) 52 Cal.3d 531, 542.

local land use decisions.”<sup>4</sup> The Tulare County General Plan thus presents both an opportunity and a responsibility to the County – an opportunity to shape the future growth of the County, and a responsibility to ensure that such growth is consistent with State and local goals, including protecting the public health and welfare of the County’s inhabitants and protecting the environment.

According to the DEIR, the Plan anticipates that the population of Tulare County will reach 621,549 by 2030, an increase of approximately 254,000 people,<sup>5</sup> and that emissions of carbon dioxide (CO<sub>2</sub>) from this growth will increase by approximately 1.7 million tons/year. As you are aware, global warming presents profoundly serious challenges to California and the nation. While we commend the County for addressing greenhouse gas (“GHG”) emissions in the DEIR, we have concluded that the DEIR is not in compliance with the requirements of CEQA in significant respects. First, the DEIR does not disclose the actual growth that may occur under the proposed General Plan – which leaves much of the control over land uses and growth patterns to the market – and the GHG emissions that will result from such growth. Second, the DEIR considers only vehicle miles traveled and dairies as sources of GHG emissions, and neglects to consider other significant new sources of GHG emissions, including emissions from construction, residential and non-residential energy use, and other activities that will result from the build-out of the Plan. Third, the DEIR considers only a narrow range of alternatives, ignoring any alternative that would aggressively foster “smart growth” by more significantly limiting development to existing urban areas. Finally, the DEIR does not impose enforceable and quantifiable mitigation measures to mitigate the impact of the GHG emissions.

Because the analysis of GHG emissions is inadequate and incomplete, the DEIR does not comply with CEQA, and does not provide substantial evidence to support the County’s finding that the impacts of GHG emissions will be “significant and unavoidable.”

## **2. Climate Change Background**

Before discussing the General Plan and legal adequacy of the DEIR, it is important to understand why human-caused climate change is of particular concern to California and to the San Joaquin Valley.<sup>6</sup>

The impacts of climate change are not limited to remote parts of the world – they are being felt in California today. In California, global warming is causing damage to agriculture, losses to the Sierra snowpack, higher risks of fire, eroding coastlines, and habitat modification

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<sup>4</sup>*DeVita, supra*, 9 Cal.4th at p. 773.

<sup>5</sup>The County indicates that the General Plan is intended to accommodate 25% of this growth in the unincorporated areas, an increase of approximately 64,000 residents.

<sup>6</sup>The physics of climate change are well described in the Intergovernmental Panel on Climate Change, Fourth Assessment Report, “Frequently Asked Questions” (available at [http://ipcc-wg1.ucar.edu/wg1/Report/AR4WG1\\_Print\\_FAQs.pdf](http://ipcc-wg1.ucar.edu/wg1/Report/AR4WG1_Print_FAQs.pdf)) and need not be repeated here.

and destruction. Global warming affects public health directly, through heat-related illnesses and deaths caused by more hot days, and longer heat waves, and indirectly as higher temperatures favor the formation of ozone and particulate matter in areas that already have severe air pollution problems.<sup>7</sup>

The impacts of climate change are of particular concern to the San Joaquin Valley and Tulare County, especially in the areas of agriculture and public health. According to a whitepaper from the California Climate Action Team on the impacts of climate change on agriculture, “California’s cornucopia is predicated on its current climate and its supply and distribution of irrigation water[.]”<sup>8</sup> Rising temperatures will cause larger crops growing in warmer climates to use more water and also may stimulate more weeds and insect pests. Pollination – essential to many Valley crops – will be negatively affected if warming causes asynchronization between flowering and the life cycle of insect pollinators. And the occurrence of adequate winter chill, necessary for fruit trees to flower, may be lost for many fruit species.<sup>9</sup> Higher temperatures due to global warming also have an impact on the dairy industry, which is of special importance to Tulare County, by causing lower milk production and heat-related animal deaths. Dairy producers will no doubt recall the extended heat wave of 2006, which caused the death of thousands of cows and created a backlog of carcasses for disposal.<sup>10</sup>

The health related impacts of climate change are also of substantial importance to the County. A Stanford study details how for each increase in temperature of 1 degree Celsius (1.8 degrees Fahrenheit) caused by climate change, the resulting air pollution would lead annually to about a thousand additional deaths and many more cases of respiratory illness and asthma.<sup>11</sup> The effects of warming are most significant where the pollution is already severe. Thus, the study has serious implications for California overall and for the San Joaquin Valley in particular. Given that California is home to six of the ten U.S. cities with the worst air quality, including Visalia-Tulare, and that the San Joaquin Valley has some of the worst air quality in the nation, the State and the Valley are likely to bear an increasingly disproportionate public health burden if we do not significantly reduce our GHG emissions.

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<sup>7</sup>A summary of impacts to California, together with citations, is available on the Attorney Generals’ website at <http://ag.ca.gov/globalwarming/impact.php>.

<sup>8</sup>California Climate Change Center, *An Assessment of the Impacts of Future CO2 and Climate on Californian Agriculture* (March 2006) at p. 1, available at <http://www.energy.ca.gov/2005publications/CEC-500-2005-187/CEC-500-2005-187-SF.PDF>.

<sup>9</sup>*Id.*, Abstract.

<sup>10</sup>Williams, “Dairy producers regroup after cow deaths,” *Bakersfield Californian* (Aug. 5, 2006) available at <http://www.bakersfield.com/102/story/66292.html>.

<sup>11</sup> Jacobson, Mark Z., *On the causal link between carbon dioxide and air pollution mortality*, *Geophysical Research Letters*, Vol. 35 L03809 (2008).

The atmospheric concentration of CO<sub>2</sub>, the leading GHG, is now 380 parts per million (ppm),<sup>12</sup> higher than any time in the last 650,000 years,<sup>13</sup> and rising at about 2 ppm per year. According to experts, an atmospheric concentration of CO<sub>2</sub> “exceeding 450 ppm is almost surely dangerous” to human life because of the climate changes it will cause.<sup>14</sup> Thus, we are fast approaching a “tipping point,” where the increase in temperature will create unstoppable, large-scale, disastrous impacts for all the inhabitants of the planet.<sup>15</sup>

We must take prompt action and control of our future. In the words of Rajendra Pachauri, Chairman of the United Nations Intergovernmental Panel on Climate Change, “If there’s no action before 2012, that’s too late. What we do in the next two to three years will determine our future. This is the defining moment.”<sup>16</sup>

### **3. Description of the General Plan**

Pursuant to Government Code section 65302, subdivision (a) a general plan must contain a land use element that

designates the proposed general distribution and general location and extent of the uses of the land for housing, business, industry, open space . . . and other categories of public and private uses of land. . . .

The distribution and general location of land uses under the Tulare County General Plan Update is almost impossible to discern from Plan documents. Maps typically accompany general plans.<sup>17</sup> While the General Plan does identify a limited number of land use designations (General Plan at pp. 5-5 to 5-12), it does not include any maps or diagrams identifying where the designations are, or the acreage available for development within each designation. A document entitled Board Update, dated April 2006, which was provided to the Board of Supervisors, includes detailed land use maps for certain limited areas – specifically, each of the 21 existing

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<sup>12</sup><http://www.esrl.noaa.gov/gmd/ccgg/trends/>

<sup>13</sup>IPCC 4<sup>th</sup>, WGI, Frequently Asked Question 7.1, *Are Increases in Atmospheric Carbon Dioxide and Other Greenhouse Gases During the Industrial Era Caused by Human Activities?* [http://ipcc-wg1.ucar.edu/wg1/Report/AR4WG1\\_Print\\_FAQs.pdf](http://ipcc-wg1.ucar.edu/wg1/Report/AR4WG1_Print_FAQs.pdf).

<sup>14</sup> See [http://www.nasa.gov/centers/goddard/news/topstory/2007/danger\\_point.html](http://www.nasa.gov/centers/goddard/news/topstory/2007/danger_point.html).

<sup>15</sup> See *ibid.*

<sup>16</sup>Rosenthal, *U.N. Chief Seeks More Leadership on Climate Change*, N.Y. Times (November 18, 2007).

<sup>17</sup>See *Las Virgenes Homeowners Federation, Inc. v. County of Los Angeles* (1986) 177 Cal.App.3d 300, 307 [general plan maps are visual depictions of planned development policies indicating the geographic or spatial aspects of the plan].

unincorporated communities “hamlets.” These maps, however, are not included in the General Plan. Nor does the Plan contain a table or tables indicating the general location, extent and type of land uses that could occur in the various geographic areas of the County. Ultimately, it is “impossible to relate any tabulated density standard of population to any location in the County.”<sup>18</sup>

The General Plan contains a Goals and Policies Report that purports to set forth a “hierarchy of goals, policies, and implementation measures designed to guide future development in the County.” (General Plan at p. 1-3.) The policies and implementation measures are in many cases nothing more than statements of preferences and opinions, rather than definite commitments to adopt enforceable policies and specific standards, or to use the powers the County has to enact ordinances and control development.

For example, one policy states that the County shall “encourage” residential growth to locate in existing Urban Development Borders (“UDBs”), Urban Area Boundaries (“UABs”), and Hamlet Development Boundaries (“HDBs”), but none of the accompanying implementation measures provide enforceable requirements or standards that would ensure that this policy is followed.<sup>19</sup> (General Plan at pp. 2-16 to 2-21.) Similarly, while the Plan states a policy of discouraging “new towns” (*id.* at p. 2-12), the policy has only very broad, general criteria and appears to allow new planned communities at an unlimited number of locations in the County as controlled by the market.<sup>20</sup> In the area of Land Use, the Plan again states a series of policies that are said to promote smart growth, encourage mixed use and infill development, etc. (General Plan at pp. 5-12 to 5-19), but the accompanying implementation measures contain no enforceable requirements that would ensure that development occurs consistent with these policy statements. (*Id.* at pp. 5-22 to 5-24.)

Thus, despite the general goals of the Plan to direct development in urban areas and in unincorporated hamlets and communities, nothing in the Plan will prevent a significant portion of the future growth from occurring outside the UDBs, for example in the foothill areas in the far eastern part of the County that are far from services, jobs, and transportation.

Ultimately, it appears that, rather than being a “constitution” for future development, the General Plan will largely leave the shape of new development, in amount and in location,

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<sup>18</sup>See *Camp v. Board of Supervisors of Mendocino County* (1981) 123 Cal.App.3d 334, 350.

<sup>19</sup> According to the 2003 State of California General Plan Guidelines (“General Plan Guidelines”) at pp. 16-17, published by the Governor’s Office of Planning and Research, a general plan should contain implementation measures which are actions, procedures, programs, or techniques, that carry out the general plan policy, as well as standards, which are rules or measures establishing a level of quality or quantity that must be complied with or satisfied.

<sup>20</sup> Similarly the Plan states a policy to “discourage the creation of ranchettes. . . .” (Plan at p. 4-4), which are residences built on large lots from 1.5 acres up. This policy does not, however, impose any enforceable limitations on ranchette development.



primarily to the control of the market. This is as much as acknowledged in the DEIR which states repeatedly that “[w]hile the proposed General Plan Update includes policies intended to control the amount and location of new growth. . . it does not solidly advocate, promote or represent any one development scenario because any attempt to predict the exact pace and locations of future market-driven growth is considered speculative.” (DEIR at p. ES-7.)

#### **4. CEQA Requirements**

An EIR is an informational document intended to provide both the public and government agencies with detailed information about the effects of a proposed project on the environment, to list ways in which those effects can be mitigated, and to discuss and analyze alternatives to the project.<sup>21</sup> A “project” is defined as “the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment. . . .”<sup>22</sup> The project must be adequately described in the EIR,<sup>23</sup> and the entirety of the project must be considered, not just some smaller portion of it.<sup>24</sup> A decision to approve a project “is a nullity if based upon an EIR that does not provide the decision-makers, and the public, with the information about the project that is required by CEQA.”<sup>25</sup>

CEQA was enacted to ensure that public agencies do not approve projects unless feasible measures are included that mitigate the project’s significant environmental effects.<sup>26</sup> CEQA therefore requires that “[e]ach public agency shall mitigate or avoid the significant effects on the environment of projects that it carries out or approves whenever it is feasible to do so.”<sup>27</sup> The mitigation measures must be enforceable and the benefits quantifiable, rather than just vague

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<sup>21</sup>*Laurel Heights Improvement Ass’n v. Regents of University of California* (1988) 47 Cal.3d 376, 390-91 (citing Pub. Res. Code, § 21061; Cal.Code Regs., tit. 14, § 15003, subd. (b)-(e) (hereafter “Guidelines”).

<sup>22</sup> Guidelines, § 15378, subd. (a).

<sup>23</sup> Guidelines, § 15124.

<sup>24</sup> *San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645, 654.

<sup>25</sup> *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 721-22 (quoting *Santiago County Water Dist. v. County of Orange* (1981) 118 Cal.App.3d 818, 829).

<sup>26</sup> Pub. Res. Code, § 21002.

<sup>27</sup> Pub. Res. Code, §§ 21002.1, subd. (b); *City of Marina Board of Trustees* (2006) 39 Cal.4th 341, 360.

policy statements.<sup>28</sup>

The CEQA Guidelines further provide that the EIR must discuss a “range of reasonable alternatives to the project or to the location of the project which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives.”<sup>29</sup> The EIR must include sufficient information about each alternative to provide meaningful analysis and comparison,<sup>30</sup> and must consider alternatives that could eliminate significant effects or reduce them to a less than significant level, even if the alternatives could impede the attainment of the project’s objectives to some degree.<sup>31</sup>

## **5. The DEIR Does Not Adequately Analyze GHG Emissions Under CEQA**

As the Legislature has recognized, global warming is an “effect on the environment” under CEQA, and an individual project’s incremental contribution to global warming can be cumulatively considerable and therefore significant.<sup>32</sup> The DEIR briefly and generally discusses global climate change, noting that California has passed Assembly Bill 32 (“AB 32”), the Global Warming Solutions Act of 2006, which requires the Air Resources Board to implement regulations to reduce GHG emissions statewide to 1990 levels by 2020. (DEIR at pp. 4-44 to 4-46.) The DEIR concludes that, even with mitigations, the GHG emissions from the project will be significant and unavoidable and will conflict with the goals of AB 32. (*Id.* at pp. 4-64 to 4-68). This analysis is deficient for the reasons discussed below.

### **a. The DEIR Does Not Adequately Disclose and Analyze All of the Potential Growth and GHG Emissions that May Result from the General Plan**

A general plan embodies an agency’s decisions as to how to guide future development, and any evaluation of the general plan “must necessarily include a consideration of the larger

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<sup>28</sup>See Publ. Res. Code, § 21081.6, subd. (b); *Federation of Hillside and Canyon Associations v. City of Los Angeles* (2000) 83 Cal.App.4th 1252, 1261 (agency must take steps to ensure mitigation measures are fully enforceable through permit conditions, agreements, or other measures).

<sup>29</sup> Guidelines, § 15126.6, subd. (a).

<sup>30</sup> Guidelines § 15126.6, subd. (d).

<sup>31</sup> Guidelines § 15126.6, subd. (b); see also *Save Round Valley Alliance v. County of Inyo* (2007) 157 Cal.App.4th 1437, 1456-57 [cannot exclude alternative simply because it impedes project objectives or is more costly].

<sup>32</sup>See Pub. Res. Code, § 21083.05 subd. (a); see also Sen. Rules Com., Off. of Sen. Floor Analyses, Analysis of Sen. Bill No. 97 (2007-2008 Reg. Sess.) Aug. 22, 2007.

project, i.e., the future development permitted by the amendment.”<sup>33</sup> Thus, in order to comply with CEQA, the DEIR must describe and consider the full extent of the growth permitted by the Plan and must quantify the GHG emissions, both direct and indirect from that growth.<sup>34</sup>

Because the Plan does not include enforceable measures guiding how and where development will occur in Tulare County, the DEIR performs its analysis based on “assumptions” about “population growth and the market distribution of that growth throughout the County.” (DEIR at p. 2-7.) The DEIR states that the population of Tulare County is anticipated to reach 621,549 by 2030, an increase of approximately 254,000 people, and assumes that approximately 75% of that growth is expected to occur within the UDBs of the incorporated cities, with the remaining 25%, or approximately 64,000 new residents, in unincorporated communities, hamlets and development corridors. (*Id.* at pp. ES-5, 2-7.)

In fact, however, as discussed above, the proposed General Plan is so open-ended that it does nothing to constrain market-driven population growth in the County and appears to allow unlimited development far beyond the scope of what is assumed in the DEIR. The actual remaining capacity for development within the existing UABs and UDBs of unincorporated communities in Tulare County is over 126,000 residents, indicating that the existing potential for growth in unincorporated areas is nearly twice the 64,000 that the DEIR assumes.<sup>35</sup> Further, development is not limited to existing communities and hamlets, but can occur at the discretion of the County in new towns located in rural, undeveloped areas of the County. Such development is not only likely in the future – it is already in progress; the County is currently considering just such a development project, the Yokohl Valley Ranch, a 10,000 unit residential development to be located in the Sierra Nevada foothills on land that is currently set aside for agriculture.<sup>36</sup>

In order to comply with CEQA, it is not sufficient for the DEIR to disclose only an assumed level of growth based on population projections, and an assumed distribution of that growth based on general policies and statements of preference. Rather, it must disclose the full potential for market-driven growth that is permitted under the Plan, and must evaluate the extent and impact of GHG emissions if a significant portion of that growth is accommodated in rural,

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<sup>33</sup> *City of Redlands v. County of San Bernardino* (2002) 96 Cal.App.4th 398, 409.

<sup>34</sup> See Guidelines, §§ 15126, 15358, subd. (a)(1), (2); *Las Virgenes Homeowners Federation, supra*, 177 Cal.App.3d at p. 307 [in adopting General Plan, County “necessarily addressed the cumulative impacts of buildout to the maximum possible densities allowed by those plans”]; see also *Christward Ministry v. Superior Court* (1986) 184 Cal.App. 3d 180, 194 [evaluation of general plan must include future development permitted by amendment].

<sup>35</sup> Tulare County General Plan Board Update (2006) at p. 8 [table showing estimate of population capacity within existing UDBs and UABs of unincorporated communities].

<sup>36</sup> See Notice of Preparation and Initial Study for Yokohl Ranch Project, available at <http://www.ceqanet.ca.gov/DocDescription.asp?DocPK=617530>.

undeveloped areas, as the Plan appears to allow.

**b. The DEIR Does Not Adequately Quantify the Emissions from the Assumed Growth**

In addition to failing to disclose the full amount of potential growth that may occur under the General Plan, the DEIR also fails to properly quantify the GHG emissions from the development it does disclose. The DEIR purports to quantify GHG emissions from the anticipated increase in vehicle miles traveled (“VMT”) in the assumed market-driven development, stating that CO<sub>2</sub> emissions will increase from 1,997,046 to 3,446,934 tons/year, (approximately a 73% increase). (DEIR at p. 4-50.)

There is no explanation or supporting analysis describing how the DEIR derives this number. It would seem impossible to determine VMT without knowing in general terms where the new development will occur in the County and the distance from workplaces and services. Development that occurs close to urban centers and mass transit will produce significantly less VMT (and GHG emissions) than development that occurs in the far foothills, away from the population centers. Since the General Plan relies on “market-driven” development and does not implement enforceable procedures to guide development, the assessment of GHG emissions from increased VMT is inaccurate and incomplete.

Second, the DEIR discusses only emissions related to VMT and dairy operations. While the DEIR notes that there will be increased emissions from the actual “buildout” of the Plan (including increased use of electricity, woodburning fireplaces, natural gas, and equipment), it states that it lacks information to quantify these emissions, and therefore makes no effort to do so. (DEIR at p. 4-50) These omitted emissions are almost certainly substantial. According to the California Energy Commission, residential, commercial, and industrial sources make up about 30% of the CO<sub>2</sub> emissions in the State,<sup>37</sup> and that does not include methane production from sources such as landfills and wastewater treatment.

There are a number of models available to assist the County in estimating future GHG emissions. One source of helpful information is the report issued by the California Air Pollution Control Officers Association (CAPCOA), “CEQA and Climate Change.”<sup>38</sup> The document discusses a variety of models that can be used to calculate GHG emissions. Similarly, the Attorney General’s Website provides a table of currently available models that are useful for calculating emissions.<sup>39</sup> Other models are available from a variety of sources,<sup>40</sup>

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<sup>37</sup>California Energy Commission, *Inventory of California Greenhouse Gas Emissions and Sinks: 1990 to 2004*, December 2006, Table 6.

<sup>38</sup>The document is available at <http://www.capcoa.org/>.

<sup>39</sup> [http://ag.ca.gov/globalwarming/ceqa/modeling\\_tools.php](http://ag.ca.gov/globalwarming/ceqa/modeling_tools.php).

<sup>40</sup> See, e.g., UPlan at <http://ice.ucdavis.edu/doc/uplan>.

The DEIR must fully quantify and consider all of the emissions from the project, including those resulting from the build-out.

**c. The DEIR Does Not Include All Feasible Alternatives and Does Not Quantify GHG Emissions from Those Alternatives**

The DEIR considers five alternatives which it terms the (1) No-Project alternative, (2) City-Centered Alternative, (3) Rural Communities Alternative, (4) Transportation Corridors Alternative, and (5) Confined Growth Alternative. (DEIR at pp. ES-8 to 9, 7-3 to 7-34.) Based on Table 7-1, which outlines the assumed population growth in unincorporated areas for each of the alternatives, it appears that the range of alternatives is narrow, representing a difference of only approximately 4% in growth in unincorporated areas (from 26% to 30%). (DEIR at pp. 7-3 to 7-4.) The alternatives thus ignore a range of “smart growth” alternatives that would concentrate development in already existing urban areas near mass transit and preserve more agricultural land and open space. A more intense “smart growth” alternative would appear to be feasible given the evidence that existing cities can currently accommodate all of the growth anticipated by the County.<sup>41</sup> Thus, in order to be consistent with CEQA, the DEIR must consider a broader range of alternatives that would focus more of the development in existing urban areas, or explain and provide evidence supporting a conclusion as to why such alternatives would be infeasible.

Moreover, while the DEIR purports to compare the impacts of the various alternatives, the discussion of the alternatives is inadequate. There are no anticipated population numbers provided for two of the alternatives (No-Project and Confined Growth alternatives), making it impossible to compare them to the other three alternatives (DEIR at pp. 7-3 to 7-4), and the discussion of alternatives does not even mention GHG emissions. (DEIR at pp. 7-14 to 7-34.) In order to comply with CEQA, the DEIR must quantify and compare the GHG emissions from each of the alternatives. Again, as discussed above, there are modeling resources available to the County for performing this analysis.

**d. The DEIR Does Not Impose All Feasible Measures to Mitigate GHG Emissions**

CEQA provides that a public agency should not approve a project as proposed if there are additional feasible mitigation measures that would substantially lessen the significant environmental effects of the project.<sup>42</sup> Further, in order to ensure that mitigation measures are actually implemented, they must be “fully enforceable through permit conditions, agreements, or

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<sup>41</sup>Tulare County General Plan: Policy Alternatives, Board of Supervisors Edition (August 2005) at p. 9, available at <http://generalplan.co.tulare.ca.us/documents.html>.

<sup>42</sup> Pub. Res. Code, § 21002.

other measures.”<sup>43</sup>

The DEIR refers to a series of policies in the General Plan that purport to mitigate GHG emissions related to general development. They include, for example, requiring any development to minimize air impacts, requiring the County to “consider” any strategies identified by the California Air Resources Board, studying methods of transportation to reduce air pollution, encouraging departments to replace existing vehicles with low emission vehicles, and identifying opportunities for infill. (General Plan at pp. 9-4 to 9-5.) While these policies are a positive step, they are general and unenforceable, as are the accompanying implementation measures. Further, the DEIR makes no attempt to quantify the extent to which these mitigation measures will reduce GHG emissions, instead simply jumping to the conclusion that the climate change impacts from the project would be “significant and unavoidable.” (DEIR at pp. 4-65 to 4-68.)<sup>44</sup>

In fact, there are many mitigation measures that are readily available to the County to decrease GHG emissions from new development. We are not suggesting that the County must adopt any specific set of mitigation measures, since this is a decision within its discretion. The County is, however, required by law to determine which measures are reasonable and feasible and to implement and enforce those measures. In considering which mitigation measures to implement, the County has many resources available. It can consider, for example, the measures set out in the CAPCOA document referenced above (pp. 79-87 and Appendix B-1), and those set forth in the list on the Attorney General’s website<sup>45</sup> (copy attached), and in the comments in the letter of the San Joaquin Valley Unified Air Pollution Control District (“APCD”) dated May 26, 2006, included in Appendix A to the Notice of Preparation. All of these sources provide concrete and enforceable recommendations, and address all aspects of project development that have an impact on GHG emissions, including conservation, land use, circulation, housing, open space,

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<sup>43</sup> Pub. Res. Code, § 21081.6, subd. (b); *Federation of Hillside & Canyon Ass’ns, supra*, 83 Cal.App.4th at p. 1261.

<sup>44</sup> The shortcomings of the mitigation discussion is further apparent in the DEIR’s discussion of mitigation measures for dairies, which addresses GHG reduction only incidentally in the context of reducing other air pollutants, and which fails to discuss many potentially significant mitigation measures that are available. (DEIR at pp. 4-66 to 4-67.) To take one example, methane digesters, which are increasingly being used on dairies in California, process animal waste under anaerobic conditions, yielding methane gas that is collected on site and can be sold directly to utilities or used to generate electricity, bringing in revenue to the dairy. See California Energy Commission, *Dairy Power Production Program, Dairy Methane Digester System 90-Day Evaluation Report, Eden-Vale Dairy*, December 2006 at p. 4; [http://cpuc.ca.gov/Final\\_resolution/68429.htm](http://cpuc.ca.gov/Final_resolution/68429.htm); <http://www.epa.gov/agstar/resources.html>; Fresno County Notices of Intention to Adopt a Mitigated Negative Declaration (Unclassified Conditional Use Permits 3215-3218).

<sup>45</sup> <http://ag.ca.gov/globalwarming/ceqa.php>.

safety, and energy. Other sources discussing mitigation measures are readily available.<sup>46</sup>

Finally, the DEIR states that the County will, at some unspecified future time, develop a GHG Emissions Reduction Plan that parallels requirements adopted by the California Air Resources Board. (DEIR at p. 4-67) While we commend the County for recognizing that such a plan is necessary, this reference to an as yet undeveloped and completely undefined plan cannot serve as mitigation for the project's GHG emissions, since deferring environmental assessment to some future date is counter to CEQA's mandate that environmental review be performed at the earliest stages in the planning project.<sup>47</sup>

We encourage the County to pursue adoption of a GHG Emissions Reduction Plan as part of its General Plan. To constitute effective mitigation, the County should consider including in the Plan a baseline inventory of the GHGs currently being emitted in the County from all sources, projected emissions for target years (e.g., 2020 and beyond), targets for the reduction of those sources of emissions that are consistent with AB 32 and Executive Order #S-03-05, and a suite of feasible emission reduction measures to meet the reduction target(s).<sup>48</sup> An effective plan would also likely include monitoring and reporting requirements so that the County will obtain information on the performance of its plan, and an adaptive management element to ensure that the Plan, once implemented, can be adjusted if necessary to meet the reduction targets.

In sum, given the wealth of resources available describing specific mitigation measures for GHG emissions, it is feasible for the County to develop and impose a set of mitigation measures that will be implemented and enforced as conditions of all future development projects. Since the County has not fully explored the extent to which there are feasible mitigation measures that would substantially reduce the global warming impacts of this project, it has not complied with CEQA.

**e. The DEIR Cannot Conclude, Without Fuller Analysis, that GHG Effects are Significant and Unavoidable and Inconsistent with AB 32**

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<sup>46</sup> See, e.g., [www.gosolarcalifornia.ga.gov/nshp](http://www.gosolarcalifornia.ga.gov/nshp) [discussing the California Energy Commissions' New Solar Homes Partnership which provides rebates to developers of six units or more who offer solar power on 50% of the new units]; [www.energy.ca.gov/efficiency/lighting/outdoor\\_reduction.html](http://www.energy.ca.gov/efficiency/lighting/outdoor_reduction.html) and [www.newbuildings.org/lighting.htm](http://www.newbuildings.org/lighting.htm) [energy efficient lighting]; [www.energy.ca.gov/title24/2005standards/](http://www.energy.ca.gov/title24/2005standards/) [feasible green building measures identified by the California Energy Commission's Compliance Manuals]; [www.vtppi.org/park\\_man.pdf](http://www.vtppi.org/park_man.pdf) [discussion of parking management programs that provide environmental benefits].

<sup>47</sup> Pub. Resources Code, § 21003.1; *Sunstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 307 (and cases cited therein).

<sup>48</sup> See the Attorney General's settlement with San Bernardino County, available at [http://ag.ca.gov/cms\\_pdfs/press/2007-08-21\\_San\\_Bernardino\\_settlement\\_agreement.pdf](http://ag.ca.gov/cms_pdfs/press/2007-08-21_San_Bernardino_settlement_agreement.pdf).

The DEIR concludes that the GHG emissions from the project will be significant and unavoidable. (DEIR at p. 4-68.) In light of the fact that the emissions are not fully quantified, enforceable mitigation measures are not imposed, and the efficacy of any mitigation are not analyzed qualitatively or quantitatively, this conclusion is unsupported and contravenes CEQA.<sup>49</sup>

**6. Conclusion**

This is a critical time for all of California. Scientists acknowledge that global warming is real. Unless we depart from the “business as usual” paradigm and embrace the new principles of “smart growth,” we risk pushing the environment past the “tipping point” into cataclysmic climate change. The stakes are too high for Tulare County to abdicate its responsibilities, allowing the market to control the future of the hundreds of thousands of people who currently live and work – and the hundred thousands more who will live and work – in Tulare County. The County, through its General Plan and the CEQA process, has the opportunity, and indeed the duty, to become one of the leaders in planning the future of California. The decisions the County makes today will determine what the County will look like in the coming years and 30 years from now, and they can help move California forward into a new era of development and sustainable growth, consistent with the State’s goals for a lower-carbon future.

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

Sincerely,

/S/

SUSAN S. FIERING  
Deputy Attorney General

For EDMUND G. BROWN JR.  
Attorney General

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<sup>49</sup> See *Berkeley Keep Jets Over the Bay Committee v. Board of Port Commissioners* (2001) 91 Cal.App.4th 1344, 1371 [lead agency cannot simply conclude that there are overriding considerations that would justify a significant and unavoidable effect without fully analyzing the effect].



## **EXHIBIT B**

## MEMORANDUM OF AGREEMENT

This Memorandum of Agreement (“Agreement”) is entered into by and between the City of Stockton (“City”), Edmund G. Brown Jr., Attorney General of California, on behalf of the People of the State of California (“Attorney General”), and the Sierra Club, and it is dated and effective as of the date that the last Party signs (“Effective Date”). The City, the Attorney General, and the Sierra Club are referred to as the “Parties.”

### RECITALS

On December 11, 2007, the City approved the 2035 General Plan, Infrastructure Studies Project, Bicycle Master Plan, Final Environmental Impact Report (“EIR”), and Statement of Overriding Considerations. The General Plan provides direction to the City when making land use and public service decisions. All specific plans, subdivisions, public works projects, and zoning decisions must be consistent with the City’s General Plan. As adopted in final form, the General Plan includes Policy HS-4.20, which requires the City to "adopt new policies, in the form of a new ordinance, resolution, or other type of policy document, that will require new development to reduce its greenhouse gas emissions to the extent feasible in a manner consistent with state legislative policy as set forth in Assembly Bill (AB) 32 (Health & Saf. Code, § 38500 et seq.) and with specific mitigation strategies developed by the California Air Resources Board (CARB) pursuant to AB 32[.]” The policy lists the following "potential mitigation strategies," among others, for the City to consider:

- (a) Increased density or intensity of land use, as a means of reducing per capita vehicle miles traveled by increasing pedestrian activities, bicycle usage, and public or private transit usage; and
- (b) Increased energy conservation through means such as those described in Appendix F of the State Guidelines for the California Environmental Quality Act.

The 2035 General Plan also includes other Policies and goals calling for infill development, increased transit, smart growth, affordable housing, and downtown revitalization.

In December 2006, in accordance with the requirements of the California Environmental Quality Act (“CEQA”), the City prepared and circulated a Draft EIR. Comments were received on the EIR; the City prepared responses to these comments and certified the EIR in December 2007.

On January 10, 2008, the Sierra Club filed a Petition for Writ of Mandate in San Joaquin County Superior Court (Case No. CV 034405, hereinafter “Sierra Club Action”),

alleging that the City had violated CEQA in its approval of the 2035 General Plan. In this case, the Sierra Club asked the Court, among other things, to issue a writ directing the City to vacate its approval of the 2035 General Plan and its certification of the EIR, and to award petitioners' attorney's fees and costs.

The Attorney General also raised concerns about the adequacy of the EIR under CEQA, including but not limited to the EIR's failure to incorporate enforceable measures to mitigate the greenhouse gas ("GHG") emission impacts that would result from the General Plan.

The City contends that the General Plan and EIR adequately address the need for local governments to reduce greenhouse gas ("GHG") emissions in accordance with Assembly Bill 32, and associated issues of climate change.

Because the outcome of the Parties' dispute is uncertain, and to allow the Stockton General Plan to go forward while still addressing the concerns of the Attorney General and the Sierra Club, the Parties have agreed to resolve their dispute by agreement, without the need for judicial resolution.

The parties want to ensure that the General Plan and the City's implementing actions address GHG reduction in a meaningful and constructive manner. The parties recognize that development on the urban fringe of the City must be carefully balanced with accompanying infill development to be consistent with the state mandate of reducing GHG emissions, since unbalanced development will cause increased driving and increased motor vehicle GHG emissions. Therefore, the parties want to promote balanced development, including adequate infill development, downtown vitalization, affordable housing, and public transportation. In addition, the parties want to ensure that development on the urban fringe is as revenue-neutral to the City as to infrastructure development and the provision of services as possible.

In light of all the above considerations, the Parties agree as follows, recognizing that any legislative actions contemplated by the Agreement require public input and, in some instances, environmental review prior to City Council actions, which shall reflect such input and environmental information, pursuant to State law:

## **AGREEMENT**

### **Climate Action Plan**

1. Within 24 months of the signing of this Agreement, and in furtherance of General Plan Policy HS-4.20 and other General Plan policies and goals, the City agrees that its staff shall prepare and submit for City Council adoption, a Climate Action Plan, either as a separate element of the General Plan or as a component of an existing General Plan element. The Climate Action Plan, whose adoption will be subject to normal requirements for compliance with CEQA and other controlling state law, shall include, at least, the measures set forth in paragraphs 3 through 8, below.

2. The City shall establish a volunteer Climate Action Plan advisory committee to assist the staff in its preparation and implementation of the Plan and other policies or documents to be adopted pursuant to this Agreement. This committee shall monitor the City's compliance with this Agreement, help identify funding sources to implement this Agreement, review in a timely manner all draft plans and policy statements developed in accordance with this Agreement (including studies prepared pursuant to Paragraph 9, below), and make recommendations to the Planning Commission and City Council regarding its review. The committee shall be comprised of one representative from each of the following interests: (1) environmental, (2) non-profit community organization, (3) labor, (4) business, and (5) developer. The committee members shall be selected by the City Council within 120 days of the Effective Date, and shall serve a one-year term, with no term limits. Vacancies shall be filled in accordance with applicable City policies. The City shall use its best efforts to facilitate the committee's work using available staff resources.

3. The Climate Action Plan shall include the following measures relating to GHG inventories and GHG reduction strategies:

a. Inventories from all public and private sources in the City:

(1) Inventory of current GHG emissions as of the Effective Date;

(2) Estimated inventory of 1990 GHG emissions;

(3) Estimated inventory of 2020 GHG emissions.

The parties recognize that techniques for estimating the 1990 and 2020 inventories are imperfect; the City agrees to use its best efforts, consistent with methodologies developed by ICLEI and the California Air Resources

Board, to produce the most accurate and reliable inventories it can without disproportionate or unreasonable staff commitments or expenditures.

- b. Specific targets for reductions of the current and projected 2020 GHG emissions inventory from those sources of emissions reasonably attributable to the City's discretionary land use decisions and the City's internal government operations. Targets shall be set in accordance with reduction targets in AB 32, other state laws, or applicable local or regional enactments addressing GHG emissions, and with Air Resources Board regulations and strategies adopted to carry out AB 32, if any, including any local or regional targets for GHG reductions adopted pursuant to AB 32 or other state laws. The City may establish goals beyond 2020, consistent with the laws referenced in this paragraph and based on current science.
  - c. A goal to reduce per capita vehicle miles traveled ("VMT") attributable to activities in Stockton (i.e., not solely due to through trips that neither originate nor end in Stockton) such that the rate of growth of VMT during the General Plan's time frame does not exceed the rate of population growth during that time frame. In addition, the City shall adopt and carry out a method for monitoring VMT growth, and shall report that information to the City Council at least annually. Policies regarding VMT control and monitoring that the City shall consider for adoption in the General Plan are attached to this Agreement in Exhibit A.
  - d. Specific and general tools and strategies to reduce the current and projected 2020 GHG inventories and to meet the Plan's targets for GHG reductions by 2020, including but not limited to the measures set out in paragraphs 4 through 8, below.
4. The City agrees to take the following actions with respect to a green building program:
- a. Within 12 months of the Effective Date, the City staff shall submit for City Council adoption ordinance(s) that require:

(1) All new housing units to obtain Build It Green certification, based on then-current Build It Green standards, or to comply with a green building program that the City after consultation with the Attorney General, determines is of comparable effectiveness;

(2) All new non-residential buildings that exceed 5000 square feet and all new municipal buildings that exceed 5000 square feet to be certified to LEED Silver standards at a minimum, based on the then-current LEED standards, or to comply with a green building program that the City, after consultation with the Attorney General, determines is of comparable effectiveness;

(3) If housing units or non-residential buildings certify to standards other than, but of comparable effectiveness to, Build It Green or LEED Silver, respectively, such housing units or buildings shall demonstrate, using an outside inspector or verifier certified under the California Energy Commission Home Energy Rating System (HERS), or a comparably certified verifier, that they comply with the applicable standards.

(4) The ordinances proposed for adoption pursuant to paragraphs (1) through (3) above may include an appropriate implementation schedule, which, among other things, may provide that LEED Silver requirements (or standards of comparable effectiveness) for non-residential buildings will be implemented first for buildings that exceed 20,000 square feet, and later for non-residential buildings that are less than 20,000 and more than 5,000 square feet.

(5) Nothing in this section shall affect the City's obligation to comply with applicable provisions of state law, including the California Green Building Standards Code (Part 11 of Title 24 of the California Code of Regulations), which, at section 101.7, provides, among other things, that "local government entities retain their discretion to exceed the standards established by [the California Green Building Standards Code]."

- b. Within 18 months of the Effective Date, the City staff shall submit for City Council adoption ordinance(s) that will require the reduction of the GHG emissions of existing housing units on any occasion when a permit to make substantial modifications to an existing housing unit is issued by the City.
- c. The City shall explore the possibility of creating a local assessment district or other financing mechanism to fund voluntary actions by owners of commercial and residential buildings to undertake energy efficiency

measures, install solar rooftop panels, install “cool” (highly reflective) roofs, and take other measures to reduce GHG emissions.

- d. The City shall also explore the possibility of requiring GHG-reducing retrofits on existing sources of GHG emissions as potential mitigation measures in CEQA processes.
- e. From time to time, but at least every five years, the City shall review its green building requirements for residential, municipal and commercial buildings, and update them to ensure that they achieve performance objectives consistent with those achieved by the top (best-performing) 25% of city green building measures in the state.

5. Within 12 months of the Effective Date, the City staff shall submit for City Council adoption a transit program, based upon a transit gap study. The transit gap study shall include measures to support transit services and operations, including any ordinances or general plan amendments needed to implement the transit program. These measures shall include, but not be limited to, the measures set forth in paragraphs 5.b. through 5.d. In addition, the City shall consider for adoption as part of the transit program the policy and implementation measures regarding the development of Bus Rapid Transit (“BRT”) that are attached to this Agreement in Exhibit B.

- a. The transit gap study, which may be coordinated with studies conducted by local and regional transportation agencies, shall analyze, among other things, strategies for increasing transit usage in the City, and shall identify funding sources for BRT and other transit, in order to reduce per capita VMT throughout the City. The study shall be commenced within 120 days of the Effective Date.
- b. Any housing or other development projects that are (1) subject to a specific plan or master development plan, as those terms are defined in §§ 16-540 and 16-560 of the Stockton Municipal Code as of the Effective Date (hereafter “SP” or “MDP”), or (2) projects of statewide, regional, or areawide significance, as defined by the CEQA Guidelines (hereafter “projects of significance”), shall be configured, and shall include necessary street design standards, to allow the entire development to be internally accessible by vehicles, transit, bicycles, and pedestrians, and to allow access to adjacent neighborhoods and developments by all such modes of transportation.
- c. Any housing or other development projects that are (1) subject to an SP or MDP, or (2) projects of significance, shall provide financial and/or other

support for transit use. The imposition of fees shall be sufficient to cover the development's fair share of the transit system and to fairly contribute to the achievement of the overall VMT goals of the Climate Action Plan, in accordance with the transit gap study and the Mitigation Fee Act (Government Code section 66000, *et seq.*), and taking into account the location and type of development. Additional measures to support transit use may include dedication of land for transit corridors, dedication of land for transit stops, or fees to support commute service to distant employment centers the development is expected to serve, such as the East Bay. Nothing in this Agreement precludes the City and a landowner/applicant from entering in an agreement for additional funding for BRT.

- d. Any housing or other development projects that are (1) subject to an SP or MDP or (2) projects of significance, must be of sufficient density overall to support the feasible operation of transit, such density to be determined by the City in consultation with San Joaquin Regional Transit District officials.

6. To ensure that the City's development does not undermine the policies that support infill and downtown development, within 12 months of the Effective Date, the City staff shall submit for City Council adoption policies or programs in its General Plan that:

- a. Require at least 4400 units of Stockton's new housing growth to be located in Greater Downtown Stockton (defined as land generally bordered by Harding Way, Charter Way (MLK), Pershing Avenue, and Wilson Way), with the goal of approving 3,000 of these units by 2020.
- b. Require at least an additional 14,000 of Stockton's new housing units to be located within the City limits as they exist on the Effective Date ("existing City limits").
- c. Provide incentives to promote infill development in Greater Downtown Stockton, including but not limited to the following for proposed infill developments: reduced impact fees, including any fees referenced in paragraph 7 below; lower permit fees; less restrictive height limits; less restrictive setback requirements; less restrictive parking requirements; subsidies; and a streamlined permitting process.
- d. Provide incentives for infill development within the existing City limits but outside Greater Downtown Stockton and excluding projects of significance. These incentives may be less aggressive than those referenced in paragraph 6.c., above.



7. Within 12 months of the Effective Date, the City staff shall submit for City Council adoption amendments to the General Plan to ensure that development at the City's outskirts, particularly residential, village or mixed use development, does not grow in a manner that is out of balance with development of infill. These proposed amendments shall include, but not be limited to, measures limiting the granting of entitlements for development projects outside the existing City limits and which are (1) subject to an SP or MDP, or (2) projects of significance, until certain criteria are met. These criteria shall include, at a minimum:

- a. Minimum levels of transportation efficiency, transit availability (including BRT) and Level of Service, as defined by the San Joaquin Council of Government regulations, City service capacity, water availability, and other urban services performance measures;
- b. Firm, effective milestones that will assure that specified levels of infill development, jobs-housing balance goals, and GHG and VMT reduction goals, once established, are met before new entitlements can be granted;
- c. Impact fees on new development, or alternative financing mechanisms identified in a project's Fiscal Impact Analysis and/or Public Facilities Financing Plan, that will ensure that the levels and milestones referenced in paragraphs 7.a. and 7.b., above, are met. Any such fees:
  - (1) shall be structured, in accordance with controlling law, to ensure that all development outside the infill areas within existing City limits is revenue-neutral to the City (which may necessitate higher fees for development outside this area, depending upon the costs of extending infrastructure);
  - (2) may be in addition to mitigation measures required under CEQA;
  - (3) shall be based upon a Fiscal Impact Analysis and a Public Facilities Financing Plan.
- d. The City shall explore the feasibility of enhancing the financial viability of infill development in Greater Downtown Stockton, through the use of such mechanisms as an infill mitigation bank.

8. The City shall regularly monitor the above strategies and measures to ensure that they are effectively reducing GHG emissions. In addition to the City staff reporting on VMT annually, as provided in paragraph 3.c., the City staff or the advisory committee shall report annually to the City Council on the City's progress in implementing the

strategies and measures of this Agreement. If it appears that the strategies and measures will not result in the City meeting its GHG reduction targets, the City shall, in consultation with the Attorney General and Sierra Club, make appropriate modifications and, if necessary, adopt additional measures to meet its targets.

### **Early Climate Protection Actions**

9. To more fully carry out those provisions of the General Plan, including the policy commitments embodied in those General Plan Policies, such as General Plan Policy HS-4.20, intended to reduce greenhouse gas emissions through reducing commuting distances, supporting transit, increasing the use of alternative vehicle fuels, increasing efficient use of energy, and minimizing air pollution, and to avoid compromising the effectiveness of the measures in Paragraphs 4 through 8, above, until such time as the City formally adopts the Climate Action Plan, before granting approvals for development projects (1) subject to an SP or MDP, or (2) considered projects of significance, and any corresponding development agreements, the City shall take the steps set forth in subsections (a) through (d) below:

(a) City staff shall:

- (1) formulate proposed measures necessary for the project to meet any applicable GHG reduction targets;
- (2) assess the project's VMT and formulate proposed measures that would reduce the project's VMT;
- (3) assess the transit, especially BRT, needs of the project and identify the project's proposed fair share of the cost of meeting such needs;
- (4) assess whether project densities support transit, and, if not, identify proposed increases in project density that would support transit service, including BRT service;
- (5) assess the project's estimated energy consumption, and identify proposed measures to ensure that the project conserves energy and uses energy efficiently;
- (6) formulate proposed measures to ensure that the project is consistent with a balance of growth between land within Greater Downtown Stockton and existing City limits, and land outside the existing City limits;

- (7) formulate proposed measures to ensure that City services and infrastructure are in place or will be in place prior to the issuance of new entitlements for the project or will be available at the time of development; and
- (8) formulate proposed measures to ensure that the project is configured to allow the entire development to be internally accessible by all modes of transportation.
- (b) The City Council shall review and consider the studies and recommendations of City staff required by paragraph 9(a) and conduct at least one public hearing thereon prior to approval of the proposed project (though this hearing may be folded into the hearing on the merits of the project itself).
- (c) The City Council shall consider the feasibility of imposing conditions of approval, including mitigation measures pursuant to CEQA, based on the studies and recommendations of City staff prepared pursuant to paragraph 9(a) for each covered development project.
- (d) The City Council shall consider including in any development approvals, or development agreements, that the City grants or enters into during the time the City is developing the Climate Action Plan, a requirement that all such approvals and development agreements shall be subject to ordinances and enactments adopted after the effective date of any approvals of such projects or corresponding development agreements, where such ordinances and enactments are part of the Climate Action Plan.
- (e) The City shall complete the process described in paragraphs (a) through (d) (hereinafter, "Climate Impact Study Process") prior to the first discretionary approval for a development project. Notwithstanding the foregoing, however, for projects for which a draft environmental impact report has circulated as of the Effective Date, the applicant may request that the City either (i) conduct the Climate Impact Study Process or (ii) complete its consideration of the Climate Action Plan prior to the adoption of the final discretionary approval leading to the project's first phase of construction. In such cases, the applicant making the request shall agree that nothing in the discretionary approvals issued prior to the final discretionary approval (i) precludes the City from imposing on the project conditions of approvals or other measures that may result from the Climate Impact Study Process, or (ii) insulates the project from a decision, if any, by the City to apply any ordinances and/ or enactments that may comprise the Climate Action Plan

ultimately adopted by the City.

### **Attorney General Commitments**

10. The Attorney General enters into this Agreement in his independent capacity and not on behalf of any other state agency, commission, or board. In return for the above commitments made by the City, the Attorney General agrees:

- a. To refrain from initiating, joining, or filing any brief in any legal challenge to the General Plan adopted on December 11, 2007;
- b. To consult with the City and attempt in good faith to reach an agreement as to any future development project whose CEQA compliance the Attorney General considers inadequate. In making this commitment, the Attorney General does not surrender his right and duties under the California Constitution and the Government Code to enforce CEQA as to any proposed development project, nor his duty to represent any state agency as to any project;
- c. To make a good faith effort to assist the City in obtaining funding for the development of the Climate Action Plan.

### **Sierra Club Commitments**

11. The Sierra Club agrees to dismiss the Sierra Club Action with prejudice within ten (10) days of the Effective Date. Notwithstanding the foregoing agreement to dismiss the Sierra Club Action, the City and Sierra Club agree that, in the event the City should use the EIR for the 2035 General Plan in connection with any other project approval, the Sierra Club has not waived its right (a) to comment upon the adequacy of that EIR, or (b) to file any action challenging the City's approval of any other project based on its use and/or certification of the EIR.

### **General Terms and Conditions**

12. This Agreement represents the entire agreement of the Parties, and supercedes any prior written or oral representations or agreements of the Parties relating to the subject matter of this Agreement.

13. No modification of this Agreement will be effective unless it is set forth in writing and signed by an authorized representative of each Party.

14. Each Party warrants that it has the authority to execute this Agreement. Each Party warrants that it has given all necessary notices and has obtained all necessary consents to permit it to enter into and execute this Agreement.

15. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

16. This Agreement may be executed in counterparts, each of which shall be deemed an original. This Agreement will be binding upon the receipt of original, facsimile, or electronically communicated signatures.

17. This Agreement has been jointly drafted, and the general rule that it be construed against the drafting party is not applicable.

18. If a court should find any term, covenant, or condition of this Agreement to be invalid or unenforceable, the remainder of the Agreement shall remain in full force and effect.

19. The City agrees to indemnify and defend the Sierra Club, its officers and agents (collectively, "Club") from any claim, action or proceeding ("Proceeding") brought against the Club, whether as defendant/respondent, real party in interest, or in any other capacity, to challenge or set aside this Agreement. This indemnification shall include (a) any damages, fees, or costs awarded against the Club, and (b) any costs of suit, attorneys' fees or expenses incurred in connection with the Proceeding, whether incurred by the Club, the City or the parties bringing such Proceeding. If the Proceeding is brought against both the Club and the City, the Club agrees that it may be defended by counsel for the City, provided that the City selects counsel that is acceptable to the Club; the Club may not unreasonably withhold its approval of such mutual defense counsel.

20. The City shall pay Sierra Club's attorney's fees and costs in the amount of \$157,000 to the law firm of Shute, Mihaly & Weinberger LLP as follows: \$50,000 within 15 days of dismissal of the Sierra Club Action, and (b) the balance on or before January 30, 2009.

21. Any notice given under this Agreement shall be in writing and shall be delivered as follows with notice deemed given as indicated: (a) by personal delivery when delivered personally; (b) by overnight courier upon written verification of receipt; or (c) by certified or registered mail, return receipt requested, upon verification of receipt. Notice shall be sent as set forth below, or as either party may specify in writing:

City of Stockton:

Attorney General's Office

Richard E. Nosky, City Attorney  
425 N. El Dorado Street, 2nd Floor  
Stockton, CA 95202

Lisa Trankley  
Susan Durbin  
Deputy Attorneys General  
1300 I Street, P.O. Box 944255  
Sacramento, CA 94255-2550

Sierra Club:  
Aaron Isherwood  
Environmental Law Program  
85 Second Street, 2<sup>nd</sup> Floor  
San Francisco, CA 94105

Rachel Hooper  
Amy Bricker  
Shute, Mihaly & Weinberger  
396 Hayes Street  
San Francisco, CA 94102

22. Nothing in this Agreement shall be construed as requiring the City to relinquish or delegate its land use authority or police power.

(SIGNATURES ON FOLLOWING PAGE)

In witness whereof, this Agreement is executed by the following:

PEOPLE OF THE STATE OF CALIFORNIA  
BY AND THROUGH ATTORNEY GENERAL  
EDMUND G. BROWN JR.

Lisa Frankley

DATED: 10/14/08

ATTEST:

[Signature]  
KATHERINE GONG MEISSNER  
City Clerk of the City of Stockton



CITY OF STOCKTON,  
a municipal corporation

[Signature]  
J. GORDON PALMER, JR.  
City Manager

APPROVED AS TO FORM:

[Signature]  
RICHARD E. NOSKY, JR.  
City Attorney

DATED 9/25/08

DATED 9-9-08

THE SIERRA CLUB

BARBARA WILLIAMS, CHAIR  
MOTHER LODGE CHAPTER

DATED \_\_\_\_\_

In witness whereof, this Agreement is executed by the following:

PEOPLE OF THE STATE OF CALIFORNIA  
BY AND THROUGH ATTORNEY GENERAL  
EDMUND G. BROWN JR.

\_\_\_\_\_  
DATED: \_\_\_\_\_

ATTEST:

CITY OF STOCKTON,  
a municipal corporation

\_\_\_\_\_  
KATHERINE GONG MEISSNER  
City Clerk of the City of Stockton

\_\_\_\_\_  
J. GORDON PALMER, JR.  
City Manager

APPROVED AS TO FORM:

DATED \_\_\_\_\_

\_\_\_\_\_  
RICHARD E. NOSKY, JR.  
City Attorney

DATED \_\_\_\_\_

THE SIERRA CLUB



BARBARA WILLIAMS, CHAIR  
MOTHER LODGE CHAPTER

DATED 10/11/08



## EXHIBIT A

### **Policy Re: VMT Monitoring Program**

The City's policy is to monitor key City-maintained roadways to estimate Vehicle Miles Traveled (VMT) by single-occupant automobile per capita on an annual basis, to be submitted as an annual report to the City Council. The estimate of citywide VMT should be developed in cooperation with the San Joaquin Council of Governments ("SJCOG"), by augmenting local City data with VMT estimates from SJCOG and Caltrans for the regional Congestion Management Plan network. The estimated change in annual VMT should be used to measure the effectiveness of jobs/housing balance, greenhouse gas emission reduction, and transit plans and programs.

### **Implementation Program**

In order to develop an annual estimate of citywide VMT, the City should augment local City data with VMT estimates from SJCOG and Caltrans for regional facilities, or adopt other methodologies to estimate citywide VMT that are approved in concept by the two agencies. For purposes of calculating annual changes in VMT, the annual estimate of VMT should subtract out the estimates of regional truck and other through traffic on the major freeways (I-5, SR 4, SR 99).

### **Policy Re: Reduce Growth in VMT**

The City's policy is to achieve the following fundamental goals to regulate vehicle emissions and reduce greenhouse gas emissions, improve jobs/housing balance, and increase transit usage over the duration of this General Plan: Reduce the projected increase in VMT by single-occupant automobile per capita to an annual rate over the planning period that is equal to or less than the population increase (this goal is also required for the City to receive funding through the Measure K/Congestion Management Plan program).

### **Implementation Program**

In order to keep annual increases in VMT to a rate equal to or less than population increases, the following trip reduction programs should be considered by the City: increased transit service (Bus Rapid Transit) funded through new development fees; planning all future housing development to be in the closest possible proximity to existing and planned employment centers; provision of affordable housing; creation of higher density, mixed use and walkable communities and development of bicycle and pedestrian trails; and other proven programs.

### **Implementation Program**

If the City goal of reducing the projected increase in VMT to an amount equal to or less than the population increase, and increase transit usage, is not met for two or more years during each five-year cycle of VMT monitoring, the City should consider adoption of the following programs, among others:

Adopt more vigorous economic development programs with funding for staff; and  
Slow the rate of approvals of building permits for housing developments.

## EXHIBIT B

### **Policy Re: Bus Rapid Transit**

The City's policy is to vigorously support efforts to develop Bus Rapid Transit (BRT) within and beyond Stockton as a major priority of its General Plan, in order to increase overall transit usage over time. Based on an updated transit study, the City should plan for and provide BRT service running along key north-south routes as a first priority: Pacific Avenue; El Dorado Street; West Lane/Airport Way; Pershing Avenue. BRT service along key east-west corridors should also be provided. Transit use goals should be approved and monitored by the City over the planning period.

### **Implementation Program**

In order to fund the initial capital and operating costs for BRT along major north-south arterials, the City should consider adoption of a comprehensive new development BRT fee program that requires new growth to significantly fund BRT, following a study consistent with the requirements of State law. The new development BRT fee program should ensure that "greenfield" projects approved at the fringe of the City pay a fee that represents the full cost of providing BRT service to the new housing; infill development may be granted a reduced BRT fee based on the reduced distance of service provided to the inner city areas.

### **Implementation Program**

In order to augment the new development funding of the initial capital and operating costs for BRT, the City should strongly advocate for Measure K funding and should seriously consider placing an initiative on the ballot to receive voter approval for additional funding from existing residents and businesses.

### **Implementation Program**

The City should establish transit use goals that set specific targets (e.g., transit mode split percentage of total trips and bus headways) that represent an increase in public transportation ridership and level of service over current levels by 2012 and then another increase by 2018.

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