



STATE OF CALIFORNIA
OFFICE OF THE ATTORNEY GENERAL
EDMUND G. BROWN JR.
ATTORNEY GENERAL

January 13, 2009

Janice Stern
Principal Planner
Community Development Department
P.O. Box 520
Pleasanton, CA 94566

RE: City of Pleasanton's General Plan Update Draft Environmental Impact Report

Dear Ms. Stern:

My office hereby submits these comments on the Draft Environmental Impact Report ("DEIR") for the City of Pleasanton's Proposed General Plan 2005-2025 ("General Plan Update" or "Project").¹

We commend the City for its participation in the Alameda County Climate Protection Project and its decision to sign the U.S. Conference of Mayors Climate Protection Agreement.² Unfortunately, the General Plan Update, as currently written, does not contain an effective strategy to reduce greenhouse gas emissions, nor does the DEIR accurately analyze or effectively mitigate the greenhouse gas emissions stemming from the Project.

In enacting Senate Bill 375 this fall, the Legislature declared that "without improved land use and transportation policy, California will not be able to achieve the goals of AB 32."³ The California Air Resources Board ("CARB") likewise has called local governments "essential partners" in implementing AB 32 and urged them reduce their emissions 15% from current levels by 2020.⁴ This means that the General Plan Update must contain elements that reduce fossil fuel consumption.

¹ The Attorney General submits these comments pursuant to his independent power and duty to protect the natural resources of the State. (See Cal. Const., art. V., § 13; Cal. Gov. Code, §§ 12511, 12600-12612; *D'Amico v. Board of Medical Examiners* (1974) 11 Cal.3d 1, 14-15.) While this letter sets forth some areas of particular concern, it is not intended to be an exhaustive discussion of the DEIR's compliance with CEQA.

² General Plan Update ("GP") at 9-13; U.S. Conference of Mayors Climate Protection Agreement List of Mayors available at <http://www.usmayors.org/climateprotection/list.asp>

³ Sen. Bill No. 375 (2007-2008 Reg. Sess.) § (1)(c) ("SB 375").

⁴ California Air Resources Board, Climate Change Proposed Scoping Plan (October 2008) 26-27 ("Proposed Scoping Plan"). CARB approved the Proposed Scoping Plan on December 11, 2008.

Background - Climate Change and Land Use Planning

California recognizes that disruptive climate change is an urgent problem requiring strong and immediate action. To this end, the state enacted AB 32, requiring the state to reduce its greenhouse gas emissions to 1990 levels by 2020. CARB, which is charged with implementing AB 32, has determined that the 2020 state target emissions level is 427 million metric tons of carbon dioxide equivalent (“MMTCO₂E”) and that reaching that target will require a reduction of approximately 30% from California’s projected 2020 emissions of 596 MMTCO₂E under a business-as-usual scenario (15% from current levels).⁵

Transportation is the largest contributor to California’s greenhouse gas emissions.⁶ CARB estimates that transportation is currently responsible for 38% of the greenhouse gas emissions in the state.⁷ And in the Bay Area, emissions from transportation account for 50% of the total area emissions.⁸ Meeting California’s goals under AB 32 thus demands reduction of emissions from the transportation sector, including vehicle miles traveled (“VMT”).⁹ As the Legislature recognized in adopting SB 375:

Greenhouse gas emissions from automobiles and light trucks can be substantially reduced by new vehicle technology and by the increased use of low carbon fuel. However, even taking these measures into account, it will be necessary to achieve significant additional greenhouse gas reductions from changed land use patterns and improved transportation.¹⁰ (emphasis added.)

Pleasanton’s General Plan Update

Pleasanton’s General Plan Update will replace the current general plan, which was adopted in 1996. Following adoption of the 1996 plan, the City adopted by initiative, Measure GG, which reaffirmed and readopted the Housing Cap provision contained in the Land Use Element of the general plan. Measure GG also added a provision to the Housing Cap requiring a vote of the people for all future amendments. The City’s General Plan Update includes the Housing Cap as Policy 24 of its Land Use Element. The provision states:

⁵ *Id.* at 12.

⁶ *Id.* at 11.

⁷ *Id.* at 11 Figure 1; see also *Id.* Appendix C at C-55.

⁸ Bay Area Air Quality Management District, Source Inventory of Bay Area Greenhouse Gas Emissions (November 2006) at 7, Figure 2, Table E.

⁹ Caroline Rodier, et al., A Review of the International Modeling Literature: Transit, Land Use, and Auto Pricing Strategies to Reduce Vehicle Miles Traveled and Greenhouse Gas Emissions (August 1, 2008) at 2; see also, CEC, The Role of Land Use in Meeting California’s Energy and Climate Change Goals, Final Staff Report (August 2007) at 4; Proposed Scoping Plan Appendix C at C-79.

¹⁰ SB 375 § (1)(c); see also California Energy Commission, The Role of Land Use in Meeting California’s Energy and Climate Change Goals, Final Staff Report (August 2007) at 1.

Policy 24: Maintain a maximum housing buildout of 29,000 units within the Planning Area.

Program 24.1: Monitor and zone future residential developments so as not to exceed the maximum housing buildout.

Program 24.2: The foregoing Policy 24 and Program 24.1 and this Program 24.2: shall be amended only by a vote of the people.¹¹

The Housing Cap plays a pivotal role in shaping the General Plan Update and in the City's evaluation of the Project's environmental impacts.

According to the City, the General Plan Update can plan for only 2,007 residential units before it reaches the limit of 29,000 units set by the Housing Cap.¹² At buildout, all residential units in the City will support a projected population of 78,200.¹³ Though there is ample space in the City for additional residential development, the City suggests that the Housing Cap limits the City's ability to utilize that space.

By relying on the Housing Cap as justification for preventing more residential units, the City ignores its obligation to provide for sufficient housing for the region's growing population. "[N]o California locality is immune from the legal and practical necessity to expand housing due to increasing population pressures."¹⁴ State housing law requires that general plan housing elements identify adequate sites to meet the city's "share of the regional housing need."¹⁵ Although the General Plan Update does not include the City's housing element,¹⁶ the information presented in the Update must be consistent with the housing element.¹⁷

As drafted, the General Plan Update does not allow for a sufficient number of housing units to satisfy the City's 2007-2014 regional housing needs allocation ("RHNA"). The Association of Bay Area Governments' ("ABAG") proposed final RHNA for Pleasanton through 2014 is 3,277 units, which is 1,270 more units than permitted by the Housing Cap.¹⁸ Moreover, the City must satisfy this obligation by 2014 and the General Plan Update runs through 2025.

¹¹ GP at 2-36.

¹² DEIR at 5-3, Table 5-2, fn. 1; see also, Pleasanton City Council Agenda Report (August 21, 2007) at 3.

¹³ GP at 2-17.

¹⁴ *Muzzy Ranch Co. v. Solano County Airport Land Use Com'n*, 41 Cal.4th 372, 383 (2007).

¹⁵ Cal. Gov. Code, §§ 65583, 65583 (a)(1).

¹⁶ The City's housing element was conditionally approved by the Department of Housing and Community Development (HCD) in 2003; however, the department notified the City on March 23, 2006, that the City had not met the conditions required for approval. (March 23, 2006 letter from Cathy E. Creswell to Nelson Fialho Re: Status of the City of Pleasanton's Housing Element.) HCD's letter traces the City's failure to complete Program 19.1 of the housing element, which requires rezoning to provide for more housing units. (*Id.* at 1.) The letter concludes that "the City's proposal to complete the requisite rezones/upzones during the first or second quarter of 2007 does not demonstrate the necessary (and timely) commitment to meet the adequate sites requirement of housing element law. Therefore, the City's housing element remains out of compliance." (*Id.* at 2.) The City's noncompliance with housing element law is the subject of an ongoing lawsuit. (*Urban Habitat Program et al., v. City of Pleasanton*, Alameda Sup.Ct. Case No. RG0629383, filed Feb. 16, 2007).

¹⁷ Cal. Gov. Code, §65300.5.

¹⁸ Proposed Final Regional Housing Needs Allocation (Revised March 20, 2008), available at <http://www.abag.ca.gov/planning/housingneeds/pdfs/proposedfinal.pdf>.

Accordingly, during the lifetime of the General Plan Update, a second RHNA with more housing units will be allocated to the City. If the Housing Cap is not changed, the City will not meet the current RHNA, much less any future allocations, and the City will be in violation of state housing law.

At the same time the General Plan Update restricts residential development, it allows 35,000,000 square feet of commercial, office, industrial and other employment-generating land development in the City.¹⁹ At buildout, this business development would support approximately 105,000 jobs, up from 61,100 current jobs.²⁰ This means that the General Plan will dramatically worsen what already is an unacceptable jobs/housing imbalance in the City, thereby exporting air pollution, exacerbating already horrendous traffic jams, and promoting greenhouse gas emissions.

Pleasanton is already a “job rich” community, with more than 1.6 jobs for every working resident.²¹ As the City notes, “even if every resident stayed in Pleasanton to work, there would be substantial in-commuting to fill the remaining jobs.”²² ABAG estimates that in 2005, the City’s 4,100 businesses employed approximately 58,110 full and part-time employees.²³ Approximately 21% of these workers live in the City, another 29% live elsewhere in the Tri-Valley area and the remaining 50% commute from the greater outlying area.²⁴ The City has also acknowledged, “The location of people’s place of work compared with their place of residence plays a crucial role in traffic patterns, commuting time, energy consumption, noise, and air pollution.”²⁵ However, as asserted in the City’s Economic Development Strategic Plan, “[T]he City’s ability to achieve a jobs/housing balance is constrained by Pleasanton’s voter-approved cap on the development of housing units within the City[.]”²⁶

The General Plan Update suggests that the City’s answer to the job/housing imbalance is to take a regional approach to housing. It states: “Pleasanton has adopted this area-wide approach to the jobs/housing issue and has taken significant steps to contribute its share of Tri-Valley housing while retaining its role as an employment center.”²⁷ However, the General Plan Update includes a Subregional Planning Element that acknowledges the shortage of affordable housing in the entire Tri-Valley area.²⁸ The City notes that the housing shortfall originated from the rapid growth in employment in the 1980’s and 1990’s and the fiscal disincentive created by state legislation to local governments to plan for new housing.²⁹ Since that time, the Plan states, “the consequence of the imbalance between income and the affordability of housing is the

¹⁹ GP at 2-17.

²⁰ *Id.*

²¹ City of Pleasanton Economic Development Strategic Plan (February 6, 2007) at 4; see also GP at 2-18 - 2-19.

²² *Id.*

²³ DEIR at 3.3-3, citing ABAG, Projections 2007 (December 2006).

²⁴ GP at 2-7.

²⁵ *Id.*

²⁶ City of Pleasanton Economic Development Strategic Plan, *supra*, at 4.

²⁷ GP at 2-19.

²⁸ *Id.* at 14-7.

²⁹ *Id.*

increasing number of Tri-Valley workers who live in east Contra Costa County and in San Joaquin County resulting in long commutes to work via the congested freeway system.”³⁰

Though the City recognizes the shortfall in current housing, particularly affordable housing, the General Plan Update does nothing to curtail the problem. It therefore will force ever more local employees to find housing in distant communities, create more sprawl, lead to more greenhouse gas emissions and other air pollution, and increase dependence on foreign oil. That is not acceptable.

Comments Regarding Pleasanton’s General Plan Update DEIR

A. Climate Change Impacts

The DEIR fails to sufficiently identify, analyze or mitigate the significant climate change impacts associated with its proposed buildout. In large part due to the job/housing imbalance authorized by the General Plan Update, the DEIR finds that the Project would result in a 46% increase in Vehicle Miles Traveled,³¹ thereby significantly increasing carbon dioxide emissions that contribute to climate change. As discussed above, if California does not address growth in VMT, it will completely overwhelm the other advances the state is making to control transportation emissions. The planning policies outlined in the City’s General Plan Update do not adequately address growth in VMT and in fact, set the stage for the City to increase VMT at a rate 11% higher than the average increase projected for Alameda County.³²

In addition, the DEIR states that the development sanctioned by the General Plan Update, “would contribute to long-term increases in greenhouse gases as a result of traffic increases (mobile sources) and residential and commercial/industrial operations associated with heating, energy use, and solid waste disposal (area sources).”³³ The City quantifies the increases, stating that the emissions from buildout represent approximately .7 percent of total Bay Area greenhouse gases emitted in 2002, which amounts to 595,000 tons CO₂eq per year.³⁴ However, the DEIR makes an erroneous determination that the Project’s climate change effects are insignificant and therefore it does not include mitigation measures or examine alternatives that would reduce the impacts.

1. Threshold of Significance

Despite the massive 46% increase in VMT, the DEIR concludes that the climate change impacts of this project will be less than significant.³⁵ This finding is premised on a flawed threshold of significance and incorrect baseline conditions against which project impacts are evaluated. Under CEQA, the determination of significance must focus on changes to the existing

³⁰ *Id.*

³¹ DEIR at 3.10-8.

³² *Id.* at 3.10-11, Table 3.10-1.

³³ *Id.* at 3.10-14.

³⁴ *Id.*

³⁵ *Id.*

physical environment.³⁶ “Before the impacts of a project can be assessed and mitigation measures considered, an EIR must describe the existing physical conditions in the environment. It is only against this baseline that any significant environmental effects can be determined.”³⁷ An agency cannot evaluate the impacts of a proposed project on “‘some hypothetical, impacted future environment that might occur . . . under existing general plan and/or zoning designations.’”³⁸ Instead, it must consider the existing physical environment and measure the impacts of its project against the current conditions.

Here, the City takes the wrong approach in its DEIR, because it measures the Project’s climate change impacts against a theoretical projection of future emissions under its 1996 general plan, not against the actual conditions existing today. In fact, the DEIR fails to estimate or quantify the City’s current greenhouse gas emissions. The City’s threshold discussion states: “If, within the Planning Area, the buildout of the proposed General Plan Update were to have the cumulative potential to decrease greenhouse gas emissions below otherwise expected future emissions, then the cumulative greenhouse gas emissions would be less than significant.”³⁹ The City asserts that without implementing greenhouse gas reduction measures identified in the proposed General Plan Update, the Project’s direct greenhouse gas emissions would total 607,000 tons of CO₂eq per year.⁴⁰ The City goes on to say that indirect emissions associated with the project will also increase, but fails to quantify what the increase will be. The City finds that the total emissions from buildout of the proposed General Plan Update will be approximately 595,000 tons CO₂eq per year, which is 12,000 tons CO₂eq per year less than emissions projected under the existing policies.⁴¹ This small decrease in projected emissions is enough, under the City’s flawed threshold of significance, for the City to find that climate change impacts for the proposed General Plan Update will be less than significant.⁴²

There are several resources that the City can use to estimate its current and projected greenhouse gas emissions. CARB has issued protocols for estimating the emissions from local government operations, and its protocol for estimating community-wide emissions is forthcoming.⁴³ The Governor’s Office of Planning and Research (OPR) has issued a Technical Advisory, which contains a list of technical resources and modeling tools to estimate GHG emissions.⁴⁴ Other sources of helpful information are the white paper issued by the California

³⁶ See, e.g., Pub. Res. Code, § 21060.5; 14 Cal.Code Regs. §§ 15002 (g); 15125 (e), 15126.2 (a), 15360.

³⁷ *County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931, 952.

³⁸ *St. Vincent’s School for Boys v. City of San Raphael* (2008) 161 Cal.App.4th 989, 1005 [quoting *Woodward Park Homeowners Assn., Inc. v. City of Fresno* (2007) 150 Cal.App.4th 683, 709]; see also *Environmental Planning & Information Council v. County of El Dorado* (1982) 131 Cal.App.3d 350, 358.

³⁹ DEIR at 3.10-7.

⁴⁰ *Id.* at 3.10-14.

⁴¹ *Id.*

⁴² *Id.*

⁴³ The protocols are available at <http://www.arb.ca.gov/cc/protocols/localgov/localgov.htm>.

⁴⁴ The Technical Advisory is available at <http://www.fbm.com/index.cfm/fuseaction/publications.home/publications.cfm>.

Air Pollution Control Officers Association (CAPCOA), “CEQA and Climate Change”⁴⁵ and the Attorney General’s website,⁴⁶ both of which provide information on currently available models for calculating emissions.

2. Mitigation

As proposed, the project will result in an increase in vehicle miles traveled of 46%, and development of millions of square feet of commercial, office and other non-residential buildings.⁴⁷ Although the City fails to properly calculate the increases in greenhouse gas emissions that will result from this growth and development, these emissions clearly will be significant. The City thus was required to adopt enforceable mitigation measures to lessen the project’s greenhouse gas emissions, which it failed to do.⁴⁸

As drafted, the DEIR provides four optional measures to minimize the General Plan Update’s impacts on climate change.⁴⁹ The options discussed in the City’s DEIR, however, are not “fully enforceable” and therefore, are not proper mitigation measures under CEQA.⁵⁰ For example, the City states that it will work with the International Council for Local Environmental Initiatives (ICLEI) to develop an action plan capable of reducing the City’s greenhouse gas emissions.⁵¹ However, the commitment is not concrete; it’s not clear when it will begin working with ICLEI and even after the plan is developed, the City does not commit to enforcing the plan’s provisions. Rather, the City says it will “*consider* implementing, monitoring, and reporting appropriate and achievable components of” the action plan.⁵² Similarly, the City offers to “*encourage*” passive-solar construction.⁵³

Such voluntary measures are not enforceable and are not adequate to mitigate the climate change impacts of the development that will take place under the General Plan Update over the next 17 years.

Instead, the City should formulate specific and binding mitigation measures and include them in the General Plan Update. One approach would be for the City to immediately engage ICLEI to develop a fully enforceable Climate Action Plan, as numerous other jurisdictions in

⁴⁵ CAPCOA, CEQA and Climate Change, Evaluating and Addressing Greenhouse Gas Emissions from Projects Subject to the California Environmental Quality Act (January 2008) (“CAPCOA white paper”), available at <http://www.capcoa.org/>.

⁴⁶ Attorney General’s website, available at http://ag.ca.gov/globalwarming/ceqa/modeling_tools.php.

⁴⁷ DEIR at 3.10-8, 3.10-14.

⁴⁸ Cal. Pub. Res. Code, §§21002, 21002.1(b), *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564-65; see 14 Cal. Code Regs. §15126.4(a)(3) (mitigation measures not required for impacts that are insignificant).

⁴⁹ DEIR at 3.10-15 - 3.10-16.

⁵⁰ Cal. Pub. Res. Code, § 21081.6(b); 14 Cal. Code Regs. § 15091(d); see also *Federation of Hillside and Canyon Assocs. v. City of Los Angeles* (2000) 83 Cal.App.4th 1252, 1261 [general plan EIR defective where there was no substantial evidence that mitigation measures would “actually be implemented”].

⁵¹ GP at 9-21; DEIR at 3.10-15.

⁵² DEIR at 3.10-15.

⁵³ *Id.*

California have done. Such a plan should include an inventory of current greenhouse gas emissions, specific emissions targets that are consistent with AB 32, and enforceable greenhouse gas control measures. The resources discussed above (see pp. 6-7) provide examples of mitigation measures that can be employed as part of a Climate Action Plan. In addition, the plan should include monitoring and reporting requirements to ensure that mitigation measures are implemented and effective. Finally, the Climate Action Plan should allow for the City to review and update mitigation measures as needed. If done properly and in tandem with the General Plan Update and final environmental impact report, the Climate Action Plan could be the cornerstone of the City's climate change mitigation strategy.

B. Alternatives

The DEIR examines only three alternatives to the proposed General Plan Update, none of which consider significantly reducing business development or significantly increasing residential development. CEQA requires a local agency to identify and study a reasonable range of alternatives that would attain most of the basic objectives of the project.⁵⁴ The fundamental purpose of alternatives analysis is to examine alternatives that can eliminate or reduce significant environmental impacts.⁵⁵ An EIR must meaningfully compare the alternatives as they contribute to global warming and an EIR should compare the alternatives' greenhouse gas emissions. Further, the differences in greenhouse gas emissions associated with the various alternatives should figure into the lead agency's identification of the "environmentally superior alternative."⁵⁶

Here, the City does not provide a reasonable range of alternatives, and it fails to evaluate the climate change impacts associated with any of the alternatives considered in the DEIR. All three alternatives allow for significant growth in employment-generating development, while limiting residential development to the 29,000 units prescribed by the Housing Cap.⁵⁷ One of the alternatives is a no project alternative, which assumes the 1996 general plan remains City policy. The other two alternatives, "Dispersed Growth" and "Concentrated Residential/Mixed Use" allow for the same number of housing units, but locate those units in different parts of the City.⁵⁸ Both of these alternatives allow for slightly more retail, office, industrial, and research and development than the proposed General Plan Update.⁵⁹ The only mention in the alternatives section of the jobs/housing imbalance, which causes increased VMT, is as follows: "The Concentrated Residential/Mixed Use Alternative has slightly higher non-residential development potential than the proposed General Plan and could therefore result in higher employment growth. The growth in employment coupled with a cap on residential development, could result in a potentially significant impact because it could cause a substantial increase in traffic volumes as persons not living in the Planning Area come to work within the Planning Area."⁶⁰ The City

⁵⁴ 14 Cal. Code Regs. §15126.6.

⁵⁵ *Id.* at §15126.6(b).

⁵⁶ See 14 Cal. Code Regs. § 15126.6 (e)(2).

⁵⁷ DEIR at 5-3, Table 5-1.

⁵⁸ *Id.* at 5-4.

⁵⁹ *Id.*

⁶⁰ *Id.* at 5-22.

does not discuss VMT or the climate change impacts associated with the other two alternatives. Even without that evaluation, the DEIR concludes that none of the alternatives will have a significant effect on climate change.⁶¹ Ultimately, the City finds the proposed General Plan Update to be environmentally superior to the other alternatives.⁶²

In drafting the final environmental impact report for the General Plan Update, the City must at the very least identify one alternative that reduces the Project's climate change impacts—an alternative that reduces rather than exacerbates the City's current jobs/housing imbalance. In addition, the City should compare the alternatives' greenhouse gas emissions and that comparison should inform its choice of the environmentally superior alternative.

Local leadership is vital to the state's effort to reduce global warming and build a sustainable California. Pleasanton's environmental review shirks its responsibility to fully analyze and address the greenhouse gas emissions stemming from its proposed development plans and is therefore legally inadequate.

Conclusion

Pleasanton's General Plan Update presents the City with a great opportunity. City leaders can chart a vision of growth for Pleasanton that is sustainable, improves energy efficiency, reduces vehicle miles traveled, freeway congestion, global warming pollution and fossil fuel consumption, all the while promoting a rich and elegant urban environment.

I urge the City to seize this opportunity.

Sincerely,



EDMUND G. BROWN JR.

cc: Jennifer Hosterman, Mayor of Pleasanton
Cheryl Cook-Kallio, Vice Mayor
Cindy McGovern, Councilmember
Matt Sullivan, Councilmember
Jerry Thorne, Councilmember

⁶¹*Id.* at 5-8, Table 5-4.

⁶²*Id.* at 5-25.