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May 8, 2009

Janice E. Stern, AICP
Principal Planner
Pleasanton Community Development/Planning
City of Pleasanton
200 Old Bernal Avenue
P. O. Box 520
Pleasanton, CA 94566-0802

RE: City of Pleasanton's Proposed General Plan Update and Final Environmental Impact Report, 2005-2025 General Plan Update

Dear Ms. Stern:

As you know the Attorney General submitted extensive comments on the draft environmental impact report (DEIR) for the General Plan Update (Update).¹ Following submission of the Attorney General's letter, at the City's request, members of our office met with City staff and officials on several occasions to discuss our concerns about the Update and the environmental analysis. In addition, we have spent a substantial amount of time and effort providing the City with written materials related to the specific deficiencies identified in the Attorney General's comments.² Finally, our office sent the City a copy of "Climate Change, the California Environmental Quality Act, and General Plan Updates: Straightforward Answers to Some Frequently Asked Questions" (FAQs), which provides recommendations for evaluating climate change impacts associated with the Update.³

¹ A copy of the January 13, 2009, letter from the Attorney General to Janice Stern re: City of Pleasanton's General Plan Update Draft Environmental Impact Report is attached as Attachment A (AG Letter).

² A copy of the April 10, 2009, email from Megan Acevedo to Janice Stern and attached 10-page table including detailed recommendations for mitigation measures addressing greenhouse gas emissions is attached as Attachment B.

³ A copy of the March 13, 2009, letter from the Attorney General to Brian Dolan and attached guidance document, "Climate Change, the California Environmental Quality Act, and General Plan Updates: Straightforward Answers to Some Frequently Asked Questions", is attached as Attachment C.

We were therefore surprised and disappointed to discover that the Final Environmental Impact Report (FEIR) does not reflect our office's efforts to provide the City with guidance. In this letter, we reiterate the fundamental legal defects in the Update's environmental analysis and trust that the City will address them before taking final action on the FEIR.⁴

Defects in the Determination of Significance for Climate Change

Although the wording in the FEIR is less than clear, it appears that the City concludes that if it subjects new projects to "performance criteria" for construction and remodeling, then the effects of cumulative greenhouse gas (GHG) emissions will be less than significant. (See FEIR Responses to Written Comments to the DEIR (Responses) at 3-85.)

On its face, based on the information in the FEIR, this conclusion is patently unreasonable. The City states that the Update will result in a 46% increase in vehicle miles traveled (VMT) and, presumably, a substantial increase in transportation-related emissions. The City offers no explanation for how construction and remodeling standards would mitigate this extremely large increase in VMT and emissions.

Moreover, as the Governor's Office of Planning and Research stated in its June 2008 Technical Advisory, "Lead agencies should make a good-faith effort, based on available information, to calculate, model, or estimate the amount of CO₂ and other GHG emissions from a project, including the emissions associated with vehicular traffic, energy consumption, water usage and construction activities."⁵ Clearly, a substantial portion of the City's emissions result from VMT related to its severe jobs/housing imbalance; people who work in the City simply cannot live in the City and must drive to outlying areas. The City attempts to avoid disclosing the true impacts of its decision to perpetuate this imbalance by stating that it cannot predict where the trip generation would be located. (Responses at 3-86.) We note, however, that many other jurisdictions have carried out VMT evaluations for their general plan update EIRs.⁶ The City's summary assertion that an estimate is impossible does not constitute a good faith effort.

Similarly, the FEIR states, "At the time of writing, the City is not able to quantify the potential reduction in greenhouse gas emissions . . . that would result with implementation of the above policies." (Responses at 3-80.) Therefore, the City's decision makers and the public have no way of knowing whether the "performance standards" and other measures outlined in the FEIR will substantially reduce greenhouse gas emissions.

⁴ We note that objections need not be raised during the public comment period, provided that they are raised before the close of the public hearing on a project. (Pub. Res. Code, § 21177, subd. (b).) Further, the exhaustion requirements that apply to private parties under CEQA do not apply to the Attorney General. (Pub. Res. Code, § 21177, subd. (d).)

⁵ OPR Technical Advisory on CEQA and Climate Change (June 19, 2008) at 5, available at <http://opr.ca.gov/ceqa/pdfs/june08-ceqa.pdf>.

⁶ See, e.g., Yolo 2030 Countywide General Plan Update Draft Environmental Impact Report (April 24, 2009) at 241-251, available at <http://www.yolocounty.org/Index.aspx?page=1683>.

Without any attempt to quantify the emissions from the project or the currently listed greenhouse gas reduction measures, the FEIR, in effect, asks the public and decisions makers to take a blind leap of faith that the project's climate change impacts are less than significant. There is no evidence, much less substantial evidence, in the FEIR to support this conclusion.

Inadequate Mitigation of Climate Change Impacts

The FEIR, like the DEIR, fails to discuss the full range of feasible mitigation measures that could be adopted to reduce the Update's climate change impacts. (See Update, Appendix A.) At the City's request, our office recommended numerous feasible and enforceable measures to City staff, but none of those suggestions were incorporated into the FEIR or Update. (Attachment B.) The attached table includes more than forty suggested revisions to existing policies in the Update that we provided to staff. Most significantly, we note that the City has the ability to, and should, modify or lift its housing cap to adequately mitigate the climate change impacts resulting from increased VMT from the Update. (Attachment B at 5; see next section.) The City did not utilize any of these suggestions, nor did it provide a response indicating why it chose not to include them in the FEIR.

Inadequate Alternatives Analysis

In the Attorney General's letter and during all subsequent communications between our office and the City, we emphasized that the alternatives analysis in the DEIR was deficient; however, the City has done nothing to correct this problem in its FEIR. Specifically, we recommended that the City examine an alternative that reduces the Update's climate change impacts and addresses the jobs/housing imbalance. (AG Letter at 9.) The FEIR asserts that evaluating such an alternative is infeasible, unless and until the housing cap is lifted. (Responses at 3-77.)

The City's position is inconsistent with CEQA. Alternatives analyzed in an EIR need only be "potentially feasible."⁷ "'Feasible' means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors."⁸ The Attorney General is of the view that the City can and should lift the cap immediately; it has been called into serious legal question by this office⁹ and the California Department of Housing and Community Development (HCD).¹⁰ In addition, the legality of the housing cap currently is in dispute in litigation.¹¹ Therefore, even if the City fails

⁷ 14 Cal. Code Regs., § 15125.6, subd. (a).

⁸ Pub. Res. Code § 21061.1

⁹ AG Letter at 2-5.

¹⁰ A copy of the March 23, 2006, letter from Cathy Creswell to Nelson Fialho re: Status of the City of Pleasanton's Housing Element is attached as Attachment D.

¹¹ *Urban Habitat Program et al., v. City of Pleasanton*, Alameda Sup. Ct. Case No. RG0629383, filed Feb. 16, 2007.

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to act on its own accord, it is potentially feasible, indeed likely, that the cap will be lifted by the courts in the near future in order to bring the City into compliance with state housing law. The City has an obligation to evaluate the impacts of such a policy change in the FEIR for the Update.

Thank you for your attention to these comments. Please include this letter and all attachments in the agenda packet for the Planning Commission meeting on May 13, 2009, as well as in the agenda packet presented to the City Council at its meeting to consider the Update and FEIR.

Sincerely,

/S/

MEGAN H. ACEVEDO
Deputy Attorney General

For EDMUND G. BROWN JR.
Attorney General

MHA:

cc: Nelson Fialho, Pleasanton City Manager
Michael H. Roush, Esq., Pleasanton City Attorney
Jennifer Pearce, Pleasanton Planning Commission Chair
Arne Olson, Pleasanton Planning Commission Vice Chair
Philip Blank, Pleasanton Planning Commission
Jerry Pentin, Pleasanton Planning Commission
Kathy Narum, Pleasanton Planning Commission
Gregory M. O'Connor, Pleasanton Planning Commission Alternate

ATTACHMENT A



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.

ATTACHMENT B

From: Megan Acevedo
To: jstern@ci.pleasanton.ca.us
CC: Cliff Rechtschaffen; nfialho@ci.pleasanton.ca.us; Terry Watt
Date: 4/10/2009 11:34 AM
Subject: General Plan Policies and Programs and Greenhouse Gases
Attachments: Final List of GHG Measures in Pleasanton GP.pdf

Hi Janice,

Thank you for agreeing to speak with Terry and me this afternoon. In anticipation of our call, we prepared the attached comments related to the City's proposed general plan policies and greenhouse gas emissions. Our list does not include every policy that was in your revised Appendix A (General Plan Policies and Programs that Serve as Greenhouse Gas Reduction Measures), but we can discuss specific measures from Appendix A if you have questions that are not covered by our comments. Our list also contains a number of measures that were not included in your revised Appendix A, but which we believe impact the City's GHG emissions. Finally, though we have reviewed the general plan carefully, there may be other relevant policies that have not been included in our list.

As we noted in our last conversation with you, strengthening the general plan policies that reduce greenhouse gas emissions is an important step for the City to take. However, the other issues we raised in our letter remain critical as well. For example, we believe the City's finding of significance for climate change is flawed and that the alternatives analysis must include an alternative that discusses the impacts of build-out without the housing cap restriction. Most importantly, the City must address the housing cap.

We welcome the opportunity to speak with you today. Terry and I will call you at 2:30.

Thanks,
Megan

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California Attorney General's Office
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Pleasanton Policy Review
Notes Re: General Plan Policies and Programs that Serve as Greenhouse Gas Reduction Measures

<u>Policy/Program in City's Appendix A</u>	<u>Attorney General's Office Suggestions</u>
Land Use Element	
Policy 1. Integrate energy efficiency, energy conservation, and energy self-sufficiency measure into land use planning.	General comment on Policy 1 and Programs 1.1 to 1.6: These measures are vague and they put off for the future actions that could be taken as part of the General Plan update.
Program 1.1. When reviewing development projects ...consider how the following will impact energy use: density, etc....and green building techniques. <u>Develop new measures of sustainability based on these factors and adopt minimum sustainability scores for typical projects.</u>	Program 1.1 Suggestion: The change made to this measure is an improvement over original. In addition, consider adding a provision stating that when reviewing development projects...require [employ] high density near transit, compliance with green building policies, mixed use, connected streets, and bicycle lanes.
Program 1.2. When reviewing development projects, review transportation energy-efficiency measures alongside level-of-service standards. Develop a methodology to accomplish this and then adopt it.	Program 1.2 Suggestion: Rather than suggest a methodology will be developed and adopted in the future, add a methodology now. The methodology should provide that LOS declines if development provides for measures that result in less driving. Example 1: Draft Yolo County General Plan Policy CI-3.1 allows the Board to entertain exceptions to LOS standards on a case-by-case basis where reducing the LOS would result in a clear public benefit. Such circumstances may include, but are not limited to the following. Preserving agricultural or open space land; Enhancing the agricultural economy; Preserving scenic roadways/highways; Preserving the rural character of the County; Avoiding adverse impacts to alternative transportation modes; Avoiding growth inducement; Preserving downtown community environments.

	Example 2: San Jose: exempts TOD projects from LOS requirements under CEQA. Example 3: Palo Alto adopted a BLOS – Bike LOS – standards.
Program 1.4. Support more locally-serving shopping opportunities in neighborhoods so that people do not have to drive far to purchase goods.	Program 1.4 Suggestion: Make the wording less vague and ensure land use map shows the change. Add a “complete neighborhoods” policy. Example 1: City of Sacramento - Complete Neighborhoods Policy Complete Neighborhoods: “The City shall require the design complete and well structured neighborhoods whose physical layout and land use mix promote walking to services, biking and transit use; foster community pride; enhance neighborhood identity; ensure public safety; are family friendly and address the needs of all ages and abilities.” <u>Definition of Complete Neighborhoods</u> Complete neighborhoods promote livability and safety for residents of all ages, incomes, and cultural backgrounds. Characteristics of complete neighborhoods include the following: - o A mixes of housing types and affordability - o One or more nodes or districts of vibrant commercial or civic activity that provide identify for the neighborhood (e.g. such as shopping district, collection of public buildings) - o Neighborhood services and facilities including, schools, parks, retail (e.g. grocery store, drug store), restaurants and cafes, and community centers or other public meeting hall. - o Employment opportunities that are walkable or accessible by

	transit. - o Extensive tree canopy and attractive landscaping - o Sustainable designs and green infrastructure that respond to climatic demands and conserves scarce resources - o An interconnected street system with short blocks and few cul-de-sacs - o A sense of personal safety - o Convenient access to transit including bus - o A complete network of pedestrian, bicycle, transit and roadway facilities that are connected to adjacent neighborhoods Pleasanton's General Plan land use diagram could include a Complete Neighborhood overlay designation to map where neighborhood services, etc could be built and incentives/prescriptions for this outcome.
Program 1.5. Encourage local employees to hire locally.	Program 1.5 Suggestion: State more specifically how City will encourage local hiring.
Program 1.6. Use the City's housing programs to encourage people who work in Pleasanton to live in Pleasanton.	Program 1.6 Suggestion: State more specifically how City will use the housing programs to encourage people who work in Pleasanton to live in Pleasanton. Will the City provide for incentives? If so, what would those incentives be?
Policy 2. Integrate land-use and transportation planning in order to ensure patterns that facilitate safe and convenient mobility of people and goods at reasonable cost, and to increase travel alternatives to the single-occupant automobiles.	No comment on Policy 2, or programs 2.1 or 2.2; however, other comments on Programs in this section are listed below.
Program 2.3. <u>Require</u> transit-compatible development near BART stations, along transportation corridors, in business parks and the Downtown and at other activity centers.	Program 2.3 Suggestion: The change to "require" is an improvement over original draft. Also consider adding that density in transit-compatible development must be sufficient to support transit.
Program 2.4. <u>Require</u> higher residential and commercial densities in the	Program 2.4 Suggestion: The change to "require" is an improvement over

proximity of transportation corridors and hubs.	original draft. Also consider requiring the maximum end of the density range be achieved in these developments.
Program 2.6. <u>Require</u> design features in new development and redeveloped areas to encourage transit, bicycle and pedestrian access, such as connections between activity centers and residential areas, and road design that accommodates transit vehicles.	Program 2.6 Suggestion: The change to “require” is an improvement over original draft. Also consider requiring grid and bike/pedestrian/transit/road connections between existing and new neighborhoods.
Program 2.8. <u>Require</u> land development that is compatible with alternative transportation modes and the use of trails.	Program 2.8 Suggestion: The change to “require” is an improvement over original draft.
Policy 3. When setting land-use policy and when reviewing potential development proposals, make energy use and the environment important considerations.	Policy 3 Suggestion: Consider making this policy more concrete. For example: “New development shall include design and construction methods that minimize energy use and impacts on the environment,”
Program 3.1. <u>Establish</u> an advisory commission to the City Council to provide recommendations and policy implementation regarding energy, environmental projects and priorities, <u>and climate change</u> , and to review the energy and environmental issues relevant to development proposals generally.	Program 3.1 Suggestion: The changes made in revised draft are an improvement over original draft.
Program 10.2 [Not in City’s Appendix A; however has GHG implications]. Residential projects proposed for land designated as Rural Density Residential should be encouraged to cluster home sites...	Program 10.2 Suggestion: Consider changing “should be encouraged” to “will be required”.
Policy 11. [Not in City’s Appendix A; however has GHG implications]. Residential density is determined by... [lengthy criteria below]	Policy 11 Suggestion: Revise policy to clearly allow high-density residential and mixed use development within a quarter mile of BART, BRT, or existing job centers. These areas should employ the maximum residential density/non-residential mixed use intensity (floor area ratio) allowed by land use designations and zoning.
Program 12.3. In the Downtown, encourage mixed-use development which incorporates higher density and affordable residential units consistent with the Downtown Specific Plan.	Program 12.3 Suggestion: Consider changing “encourage” to “require” or “implement”.
Policy 16. Encourage mixed use development which encompasses any combination of commercial development, housing units, or community facilities in an integrated development. This mixed use development	Policy 16 Suggestion: Consider making this requirement more concrete. In areas served by transit, require mixed-use and densities that support affordable housing and transit.

would preferably be located in areas served by public transit and would development at densities that encourage affordable housing.	- The land use maps for the general plan should identify these areas and designate them for mixed use high density.
Policy 17 [Not in City's Appendix A; however has substantial GHG implications]. The specific location of land uses, appropriate floor area ratios, and residential densities in mixed use areas will be determined by the City Council through the planned unit development process or through the preparation of specific plans. In any case, the number of housing units in the Pleasanton Planning Area may not exceed 29,000.	Policy 17 Suggestion: Delete this policy or modify the housing cap to exempt projects that meet specific requirements related to affordability, high density and location close to transit. Example 1: Livermore Housing Implementation Program
Policy 24. [Not in City's Appendix A; however has substantial GHG implications]. Maintain a maximum housing buildout of 29,000 housing units within the Planning Area.	Policy 24 Suggestion: Delete. See also above possible modification. Example 1: Livermore Housing Implementation Program
CIRCULATION ELEMENT	
Program 7.3. Design complete streets serving pedestrians, bicyclists, motorists, and transit riders of all ages, and abilities, except where infeasible.	Program 7.3 Suggestion: Add more detail about interests served by complete streets. Example 1: Design complete streets that provide for greater connectivity and efficient and safe movement of all transportation modes by: - o Allowing roundabouts as an alternative intersection control where appropriate; - o Requiring bicycle and pedestrian connections from cul-de-sacs to adjacent streets, trails, bike paths and neighborhoods; - o Requiring a grid system; - o Incorporating appropriate traffic calming measures. - o Other...
Program 8.1. [Not in City's Appendix A; however has GHG implications]. Allocate a share of each year's Capital Improvement Program to street maintenance, roadway improvements, and traffic management.	Program 8.1 Suggestion: Note that the Capital Improvement Program can also be used to fund pedestrian and bike projects, including improvements identified in Program 23.4.
Policy 15. Reduce the total number of average daily trips throughout	Policy 15 Suggestion: Include specific measures to be used to reduce VMT.

the City.	Example 1: We believe Yolo County is considering VMT reduction policies as mitigation measures in its EIR for the General Plan update. We will track the development of these measures and will send them to you as appropriate.
Program 22.5. <u>Require</u> appropriate bicycle related improvements with new <u>commercial</u> development.	Program 22.5 Suggestion: The change to “require” is an improvement, but it is not clear why the policy is now limited to new commercial development. Consider expanding coverage. Example 1: Oakland Bike ordinance.
Public Facilities	
Program 21.2. <u>Require</u> pedestrian and bike friendly development that can accommodate and promote physical activity.	The change to “require” is an improvement.
Program 22.2. Encourage developers of projects to include childcare facilities in or near schools.	Program 22.2 Suggestion: Consider changing “encourage” to “require”.
Goal 10. Strive to meet State and County standards for source reduction and waste diversion, including the countywide goal of 75 percent reduction of waste going to landfills by 2010.	Goal 10 Suggestion: Consider changing “meet” to “exceed”. There is no reason to be limited by state and county goals when you can exceed them. Example 1: Marin County goal of zero waste. Example 2: Yolo County Draft GP. Policy PF-9.1 Meet or exceed State waste diversion requirements. Also PF-9.8. Require salvage, reuse, recycling of construction and demolition materials and debris at all construction sites.
Program 26.7. Consider requiring businesses and multifamily residents to participate in recycling and waste reduction program.	Program 26.7 Suggestion: Consider changing “consider requiring” to “require”. Could also consider applying this policies to businesses and all residents, rather than just multifamily residents. Example 1: Alameda County is a useful resource for recycling and waste management policies. www.stopwaste.org
Program 26.11. Evaluate the food scrap composting program; if it is cost effective, continue to support the program.	Program 26.11 Suggestion: Consider changing to “Support the food scrap composting program if feasible.”

	Example 1: Marin County GP PFS-4.1. Food Waste Collection Program. The County should actively promote a curbside food waste collection program by integrating this measure into bid specifications.
Water	
Policy 1. [Not in City's Appendix A; however has GHG implications] To ensure sustainability, promote the conservation of water resources.	Policy 1 Suggestion: Make the programs under this policy stronger by requiring primarily drought tolerant landscaping, limiting size of irrigated lawns with timers and restrict daytime watering.
Air Quality	
Goal 2. Promote sustainable development and planning to minimize additional air emissions.	Goal 2 Suggestion: Consider changing "promote" to "implement". - Note - To truly achieve this goal, the housing cap must be eliminated or modified.
Policy 6. Reduce air pollution and the production of GHG by increasing energy efficiency, conservation and the use of renewable resources. Program 6.1 For a one year period, the City will work with ICLEI to develop a climate action plan capable of reducing the City's greenhouse gas emissions. The City <u>will implement, monitor and report appropriate and achievable components of the proposed climate action plan.</u>	Policy 6 Suggestion: The changes made to program 6.1 are good. The City could go further by setting specific targets for its Climate Action Plan in the General Plan. Example 1: Stockton settlement agreement available on Attorney General's website at http://ag.ca.gov/cms_attachments/press/pdfs/n1608_stockton_agreement.pdf
Energy	
Program 1.1. Develop a comprehensive program to reduce the City government energy consumption. As part of the program, explore ways to designate one or more city employees to be responsible...	Program 1.1 Suggestion: Consider changing "explore ways to designate" to "designate".
Program 1.4. Look for ways to increase the fuel efficiency of the City's fleet when replacing older vehicles.	Program 1.4 Suggestion: Consider changing policy to require City to purchase the most fuel efficient vehicles when replacing vehicles in the City's fleet. Example 1: Solano County Resource element; Example 2: Marin County GP

Program 1.5. Can't read printout of modified language.	Program 1.5 Suggestion: "Use the most energy efficient lighting. In new development, require LED lighting for all lighting where feasible."
Program 3.2 Identify where insulation would be most beneficial and consider developing an incentive program to help owners insulate their buildings.	Energy Program 3.2 Suggestion: Also make a commitment to adopting a Residential Energy Conservation Ordinance (RECO) Example 1: Berkeley RECO ordinance Example 2: San Francisco RECO ordinance
Program 4.1. Encourage a built environment that uses the properties of nature for heating and cooling buildings.	Program 4.1 Suggestion: Replace "encourage" with "require" and be more specific. Example 1: Yolo County Draft General Plan Goal CC-4 Require project design that incorporates smart growth planning principles and green building standards that achieve sustainable development. Policy CC-4.1 Reduce dependence on fossil fuels, extracted underground metals, minerals and other non-renewable resources by: ○ Requiring projects to take advantage of shade, prevailing winds, landscaping and sun screens to reduce energy use; ○ Requiring projects to use regenerative energy heating and cooling source alternatives to fossil fuels; ○ Encouraging projects to select building materials that require less energy intensive production and long distance transport in compliance with LEED.
Energy Program 4.3 Reduce heat gain and air conditioning demand by requiring light colored paving material for roads and parking areas where feasible and cost effective.	Energy Program 4.3 Suggestion: This cool pavement policy is good. Also consider adopting a cool roofs policy.
Program 6.2. Review the Green Building Ordinance to determine if increasing the Green Points required is feasible.	Program 6.2 Suggestion: Consider committing to revising the green ordinance to make it more stringent by a certain date and to ongoing maintenance of the ordinance, so that it will continue to exceed state green building standards. The City should consider requiring more points for a building to qualify as a

	green building under the ordinance. Example 1: Stockton settlement agreement Section 4 (LEED Silver required) (http://ag.ca.gov/cms_attachments/press/pdfs/n1608_stockton_agreement.pdf) Example 2: Rohnert Park Green Building Ordinance requires 90-110 points, while Pleasanton's requires only 50. Example 3: California Public Utilities Commission Energy Efficiency Strategic Plan sets goal of zero net energy for all new homes by 2020. http://www.californiaenergyefficiency.com/docs/EEStrategicPlan.pdf
Program 6.3. Encourage green building practices	Program 6.3 Suggestions: Consider changing “encourage” to “require”.
Program 7.2. <u>Use</u> solar in public facilities and <u>encourage the use of solar</u> in private facilities where feasible and cost effective.	Program 7.2 Suggestion: Changing this to “use” is an improvement, but should also consider applying this policy to all facilities, not just private facilities.
Programs 7.6 and 7.7. For new construction, require roofs that are strong enough for solar where feasible; and 7.7 Consider requiring solar water heating and or solar ready roofs in new construction.	Programs 7.6 and 7.7 Suggestion: Both programs should “require” these roofs.
Program 10.3 Require the installation of energy efficient lighting.	Program 10.3 Suggestion: Requiring this lighting is an improvement over original draft.
Other Suggestions	
Public Facilities Element Program 25.2 Adopt purchasing policies that give preference to recycled content and environmentally friendly products in City procurement, where economically feasible.	Public Facilities Element Program 25.2 Suggestion: The change to “adopt” is an improvement. The City may want to use San Francisco and Los Angeles’s green purchasing ordinances as references. Example 1: San Francisco green purchasing ordinance. Example 2: Los Angeles green purchasing ordinance.
Circulation Element	Circulation Element Suggestion: Add a policy requiring new development to allow employees to participate in Commendable Commutes (GP Update 3-41)

	Circulation Element Suggestion: Adopt a policy specifying that road improvements should not be required that impact safety and convenience of walking and biking.
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ATTACHMENT C

EDMUND G. BROWN JR.
Attorney General

State of California
DEPARTMENT OF JUSTICE



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OAKLAND, CA 94612-0550

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March 13, 2009

Brian Dolan, Planning Director
Planning Department
City of Pleasanton
P.O. Box 520
Pleasanton, California 94566

RE: Shaping Local Land Use Patterns to Meet the Requirements of AB 32

Dear Planning Director Dolan:

In response to the many questions we receive from local agencies like yours, the Attorney General's Office has compiled the attached document, "Climate Change, the California Environmental Quality Act (CEQA), and General Plan Updates: Straightforward Answers to Some Frequently Asked Questions." To ensure that all local governments have access to the most up-to-date information, we are sending these materials to cities and counties that are in the process of updating their general plans and, in addition, to those jurisdictions that are due for an update.

The general planning process presents a powerful opportunity to carefully consider and shape future land use patterns and ensure that development is consistent with AB 32. As the Air Resources Board noted in its recent AB 32 Scoping Plan, "[l]ocal governments are essential partners in achieving California's goals to reduce greenhouse gas emissions."

Attorneys in my office have commented on a significant number of general plan updates over the past two years. They also have met informally with planners and officials from numerous jurisdictions. It is clear to us that local agencies are attempting to address global warming in their general plan updates and accompanying CEQA documents and are taking on the challenging scientific, technical, and policy issues presented.

Brian Dolan
March 13, 2009
Page 2

We hope that the attached Frequently Asked Questions will serve as helpful guidance in your general plan update. We look forward to learning from your work and stand ready to assist should you have questions about the contents of this letter or the attachment. For additional information, please contact Cliff Rechtschaffen, Special Assistant Attorney General, at (510) 622-2260 / Cliff.Rechtschaffen@doj.ca.gov, or Janill Richards, Deputy Attorney General, at (510) 622-2130 / Janill.Richards@doj.ca.gov.

Sincerely,


EDMUND G. BROWN JR.
Attorney General

Attachment (CEQA FAQs, also available at <http://ag.ca.gov/globalwarming/ceqa.php>)

cc: City Council for the City of Pleasanton, c/o
Jennifer Hosterman, Mayor of the City of Pleasanton
Nelson Fialho, City Manager
Michael Roush, City Attorney

**Climate Change, the California Environmental Quality Act,
and General Plan Updates:
Straightforward Answers to Some Frequently Asked Questions
California Attorney General's Office**

At any given time in this State, well over one hundred California cities and counties are updating their general plans. These are complex, comprehensive, long-term planning documents that can be years in the making. Their preparation requires local governments to balance diverse and sometimes competing interests and, at the same time, comply with the Planning and Zoning Law and the California Environmental Quality Act (CEQA).

Local governments have decades of experience in applying state planning law and excellent resources to assist them – such as the “General Plan Guidelines” issued by The Governor’s Office of Planning and Research (OPR).¹ They are also practiced in assessing whether general plans may have significant localized environmental effects, such as degradation of air quality, reductions in the water supply, or growth inducing impacts. The impact of climate change, however, has only fairly recently shown up on the CEQA radar.

The fact that climate change presents a new challenge under CEQA has not stopped local governments from taking action. A substantial number of cities and counties already are addressing climate change in their general plan updates and accompanying CEQA documents. These agencies understand the substantial environmental and administrative benefits of a programmatic approach to climate change. Addressing the problem at the programmatic level allows local governments to consider the “big picture” and – provided it’s done right – allows for the streamlined review of individual projects.²

Guidance addressing CEQA, climate change, and general planning is emerging, for example, in the pending CEQA Guideline amendments,³ comments and settlements by the Attorney General, and in the public discourse, for example, the 2008 series on CEQA and Global Warming organized by the Local Government Commission and sponsored by the Attorney General. In addition, the Attorney General’s staff has met informally with officials and planners from numerous jurisdictions to discuss CEQA requirements and to learn from those who are leading the fight against global warming at the local level.

Still, local governments and their planners have questions. In this document, we attempt to answer some of the most frequently asked of those questions. We hope this document will be useful, and we encourage cities and counties to contact us with any additional questions, concerns, or comments.

- **Can a lead agency find that a general plan update's climate change-related impacts are too speculative, and therefore avoid determining whether the project's impacts are significant?**

No. There is nothing speculative about climate change. It's well understood that (1) greenhouse gas (GHG) emissions increase atmospheric concentrations of GHGs; (2) increased GHG concentrations in the atmosphere exacerbate global warming; (3) a project that adds to the atmospheric load of GHGs adds to the problem.

Making the significance determination plays a critical role in the CEQA process.⁴ Where a project may have a significant effect on the environment, the lead agency must prepare an Environmental Impact Report (EIR).⁵ Moreover, a finding of significance triggers the obligation to consider alternatives and to impose feasible mitigation.⁶ For any project under CEQA, including a general plan update, a lead agency therefore has a fundamental obligation to determine whether the environmental effects of the project, including the project's contribution to global warming, are significant.

- **In determining the significance of a general plan's climate change-related effects, must a lead agency estimate GHG emissions?**

Yes. As OPR's Technical Advisory states:

Lead agencies should make a good-faith effort, based on available information, to calculate, model, or estimate the amount of CO₂ and other GHG emissions from a project, including the emissions associated with vehicular traffic, energy consumption, water usage and construction activities.⁷

In the context of a general plan update, relevant emissions include those from government operations, as well as from the local community as a whole. Emissions sources include, for example, transportation, industrial facilities and equipment, residential and commercial development, agriculture, and land conversion.

There are a number of resources available to assist local agencies in estimating their current and projected GHG emissions. For example, the California Air Resources Board (ARB) recently issued protocols for estimating emissions from local government operations, and the agency's protocol for estimating community-wide emissions is forthcoming.⁸ OPR's Technical Advisory contains a list of modeling tools to estimate GHG emissions. Other sources of helpful information include the white paper issued by the California Air Pollution Control Officers Association (CAPCOA), "CEQA and Climate Change"⁹ and the Attorney General's website,¹⁰ both of which provide information on currently available models for calculating emissions. In addition, many cities and counties are working with the International Council for Local Environmental Initiatives (ICLEI)¹¹ and tapping into the expertise of this State's many colleges and universities.¹²

- **For climate change, what are the relevant “existing environmental conditions”?**

The CEQA Guidelines define a significant effect on the environment as “a substantial adverse change in the physical conditions which exist in the area affected by the proposed project.”¹³

For local or regional air pollutants, existing physical conditions are often described in terms of air quality (how much pollutant is in the ambient air averaged over a given period of time), which is fairly directly tied to current emission levels in the relevant “area affected.” The “area affected,” in turn, often is defined by natural features that hold or trap the pollutant until it escapes or breaks down. So, for example, for particulate matter, a lead agency may describe existing physical conditions by discussing annual average PM10 levels, and high PM10 levels averaged over a 24-hour period, detected at various points in the air basin in the preceding years.

With GHGs, we’re dealing with a global pollutant. The “area affected” is both the atmosphere and every place that is affected by climate change, including not just the area immediately around the project, but the region and the State (and indeed the planet). The existing “physical conditions” that we care about are the current atmospheric concentrations of GHGs and the existing climate that reflects those concentrations.

Unlike more localized, ambient air pollutants which dissipate or break down over a relatively short period of time (hours, days or weeks), GHGs accumulate in the atmosphere, persisting for decades and in some cases millennia. The overwhelming scientific consensus is that in order to avoid disruptive and potentially catastrophic climate change, then it’s not enough simply to stabilize our annual GHG emissions. The science tells us that we must immediately and substantially reduce these emissions.

- **If a lead agency agrees to comply with AB 32 regulations when they become operative (in 2012), can the agency determine that the GHG-related impacts of its general plan will be less than significant?**

No. CEQA is not a mechanism merely to ensure compliance with other laws, and, in addition, it does not allow agencies to defer mitigation to a later date. CEQA requires lead agencies to consider the significant environmental effects of their actions and to mitigate them today, if feasible.

The decisions that we make today do matter. Putting off the problem will only increase the costs of any solution. Moreover, delay may put a solution out of reach at any price. The experts tell us that the later we put off taking real action to reduce our GHG emissions, the less likely we will be able to stabilize atmospheric concentrations at a level that will avoid dangerous climate change.

- **Since climate change is a global phenomenon, how can a lead agency determine whether the GHG emissions associated with its general plan are significant?**

The question for the lead agency is whether the GHG emissions from the project – the general plan update – are considerable when viewed in connection with the GHG emissions from past projects, other current projects, and probable future projects.¹⁴ The effects of GHG emissions from past projects and from current projects to date are reflected in current atmospheric concentrations of GHGs and current climate, and the effects of future emissions of GHGs, whether from current projects or existing projects, can be predicted based on models showing future atmospheric GHG concentrations under different emissions scenarios, and different resulting climate effects.

A single local agency can't, of course, solve the climate problem. But that agency can do its fair share, making sure that the GHG emissions from projects in its jurisdiction and subject to its general plan are on an emissions trajectory that, if adopted on a larger scale, is consistent with avoiding dangerous climate change.

Governor Schwarzenegger's Executive Order S-3-05, which commits California to reducing its GHG emissions to 1990 levels by 2020 and to eighty percent below 1990 levels by 2050, is grounded in the science that tells us what we must do to achieve our long-term climate stabilization objective. The Global Warming Solutions Act of 2006 (AB 32), which codifies the 2020 target and tasks ARB with developing a plan to achieve this target, is a necessary step toward stabilization.¹⁵ Accordingly, the targets set in AB 32 and Executive Order S-3-05 can inform the CEQA analysis .

One reasonable option for the lead agency is to create community-wide GHG emissions targets for the years governed by the general plan. The community-wide targets should align with an emissions trajectory that reflects aggressive GHG mitigation in the near term and California's interim (2020)¹⁶ and long-term (2050) GHG emissions limits set forth in AB 32 and the Executive Order.

To illustrate, we can imagine a hypothetical city that has grown in a manner roughly proportional to the state and is updating its general plan through 2035. The city had emissions of 1,000,000 million metric tons (MMT) in 1990 and 1,150,000 MMT in 2008. The city could set an emission reduction target for 2014 of 1,075,000 MMT, for 2020 of 1,000,000 MMT, and for 2035 of 600,000 MMT, with appropriate emission benchmarks in between. Under these circumstances, the city could in its discretion determine that an alternative that achieves these targets would have less than significant climate change impacts.

- **Is a lead agency required to disclose and analyze the full development allowed under the general plan?**

Yes. The lead agency must disclose and analyze the full extent of the development allowed by the proposed amended general plan,¹⁷ including associated GHG emissions.

This doesn't mean that the lead agency shouldn't discuss the range of development that is likely to occur as a practical matter, noting, for example, the probable effect of market forces. But the lead agency can't rely on the fact that full build out may not occur, or that its timing is uncertain, to avoid its obligation to disclose the impacts of the development that the general plan would permit. Any other approach would seriously underestimate the potential impact of the general plan update and is inconsistent with CEQA's purposes.

- **What types of alternatives should the lead agency consider?**

A city or county should, if feasible, evaluate at least one alternative that would ensure that the community contributes to a lower-carbon future. Such an alternative might include one or more of the following options:

- o higher density development that focuses growth within existing urban areas;
- o policies and programs to facilitate and increase biking, walking, and public transportation and reduce vehicle miles traveled;
- o the creation of "complete neighborhoods" where local services, schools, and parks are within walking distance of residences;
- o incentives for mixed-use development;
- o in rural communities, creation of regional service centers to reduce vehicle miles traveled;
- o energy efficiency and renewable energy financing (see, e.g., AB 811)¹⁸
- o policies for preservation of agricultural and forested land serving as carbon sinks;
- o requirements and ordinances that mandate energy and water conservation and green building practices; and
- o requirements for carbon and nitrogen-efficient agricultural practices.

Each local government must use its own good judgment to select the suite of measures that best serves that community.

- **Can a lead agency rely on policies and measures that simply "encourage" GHG efficiency and emissions reductions?**

No. Mitigation measures must be "fully enforceable."¹⁹ Adequate mitigation does not, for example, merely "encourage" or "support" carpools and transit options, green building practices, and development in urban centers. While a menu of hortatory GHG policies is positive, it does not count as adequate mitigation because there is no certainty that the policies will be implemented.

There are many concrete mitigation measures appropriate for inclusion in a general plan and EIR that can be enforced as conditions of approval or through ordinances. Examples are described in a variety of sources, including the CAPCOA's white paper,²⁰ OPR's Technical Advisory,²¹ and the mitigation list on the Attorney General's website.²² Lead agencies should also consider consulting with other cities and counties that have recently completed general plan updates or are working on Climate Action Plans.²³

- **Is a “Climate Action Plan” reasonable mitigation?**

Yes. To allow for streamlined review of subsequent individual projects, we recommend that the Climate Action Plan include the following elements: an emissions inventory (to assist in developing appropriate emission targets and mitigation measures); emission targets that apply at reasonable intervals through the life of the plan; enforceable GHG control measures; monitoring and reporting (to ensure that targets are met); and mechanisms to allow for the revision of the plan, if necessary, to stay on target.²⁴

If a city or county intends to rely on a Climate Action Plan as a centerpiece of its mitigation strategy, it should prepare the Climate Action Plan at the same time as its general plan update and EIR. This is consistent with CEQA’s mandate that a lead agency must conduct environmental review at the earliest stages in the planning process and that it not defer mitigation. In addition, we strongly urge agencies to incorporate any Climate Action Plans into their general plans to ensure that their provisions are applied to every relevant project.

- **Is a lead agency also required to analyze how future climate change may affect development under the general plan?**

Yes. CEQA requires a lead agency to consider the effects of bringing people and development into an area that may present hazards. The CEQA Guidelines note the very relevant example that “an EIR on a subdivision astride an active fault line should identify as a significant effect the seismic hazard to future occupants of the subdivision.”²⁵

Lead agencies should disclose any areas governed by the general plan that may be particularly affected by global warming, e.g.: coastal areas that may be subject to increased erosion, sea level rise, or flooding; areas adjacent to forested lands that may be at increased risk from wildfire; or communities that may suffer public health impacts caused or exacerbated by projected extreme heat events and increased temperatures. General plan policies should reflect these risks and minimize the hazards for current and future development.

Endnotes

¹For a discussion of requirements under general planning law, see OPR’s General Plan Guidelines (2003). OPR is in the process of updating these Guidelines. For more information, visit OPR’s website at <http://www.opr.ca.gov/index.php?a=planning/gpg.html>.

²OPR has noted the environmental and administrative advantages of addressing GHG emissions at the plan level, rather than leaving the analysis to be done project-by-project. See OPR, Preliminary Draft CEQA Guideline Amendments, Introduction at p. 2

(Jan. 8, 2009), available at http://opr.ca.gov/download.php?dl=Workshop_Announcement.pdf.

³ OPR issued its Preliminary Draft CEQA Guidelines Amendments on January 8, 2009. Pursuant to Health and Safety Code, § 21083.05 (SB 97), OPR must prepare its final proposed guidelines by July 1, 2009, and the Resources Agency must certify and adopt those guidelines by January 1, 2010.

⁴ Cal. Code Regs., tit. 14 (hereinafter “CEQA Guidelines”), § 15064, subd. (a).

⁵ CEQA Guidelines, § 15064, subd. (f)(1).

⁶ CEQA Guidelines, § 15021, subd. (a).

⁷ OPR, CEQA and Climate Change: Addressing Climate Change Through California Environmental Quality Act (CEQA) Review (June 2008), available at <http://opr.ca.gov/ceqa/pdfs/june08-ceqa.pdf>.

⁸ ARB’s protocols for estimating the emissions from local government operations are available at <http://www.arb.ca.gov/cc/protocols/localgov/localgov.htm>.

⁹ CAPCOA, CEQA and Climate Change, Evaluating and Addressing Greenhouse Gas Emissions from Projects Subject to the California Environmental Quality Act (January 2008) (hereinafter, “CAPCOA white paper”), available at <http://www.capcoa.org/>.

¹⁰ http://aq.ca.gov/globalwarming/ceqa/modeling_tools.php

¹¹ <http://www.iclei-usa.org>

¹² For example, U.C. Davis has made its modeling tool, UPlan, available at <http://ice.ucdavis.edu/doc/uplan>; San Diego School of Law’s Energy Policy Initiatives Center has prepared a GHG emissions inventory report for San Diego County <http://www.sandiego.edu/EPIC/news/frontnews.php?id=31>; and Cal Poly, San Luis Obispo City and Regional Planning Department is in the process of preparing a Climate Action Plan for the City of Benicia, see <http://www.beniciacimateactionplan.com/files/about.html>.

¹³ CEQA Guidelines, § 15002, subd. (g).

¹⁴ CEQA Guidelines, § 15064(h)(1).

¹⁵ See ARB, Scoping Plan at pp. 117-120, available at <http://www.arb.ca.gov/cc/scopingplan/document/psp.pdf>. (ARB approved the Proposed Scoping Plan on December 11, 2008.)

¹⁶ In the Scoping Plan, ARB encourages local governments to adopt emissions reduction goals for 2020 “that parallel the State commitment to reduce greenhouse gas emissions by approximately 15 percent from current levels” Scoping Plan at p. 27; see *id.* at Appendix C, p. C-50. For the State, 15 percent below current levels is approximately equivalent to 1990 levels. *Id.* at p. ES-1. Where a city or county has grown roughly at

the same rate as the State, its own 1990 emissions may be an appropriate 2020 benchmark. Moreover, since AB 32's 2020 target represents the State's *maximum* GHG emissions for 2020 (see Health & Safety Code, § 38505, subd. (n)), and since the 2050 target will require substantial changes in our carbon efficiency, local governments may consider whether they can set an even more aggressive target for 2020. See Scoping Plan, Appendix C, p. C-50 [noting that local governments that "meet or exceed" the equivalent of a 15 percent reduction in GHG emissions by 2020 should be recognized].

¹⁷ *Christward Ministry v. Superior Court* (1986) 184 Cal.App.3d 180, 194 [EIR must consider future development permitted by general plan amendment]; see also CEQA Guidelines, §§ 15126 [impact from all phases of the project], 15358, subd. (a) [direct and indirect impacts].

¹⁸ See the City of Palm Desert's Energy Independence Loan Program at <http://www.ab811.org>.

¹⁹ Pub. Res. Code, § 21081.6, subd. (b); CEQA Guidelines, § 15091, subd. (d); see also *Federation of Hillside and Canyon Assocs.* (2000) 83 Cal.App.4th 1252, 1261 [general plan EIR defective where there was no substantial evidence that mitigation measures would "actually be implemented"].

²⁰ CAPCOA white paper at pp. 79-87 and Appendix B-1.

²¹ OPR Technical Advisory, Attachment 3.

²² See http://ag.ca.gov/globalwarming/pdf/GW_mitigation_measures.pdf [mitigation list]; http://ag.ca.gov/globalwarming/pdf/green_building.pdf [list of local green building ordinances].

²³ See http://opr.ca.gov/ceqa/pdfs/City_and_County_Plans_Addressing_Climate_Change.pdf.

²⁴ See Scoping Plan, Appendix C, at p. C-49.

²⁵ CEQA Guidelines, § 15126.2, subd. (a).

ATTACHMENT D

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT**Division of Housing Policy Development**

1800 Third Street, Suite 430
P. O. Box 952053
Sacramento, CA 94252-2053
(916) 323-3177
FAX (916) 327-2643



March 23, 2006

Mr. Nelson Fialho
City Manager
City of Pleasanton
P.O. Box 520
Pleasanton, CA 94566-0802

Dear Mr. Fialho:

RE: Status of the City of Pleasanton's Housing Element

This letter is in response to the City of Pleasanton's submittal of information regarding the City's progress in implementing its housing element, adopted on April 15, 2003. As you know, on March 7, 2005 the Department determined Pleasanton's housing element no longer complied with requirements of State housing element law (Article 10.6 of Chapter 3 of Division 1 of Title 7 of the Government Code) due to the failure to implement Program 19.1 of the City's adopted housing element. This program committed the City to rezone/upzone at least 30 acres to allow development at 30 dwelling units per acre, or 40 acres allowing at least 20 dwelling units per acre by June 2004. Implementation of Program 19.1 was specified as a condition of compliance in the Department's June 2, 2003 review.

During an April 20, 2005 meeting with you and your staff, the status of the current general plan update, along with options the City could explore to address the "adequate sites" requirement of housing element law was discussed. Specific items and strategies discussed included how the City could more effectively engage the general public and increase understanding on the merits and community-wide benefits resulting from increasing housing opportunities including zoning sufficient sites for multifamily development. City staff also shared information regarding potential residential development opportunities on the Staples Ranch and the Kaiser properties. The Department followed-up by providing planning staff with technical assistance materials.

As you know from the Department's previous review and response letters (June 2, 2003, September 30, 2004, and March 7, 2005), the time specific completion of Program 19.1 was a key factor in the Department's original finding that the City's adopted element conditionally satisfied the requirements of State housing element law. As outlined in the City's housing element implementation status letter, a final decision on the "preferred" land-use and circulation plans was scheduled to be acted upon by the City Council in

December 2005, with final action on the requisite rezone applications to occur in late November or early December 2006. However, according to Ms. Janice Stern, Principal Planner, the update schedule has slipped, extending the completion of the update (including the rezones) to the first or second quarter of 2007.

After thorough review and consideration of the updated information, the Department continues to find 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. Once Pleasanton successfully completes the implementation of Program 19.1, the City should submit documentation (e.g., a resolution describing acreage/sites and density) to the Department that indicates the City Council has taken final action to adopt the new land-use designations.

Addressing all provisions of housing element law is both a statutory requirement and provides the policy framework to address the housing and community development needs of your community. The Department remains committed to working in partnership with you and your staff to bring the element back into compliance and to meet the housing needs of Pleasanton. If you have any questions, or if the Department can provide further assistance, please contact Don Thomas, of our staff, at (916) 445-5854.

Sincerely,



Cathy E. Creswell
Deputy Director

cc: Jerry Iserson, Director of Planning and Community Development, City of Pleasanton
Janice Stern, Principal Planner, City of Pleasanton

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT**Division of Housing Policy Development**

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March 7, 2005

Mr. Nelson Fialho
City Manager
City of Pleasanton
P.O. Box 520
Pleasanton, CA 94566-0802

Dear Mr. Fialho:

RE: Compliance Status of City of Pleasanton's Adopted Housing Element

Thank you for your response to the Department's September 30, 2004 letter regarding the implementation status of the City's housing element. To recap, due to the shortfall of appropriately zoned and suitable sites to accommodate Pleasanton's share of the regional housing need for lower-income households, the Department's June 3, 2003 finding that the City's housing element met the statutory requirements set forth in State housing element law was contingent on the City successfully implementing Program 19.1. This Program commits the City to "following through with appropriate modifications to the Land Use Element and rezonings as soon as possible, but no later than June 2004, so that implementation can occur within the planning period".

According to your October 19, 2004 response, the general plan update schedule calls for the City to conduct a series of public workshops during the next few months to consider "recommendations" for specific sites that are appropriate for high density housing. These workshops will culminate with the City Council adopting final "recommendations" in July 2005. It is the Department's understanding that initiation of the rezones will follow the adoption of the General Plan update (e.g., sometime in late Fall 2005). Unfortunately, your response does not commit to a specific date for completing those rezones necessary to address the "adequate sites" requirement in State housing element law and, therefore, does not comply with the Department's conditional compliance finding.

The City's failure to comply with the June 2004 rezone commitment significantly impedes its ability to establish realistic opportunities for the development of housing affordable to the local workforce and lower-income households during the remainder of the current planning period. In addition, continuing to delay the rezone completion date will further exacerbate the City's ability to take additional actions to identify other suitable and available high density zoned sites. Therefore, the Department regrets to find Pleasanton's housing element does not address the "adequate sites" statutory requirement and no longer complies with State housing element law (Article 10.6 of Government Code).

Adequately addressing the City's housing needs not only provides an economic benefit to the community through the creation of jobs and the significant economic multiplier effects of housing construction, but will also promote and maintain a vibrant quality of life for all of Pleasanton residents. An inadequate housing supply, particularly for affordable housing, forces working families to commute longer distances, creates severe burdens on lower-income families and seniors, who are forced to spend more than 50 percent of their income on housing, and puts the dream of homeownership further out of reach. Rent and ownership cost burdens have a negative ripple effect on local economies as residents must spend a disproportionate share of their incomes on housing, and necessarily spend less on local services or in local stores.

The Department remains committed to working in partnership with you to bring Pleasanton's housing element back into compliance with State housing element law. If you have any questions, would like to schedule another meeting, or to discuss your technical assistance needs, please contact Don Thomas, at (916) 445-5854.

Sincerely,



Cathy E. Creswell
Deputy Director

cc: Jerry Iserson, Director of Planning and Community Development, City of Pleasanton

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

Division of Housing Policy Development

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September 30, 2004

Ms. Deborah Acosta McKeehan
City Manager
City of Pleasanton
P.O. Box 520
Pleasanton, California 94566-08026

RE: City of Pleasanton's Housing Element Compliance

Dear Ms. Acosta McKeehan:

This letter responds to your recent correspondence to the Department outlining Pleasanton's progress in implementing its key program actions described in the adopted housing element. As you are aware, the Department's June 3, 2003 finding of compliance was conditioned on the successful and timely implementation of the following programs: (1) Program 19.1 (General Plan amendments and rezones) to rezone/upzone a specific amount of land by June of 2004, and (2) Programs 10.3 and 42.2 (second units). The City of Pleasanton's ability to meet the adequate sites requirement as set forth in State housing element law, particularly for lower-income households, hinges on the effective and successful completion of these program actions. Your June 16, 2004 letter describes the City's effort to engage the local residents regarding traffic and housing issues through a series of City Council and Planning Commission workshops. While this effort is laudable, your letter does not indicate when the necessary rezonings will be completed to ensure compliance with the adequate sites requirement of the law.

Therefore, within 15 days of the date of this letter, please submit a revised implementation schedule that clearly and definitively commits the City to completing the requisite rezone actions by a date certain. The revised implementation schedule should commit the City to initiating the general plan amendments and rezones by mid-2005. Failure to address the requirements specified in the Department's June 3, 2003 review will impact the compliance status of the City's element.

The Department remains committed to working with the City to address its housing and community development challenges and to ensure compliance with State housing element law.

Thank you in advance for your immediate attention to this matter. If you have any questions regarding our comments and direction, please feel free to contact me at (916) 323-3177 or Don Thomas, of our staff, at (916) 445-5854.

Sincerely,



Cathy E. Creswell
Deputy Director

cc: Mark Stivers, Senate Committee on Housing & Community Development
Suzanne Ambrose, Supervising Deputy Attorney General, AG's Office
Terry Roberts, Governor's Office of Planning and Research
Nick Cammarota, California Building Industry Association
Marcia Salkin, California Association of Realtors
Marc Brown, California Rural Legal Assistance Foundation
Rob Weiner, California Coalition for Rural Housing
John Douglas, AICP, Civic Solutions
Deanna Kitamura, Western Center on Law and Poverty
S. Lynn Martinez, Western Center on Law and Poverty
Alexander Abbe, Law Firm of Richards, Watson & Gershon
Michael G. Colantuono, Colantuono, Levin & Rozell, APC
Ilene J. Jacobs, California Rural Legal Assistance, Inc.
Richard Marcantonio, Public Advocates
Clifford Sweet, Alameda County Legal Aid Society
Mike Rawson, The Public Interest Law Project
James W. Sweeney, West Alameda Neighborhood Assoc.
David Booher, California Housing Council
Sue Hestor, Attorney at Law
Paul Campos, Home Builders Assoc. of Northern California
Shannon Dodge, Non-Profit Housing Association of Northern California
Eve Bach, Arc Ecology
Allison Brooks, Livable Communities Initiative
Charlie Carson, Home Builders Association - Northern Division