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By Telecopy and Email

Mellanie Marshall, Associate Planner
City of Sacramento, Development Services Department
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RE: City of Sacramento General Plan 2030 Draft Environmental Impact Report
SCH # 2007072024

Dear Ms. Marshall:

The Attorney General submits these comments on the Draft Environmental Impact Report ("DEIR") for the City's proposed 2030 General Plan ("General Plan" or "Project").¹ We appreciate the additional time that the City provided for submittal of our comments.

The proposed General Plan estimates that by 2030 Sacramento will have an additional 195,000 new residents, 136,000 new jobs, and 97,000 new housing units. (DEIR, p. 3-37.) This is a significant level of growth. Because the General Plan will guide development in the City over the next two decades, it is critical that the DEIR adequately address the environmental impacts that will be experienced by, and result from, that development. It is also critical that the City adopt and enforce specific measures to limit greenhouse gas ("GHG") emissions that will result from the City's growth. As recognized by the California Air Resources Board, local governments have a very important role in the fight against global warming and are "essential partners in achieving California's greenhouse gas goals."²

¹ The Attorney General submits these comments pursuant to his independent power and duty to protect the natural resources of the State from pollution, impairment, or destruction in furtherance of the public interest. (See Cal. Const., art. V., § 13; Cal. Gov. Code, §§ 12511, 12600-12612; *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 California Air Resources Board, Climate Change Draft Scoping Plan (June 2008), p.31, at <http://www.arb.ca.gov/cc/scopingplan/document/draftscopingplan.htm> (hereafter "Draft Scoping Plan.")

We appreciate that the City took the time to meet with us to discuss the opportunities to address climate change in the DEIR and General Plan. The DEIR contains a lengthy list of climate change actions that demonstrate a great deal of thought and reflect the City's "smart" planning goals. The City aspires to be, in its words, the "regional leader in sustainable development," and we hope these comments are useful in assisting the City to achieve that objective.

Global Warming Under CEQA

CEQA requires that "[e]ach public agency shall mitigate or avoid the significant effects on the environment of projects that it carries out or approves whenever it is feasible to do so." (Pub. Res. Code, § 21002.1, subd. (b).) This requirement is the "core of an EIR." (*Citizens of Goleta Valley v. Board of Supervisors of Santa Barbara County* (1990) 52 Cal.3d 553, 564-65.) Agencies must ensure that mitigation measures "are fully enforceable through permit conditions, agreements, and other measures." (Pub. Res. Code, § 21081.6, subd. (b).)

Global warming is an "effect on the environment" under CEQA, and an individual project's incremental contribution to global warming can be cumulatively considerable. (See Cal. Pub. Res. Code, § 21083.05, subd. (a); see also Sen. Rules Comm., Off. Of Sen. Floor Analyses, Analysis of Sen. Bill No. 97 (2007-2008 Reg. Sess.) Aug. 22, 2007.)

Comments on the DEIR

The DEIR does a very good job of describing the phenomenon of global warming, the types of GHG emissions, and the regulatory measures designed to reduce GHG emissions. Citing a NASA study, the DEIR states that climate models show that CO2 concentrations exceeding 450 ppm would result in dangerous consequences. Many experts believe that to avoid dangerous climate change, stabilization must occur at or below 450 ppm.³ Scientists are also reporting that, based on recent observations, climate appears to be changing even faster than modeled in the IPCC's worst case scenarios.⁴

California recognizes that global warming is an urgent problem. As reflected in the California Global Warming Solutions Act of 2006 ("AB 32") and Executive Order S-3-05, the best available science establishes that we must substantially reduce our total GHG emissions,

³ J. Hansen et al, Dangerous human-made interference with climate: a GISS modelE study, 7 *Atmos. Chem. Phys.* 2287-2312 (2007) (article with 47 co- authors).

⁴ S. Rahmstorf et al, Recent Climate Observations Compared to Projections, *Scienceexpress* (2007); M. Raupach et al., Global and Regional drivers of accelerating CO2 emissions, *Biological Sciences/Sustainability Science* (2007); J. Stroeve, Arctic Sea Ice Decline: Faster than Forecast? (2007) *Geophysical Research Letters*; The Climate Institute (November 2007) *Evidence of Accelerated Climate Change* (Climate Adaptation Science and Policy Initiative, University of Melbourne).

achieving a low-carbon future by mid-century in order to stabilize atmospheric concentrations of GHGs at a level that will reduce the risk of the most catastrophic outcomes of climate change. If we fail to make better development decisions at all levels of government and at every opportunity, in a very short time, our climate goals may be out of reach. According to Rajendra Pachauri, Chairman of the United Nations Intergovernmental Panel on Climate Change (“IPCC”), “If there’s no action before 2012, that’s too late. What we do in the next two to three years will determine our future. This is the defining moment.”⁵

As discussed below, there is substantial room for improvement in the DEIR’s discussion of the impacts of climate change on the Project, in particular, water supply; the Project’s GHG emissions as compared to the existing environmental baseline and the cumulative significance of those emissions; and specific, enforceable mitigation to control and mitigate those emissions.

1. Impact of Climate Change on Water Supply

The DEIR discusses generally the impact of climate change on water resources. The DEIR fails, however, to address several important issues. First, the DEIR discusses the impacts of reduced snowpack that are expected to occur between 2070 and 2099, but fails to address the potential impacts during the years covered by the General Plan, from 2008 until 2030. Second, the DEIR fails to discuss the impacts of climate change, and reduced snowpack, on the City’s water resources specifically. This is significant because the City primarily depends on the Sacramento and American Rivers for its water, and flows in the American River depend on operations at Folsom Reservoir.

With a reduced snowpack, it becomes increasingly difficult to refill reservoirs in the late spring and early summer, reducing reservoir yields.⁶ The DEIR thus needs to address the likelihood of reduced snowmelt affecting the availability of surface water, and should also discuss potential impacts of greater reliance on groundwater due to reduced surface water supplies. In California’s changing climate, the DEIR cannot assume that the region’s hydrology will not change.⁷

⁵Rosenthal, *U.N. Chief Seeks More Leadership on Climate Change*, N.Y. Times (November 18, 2007).

⁶ See California Department of Water Resources, *Progress on Incorporating Climate Change into Management of California’s Water Resources*, (July 2006) pp. 2-22, 2-30 and 2-31 and Department of Water Resources, *California Water Plan Update 2005*, Volume 1 Strategic Plan, Chapter 4, p. 31, both available at <http://www.water.ca.gov/climatechange/articles.cfm> under “Reports.”

⁷ See, e.g., *Natural Resources Defense Council v. Kempthorne* (2007) 506 F.Supp.2d 322, 367-370 (Fish and Wildlife Service’s Biological Opinion on Delta smelt should have looked at effect of various climate change scenarios on Delta hydrology).

2. Baseline Used to Evaluate the Impacts of the Plan

In both the Climate Change and Water Quality sections, the DEIR uses the hypothetical full build-out under the 1988 General Plan as the baseline for calculating CO₂ emissions, water demand, and accompanying environmental impacts. Both CEQA and case law are clear, however, that a planning document must describe the existing physical conditions in the environment, not only what could have been built under a previous plan.⁸ “Before the impacts of a project can be assessed and mitigation measures considered, an EIR must describe the existing environment. It is only against this baseline that any significant environmental effects can be determined.” (*County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931, 952.) Thus, the City should recalculate all projections and evaluate impacts using the correct baseline.⁹

3. GHG Emissions Analysis

There appear to be several flaws in the GHG emissions analysis and quantification in the DEIR. First, the DEIR does not disclose the City’s current annual GHG emissions and how much emissions are projected to increase over current levels through 2030 (the time-frame of the new General Plan). Rather, the document only evaluates the difference between expected emissions in 2030 from the Project and the expected emissions under the 1988 General Plan.¹⁰ As discussed above, the DEIR cannot rely solely on hypothetical buildout under the 1988 General Plan as the environmental baseline.

Moreover, while comparing emissions expected under the proposed new General Plan to the emissions expected under the 1988 General Plan may be relevant in the alternatives analysis, the limited comparative information about GHG emissions in 2030 that is provided in the DEIR is confusing and must be clarified. The DEIR contains the following inconsistencies:

⁸ See, e.g., Cal. Code Regs., tit. 14, § 15125, subd. (a), requiring a description of the physical environmental conditions in the vicinity of the project, *as they exist as the time the notice of preparation is published. . . .*” (emphasis added) and § 15123, subd. (e), requiring “[w]here a proposed project is compared with an adopted plan, the analysis shall examine the existing physical conditions at the time the notice of preparation is published . . . as well as the potential future conditions discusses in the plan.”; *Woodward Park Homeowners Association, Inc. v. City of Fresno* (2007) 150 Cal.App.4th 683, 706-710; *Environmental Planning and Information Council v. County of El Dorado* (1982) 131 Cal.App.3d 350, 354-358.

⁹ An existing plan, and associated future environmental impacts under that plan, may be appropriate to evaluate as a “no action” alternative in the DEIR, as the City has done here. However, in this case, the “no action” alternative is not the same as the environmental baseline.

¹⁰ It is also not clear whether the comparisons in Table 8-3 are valid because the 1988 General Plan addresses development through 2022, while the proposed Project addresses development through 2030.

- Table 8-3 states that total projected additional GHG emissions are 738 tons/day, but page 8-55 of the DEIR states they are 291 tons/day.
- Table 8-3 states that projected additional mobile source emissions are 464 tons/day (which equals 169,360 tons/year), but page 8-38 of the DEIR states that mobile (vehicle) source emissions are 256 tons/day and 93,440 tons/year.
- Table 8-3 states that projected additional emissions from use of electricity are 241 tons/day (which equals 87,965 tons/year), but page 8-36 of the DEIR states that electricity emissions are 8 tons/day and 2,920 tons/year.

We inquired about these inconsistencies with City staff, and were informed that the numbers in Table 8-3 are correct, while the numbers elsewhere in the text are wrong. Therefore, it appears that the text of the DEIR significantly understates the GHG emissions from the proposed General Plan. Although not expressly stated in the DEIR, it appears that the proposed new Plan would increase GHG emissions by 269,370 tons per year (738 tons/day from Table 8-3 x 365 days) above the emissions that would occur under the 1988 General Plan.¹¹

Third, it appears that the DEIR does not include complete estimates of GHG emissions from the Project because it omits foreseeable emissions from construction activities and from conveyance and treatment of water and wastewater. For development of this scale, those emissions could be quite large.¹² In its Technical Advisory *CEQA and Climate Change*, the Governor's Office of Planning and Research is clear that estimates of GHG emissions from a project should include "emissions associated with vehicular traffic, energy consumption, *water usage and construction activities*."¹³

4. GHG Analysis and Finding of Significance

The DEIR asserts that the significance of the Project's impacts on climate change cannot be determined because: there are no published State guidelines, thresholds, targets or methodologies for making the determination; and it is not known how much of the emissions

¹¹ We note that the DEIR also states that the new Plan will result in a *reduction* in GHG emissions in the six county SACOG region in 2030, as compared with the 1988 General Plan (DEIR, p. 8-35 and Table 8-3). However, the DEIR does not explain how the City's proposed Plan relates to regional GHG emissions, or how the reduction relates to the City's project.

¹² See Department of Water Resources, *Progress on Incorporating Climate Change Into Management of California's Water Resources* (July 2006), p. 2-7, stating that significant uses of electrical power related to water in California include: pumping groundwater from wells; treating drinking water; delivering water to consumers; and treating wastewater and water reclamation.

¹³ Governor's Office of Planning and Research, Technical Advisory *CEQA and Climate Change* (June 19, 2008), p.5.

from new development are truly “new” or would be transferred from somewhere else. These arguments do not relieve the City of its obligation to determine if the Project has a potentially significant cumulative impact on climate change.

As we have stated in previous Attorney General comment letters (and has been recognized by local agencies and in the Office of Planning and Research’s Technical Advisory), the lack of an official threshold does not absolve the City from the obligation under CEQA to determine the significance of the anticipated GHG emissions of this project.¹⁴ Nor does the lack of a 1990 emissions inventory or an adopted GHG reduction target for the City eliminate the obligation to determine if a proposed project’s GHG emissions constitute a significant impact under CEQA. Finally, the difficulty in determining whether emissions are “new” or transferred from somewhere else (DEIR, at pp. 8-38, 8-55 and 8-56) is not a valid basis for declining to determine if the project’s GHG emissions are significant. As the DEIR recognizes, the City is expected to experience substantial population and employment growth; unless there is persuasive evidence to the contrary, the buildings where the project’s residents and employees previously lived and worked will continue to be used as homes and workplaces. In addition, it is not possible to determine, as the DEIR purports to do, the extent and type of housing and job changes that will be made by people who move to the new housing and jobs in the City. For these reasons, all reasonably foreseeable GHG emissions associated with the City’s future development must be considered in evaluating the impact of the proposed Plan on climate change.¹⁵

In addition, the EIR should address whether the projected GHG emissions are consistent with the need to greatly reduce the State’s GHG emissions by 2050 (to 80% below 1990 levels, as set forth in Executive Order S-3-05). When this longer time-frame is considered, the Project’s cumulative impact on climate change may be significant. The DEIR does not address this issue.

5. Mitigation of Climate Change Impacts

We appreciate the DEIR’s organization of the climate change policies and mitigation measures. It is easy to locate the General Plan’s policies and the specific policies that address the Attorney General’s Office mitigation list. The City has proposed many good policies and mitigation measures, both in the General Plan and in its Sustainability Plan. Many of the policies, however, are very general in nature and it is unclear what specific actions the City

¹⁴ See Governor’s Office of Planning and Research, Technical Advisory, *CEQA and Climate Change* (June 19, 2008) p. 6, stating: “As with any environmental impact, lead agencies must determine what constitutes a significant impact. In the absence of regulatory standards for GHG emissions ... individual lead agencies may undertake a project-by-project analysis, consistent with available guidance and current CEQA practice.” Moreover, the CEQA Guidelines encourage, *but do not require*, agencies to publish thresholds of significance. (Cal.Code Regs., tit. 14, §15064.7(a).)

¹⁵ See also California Air Pollution Control Officers’ Association White Paper “CEQA and Climate Change,” (January 2008), pp. 35 and 72, available at <http://www.capcoa.org/>.

intends to take to ensure that it meets its climate change goals. The following policies, for example, require the City to “promote” or “encourage” certain outcomes, where it may be feasible to adopt enforceable requirements: LU 2.6.3: “the City shall promote sustainable building practices;” LU 2.6.5: “the City shall encourage structures under renovation to be built to a green building standard;” and LU 2.6.6: “the City shall seek to reduce the ‘heat island’ effect by promoting such features as reflective roofing... .” (DEIR, Technical Appendices, p. K-7.)

We recommend that the City take a second look at ways to improve its global warming mitigation measures to ensure that they serve the City’s stated goals.¹⁶ Below, we set forth some representative measures for the City’s consideration. We are also available to discuss other options that may be available to the City.

a. Climate Action Plan

A well-designed and enforceable Climate Action Plan or “CAP” integrated into the General Plan can serve as mitigation for projected development. The City’s proposal for adopting a CAP is not contained in the General Plan, however, but is in a separate document entitled “Administration Implementation Programs.” There is no target date by which the CAP will be adopted and it is unclear whether the CAP will include an inventory of GHG emissions, reduction targets, and specific tools and strategies to achieve the targets, or whether it will be incorporated into the General Plan.

An agency may only approve an EIR in reliance on a commitment to develop a mitigation plan in the future if the plan is sufficiently formulated that it provides a high level of assurance that the objective of the plan – real mitigation – will be achieved. (See *Sacramento Old City Assn. v. City Council* (1999) 229 Cal.App.3d 1011, 1020-22, 1028-30; *Lincoln Place Tenants Assn. v. City of Los Angeles* (2007) 155 Cal.App.4th 425, 446.) In its current form, the City’s proposed CAP constitutes an improper deferral of mitigation. (See, e.g., *San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645, 670 [holding that provision in EIR that allowed specifics of mitigation for biological impacts to be determined after future study violated CEQA where there were no specific criteria or standards of performance].)

To ensure that it does not run afoul of the rule against deferral, in general, a proposal in a General Plan for development of a CAP should include:

- a clear deadline for completion
- requirement for an inventory of emissions
- a reduction target
- specific mitigation strategies that will be considered for inclusion

¹⁶ See *Federation of Hillside and Canyon Associations v. City of Los Angeles* (2000) 83 Cal.App.4th 1252, 1261 (agency must ensure that feasible mitigation measures identified the EIR will be implemented).

- monitoring and reporting requirements
- adaptive management (to ensure that mitigation strategies are updated over time)
- interim provisions (to ensure that no major decisions that could be inconsistent with the CAP will be made before the CAP is completed)

It is also important that the completed CAP be incorporated into the General Plan so that it is enforceable, ensuring that future developments are required to be consistent with the elements of the CAP.¹⁷

b. Green Building Program

Currently, the City's commitment to green building extends only to municipal buildings. Most of the policies only "promote" or "encourage" developers to build, or owners to retrofit, with green technology. The Air Resources Board identifies building energy efficiency as the "cornerstone of California's energy strategy" which presents opportunities "to achieve significant energy savings... ." (Draft Scoping Plan, Appendix C, p. C-55.) The Air Board also notes that increasing energy efficiency is particularly important in fast-growing and warmer areas of the state with more air conditioning use, such as Sacramento. (*Id.* at p. C-56.)¹⁸ The City should therefore consider whether measures such as mandatory green building requirements for residential and non-residential buildings and mandatory energy efficiency upgrades for existing buildings undergoing substantial modifications would be feasible and assist in achieving its stated goal "to decrease dependence on renewable energy sources through energy conservation, [and] efficiency" (Goal U 6.1.)

In addition, we encourage the City to consider evaluating the feasibility of creating a local assessment district or other financing mechanism to fund installation of energy efficiency measures, including rooftop solar systems¹⁹ and evaluate requiring GHG-reducing retrofits as a potential mitigation measure for new development.

c. Transit Program

¹⁷ Provided that the Climate Action Plan is completed and integrated into the General Plan, the City and project proponents will be able to benefit substantially from CEQA's streamlining provisions. (See, e.g., CEQA Guidelines, §§ 15152(d), (f); 15130(d), (e) [discussing tiering and cumulative impacts]; see also Pub. Res. Code, § 21081.6(b).)

¹⁸ Also see Sacramento Municipal Utilities District "SMUD") "Advantage Home" rebate program, where new homes exceed state energy standards for cooling by at least 30%, and "Solar Smart Home" rebate program where energy use is reduced by 23-42% (without including reduced electricity use from onsite solar generation). (See SMUD website at: http://www.smud.org/residential/docs/advantagelist_0407.pdf and <http://www.smud.org/residential/solarsmart/index.html> and attached SMUD slide.)

¹⁹ See "Berkeley First," at <http://www.ci.berkeley.ca.us/ContentDisplay.aspx?id=22620>.

Transportation is responsible for 38% of the GHG emissions in California. (Draft Scoping Plan, Appendix C, p. C-21.) Better land use planning, addressing such things as land use patterns, increased density, connected streets, and access to jobs, transit and services, has the potential to reduce driving and thus reduce GHG emissions.²⁰ According to the Air Resources Board, if we do not address growth in vehicle miles traveled, it will completely overwhelm the other advances that the State is making to control emissions. (Draft Scoping Plan, Appendix C, p. C-40.)

The DEIR has a number of well-intended transit policies, such as supporting many forms of transit, requiring development near transit stations, and requiring developments to be bicycle- and pedestrian-friendly. Two particularly good policies are one that allows for flexible Level of Service standards for traffic to permit increased densities and one that “shall require developer contributions for bus facilities and improvements.” The City, however, could do more to require transit oriented development.

For example, the City could adopt a transit program requiring housing or other development projects of a certain threshold size (1) to provide financial or other support for transit use, with the fees sufficient to cover the development’s fair share of the transit system, and (2) to meet density standards that will support the operation of transit.

d. Infill Program

It is clear from the General Plan policies, the DEIR and our discussions, that the City supports the concept of infill. The policies and mitigation measures in the General Plan and DEIR, however, are generally vague, and may not ensure that the City achieves its infill goals.

The City may consider adopting a more specific infill program, such as one in which it determines a certain percentage of new housing that will be located in an identified urban core area (determined by the City) and adopts monetary (lower fees) and non-monetary incentives to facilitate infill development. This is not a new concept in the region: the Sacramento County Regional Sanitation District charges different rates for sewer hookups based on location.²¹

²⁰ See, e.g., U.S. Environmental Protection Agency, *Our Built and Natural Environments: A Technical Review of the Interactions Between Land Use Transportation and Environmental Quality* (2001); Ewing, R. & Cervero, R., *Travel and the built environment: A synthesis* (2001) 1780 *Transportation Research Record*, at pp. 87-114; Frank, L.D. *Land Use and Transportation Interaction: Implications on Public Health and Quality of Life* (2000) 20 *Journal of Planning Education and Research*, at pp. 6-22; Ewing, R., et al. *Growing Cooler: The Evidence on Urban Development and Climate Change*, Urban Land Institute (Chicago 2007).

²¹ A connection fee for a house in a new neighborhood is \$7,450, while the fee for a new house in an existing urban area is \$2,800. See <http://www.srcsd.com/rates.php>. Multi-family residential unit fees are handled the same way.

Mellanie Marshall, Associate Planner
August 29, 2008
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Conclusion

We thank you for the opportunity to comment on the DEIR and are pleased that the City recognizes the imperative of expanding consistent with smart growth principles. We will be glad to work with the City in implementing our comments or in any other way.

Sincerely,

/S/

LISA TRANKLEY
SANDRA GOLDBERG
Deputy Attorneys General

For EDMUND G. BROWN JR.
Attorney General