Sarah Mayer Public Comment - Bernhaut, Jerry Esq.

From: Jerry Bernhaut <j3bernhaut@gmail.com>
Sent: Thursday, April 18, 2024 10:10 AM
To: sbcob
Cc: katie Davis
Subject: Santa Barbara Draft-2030-Climate-Action-Plan- Comments
Attachments: Santa Barbara Draft 2030 Climate Action Plan-Comments by Jerry Bernhaut.docx; Order Granting Writ 7-20-17.pdf

Follow Up Flag: Follow up
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Dear Supervisors,

Attached are my comments on the Santa Barbara County Draft 2030 Climate Action Plan, which I submitted to the Sierra Club with my recommendation, as a member of the Sierra Club, regarding the Club's position on the Draft Plan.
I was the lead attorney in the case which overturned the Sonoma County Climate Action Plan on similar grounds to those addressed in my comments on the Santa Barbara Plan. I have also attached the court's ruling in that case.

Thank you for the opportunity to comment on this important matter.

Jerry Bernhaut, Esq.

I have reviewed the Santa Barbara Draft 2030 Climate Action Plan (CAP). Following are my comments.

1.The exclusion of GHG emissions from oil production in the GHG Inventory is justified by the following rationale:

"For the purposes of this CAP, stationary sources are excluded because the County lacks primary regulatory control over many of these facilities" p. 22

This is a clearly bogus position. The generally accepted criterion for inclusion of emissions from activities in a jurisdiction's GHG Inventory in a CAP is whether the local government has the ability to control or influence the activity. The County of Santa Barbara has the authority to permit or deny oil and gas wells. If the County did not issue permits for these facilities, emissions from their activities would not occur. The fact that there are State or Federal regulations that apply to the operation of these facilities does not negate the County's ability to control emissions from their operation through its permitting authority. This applies to the direct emissions from the operation of oil and gas production, the emissions from the transmission of oil produced in Santa Barbara to other to jurisdictions and to emissions from the end use, the combustion of the oil.

This argument that emissions from activities subject to regulation by other government agencies should not be included in a local jurisdiction's GHG Inventory is a commonly recurring justification for giving major local business interests a free pass from responsibility for their GHG emissions in Climate Action Plans. I encountered the same argument regarding the Sonoma County Climate Action plan in relation to emissions from air travel by wine country tourism and shipping of Sonoma County wines and other produce. I prevailed in court by arguing that Sonoma County could influence and control these emissions through its permitting authority. This is an obvious causal connection between a local government's authority to issue permits for land use and the emissions resulting from the permitted activities.

2.Regarding GHG reduction measures, the Santa Barbara Draft CAP relies on projected increase in EV car use to 25% by 2030 and 90% by 2045, Increase commercial EV car use to 15% by 2030 and 75% by 2045 Install at least 375 additional publicly available EV chargers by 2030. See the following public comment:

"I believe the goals for the 2030 Climate Action Plan are not realistic when it comes to the biggest source of GHGs which is transportation. We need to be

more honest with the severity of the climate crisis instead of misleading people that we have a realistic plan. Using 2021 DMV data, in Santa Barbara County, a total of 367,892 cars and trucks are registered. To achieve the 25% EV goal by 2030, we need to sell 13,139 EVs every year. Using the California New Car Dealers Association estimate of 1.9 million new cars sold in the state each year, we would need over 60% of these new cars to be EV to reach the 2030 goal. At the current pace of 10% of new cars being EVs, we are already failing to meet our goal"- Public Comment p.41

There is generally aspirational language about land use and affordable housing to reduce vehicle miles traveled, but an admission that passenger vehicles will be the dominant mode of transportation. (p.36)

There is vague language regarding commuter rail service:
"TR 2.8 Work with the LOSSAN Rail Corridor Agency to increase commuter rider services."
"TR 2.8 appears to be low hanging fruit. One of the largest traffic volumes each week day must be the commuters between Santa Barbara and Ventura counties. "Work with" is not a very encouraging promise. What will you really do?" Public comment P.45

My overall evaluation, considering the unjustified exclusion of emissions from oil production, unrealistic projection of electric vehicle use and vaguely defined measures regarding land use and transit, is that the Santa Barbara Draft 2030 Climate Action Plan is highly unlikely to achieve projected GHG emissions reductions. I recommend that the Sierra Club should be strongly critical of Climate Action Plans such as this one which, especially since it is designated CEQA compliant, will enable "streamlined" review of GHG impacts of future projects. Most importantly, I believe such inadequate Climate Action Plans do more harm than good because they project a false sense of progress in addressing the climate crisis.

Jerry Bernhaut, Esq.

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SUPERIOR COURT FOR THE STATE OF CALIFORNIA

COUNTY OF SONOMA

CALIFORNIA RIVERWATCH,

Petitioner,

v.

COUNTY OF SONOMA, ET AL.

Defendants.

Case No.: SCV-259242

ORDER GRANTING PETITION FOR WRIT OF MANDATE

This matter was tried to the court on March 23, 2017, the Honorable Nancy Case Shaffer presiding. The Law Office of Jack Silver and Jerry Bernhaut and Jack Silver appeared on behalf of Petitioner; the Office of Sonoma County Counsel and Bruce Goldstein and Verne Ball appeared on behalf of Respondent Sonoma County Regional Climate Protection Authority. At the conclusion of the hearing, the court ordered further briefing. The matter was deemed submitted on April 21, 2017, when all briefs were submitted.

I. SUMMARY OF RULING

The court finds that the Sonoma County Regional Climate Protection Authority's Final Programmatic EIR ("the PEIR") for Climate Action 2020 and Beyond, its Climate Action plan ("CAP") and the County of Sonoma's approval of the CAP violate CEQA, in that the inventory of greenhouse gas emissions is based on insufficient information; the PEIR fails to

include effectively enforceable, clearly defined performance standards for the mitigation measures regarding Green House Gas ("GHG") emissions, identified as "GHG Reduction Measures;" and fails to develop and fully analyze a reasonable range of alternatives.

Accordingly, the approval of the PEIR was a prejudicial abuse of discretion by Respondent. Given the lack of information and other material defects, as a matter of law the PEIR cannot fulfill its basic CEQA purpose as an information document.

The court finds that there is insufficient information in the administrative record to support the factual conclusion that the CAP will achieve its fundamental purpose of reducing Respondent's countywide GHG emissions to the stated target of 25% below 1990 levels by 2020.

I. FACTS

Petitioner seeks a writ of mandate overturning Respondent's certification and of a Final Programmatic EIR (the PEIR) for its Climate Action Aplan (CAP) and the approval of the CAP on the grounds that the approvals violate CEQA.

A. The Project

The CAP Project is a planning-level document to guide analysis of the greenhouse gas (GHG) impacts of future projects in the county.

In 2006, the California legislature passed AB 32, the Global Warming Solutions Act (the Act) which, among other things, establishes a statewide goal of achieving 1990-level GHG impacts by 2020.

CEQA Guideline 15183.5 allows agencies to adopt an overall long-range plan such as a general plan or similar plan governing GHG analysis of subsequent projects. Respondent adopted the CAP in accord with Guideline 15183.5 as a method of providing an overall *tiered analysis* of GHG impacts in subsequent projects as a method of complying with the Act's mandate. (1 AR 4, 10.)

B. The Petition for Writ of Mandamus

Petitioner argues that the EIR fails to provide an accurate description of the existing conditions or a means for calculating GHG emissions; that the PEIR contains inadequate mitigation measures, alternatives analysis, or response to public comments.

Respondent opposes the petition, contending that Petitioner relies on non-existent requirements in 15183.5; that Petitioner fails to discuss the substantial evidence in the record, that the EIR sufficiently discusses existing conditions; that the PEIR properly discloses methodology; that the CAP is not a mitigation measure and does not need to contain mitigation measures; that substantial evidence supports the CAP emissions reduction estimates; that the alternatives analysis complies with CEQA; that Petitioner failed to exhaust administrative remedies on the responses to comments; and that Petitioner has demonstrated no prejudicial error.

II. ANALYSIS

A. Request for Judicial Notice

The court grants, in full, Respondents' request to take judicial notice of certain government and regulatory documents, including a statement from the Natural Resources Agency on amendments to the Guidelines regarding GHG emissions; the California Air Resources Board ("CARB") Climate Change Scoping Plan; the CARB draft 2030 Target Scoping Plan Update; the County of Napa CAP; Guideline 15183.5, AB32, and SB 97; and the lodgment of the record in this case.

B. **CEQA**

An EIR is required for a project which substantial evidence indicates may have a significant effect on the environment. (Guidelines for the Implementation of CEQA (Guidelines), 14 CCR section 15063(b)[1]; PRC sections 21100, 21151.) EIRs are, in the words

[1]These are at 14 Cal Code Regs §§ 15000, *et seq*. Courts should at a minimum afford great weight to the Guidelines except when a section is clearly unauthorized or erroneous under CEQA. *Laurel Heights Improvement Ass'n v. Regents of Univ. of Cal.* (*Laurel Heights I)* (1988) 47 Cal.3d 376, 391, fn 2; *Sierra Club v. County of Sonoma* (1992) 6 Cal.App.4th 1307, 1315.

of the California Supreme Court, "the heart of CEQA." *Laurel Heights Improvement Assn. v. Regents of the University of California* (1988) 47 Cal.3d 376, 392 (*Laurel Heights I*).

The ultimate mandate of CEQA is "to provide public agencies and the public in general with *detailed information* about the effect [of] a proposed project" and to minimize those effects and choose possible alternatives. (emphasis added) (PRC 21061.) The public and public participation hold a "privileged position" in the CEQA process based on fundamental "notions of democratic decision-making." (*Concerned Citizens of Costa Mesa, Inc. v. 32nd District Agricultural Association* (1986) 42 Cal.3d 929, 936.)

As a fundamental benchmark that generally applies to all issues in CEQA the court, is that the court, in considering an issue, should look to see if "the public could discern... the 'analytic route the... agency traveled from evidence to action.'" (See ***Al Larson Boat Shop*** *Inc. v. Bd. of Harbor Commissioners* (1993) 18 Cal.App.4th 729, 749; see also *Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 513-514, 522.)

The burden of investigation rests with the government and not the public. (*Lighthouse Field Beach Rescue v. City of Santa Cruz* (2005) 131 Cal.App.4th 1170, 1202.)

C. Standard of review

1. Preliminary Basis for Standard of Review

The standard of review is in dispute here. This dispute arises out of the divergent characterizations of the issues by the parties.

Public Resources Code section 21168 provides that when a court reviews a determination, finding, or decision of a public agency, "as a result of a proceeding in which by law a hearing is required to be given, evidence is required to be taken and discretion in the determination of facts is vested in a public agency ... the court shall not exercise its independent judgment on the evidence but shall only determine whether the act or decision is supported by substantial evidence in the light of the whole record." However, review is *de novo* when the court must determine whether the agency has prejudicially abused its discretion either by failing to proceed in the manner required by law or by reaching a decision that is not supported by substantial evidence. (*Laurel Heights I, supra* 47 Cal.3d 392, fn.5.)

"[A] reviewing court must adjust its scrutiny to the nature of the alleged defect, depending on whether the claim is predominantly one of improper procedure or a dispute over the facts." *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 435 (*"Vineyard"*).

As the court explained in *Vineyard*:

> [A]n agency may abuse its discretion under CEQA either by failing to proceed in the manner CEQA provides or by reaching factual conclusions unsupported by substantial evidence. (§21168.5.) Judicial review of these two types of error differs significantly: while we determine de novo whether the agency has employed the correct procedures, "scrupulously enforc[ing] all legislatively mandated CEQA requirements" (*Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564...), we accord greater deference to the agency's substantive factual conclusions. In reviewing for substantial evidence, the reviewing court "may not set aside an agency's approval of an EIR on the ground that an opposite conclusion would have been equally or more reasonable," for, on factual questions, our task "is not to weigh conflicting evidence and determine who has the better argument."(*Laurel Heights I, supra,* 47 Cal.3d at p. 393....) [2]

While courts must give deference as to substantive factual decisions, courts demand strict compliance with "legislatively mandated CEQA requirements." (*Citizens of Goleta Valley v. Bd. of Supervisors* (1990) 52 Cal.3d 553, 564 (*Goleta II*).) A Respondent is entitled to no deference where the law has been misapplied, or where the decision was based on "an erroneous legal standard." (*East Peninsula Educ. Council, Inc. v. East Peninsula Unif. Sch. Dist.* (1989) 210 Cal.App.3d 155, 165.)

Courts must 'determine de novo whether the agency has employed the correct procedures, "scrupulously enforc[ing] all legislatively mandated CEQA requirements"....' (*Vineyard Area Citizens for Responsible Growth, supra,* 40 Cal.4th 435, citing *Goleta II,* 52 Cal.3d at 564.) *Failure to include required information is a failure to proceed in the manner*

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[2] *Laurel Heights I* is *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 400 (*Laurel Heights I*

required by law and demands strict scrutiny. (*Sierra Club v. State Bd. of Forestry* (1994) 7 Cal.4th 1215, 1236; *Vineyard, supra,* 40 Cal.4th at 435.) The court reviews the PEIR here de novo.

Nevertheless, agency actions are presumed to comply with applicable law unless the petitioner presents proof to the contrary. (Evid. Code § 664; *Foster v. Civil Service Commission of Los Angeles County* (1983) 142 Cal.App.3d 444, 453.) The petitioner in a CEQA action thus has the burden of proving that an EIR is insufficient. (*Al Larson Boat Shop, Inc. v. Board of Harbor Commissioners* (1993) 18 Cal.App.4th 729, 740.)

2. Standard of Review: Substantial-Evidence Test

The substantial-evidence test applies to substantive issues in a decision certifying an EIR. The court must uphold the decision if it is supported by substantial evidence in the record as a whole. (*Bowman v. City of Petaluma* (1986) 185 Cal.App.3d 1065, 1075; see *River Valley Preservation Project v. Metropolitan Transit Dev. Bd.* (1995) 37 Cal.App.4th 154, 166; see *Santa Teresa Citizen Action Group v. City of San Jose* (2003) 114 Cal.App.4th 689, 703. The "substantial evidence" test requires the court to determine "whether the act or decision is supported by substantial evidence in the light of the whole record." (*Chaparral Greens v. City of Chula Vista* (1996) 50 Cal.App.4th 1134, 1143; *River Valley Preservation Project v. Metropolitan Transit Develop. Bd.* (1995) 37 Cal.App.4th 154, 168.)

When applying the substantial-evidence standard, the court must focus not upon the "correctness" of a report's environmental conclusions, but only upon its "sufficiency as an informative document."(*Laurel Heights I* 47 Cal.3d at 393.) The findings of an administrative agency are presumed to be supported by substantial evidence. *(Taylor Bus. Service, Inc. v. San Diego Bd. of Education* (1987) 195 Cal.App.3d 1331.) The court must resolve reasonable doubts in favor of the findings and decision. (*Id.)*

A claim that the EIR lacks *sufficient* information regarding an issue will be treated as an argument that the EIR is not supported by substantial evidence. (*Barthelemy v. Chino Basin Munic. Water Dist.* (1995) 38 Cal.App.4th 1609, 1620.) The petitioners in *Barthelemy*

asserted that it was a failure to proceed in the manner required by law where an EIR did not include key information. The court rejected that argument.

a) The Definition of "Substantial Evidence"

Substantial evidence is "enough relevant information and reasonable inferences" to allow a "fair argument" supporting a conclusion, in light of the whole record before the lead agency. (14 CCR § 15384(a); PRC §21082.2; *City of Pasadena v. State of California* (2nd Dist.1993) 14 Cal.App.4th 810, 821-822.) Other decisions define "substantial evidence" as that with "ponderable legal significance," reasonable in nature, credible, and of solid value. (*Stanislaus Audubon Society, Inc., v. County of Stanislaus* (1995) 33 Cal.App.4th 144.)

Substantial evidence includes facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts. (PRC §21082.2(c); see also Guidelines 15064(g)(5), 15384.) It does not include argument, speculation, unsubstantiated opinion or narrative, clearly incorrect evidence, or social or economic impacts not related to an environmental impact. (Guideline 15384.)

3. Prejudicial Abuse of Discretion

A court may only issue a writ in a CEQA case for an abuse of discretion, including making a finding without substantial evidence, if the error was *prejudicial*. (*Chaparral Greens v. City of Chula Vista* (1996) 50 Cal.App.4th 1134, 1143.) The court must defer to the agency's substantive conclusions an uphold the determination unless. ((Id); *see* PRC § 21168, 21168.5, *Laurel Heights I, supra,* 47 Cal.3d at 392, fn.5; Remy, et al., Guide to the California Environmental Quality Act (10th Ed.1999) Chapter XI (D), p.590.)

4. Tiered EIRs

As discussed further below, the PEIR here is a tiered EIR prepared in accordance with Guideline 15183.5, which specifically allows for preparation of an overall, first-tier EIR and planning document to govern analysis of GHG emissions and control GHG emissions in order to comply with the statewide mandates to reduce GHG emissions.

A tiered EIR scheme allows an agency to produce a general EIR focusing on an overall plan or policy and later conduct more limited, narrow subsequent EIR review for

individual projects within the broad plan or scope of the original, general EIR. (PRC 21068.5, 21093(a); Guideline 15152; *Koster v. County of San Joaquin* (1996) 47 Cal.App.4th 29, 36.) "Tiering" is defined in PRC 21068.5 as:

> coverage of general matters and environmental effects in an [EIR] prepared for a policy, plan, program or ordinance followed by narrower or site-specific [EIRs] which incorporate by reference the discussion in any prior [EIR] and which concentrate on the... effects which (a) are capable of being mitigated, or (b) were not analyzed... in the prior [EIR].

In other words, it is 'a process by which agencies can adopt programs, plans, policies, or ordinances with EIRs focusing on "the big picture" and can use streamlined CEQA review for individual projects that are consistent with such... [first tier plans]....' (*Koster v. County of San Joaquin* (3d Dist. 1996) 47 Cal.App. 4th 29, 36.) The later EIRs need not repeat the analysis or revisit the issues from the original EIR. (Guideline 15385.)

Guideline 15152 is the overall provision governing first-tier documents in general and in its detailed discussion demonstrates clearly what such documents must do, what they must include, and how they may be used.[i] Environmental impact reports "shall be tiered whenever feasible, as determined by the lead agency." (PRC 21093(b).) This "is needed in order to provide increased efficiency in the CEQA Process. It allows agencies to deal with broad environmental issues in EIRs at planning stage and then to provide more detailed examination of specific effects....These later EIRs are excused by the tiering concept from repeating the analysis of the broad environmental issues examined in the [first tier] EIRs." (Discussion following Guideline 15385.)

PRC 21094(c) states that "[f]or purposes of compliance with this section, an initial study shall be prepared to assist the lead agency in making the determinations required by this section."

C. GREENHOUSE GAS EMISSIONS

The Global Warming Solutions Act ("the Act") 'implements deep reductions in greenhouse gas emissions, recognizing that "[g]lobal warming poses a serious threat to the

economic well-being, public health, natural resources, and the environment of California...." (Health & Saf.Code, § 38501, subd. (a).) Through this enactment, the Legislature has expressly acknowledged that greenhouse gases have a significant environmental effect.' (*Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70, 91 (*CEB*).) Guideline 15183.5 governs tiering and streamlining the analysis of GHG emissions.[ii] Subdivision (b) sets forth the specific things such a plan should do.

1. The Role of the CAP in Subsequent GHG Analysis

A key issue is the ultimate role this CAP will play in subsequent GHG analysis of future projects. Here neither party clearly addresses the intended role and effect of the CAP in the review of subsequent projects.

The CAP at 1013-1016 generally indicates that the CAP is intended to eliminate any need to conduct any GHG analysis in future discretionary projects that comply with the CAP. Specifically, the introduction to the checklist of standards and measures, states that:

> Discretionary projects that utilize the checklist, as modified by the individual agency, and can demonstrate consistency with all applicable mandatory local or regional measures in the CAP, can conclude that their impacts related to [GHG] emissions would be less than significant under CEQA because the project would be consistent with a qualified GHG reduction plan under... Guidelines Section 15183.5.

The introduction then quotes 15183.5(b) and (b)(2) in part as follows:

> (b) Pursuant to sections 15064(h)(3) and 15130(d), a lead agency may determine that a project's incremental contribution to a cumulative effect is not cumulatively considerable if the project complies with the requirements in a previously adopted plan or mitigation program under specified circumstances.
>
> ...
>
> (b)(2) A plan for the reduction of greenhouse gas emissions, once adopted following certification of an EIR or adoption of an environmental document, may be used in the cumulative impacts analysis of later projects. An environmental document that relies on a greenhouse gas reduction plan for a cumulative impacts analysis must identify

those requirements specified in the plan that apply to the project, and, if those requirements are not otherwise binding and enforceable, incorporate those requirements as mitigation measures applicable to the project.

It reiterates that the 'significance threshold for projects using the checklist for streamlining is "consistency with an applicable plan for the reduction of [GHG] emissions meeting the requirements of...15183.5" ' All of this indicates an intent that a future project complying with this CAP and its standards and measures need include no independent GHG analysis.

2. Respondent's Contention That Petitioner Imposes Non-Existent Requirements

Respondent argues, that Petitioner is improperly trying to impose requirements on the CAP that do not exist in Guideline 15183.5. This argument is expressly stated at the start of its brief and is repeated throughout its papers. This argument is itself groundless; it is contrary to the fundamental purpose of CEQA requirements.

First, Respondent contends that the Guideline merely gives a list of what such a plan "should" do; not what it "must" do. Although the Guideline does only state what such a plan "should" include, (see end note ii, Guideline 15183.5), it expressly states that it is a tiering mechanism and that it must comply with the standards for first-tier programs or plan EIRs. It is *titled* "*Tiering* and Streamlining the Analysis of Greenhouse Gas Emissions." (Emphasis added.) It beings by explaining that agencies may develop a GHG plan or standards in a plan using a tiering method, governed by the standards for tiering. It states that agencies *may* handle GHG analysis:

> at a *programmatic* [i.e., first-tier] level, such as in a general plan, a long range development plan, or a separate plan to reduce greenhouse gas emissions. *Later* project-specific environmental documents *may tier from* and/or incorporate by reference that existing programmatic review. Project-specific environmental documents *may* rely on an EIR containing a programmatic analysis of greenhouse gas emissions as provided in *section 15152 (tiering), 15167 (staged EIRs) 15168 (program EIRs)*, 15175-15179.5 (Master EIRs), 15182 (EIRs Prepared for Specific Plans), and 15183 (EIRs Prepared for General Plans, Community Plans, or Zoning).

(emphasis added.)

As noted above, the CAP also makes it clear that, as a first-tier document, it is to be used in such a manner that, if complied with, will excuse the analysis of a future project from revisiting GHG emissions. Therefore, the CAP, and any such plan prepared under 15183.5, must meet the requirements for all first-tier documents and thus must impose effectively enforceable requirements and measures with defied performance standards.

Second, although Respondent is correct that the requirements on which Petitioner relies are not necessarily in the Guideline itself, they are applicable to *all* CEQA review and, specifically, to first-tier documents, as explained above. Petitioner's further arguments, such as that the CAP must provide a clear, complete, and accurate GHG "inventory," i.e., the existing GHG emissions associated with activities in the county, are consistent with a standard CEQA mandate, which is that an environmental document must present clear, meaningful information sufficient to allow the agency and public to make an intelligent, informed decision, or, stated another way, sufficient to make clear the analytic route of the agency. (*Concerned Citizens of Costa Mesa, Inc. v. 32nd District Agricultural Association* (1986) 42 Cal.3d 929, 936; ***Al Larson Boat** Shop Inc. v. Bd. of Harbor Commissioners*, *supra,* 18 Cal.App.4th at 749; *Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 513-514, 522. Therefore, it must be based on substantial evidence. (See section C.2., above.)

3. Existing Conditions

Petitioner first argues that the PEIR fails to describe existing conditions accurately because it limits the range of emissions from vehicles miles traveled (VMT) associated with land-use activities in the county and to and from 18 nearby regional locations. Petitioner contends that the baseline or current GHG emissions level associated with the county should include all VMT for trips associated with activities in the county, not only within the county and to and from the 18 nearby regional locations used in the PEIR and that Respondent thus understates the current GHG emissions. Respondent focuses on two general categories of VMT omitted from the PEIR: VMTs generated by goods exported from the county to

locations beyond (produce, medical equipment, beer, and wine) , and tourist travel to Sonoma County.

a) CEQA Baselines and Quantifying Current GHG Levels

Ordinarily, an EIR must clearly and consistently describe the baseline, which is *normally* the *existing* environmental setting or conditions. The existing conditions, at the time the notice of preparation ("NOP") is published, "normally constitute the baseline physical conditions by which the lead agency determines whether an impact is significant." (Guideline 15125(a).) Guideline 15126.2(a) states that the agency "should normally limit its examination to changes in the existing physical conditions in the affected area as they exist at the time...environmental analysis is commenced."

Guideline 15183.5(b)(1)(A) sets forth special requirements for GHG first-tier plans such as the CAP. Such plans are required to "[q]uantify greenhouse gas emissions, both existing and projected over a specified time period, resulting from activities within a defined geographic area."

Respondent notes that the ordinary requirements governing determination of the "baseline" apply where there is a project that may alter this in of itself in order to determine the extent of any impact which a project will have. (See Guideline 15126.2(a).)

b) VMT Data

The CAP explanation of how it determined the GHG inventory is found at AR 1050, et seq. It used 2010 data because that year includes largely complete or complete activity data for all sectors as needed to calculate GHG levels; this is not challenged by Petitioner. (See AR 1052; Memorandum of Points and Authorities in Support of Petition for Writ of Mandate, 9:1-3.) The response to comment at AR 1084 explains that the VMTs were determined by considering the travel in the county plus travel between the county and 18 external "traffic analysis zones" ("TAZ").

Respondent relies on Guideline 15130(b) which provides that studies of cumulative impacts are guided by "standards of practicality and reasonableness." According to Guideline 15364, "'Feasible" means capable of being accomplished in a successful manner within a

reasonable period of time, taking into account economic, environmental, legal, social, and technological factors.' Thus, "[a]n evaluation of the environmental effects of a proposed project need not be exhaustive, but the sufficiency of an EIR is to be reviewed in the light of what is reasonably feasible .... The courts have looked not for perfection but for adequacy, completeness, and a good faith effort at full disclosure." (Guideline 15151; see also *Citizens to Preserve the Ojai v. County of Ventura, supra,* 176 Cal.App.3d at 429.) Petitioner argues that an agency is "not required to engage in sheer speculation as to future environmental consequences [Citations], [but an] EIR [is] required to set forth and explain the basis for any conclusion that analysis of the cumulative impact of offshore emissions [is] wholly infeasible and speculative." (*Citizens to Preserve the Ojai, supra,* 176 Cal.App.3d at 430.)

Respondent correctly argues that ultimately GHG emissions must be considered in light of their cumulative worldwide impact because of their nature. The Supreme Court in *Center for Biological Diversity v. California Dept. of Fish and Wildlife* (2015) 62 Cal.4th 204, at 219-220, considered a challenge to an agency's GHG analysis. The Court explained:

> [W]e address two related aspects of the greenhouse gas problem that inform our discussion of CEQA significance.
>
> First, because of the global scale of climate change, *any one project's contribution is unlikely to be significant* by itself. *The challenge for CEQA purposes is to determine whether the impact of the project's emissions of greenhouse gases is cumulatively considerable*, in the sense that "the incremental effects of [the] individual project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects." (§ 21083, subd. (b)(2); see Guidelines, § 15064, subd. (h)(1).) "With respect to climate change, an individual project's emissions will most likely not have any appreciable impact on the global problem by themselves, but they will contribute to the significant cumulative impact caused by greenhouse gas emissions from other sources around the globe. *The question therefore becomes whether the project's incremental addition of greenhouse gases is 'cumulatively considerable' in light of the global problem*, and thus

significant." (Crockett, Addressing the Significance of Greenhouse Gas Emissions Under CEQA: California's Search for Regulatory Certainty in an Uncertain World (July 2011) 4 Golden Gate U. Envtl. L.J. 203, 207–208 (hereafter Addressing the Significance of Greenhouse Gas Emissions).)

Second, the global scope of climate change and the fact that carbon dioxide and other greenhouse gases, once released into the atmosphere, are not contained in the local area of their emission means that *the impacts to be evaluated are also global rather than local. For many air pollutants, the significance of their environmental impact may depend greatly on where they are emitted; for greenhouse gases, it does not.* For projects, like the present residential and commercial development, which are designed to accommodate long term growth in California's population and economic activity, this fact gives rise to an argument that a certain amount of greenhouse gas emissions is as inevitable as population growth. Under this view, a significance criterion framed in terms of efficiency is superior to a simple numerical threshold because CEQA is not intended as a population control measure.

(emphasis added.)

Consistent with the Supreme Court's discussion in that case, the EIR here expressly discusses the global nature of GHG emissions, explaining that "unlike other resource areas that are primarily concerned with localized project impacts... the global nature of climate change requires a broader analytic approach. Although this section focuses on GHG emissions generated as a result of the CAP, the analysis considered them in the context of potential state, national, and global GHG impacts." (AR 314.) It also noted global GHG concentrations. (AR 81, 106, 316.)

The PEIR analysis considered VMT for the county and the 18 TAZs in the region, and only for automobile traffic and "emissions that local governments have primary influence or control over." (AR 85.) It did not consider travel by other means such as by airplane or emissions over which the local entities have no direct control. (AR 85.) The PEIR explained

at AR 82 and 85 that it was relying on the International Council for Local Environmental Initiatives (ICLEI) Protocol and that:

> the ICLEI Community Protocol does not require air travel emissions to be included in the basic emissions necessary for protocol-compliance GHG inventories because it recognizes that local governments have less control over such sources as air travel and that information is often not available to precisely describe an airport's emissions to a specific community.

Similarly, it noted that methodologies exist to estimate emissions further afield but associated with local activities but rejected these methodologies because the information might be difficult to obtain or are not "common" approaches. (AR 85-86.) For example, the response to the comment at AR 85-86 stated:

> [w]hile there are methodologies to estimate upstream emissions..., these methodologies are commonly used to prepare what is known as a "consumption-based" inventory, which estimate the life cycle "carbon footprint" of everything households (and...other consumers) consume. There are also methodologies to estimate "downstream" emissions associated with the transportation, end use, and disposal of goods produced in a jurisdiction, but such methodologies require highly detailed information about the entire downstream supply chain, including the ultimate geographical destination of goods that can be difficult to come by, especially if such data is privately held. While one could estimate emissions using a consumption-based approach of a "downstream" emissions method, these are not the common approach used for community emissions, or national emissions at present, and if used, would make it impossible to compare regional inventories.

As a result, the response contends, "nearly every" national, state, and local agency preparing a CAP has used the "activity-based" approach to calculate and define the GHG inventories. (AR 86.) Respondent asserts that by avoiding the methodologies which include upstream or downstream data, and instead using the ICLEI Protocol, the CAP inventory "can be compared to those other communities, using a common standard...." (Ibid.)

The question before the court is whether there is information in the record showing that Respondent might or might not feasibly have included the additional data as Petitioner contends, or whether Respondent did not need to include it.

Respondent's primary argument that it did not need to include additional emissions estimates is based on its assertion that CEQA only requires an agency to do what is feasible, and further that it need not, and should not, engage in speculation over data that is unknowable. The basic that a public agency is only required to do what is feasible, discussed above, is correct, but Respondent has not persuasively shown that it defeats Petitioner's arguments regarding the need for more information about MVT. The response to comments at AR 84-86 expressly admits that there are methodologies to quantify the additional sources of GHG emissions Petitioner identifies, but did not use them because they are not "commonly" used or the information "can be difficult to come by." This argument does not establish that Respondent had substantial evidence to support its approval.

The record, including the admissions in the PEIR shows that Respondent had a feasible ability to include the additional GHG data. Respondent compares the data used in this CAP to that used by other agencies. (AR 86; generally AR 84-86.) This is a logical explanation for employing the ICLEI Protocol used, but it does not demonstrate that it was "infeasible" to obtain the additional MVT data, especially given that Respondent acknowledges that the methodologies exist.

Had the EIR explained that it was unable to obtain the necessary information, or that there were no methodologies that it could have used to obtain/include it, Respondent's would have been justified in failing to obtain this data. However, here, Petitioner complains that Respondent appears merely to have avoided including greater, more complete, information based on the assumption that it would be "too much work."

The court grants the petition on this point.

D. MITIGATION MEASURES

Petitioner also argues that Respondent failed to adopt "definite, clearly defined and enforceable" mitigations measures. It contends that at least some of the mitigation measures

and standards it sets forth are unclear, vague, and not fully enforceable. Petitioner points out that the EIR concludes that the CAP would be "beneficial" and would thus support applicable regulatory plans for reducing GHG emissions, so, it contends, no mitigation for GHG emissions is necessary. (AR 204.)

Respondent argues that the CAP is not intended as a mitigation measure. No mitigation is needed because it is a plan to reduce GHG emissions in subsequent projects.

What Petitioner contends is not that the CAP and EIR need to adopt mitigation measures for the CAP itself, but instead that the CAP, in setting forth purported mitigation measures for future analysis and handling of GHG emissions, fails to present sufficient clearly defined and enforceable mitigation measures and standards.

Respondent points out this is not a "project" in the sense of an activity that will do anything that might create GHG emissions but instead is a plan for handling analysis and mitigation of GHG emissions in future projects. Therefore, there is clearly nothing about this Project to mitigate. Petitioner's contention that the PEIR should imposing sufficiently defined and enforceable mitigations measures, is a different issue.

Guideline 15183.5(b)(1)(D) and (E) are instructive. Subdivision (D) states that the plan should "*[s]pecify measures or a group of measures, including performance standards*, that substantial evidence demonstrates, if implemented on a project-by-project basis, would collectively achieve the specified emissions level. Subdivision (E) states that the plan should "[e]stablish a mechanism to monitor the plan's progress toward achieving the level and to require amendment if the plan is not achieving specified levels." (Emphasis added.)

1. Role and Purpose of Mitigation Measures in CEQA

Mitigation measures are needed, even required, where a project may have a significant impact and the purpose of the measures is to reduce any impact to less than significant. (PRC 21003.1(b); Guideline 15002(a)(3).)

2. Deferral of Mitigation

In general, it is improper for an agency to rely on *deferred* mitigation. (*Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 306; *Defend the Bay v. City of Irvine*

(2004) 119 Cal.App.4th 1261, 1275-1276.) An agency cannot find a significant impact to be mitigated to a less-than-significant level based on a deferred mitigation measure. (*Sundstrom v. County of Mendocino, supra,* 202 Cal.App.3d at 306. It is a violation of CEQA when an agency "simply requires a project applicant to obtain a biological report and then comply with any recommendations that may be made in the report. [Citation.]" (*Defend the Bay v. City of Irvine* (2004) 119 Cal.App.4th 1261, 1275; see also *Endangered Habitats League, Inc. v. County of Orange* (2005) 131 Cal.App.4th 777, 793.)

"Deferral of the specifics of mitigation is permissible where the local entity commits itself to mitigation and lists the alternatives to be considered, analyzed and possibly incorporated in the mitigation plan." (*Defend the Bay v. City of Irvine* (2004) 119 Cal.App.4th 1261, 1275-1276; see also *Sacramento Old City Assn. v. City Council* (1991) 229 Cal.App.3d 1011, 1028-1030.) This applies where "mitigation is known to be feasible, but where the practical considerations prohibit devising such measures early," so that "[w]here future action to carry a project forward is contingent on devising means to satisfy such criteria, the agency should be able to rely on its commitment as evidence that significant impacts will in fact be mitigated." (*Sacramento Old City Assn., supra,* 229 Cal.App.3d at 1028-1029.)

Because of the nature of first-tier tier EIRs, in particular, deferral of the specifics of mitigation measures, as long as they contain clear performance standards, is particularly appropriate and logical. (See, e.g., *Rio Vista Farm Bureau Center v. County of Solano* (1st Dist.1992) 5 Cal.App.4th 351 ("*Rio Vista Farm Bureau*"); *Al Larson Boat Shop Inc. v. Bd. of Harbor Commissioners, supra,* 18 Cal.App.4th 729.) In *Rio Vista Farm Bureau*, a first-tier "program EIR" serving as "primary planning document for hazardous waste management in the county" was found to contain sufficient mitigation measures adopted as policies to guide subsequent projects. The court rejected a challenge based on the assertion that the mitigation measures were "vague, inconclusive, and even inconsistent," finding the measures sufficient "given the broad, nebulous scope of the project under evaluation." (*Rio Vista Farm Bureau, supra,* 5 Cal.App.4th at 376.) The court found that the specificity of mitigation measures

should be proportionate to the specificity of the underlying project, which in that case was a broad planning document to guide later site-specific projects.

The court in *Coastal Hills Rural Preservation v. County of Sonoma* (2016) 2 Cal.App.5th 1234, 1258, upholding the trial court's order denying a CEQA petition for writ of mandate, explained that although "CEQA usually requires mitigation measures to be defined in advance" and not deferred, "deferral [of mitigation measures] is permitted if, in addition to demonstrating some need for deferral, the agency (1) commits itself to mitigation; and (2) spells out, in its environmental impact report, the possible mitigation options that would meet "specific performance criteria" contained in the report."

In *Sundstrom, supra*, the county required future hydrological studies as conditions of a use permit and required that any mitigation measures that the study suggested would become mandatory. This was held to be improper because the impacts and mitigation measures were not determined.

The court in *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359 found an Negative Declaration defective because it improperly relied on deferred formulation of specific mitigation measures. There, the city required the applicant to comply with any existing ordinance protecting the Stephens' kangaroo rat and allowed the city to require a biological report on the rat and compliance with any recommendations in the report. The court found this to be insufficient because it, like the approval in *Sundstrom*, was based on compliance with a report that had not yet even been performed.

By contrast, the court in *Schaeffer Land Trust v. San Jose City Council* (1989) 215 Cal.App.3d 612, upheld an Negative Declaration for a general plan amendment for a parcel of land which, regarding traffic issues, required any future development to comply with applicable "level of service" standards. Unlike the other cases mentioned above, here the mitigation measures were delayed because the development and impacts were not concrete, but the mitigation was fixed to set standards which, by definition, ensured that there would be no significant impact. Mitigation with deferred specifics was found to satisfy CEQA where the lead agency had committed to mitigation meeting a specified range of criteria and project

approval required the developer to obtain permits and adopt seven itemized measures in coordination and consultation with relevant agencies. *Defend the Bay, supra,* 1276.

In *Endangered Habitats League, Inc. v. County of Orange* (2005) 131 Cal.App.4th 777, 794, the court found a mitigation measure that required replacement habitat preservation to satisfy CEQA even though the specifics were not fully determined but where the approval set forth *specific possibilities and parameters that the mitigation needed to meet.*

3. The Role of the CAP in Subsequent GHG Analysis

The key issue here in determining the sufficiency of mitigation measures is the role this CAP is intended to play in s GHG analysis of future projects. As noted above, one aspect of first-tier plans and EIRs is that they may obviate the need for later projects falling within their ambit to conduct new CEQA review on certain issues where the future projects comply with the first-tier plan. Any later discretionary project that complies with its criteria, such as the standards and requirements it imposes, would not need to do further study of GAG emissions. Accordingly, the standards and requirements the CAP imposes for reducing or minimizing GHG emissions must be considered mitigation measures for purposes of CEQA and must comply with the CEQA requirements. This means that they must set forth clearly defined and enforceable performance standards to be met. Because of the intended streamlining, Petitioner correctly contends that the performance standards and measures set forth the PEIR must be clear, definite, and enforceable.

Here also, Respondent contends that Petitioner is imposing requirements and standards that do not exist in Guideline 15183.5. Respondent ignores the fundamental CEQA requirements which underlie Petitioner's claims. Respondent contends that Guideline 15183.5 does not require mitigation measures for the CAP or within the CAP imposed on future projects. This position not only conflicts with 15183.5 itself, it is fundamentally contrary to the principles of CEQA review.

It is axiomatic in CEQA that any measures or requirements imposed be sufficiently defined to be enforceable and that, in the context of tiering, any subsequent project may avoid analysis of an issue only if it complies with a first-tier document that satisfies CEQA

requirements. As noted above, PRC 21094(a) states that where a prior first-tier EIR has been certified and applies to a subsequent project, the agency "*need not examine those effects which ... were either (1) mitigated or avoided...* as a result of the prior [EIR] *or (2) examined at a sufficient level of detail in the prior [EIR] to enable those effects to be mitigated or avoided by site specific revisions, the imposition of conditions, or by other means....*" Accordingly, to obviate the need to address an issue or impact as part of a later project's CEQA review, a first-tier plan or program document and EIR must sufficiently analyze that issue or impact to determine that compliance with the document and its mitigations will mitigate or avoid the impact. The mitigation requirements in a first-tier document for avoiding or mitigating the impact *must* include performance standards that are mandatory and include specific, and effectively enforceable performance standards. (*Coastal Hills Rural Preservation v. County of Sonoma* (2016) 2 Cal.App.5th 1234, 1258.)

The prior discussion of Guideline 15183.5 addresses the impact of tiering mechanisms. Again, the CAP, and any such plan prepared under 15183.5, must meet the requirements for all first-tier documents and thus must impose effectively enforceable requirements and measures with defied performance standards.

Further, Guideline 15183.5 *does require the CAP to impose mitigation measures* on future projects. As both Respondent and the CAP itself acknowledge, and as noted above, subdivision (b) expressly states that "a lead agency may determine that a project's incremental contribution to a cumulative effect is not cumulatively considerable *if* the project complies with *the requirements* in a previously *adopted plan or mitigation program* under specified circumstances." This plan or mitigation program, i.e., the CAP, according to (b)(2), "*may* be used in the cumulative impacts analysis of later projects" which clearly means that it need not. However, (b)(2) continues to state that *if it is* so used for a later project, that project must comply with the requirements and mitigation measures from the CAP. Once again, in the Guideline's words, a later project that in fact "relies on [the CAP] for a cumulative impacts analysis *must* identify those *requirements specified in the plan* that apply to the project, and, *if*

those requirements are not otherwise binding and enforceable, incorporate those requirements as mitigation measures...."

In countering Petitioner's complaint that some of the so-called measures or standards are too vague or loose or ill-defined to be properly enforceable, Respondent asserts that this will be "cured" because Guideline 15183.5(b)(2) states that any requirements that are not "binding and enforceable" will be incorporated as mitigation measures in the project's CEQA document. This "interpretation" does not withstand scrutiny. As explained above, a first-tier document, in order to be used to avoid revisiting analysis of an issue in a later project, must have sufficiently analyzed the issue and found any significant impact to be mitigated or avoided by complying with the document. That means that any requirement, such as mitigation, must have sufficiently defined, clear, and mandatory performance standards to be effectively enforceable and to have predictable results. If the requirements or measures are so ill-defined as to be unenforceable as a practical matter, and effectively meaningless, merely "incorporating" them into the later project's CEQA document will obviously not fix that problem. What the state in the Guideline must mean, therefore, is not that an ineffective measure may simply be incorporated into a later project's document, as Respondent asserts, but that a measure or requirement must be incorporated in the document *if it is not enforced independently, or through some other mechanism.*

4. The Measures in the CAP

The CAP sets forth requirements and standards or mitigation measures at AR 1015-1048.

Respondent primarily argues that under Guideline 15183.5(b)(2), any measure which the CAP imposes and which is "not otherwise binding and enforceable" must be incorporated into future projects. As addressed above, this argument is not meritorious. Guideline 15183.5(b)(2) expressly requires that:

"*An environmental document that relies on a greenhouse gas reduction plan for a cumulative impacts analysis must identify those requirements specified in the plan that apply to the project, and, if those requirements are not otherwise binding and*

enforceable, incorporate those requirements as mitigation measures applicable to the project. *If there is substantial evidence that the effects* of a particular project *may be cumulatively considerable notwithstanding the project's compliance with the specified requirements in the plan* for the reduction of greenhouse gas emissions, *an EIR must be prepared* for the project.

(emphasis added.)

Petitioner singles out three of the specific measures or requirements in the CAP for discussion as demonstrating a lack of meaningful enforceability and clear standards.

a) 5-R4 (AR 1026)

The first is 5-R4 (AR 1026.) This "trip-reduction ordinance" requires employers with 50+ employees to offer one of several options to employees in order to reduce GHG emissions: "pre-tax transit expenses, transit or vanpool subsidy, free or low cost shuttle, *or an alternative benefit*." (Emphasis added.) It is the latter to which Petitioner objects, arguing that it is vague and undefined either in what it must be like or what it must achieve, so that there is no way to enforce this. As a result, Petitioner contends, a project could offer as "alternative benefit" which no-one can at this point predict, and argue that it need not do GHG analysis because it has "complied" with this measure. Respondent contends that an alternative of purchasing GHG offsets is considered and this is correct but this is not the definition of "an alternative benefit," which is left open and could be anything. Petitioner is correct on this point.

Respondent contended that Petitioner failed to exhaust administrative remedies on this specific issue.

According to PRC section 21177, "[a] person shall not maintain an action or proceeding unless that person objected to the approval of the project orally or in writing during the public comment period provided by this division or prior to the close of the public hearing on the project before the filing of the notice of determination." This does not, however, bar an association or organization formed after approval from raising a challenge which one of its constituent members had raised, directly or by agreeing with or supporting

another's comments. (PRC section 21177(c).) Moreover, someone may file a legal challenge based on an issue as long as "any person" raised that issue during the review process. PRC section 21177(a); see *Friends of Mammoth v. Board of Supervisors* (1972) 8 Cal.3d 247, 267-268. It also does not apply to any grounds of which the agency did not give required notice and for which there was no hearing or opportunity to be heard. PRC section 21177(e).

A party challenging decision under CEQA cannot, to exhaust administrative remedies, rely merely on "general objections" or "unelaborated comments." *Sierra Club v. City of Orange* (2008) 163 Cal.App.4th 523, 535; *Coalition for Student Action v. City of Fullerton* (1984) 153 Cal.App.3d 1194, 1197. However, "[l]ess specificity is required to preserve an issue for appeal in an administrative proceeding than in a judicial proceeding...." *Citizens Association for Sensible Development of Bishop Area v. County of Inyo* (1985) 172 Cal.App.3d 151, 163.

Petitioner responds that only the substance of the issue must be raised at the administrative level, relying on *Save Our Residential Environment v. City of West Hollywood* (1992) (Cal.App.4th 1745, 1750.) And further that less specificity is required to exhaust an issue in an administrative proceeding that in a judicial one, relying on *Woodword park Homeowners Assn. v. City of Fresno* (2007) 150 Cal.appp.4th 683, 712 and *Brothers Real Estate Group v. City of Los Angeles* (2008) 153 Cal.App.4th 1385, 1395. The court finds that Petitioner did articulate this as a basic contention in the underlying administrative proceedings. (AR 66 and AR 67.)

b) 4-L-1 (AR 1024)

Petitioner's attack 4-L-1, at AR 1024, which requires consistency with applicable "adopted policies" on mixed-use and transit-oriented development, such as zoning codes, general plans, etc., and states that agencies must "support mixed use [sic] development in city-centers and transit-oriented development locations through their General Plans, etc." is not persuasive. Petitioner contends that this is too vague because "mixed-use" has been interpreted to allow hotels and tourist destinations built downtown or near rail stations. Petitioner focuses on one portion of this requirement that is open-ended. Nothing indicates

that the type of use that could be allowed in a mixed-use development, whether store, museum, eatery, office, or hotel, has any bearing on GHG emissions. Petitioner cites no evidence or explanation in support of this claim and does not explain how this is material. What matters is that there are clear, adopted standards mandating such development and Petitioner does not challenge that portion of the measure at all.

It is possible that the measure could be found too vague and Petitioner may be challenging it on that basis as well. Petitioner refers to it when mentioning how an "undefined alterative... lacks the required specificity" and Petitioner again mentions it on the following page with reference to "tentative plans" for future mitigation in ill-defined subsequent regulation to be adopted. This, merely requires each jurisdiction to "identify such appropriate areas and include unspecified policies and incentives to encourage development near high-quality transit service." It requires the jurisdiction to define requirements and identify potential incentives, giving a list of the types that these "may include," the last being "other related items." Again, this does not give any clear performance standards regarding how to achieve this or what the parameters are. As Petitioner argues, for the third measure, the court in *Communities for a Better Environment v. City of Richmond,* 184 Cal.App.4th 70, 92, found a measure insufficiently specific where it required reduction of mobile emission sources though "transportation smart" development because "reliance on tentative plans for future mitigation... significantly undermines CEQA's goals of full disclosure and informed decision making." Under this analysis, this measure is also defective.

c) 2-L-1 (AR 1021)

Lastly, Petitioner argues that 2-L-1, at AR 1021, is defective. This measure mandates that the project "comply with local requirement(s) for rooftop solar PV on new residential development. It states that each jurisdiction "will define which new development must provide rooftop solar [PV] by defining qualifying criteria... and the amount of solar required...." As Petitioner argues, this sets no standards at all, just like 4-L-1, but instead merely general principles and future possibilities. This violates CEQA.

Petitioner further argues that the measures in general do not guarantee any likelihood of implementation. This is clear from the ones discussed above. Petitioner cites 1-R2 as another example. It states that two named agencies "will work with the participating communities to implement energy efficient retrofits. Actions may include: Implementing a... weatherization program, expanding energy efficiency outreach/education campaigns..., promoting the smart grid," etc. Again, none of this goes beyond stating wishful thinking, good intentions, and an intent to "work" with others. Measures that fall into this category violate CEQA as well.

Petitioner also generally attacks the measures as lacking meaningful enforceability. Petitioner also contends that of all of them, only 1-S1 and 1-S2 are actually enforceable because they govern building energy and lighting efficiency, both controlled by state regulation. The court finds a few others in addition to 1-S1 and 1-S2 to be similarly enforceable. These include 1-L1, based on Windsor's building code, 1-L2, requiring LED lights in new development.

Aside from those few, Petitioner is correct that most are not enforceable, either because they are too vague and lacking in meaningful mandatory requirements such as those already discussed, which only "require" some "alternative" that is not specified or governed by set parameters. Others, such as 1-L3 through2-L2, state mitigation measures but then state that these are "voluntary," or "encouraged," or only necessary where "applicable" based on circumstances or criteria that are not defined. Others again rely on other jurisdictions such as the cities creating applicable requirements that in some unspecified manner promote the stated, vague, open-ended policies that lack any parameters or requirements. These are too numerous to list them all here but this general characteristic dominates almost all of the measures from what I have read.

Accordingly, the court grants the petition with respect to mitigation. Because the record does not provide adequate information about extraterritorial emissions the agency and the public could not and the court cannot determine whether the CAP would achieve its stated goal to reduce GAG impacts to pre-1990 levels by 2020.

E. ALTERNATIVES

Petitioner asserts that Respondent violated CEQA by adopting as the "environmentally superior alternative" the Zero Net Energy Buildings Alternative because it fails to address GHG emissions from transportation while Respondent declined to evaluate an alternative with a moratorium on, or significant reduction of, new or expanded vineyards, wineries and tourist destinations. (AR 94; 426-427.)

Respondent contends that the analysis is sufficient because Petitioner believes that reducing or stopping growth, and in particular growth that involves travel of people and goods to and from the county, is necessary, and Petitioner cannot impose such mandates on R; Respondent considered a range of alternatives; and choosing the moratorium alternative would require the court to "dramatically substitute" its judgment for Respondent's.

CEQA requires all EIRs to consider alternatives to the project. (*Friends of the Old Trees v. Dept. of Forestry & Fire Protection* (1st Dist.1997) 52 Cal.App.4th 1383, 1393-1395 (*Friends of Old Trees*).)

1. Importance and Central Role of Alternatives Analysis

PRC section 21002 states that "it is the policy of the state that public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental effects...." An agency may not approve a project that will result in significant impacts *unless it first finds that mitigation measures or alternatives are infeasible*. (PRC section 21081; Guidelines 15091, 15093.)

The Supreme Court decided that considering alternatives is one of the most important functions of an EIR. (*Wildlife Alive v. Chickering* (1976) 18 Cal.3d 190, 197.) In fact, "[t]he core of the EIR is the mitigation and alternatives sections." (*Citizens of Goleta Valley v. Bd. of Supervisors* (1990) 52 Cal.3d 553, 564, 566 (*Goleta II*).)

Without evidence regarding why the alternatives are insufficient to meet the project or CEQA goals, meaningful analysis is impossible. An EIR must "explain in meaningful detail the reasons and facts supporting [the] conclusion." (*Marin Municipal Water Dist. v. KG Land*

Corp. California (1991) 235 Cal.App.3d 1652, 1664.) Failure to provide sufficient analysis or alternatives makes it impossible for the court to "intelligently examine the validity of the... action." (*Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 513-514, 522.)

The alternatives must be discussed in the EIR itself, provided for public review, and subject to analysis, and the agency cannot cure defects by providing analysis in its official response. (See *Friends of the Old Trees, supra*, 52 Cal.App.4th at 1403-1405.)

2. Authority on Analyzing Alternatives and Feasibility

The discussion should evaluate the relative merits of each alternative 14 CCR §15126.6(a). Respondents need not analyze or adopt alternatives that are not feasible. 14 CCR ' 15126.6(c), (f); *Citizens of Goleta Valley v. Bd. of Supervisors* (1990) 52 Cal.3d 553, 564, 566 (*Goleta II*). However, the document *must* consider alternatives that *are* feasible. *EPIC v. Johnson* (1985) 170 Cal.App.3d 604, 610; *Friends of the Old Trees, supra*, 52 Cal.App.4th 1404.

Ultimately, determining if alternatives are suitable involves a three-part test governed by the "rule of reason" as set forth in Guideline 15126.6. (See *Citizens of Goleta Valley v. Bd. of Supervisors* (1990) 52 Cal.3d 553, 564, 566 (*Goleta II*); *Save San Francisco Bay Association v. San Francisco Bay Conservation and Development Commission* (1992) 10 Cal.App.4th 908, 919.) The analysis must consider alternatives that 1) may "attain most of the basic objectives of the project," 2) reduce or avoid the project's impacts, and 3) are "potentially feasible." (Guideline 15126.6(a), (f).)

The analysis of alternatives is required to set forth facts and "*meaningful* analysis" of these alternatives rather than "'just the agency's bare conclusions or opinions.'" (*Laurel Heights I, supra*, 47 Cal.3d 376, 404-405; *Goleta II, supra*, 52 Cal.3d 569; *Preservation Action Council v. City of San Jose* (2006) 141 Cal.App.4th 1336, 1353.) All analysis must include "detail sufficient to enable those who did not participate... to understand and to consider meaningfully" the alternatives. (*Laurel Heights I, supra*, 404-405.)

As notes above, "feasible" means able to be "accomplished in a successful manner within a reasonable period... taking into account economic, environmental, social, and technological factors." (PRC section 21061.1.)

When the agency determines that alternatives are infeasible, it "shall describe the specific reasons for rejecting identified...project alternatives." (Guideline 15091(a), (c).) The analysis of alternatives is required to set forth facts and "*meaningful* analysis" of these alternatives rather than "'just the agency's bare conclusions or opinions.'" (*Laurel Heights I, supra*, 47 Cal.3d 376, 404-405; *Goleta II, supra*, 52 Cal.3d 569; *Preservation Action Council v. City of San Jose* (2006) 141 Cal.App.4th 1336, 1353.) All analysis must include "detail sufficient to enable those who did not participate... to understand and to consider meaningfully" the alternatives. (*Laurel Heights I, supra*, 404-405.)

The agency must make findings identifying specific considerations making an alternative infeasible and the specific benefits of the Project that outweigh the relative harm. (PRC § 21002.1(b), 21081, Guideline 15092(b); *Preservation Action Council, supra*, 1353.)

On the other hand, as usual, the requirement is one of reasonableness and a "crystal ball" inquiry is not necessary. (*Residents Ad Hoc Stadium Committee v. Bd. of Trustees* (3d Dist.1979) 89 Cal.App.3d 272, 286.) The key, as with most aspects of an EIR is that the agency must provide enough information about the analytical path taken to allow the court to "intelligently examine the validity of the administrative action." (*Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 513-514, 522.) However, no "ironclad rule" other than the "rule of reason" governs the decision. (Guideline 15126.6(a).)

An agency cannot find an alternative infeasible simply because the developer does not want to do it. (*Uphold Our Heritage v. Town of Woodside* (2007) 147 Cal.App.4th 587, 601.) In fact, the analysis must include alternatives that are reasonable "even if they substantially impede the project or are more costly." (*San Bernardino Valley Audubon Society v. County of San Bernardino* (1984) 155 Cal.App.3d 738, 750; see also *Preservation Action Council v. City of San Jose* (2006) 141 Cal.App.4th 1336.)

An EIR or decision thereon also cannot merely state that an alternative is infeasible simply because it is too expensive or will not lead to sufficient return without providing supporting analysis. (*Preservation Action Council v. City of San Jose* (2006) 141 Cal.App.4th 1336.) "The fact that an alternative may be more expensive or less profitable is not sufficient to show that the alternative is financially infeasible. What is required is evidence that the *additional costs or lost profitability* are sufficiently *severe as to render it impractical* to proceed with the project." (*Citizens of Goleta Valley v. Board of Supervisors* (1988) 197 Cal.App.3d 1167, 1181; *Uphold Our Heritage, supra*, 599; (emphasis added).)

An alternative should be capable of "substantially lessening" adverse impacts but it need only have fewer impacts and it need not be impact free. PRC 21002; Guideline 15126.6(a); *Citizens of Goleta Valley v. Board of Supervisors (Goleta II)* (1990) 52 Cal.3d 553, 566.

3. Reasonable Range

An EIR must describe a reasonable range of alternatives to the proposed project or its location that would feasibly achieve most of the project's objectives, while reducing or avoiding any of its significant effects. (Guideline 15126.6(a), (d).)

The EIR "shall focus on alternatives... which are capable of avoiding or substantially lessening any significant effects of the project, even if these alternatives would impede to some degree the attainment of the project objective, or would be more costly." (Guideline 15126.6(b).)

The EIR must set forth the alternatives necessary to permit a reasoned choice and in a manner that will allow "meaningful evaluation." (Guideline 15126.6(a), (d), (f); *Goleta II;* see also *Laurel Heights I, supra*; see also *San Bernardino Valley Audubon Soc., Inc. v. County of San Bernardino* (1984) 155 Cal.App.3d 738, 750-751 (the detail must allow a reasonable choice "so far as environmental aspects are concerned.").)

If an EIR excludes certain alternatives, it should identify the alternatives and set forth the reasons. (*Goleta II, supra,* 569; Guideline 15126.6(b).) The court in determining if the

EIR included a reasonable range of alternatives may consider the entire record to determine if alternatives were properly excluded from consideration. (*Goleta II, supra*, 569.)

Alternatives that would eliminate or reduce significant environmental impacts *must* be considered even if they would cost more or "to some degree" impede attainment of the project's objectives. (Guideline 15126.6(b).)

4. Detail of Relevant Decisions on the Adequacy of Alternatives

In *Friends of the Old Trees, supra*, 52 Cal.App.4th 1383, an extreme case, there was no discussion of alternatives in the versions submitted for public review. The agency argued that the fact it considered mitigation should suffice, while the real party marked a box selecting a certain method of cutting. The court also noted that the *public* brought forth "the only true alternatives," and that these were discussed only after the document was approved. (*Friends of the Old Trees, supra,* 52 Cal.App.4th 1405.) The court found the discussion inadequate. (*Id.*, 1403-1405.)

In *Citizens of Goleta Valley v. Board of Supervisors (Goleta I),* (1988) 197 Cal.App.3d 1167, the EIR considered a smaller hotel to be an economically infeasible alternative to the proposed hotel at issue. Because the EIR lacked *evidence* that the smaller hotel was economically infeasible, the court considered it error to deny the writ of mandate. The court found that although the EIR contained estimated figures of costs, the record did not reveal any *evidence* which *analyzed* the alternative in terms of comparative costs, comparative profits or losses, or comparative economic benefit to the project proponent, residents, or the community at large. (*Id.*, 1180.)

The court in *Uphold Our Heritage v. Town of Woodside* (2007) 147 Cal.App.4th 587, at 599, addressed a project to demolish an historic mansion in order to construct a new, smaller single-family residence. The court found that evidence that alternatives of historic rehabilitation or rehabilitation with a new addition, would cost between $4.9 million and $10 million was not substantial evidence that alternatives were not economically feasible since there was no evidence of the likely cost of a proposed replacement home or average cost of

building the proposed 6,000 square foot home in the city. It also found that whether the developer wanted to do the alternative was irrelevant to determining if it is not feasible.

San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus (Arambel and Rose Development, Inc.) (1994) 27 Cal.App.4th 713, also dealt with alternatives analysis. The court found, in the context of a proposed housing development, that the discussion of housing density alternatives was inadequate. The DEIR stated that a lower density would "lessen the impacts," but failed to identify which impacts it meant or to what degree. The court ruled that " [s]uch a bare conclusion without an explanation of its factual and analytical basis is insufficient." *Id.*, at 736. The court went on to state:

> That lower density might not be "economically feasible," is not sufficient justification for the failure to give basic information as to density alternatives which were considered and rejected. Contrary to [respondent's] argument, [petitioners] are not required to show there are reasonable alternatives. *It is the project proponent's responsibility to provide an adequate discussion of alternatives....* If the project proponent concludes there are no feasible alternatives, it must explain in *meaningful detail* in the EIR the basis for that conclusion. Thus, even if alternatives are rejected, an EIR *must explain why* each suggested alternative either does not satisfy the goals of the proposed project, does not offer substantial environmental advantages or cannot be accomplished.

Id., at 737 (emphasis added).

5. Whether Feasibility Finding Is Necessary

As noted above, PRC sections 21002, 21081, and Guidelines 15091, 15093 together forbid approval of a project that *will result in significant impacts without first finding that any environmentally superior alternatives are infeasible*. Petitioner argues that Respondent failed to consider an alternative that is environmentally superior.

6. The Alternatives Analysis for the CAP

The alternatives analysis is at AR 425-438. The PEIR explains that it developed and analyzed only *one* other alternative, the Carbon Offset Alternative, in addition to the chosen Zero Net Energy Buildings plan and the mandatory no-project alternative. It expressly rejected a growth moratorium, reduced density, greater density, increased Sonoma Clean Power, expanded transit service, 1990 Levels by 2020 (AB32), and 80% Below 1990 Levels by 2020.

The real issue here is whether the Respondent, in rejecting formulating other alternatives, has considered a reasonable range, as required, and whether Respondent has provided sufficient explanation of infeasibility or other reasoning to support not considering other proposed alternatives.

Respondent's analysis is insufficient. Respondent considered almost no range at all, and only one other alternative that essentially is one that does nothing other than to authorize Respondent to buy GHG offsets for all GHG impacts from projects. Although Respondent argues to the contrary, this alternative seems both infeasible and at the same time would not actually do anything to control or limit actual GHG production. As an alternative, this appears to be one of form, but not of substance.

By contrast, the moratorium or reduced-development alternative which Petitioner proposes, and which was presented to Respondent in public comments (see, e.g., AR 93-94, response to comment) along with others noted but rejected without being developed, include real solutions that differ significantly from the chosen CAP. At least some, like the moratorium or growth limit, also address issues of GHG production from travel. While it is logical that some may be infeasible or incompatible with goals of growth, this is not alone, without explanation or support, a basis for not even considering those alternatives, or modified versions. For example, Respondent noted a moratorium on growth of wineries or housing "until the jobs-housing balance in the County is more equitable," but this does not even address the issues of Petitioner's proposed moratorium, it is arbitrarily limited, and it does not even seem to make much sense. There is no evidence or explanation for what it

would be or why Respondent could not consider a similar, but different one, such as Petitioner proposed. That is the purpose of actually developing and considering alternatives. Given that there are available alternatives that differ drastically from what Respondent has considered and given that Respondent has, in effect, considered only one other option that is perhaps only nominally an alternative, this analysis fails to consider a reasonable range of alternatives, or even any range at all.

The court Grants the petition on this issue.

F. RESPONSE TO PUBLIC COMMENTS

Petitioner next argues that Respondent's response to public comments was insufficient in violation of Guideline 15088(c).

The "evaluation and response to public comments is an essential part of the CEQA process." (Discussion following CEQA Guideline 15088.) The final EIR must include evaluation and responses to all comments received in the public-comment period. PRC section 21091(d)(2)(A). Guideline 15088 governs responses to comments and subdivision (c) governs the substance of such responses. It requires responses to address issues "in detail" and demonstrate "why specific comments and suggestions were not accepted." Most importantly, perhaps, the responses must explain the reasons for rejecting suggestions with a "good faith, reasoned analysis" and must not rely on "[c]onclusory statements unsupported by factual information." Guideline 15088(c).

1. Exhaustion of Administrative Remedies

Respondent first contends that Petitioner failed to exhaust administrative remedies on this issue. The court has found, above, that Petitioner exhausted its administrative remedies.

Petitioner's argument here is collateral and not persuasive. Although Petitioner points out that a few responses may not sufficiently resolve issues, that is of little importance in of itself. What matters are the fundamental defects that have not been cured as discussed above: failure to properly determine GHG inventory, or demonstrate that Respondent could not practically have done more or did not need to do more; ill-defined mitigation measures lacking enforceable criteria or parameters; and lack of reasonable range of alternatives.

The court denies the Petition with respect to the comments..

G. WHETHER RESPONDENTS' ERROR WAS PREJUDICIAL

Respondent contends that even if Petitioner demonstrated error, it was not prejudicial. As noted at the outset, in order for the court to issue a writ of mandate, it must find not only error, i.e., a violation of CEQA, but that error was prejudicial. (*Chaparral Greens v. City of Chula Vista* (1996) 50 Cal.App.4th 1134, 1143; *see* PRC 21168, 21168.5, *Laurel Heights I, supra* 47 Cal.3d 392, fn.5; Remy, et al., Guide to the California Environmental Quality Act (10th Ed.1999) Chapter XI(D), p.590.)

Respondent's failure to impose meaningful, effectively enforceable mitigation measures, when presenting compliance with the CAP as a way for future projects to avoid any other GHG analysis, is fundamentally and on its face, prejudicial. The failure to present a reasonable range of alternatives or to properly inventory GHG emissions as required are also on, their face, prejudicial because they prevent informed decision making or public review, the very bases of CEQA. (*Sierra Club v. State Bd. of Forestry* (1994) 7 Cal.4th 1215, 1228-1230, 1235-1237 (failure to put critical information in an environmental document was in of itself a prejudicial abuse of discretion partly because it "frustrated the purpose of the public comment provisions"); *Save Cuyama Valley v. County of Santa Barbara* (2013) 213 Cal.App.4th 1059, at 1073 ("[a]n error is prejudicial when an agency fails to comply with a mandatory CEQA procedure or when a report omits information and thereby precludes informed decision making); *Lighthouse Field Beach Rescue v. City of Santa Cruz* (2005) 131 Cal.App.4th 1170, 1182,; *Schoen v. Dept. of Forestry & Fire Protection* (1997) 58 Cal.App.4th 556, 565 ("We cannot overlook a prejudicial error by surmising that the project would have gone forward anyway.").)

Based on the foregoing,

NOW, THEREFORE,

ORDER

1. The Petition for Mandamus is granted as stated above.

Dated: 7/20/17

By: _____
NANCY CASE SHAFFER
Judge of the Superior Court

END NOTES

[i] (a) "Tiering" refers to using the analysis of general matters contained in a broader EIR (such as one prepared for a general plan or policy statement) with later EIRs and negative declarations on narrower projects; incorporating by reference the general discussions from the broader EIR; and concentrating the later EIR or negative declaration solely on the issues specific to the later project.
(b) Agencies are encouraged to tier the environmental analyses which they prepare for separate but related projects including general plans, zoning changes, and development projects. This approach can eliminate repetitive discussions of the same issues and focus the later EIR or negative declaration on the actual issues ripe for decision at each level of environmental review. Tiering is appropriate when the sequence of analysis is from an EIR prepared for a general plan, policy, or program to an EIR or negative declaration for another plan, policy, or program of lesser scope, or to a site-specific EIR or negative declaration. Tiering does not excuse the lead agency from adequately analyzing reasonably foreseeable significant environmental effects of the project and does not justify deferring such analysis to a later tier EIR or negative declaration. However, the level of detail contained in a first tier EIR need not be greater than that of the program, plan, policy, or ordinance being analyzed.
(c) Where a lead agency is using the tiering process in connection with an EIR for a large-scale planning approval, such as a general plan or component thereof (e.g., an area plan or community plan), the development of detailed, site-specific information may not be feasible but can be deferred, in many instances, until such time as the lead agency prepares a future environmental document in connection with a project of a more limited geographical scale, as long as deferral does not prevent adequate identification of significant effects of the planning approval at hand.
(d) Where an EIR has been prepared and certified for a program, plan, policy, or ordinance consistent with the requirements of this section, any lead agency for a later project pursuant to or consistent with the program, plan, policy, or ordinance should limit the EIR or negative declaration on the later project to effects which:
(1) Were not examined as significant effects on the environment in the prior EIR; or
(2) Are susceptible to substantial reduction or avoidance by the choice of specific revisions in the project, by the imposition of conditions, or other means.
(e) Tiering under this section shall be limited to situations where the project is consistent with the general plan and zoning of the city or county in which the project is located, except that a project requiring a rezone to achieve or maintain conformity with a general plan may be subject to tiering.

(f) A later EIR shall be required when the initial study or other analysis finds that the later project may cause significant effects on the environment that were not adequately addressed in the prior EIR. A negative declaration shall be required when the provisions of Section 15070 are met.
(1) Where a lead agency determines that a cumulative effect has been adequately addressed in the prior EIR, that effect is not treated as significant for purposes of the later EIR or negative declaration, and need not be discussed in detail.
(2) When assessing whether there is a new significant cumulative effect, the lead agency shall consider whether the incremental effects of the project would be considerable when viewed in the context of past, present, and probable future projects. At this point, the question is not whether there is a significant cumulative impact, but whether the effects of the project are cumulatively considerable. For a discussion on how to assess whether project impacts are cumulatively considerable, see Section 15064(i).
(3) Significant environmental effects have been "adequately addressed" if the lead agency determines that:
(A) they have been mitigated or avoided as a result of the prior environmental impact report and findings adopted in connection with that prior environmental report; or
(B) they have been examined at a sufficient level of detail in the prior environmental impact report to enable those effects to be mitigated or avoided by site specific revisions, the imposition of conditions, or by other means in connection with the approval of the later project.
(g) When tiering is used, the later EIRs or negative declarations shall refer to the prior EIR and state where a copy of the prior EIR may be examined. The later EIR or negative declaration should state that the lead agency is using the tiering concept and that it is being tiered with the earlier EIR.
(h) There are various types of EIRs that may be used in a tiering situation. These include, but are not limited to, the following:
(1) General plan EIR (Section 15166).
(2) Staged EIR (Section 15167).
(3) Program EIR (Section 15168).
(4) Master EIR (Section 15175).
(5) Multiple-family residential development/residential and commercial or retail mixed-use development (Section 15179.5).
(6) Redevelopment project (Section 15180).
(7) Projects consistent with community plan, general plan, or zoning (Section 15183).

One specific example of a first-tier EIR is a "program" EIR as set forth in Guideline 15168. This details the nature and requirements and uses of such a first-tier EIR, in a manner similar to that set forth in 15152, and gives another good picture of how they are to be used and what they must do to be so used in compliance with CEQA. It states, in full,

(a) General. A program EIR is an EIR which may be prepared on a series of actions that can be characterized as one large project and are related either:

(1) Geographically,

(2) As logical parts in the chain of contemplated actions,

(3) In connection with issuance of rules, regulations, plans, or other general criteria to govern the conduct of a continuing program, or

(4) As individual activities carried out under the same authorizing statutory or regulatory authority and having generally similar environmental effects which can be mitigated in similar ways.

(b) Advantages. Use of a program EIR can provide the following advantages. The program EIR can:

(1) Provide an occasion for a more exhaustive consideration of effects and alternatives than would be practical in an EIR on an individual action,

(2) Ensure consideration of cumulative impacts that might be slighted in a case-by-case analysis,

(3) Avoid duplicative reconsideration of basic policy considerations,

(4) Allow the lead agency to consider broad policy alternatives and program wide mitigation measures at an early time when the agency has greater flexibility to deal with basic problems or cumulative impacts,

(5) Allow reduction in paperwork.

(c) Use With Later Activities. Subsequent activities in the program must be examined in the light of the program EIR to determine whether an additional environmental document must be prepared.

(1) If a later activity would have effects that were not examined in the program EIR, a new initial study would need to be prepared leading to either an EIR or a negative declaration.

(2) If the agency finds that pursuant to Section 15162, no new effects could occur or no new mitigation measures would be required, the agency can approve the activity as being within the scope of the project covered by the program EIR, and no new environmental document would be required.

(3) An agency shall incorporate feasible mitigation measures and alternatives developed in the program EIR into subsequent actions in the program.

(4) Where the subsequent activities involve site specific operations, the agency should use a written checklist or similar device to document the evaluation of the site and the activity to determine whether the environmental effects of the operation were covered in the program EIR.

(5) A program EIR will be most helpful in dealing with subsequent activities if it deals with the effects of the program as specifically and comprehensively as possible. With a good and detailed analysis of the program, many subsequent activities could be found to be within the scope of the project described in the program EIR, and no further environmental documents would be required.

(d) Use With Subsequent EIRS and Negative Declarations. A program EIR can be used to simplify the task of preparing environmental documents on later parts of the program. The program EIR can:

(1) Provide the basis in an initial study for determining whether the later activity may have any significant effects.

(2) Be incorporated by reference to deal with regional influences, secondary effects, cumulative impacts, broad alternatives, and other factors that apply to the program as a whole.

(3) Focus an EIR on a subsequent project to permit discussion solely of new effects which had not been considered before.

(e) Notice With Later Activities. When a law other than CEQA requires public notice when the agency later proposes to carry out or approve an activity within the program and to

rely on the program EIR for CEQA compliance, the notice for the activity shall include a statement that:

(1) This activity is within the scope of the program approved earlier, and

(2) The program EIR adequately describes the activity for the purposes of CEQA.

[ii] (a) Lead agencies may analyze and mitigate the significant effects of greenhouse gas emissions at a programmatic level, such as in a general plan, a long range development plan, or a separate plan to reduce greenhouse gas emissions. Later project-specific environmental documents may tier from and/or incorporate by reference that existing programmatic review. Project-specific environmental documents may rely on an EIR containing a programmatic analysis of greenhouse gas emissions as provided in section 15152 (tiering), 15167 (staged EIRs) 15168 (program EIRs), 15175-15179.5 (Master EIRs), 15182 (EIRs Prepared for Specific Plans), and 15183 (EIRs Prepared for General Plans, Community Plans, or Zoning). (b) Plans for the Reduction of Greenhouse Gas Emissions. Public agencies may *choose to analyze and mitigate significant greenhouse gas emissions in a plan for the reduction of greenhouse gas emissions or similar document.* A plan to reduce greenhouse gas emissions may be used in a cumulative impacts analysis as set forth below. Pursuant to sections 15064(h)(3) and 15130(d), a lead agency may determine that a project's incremental contribution to a cumulative effect is not cumulatively considerable if the project complies with the requirements in a previously adopted plan or mitigation program under specified circumstances.

(1) *Plan Elements. A plan for the reduction of greenhouse gas emissions should:*

(A) Quantify greenhouse gas emissions, both existing and projected over a specified time period, resulting from activities within a defined geographic area;

(B) Establish a level, based on substantial evidence, below which the contribution to greenhouse gas emissions from activities covered by the plan would not be cumulatively considerable;

(C) Identify and analyze the greenhouse gas emissions resulting from specific actions or categories of actions anticipated within the geographic area;

(D) Specify measures or a group of measures, including performance standards, that substantial evidence demonstrates, if implemented on a project-by-project basis, would collectively achieve the specified emissions level;

(E) Establish a mechanism to monitor the plan's progress toward achieving the level and to require amendment if the plan is not achieving specified levels;

(F) Be adopted in a public process following environmental review.

(2) Use with Later Activities. A plan for the reduction of greenhouse gas emissions, once adopted following certification of an EIR or adoption of an environmental document, may be used in the cumulative impacts analysis of later projects. An environmental document that relies on a greenhouse gas reduction plan for a cumulative impacts analysis must identify those requirements specified in the plan that apply to the project, and, if those requirements are not otherwise binding and enforceable, incorporate those requirements as mitigation measures applicable to the project. If there is substantial evidence that the effects of a particular project may be cumulatively considerable notwithstanding the project's compliance with the specified requirements in the plan for the reduction of greenhouse gas emissions, an EIR must be prepared for the project.

(c) Special Situations. As provided in Public Resources Code sections 21155.2 and 21159.28, environmental documents for certain residential and mixed use projects, and transit priority projects, as defined in section 21155, that are consistent with the general use designation, density, building intensity, and applicable policies specified for the project area in an applicable sustainable communities strategy or alternative planning strategy need not analyze global warming impacts resulting from cars and light duty trucks.

A lead agency should consider whether such projects may result in greenhouse gas emissions resulting from other sources, however, consistent with these Guidelines.

SCV259242

PROOF OF SERVICE BY MAIL

I certify that I am an employee of the Superior Court of California, County of Sonoma, and that my business address is 600 Administration Drive, Room 107-J, Santa Rosa, California, 95403; that I am not a party to this case; that I am over the age of 18 years; that I am readily familiar with this office's practice for collection and processing of correspondence for mailing with the United States Postal Service; and that on the date shown below I placed a true copy of Order Granting Petition for Writ of Mandate in an envelope, sealed and addressed as shown below, for collection and mailing at Santa Rosa, California, first class, postage fully prepaid, following ordinary business practices.

Date: July 20, 2017

JOSÉ OCTAVIO GUILLÉN
Court Executive Officer

By: Missy Lemley
Missy Lemley, Deputy Clerk

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