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July 13, 2009

Joyce Horizumi
Department of Review and Assessment
Sacramento County
827 7th Street, Room 220
Sacramento, CA 95814

RE: Comments on Draft Environmental Impact Report for General Plan Update
SCH # 2007082086

Dear Ms. Horizumi:

The Attorney General submits these comments on the Draft Environmental Impact Report (DEIR) for the County's proposed General Plan Update (General Plan).¹ We note at the outset that the County has already taken a number of steps to address climate change in a meaningful way, such as joining various climate protection organizations, conducting an inventory of greenhouse (GHG) emissions and adopting energy conservation and green fleet measures for its facilities and vehicles. Sacramento County also has shown considerable leadership by being among the first jurisdictions in the State to adopt Transit Oriented Districts, which can provide significant reductions in carbon emissions by providing alternative mobility choices to the car.

The County has recognized in its DEIR the very important role that local governments play in the fight against global warming and has stated its intent to take action; unfortunately, this intent is

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

unlikely to be fully realized with the existing documents. Our concerns and questions, as discussed below, relate to (1) proposed land use patterns that will increase vehicle miles traveled (VMT) and related GHG emissions; and (2) the absence of specific proposed General Plan policies and enforceable mitigation measures that could mitigate GHG emissions. According to the DEIR, part of the mitigation for significant impacts related to GHG emissions requires adoption of a Climate Action Plan (CAP).² Our comments below about mitigation are relevant to the CAP as well as proposed mitigation measures in the DEIR and policies in the General Plan.

Land Use Patterns

The CAP acknowledges the County's increase in VMT is outpacing its increase in population: From 1997 to 2005, Sacramento County's population grew by 22.9%, and VMT in the County increased by 27.4 %. (CAP, p. 3.2-2.) The County has identified as the proposed project a General Plan update that puts the County in danger of continuing this increase in VMT. The proposed General Plan expands the area designated for development—the Urban Policy Area (UPA)—by 145,000 units, “nearly double what is necessary to meet projected demand.” (Staff Report, p. 5.) The Staff Report analyzes the potential consequences of prematurely committing more land to urbanization than can be absorbed in the market, including the encouragement of sprawl and contribution to climate change.

We appreciate that both the Staff Report and the DEIR frankly discuss the adverse impacts that could occur from this over-designation. However, CEQA requires that the County not only disclose adverse impacts, but take action to avoid or minimize them. Accordingly, the County should consider more aggressive approaches to curbing this substantial increase than either the Staff Report or the DEIR recommends.

As discussed below, these approaches include: (1) careful consideration of the feasibility of a General Plan alternative that would reduce the area designated for development while increasing density; (2) development phasing so that land is not developed prematurely; and (3) coordination between the County and the cities in its jurisdiction about where future growth should occur. The County's goal should be to ensure that expansion of the UPA does not occur until available infill land (areas in or adjacent to developed areas) has been used to the maximum extent feasible.

² The 25-page Sacramento County Draft Climate Action Plan (Phase 1, May 2009) is set forth in a separate document, available at http://www.climatechange.sacounty.net/coswems/groups/public/@wcm/@pub/@sccc/documents/webcontent/sac_018841.pdf. It appears that to this point, the CAP has been developed on a separate track from the General Plan Update and DEIR.

1. Alternatives

In light of the significant impact the General Plan will have on climate change, it is incumbent on the County to carefully consider whether it should adopt one of the alternatives to the proposed General Plan. CEQA requires public agencies to refrain from approving projects with significant environmental impacts when there are feasible alternatives that can substantially lessen or avoid those impacts. (*Mountain Lion Foundation v. Fish & Game Commission* (1997) 16 Cal.4th 105,134; Pub. Resources Code, § 21002; CEQA Guidelines, §§ 15002, subd. (a)(3), 15021, subd. (a)(2).) The “ cursory rejection ” of a proposed alternative “ does not constitute an adequate assessment of alternatives as required under CEQA ” and it “ fails to provide solid evidence of a meaningful review of the project alternative that would avoid the significant environmental effects identified ” (*Mountain Lion Foundation*, 16 Cal.4th at 136.)

Based on the existing record, there appear to be a number of alternatives to the proposed General Plan which, alone or combined, would significantly reduce GHG emissions generated by VMT. These alternatives include:

- **Mixed Use Alternative:** The Mixed Use Alternative would have a smaller increase in housing and employment than other alternatives, but would still adequately accommodate growth. This alternative would result in the lowest increase in VMT. (DEIR, p. 9-34.) It exhibits the largest share of non-automotive travel (walking, biking, and public transit) (DEIR, p. 9-35) and is considered consistent with the Smart Growth Principles articulated in the Project Description. (See DEIR, p. 3-81.) It also would have the greatest residential accessibility to transit service, as well as the greatest employment accessibility to light rail transit (LRT), bus rapid transit (BRT) and other transit service. (DEIR, p. 9-34.) The Mixed Use Alternative is identified as the environmentally superior alternative (excluding the no project alternative).
- **Grant Line East Alternative:** The Grant Line East Alternative, which would eliminate the 8,000+ acre area referred to as the Grantline East New Growth Area, has the greatest residential accessibility to LRT/BRT. (DEIR, p. 9-34.)
- **City – Urban Centered Alternative:** The DEIR does not disclose or analyze the amount of growth that could be accommodated in a City and Urban Centered Alternative (including vacant legal suburban and rural lots of record in the County). It is reasonable to assume that such an alternative could result in even lower VMT and GHG emissions.

2. Development Phasing Requirements

The Staff Report recommends that the County adopt a phased approach that expands the UPA but limits growth in the next 10 years to an “Urban Development Area” and reserves future growth to an “Urban Reserve.” This approach, according to the Staff, will manage growth effectively while providing the County and developers flexibility and certainty. We agree with the Staff that phasing provides an effective approach to managing the pace and location of growth, but recommend that the County consider some more stringent phasing protections.

As discussed in the Staff Report, the Attorney General’s settlement agreement with the City of Stockton provides for Stockton to phase in new growth in a manner that will not undermine downtown Stockton, and would complement existing commercial and residential zones. Phasing can ensure that land designated for urban development is used efficiently. The agreement, a copy of which is attached to these comments, stipulates that Stockton will locate a specified number of new housing units in infill areas (¶¶ 6.a.,6.b) Stockton will also consider limits on growth outside the city limits until certain criteria are met. (¶ 7.)

Another example of phasing the County could consider is in the Visalia General Plan. Like the County, Visalia’s General Plan includes different “growth boundaries” for the purpose of managing growth. Visalia, however, gives substance to these boundaries by setting specific growth criteria that must be met before development can advance to the next growth area.³ According to the City of Visalia’s Assistant City Manager and Community Development Director, the phasing policy has resulted in orderly concentric growth, efficient use of land and infrastructure and revitalization of the downtown. This type of approach could be paired with the Staff’s recommendation and Mitigation Measure LU-3, which provides criteria for UPA expansion (DEIR, p. 3-43), as well as other prerequisites for expanding growth boundaries (e.g. completion, adoption and incorporation of the Phase II CAP into the General Plan, or meeting or exceeding emissions reduction targets).

These types of phasing approaches, particularly in combination with a lower-carbon alternative, would provide the flexibility and certainty the County needs, while resulting in more compact growth, fewer VMT, and fewer adverse impacts on climate change. The County should review these examples and analyze whether adopting similar phasing measures would be feasible and would further the County’s stated Smart Growth Principles.

³ These criteria include: (1) adequate residential, commercial and industrial capacity for the projected population; (2) inclusion of a 30% vacancy factor (flexibility factor) for residential development and 20% for commercial development [in the growth boundary]; (3) adequacy of infrastructure and other urban services and facilities; and (4) community growth priorities, among other factors.

3. City-County Coordination

Coordination between cities and counties is a critical component of optimizing patterns of growth and reducing greenhouse gas emissions and, therefore, can be a very important climate change-related mitigation measure.⁴ Even though the County does not have jurisdiction over land use inside city limits, the County does have jurisdiction within city spheres of influence and planning areas making coordination between the County and its cities important to ensuring that these areas are developed with climate change in mind. This is particularly important in light of the information in the Draft CAP that shows that Sacramento County and Sacramento County Unincorporated have higher per capita rates of GHG emissions than all the cities in the county (p. 2-10).⁵

There are many instances of County-City collaborations directed at climate change (see, e.g., the Sonoma County Climate Action Plan⁶), at more sustainable patterns of development (see, e.g., Kings County Joint Housing Element⁷), and at revenue sharing (see, e.g., Yolo County's pass through agreements with its cities⁸).

The County General Plan should consider including specific policies to facilitate collaboration with the cities. The General Plan could, for example, include policies to support collaboration and incentives for cities to cooperate. We would be happy to provide the staff with other examples that could serve as models for the County to consider.

⁴ Coordination has other benefits as well, including, but not limited to, revenue sharing from commercial development.

⁵ It is not clear how the County calculated these emission rates. For example, did the County include trips by non-residents to the airport in these figures?

⁶ See <http://coolplan.org/>.

⁷ Kings County and its four cities jointly prepared and adopted the current housing element and are in the process of jointly preparing a housing element update. This collaboration allows the County and its cities to share the cost of the housing element update, and to direct new housing to the best locations in the County, including within its cities. San Mateo County, an urban county like Sacramento County, and its cities are collaborating on their housing element updates by sharing resources, successful strategies and best practices. (See <http://www.21elements.com>.)

⁸ The Yolo County-Davis Pass Through Agreement has provided protection for the City of Davis against disorderly growth in its Sphere of Influence and Planning Area for over a decade. The Agreement requires that Yolo County not approve urban development in the areas surrounding the City. In return, the City has agreed to "pass through" to the County a certain share of the revenue of any development it approves in the area. Yolo County has similar agreements with each of its four cities.

Proposed Mitigation Strategies

We have several questions about the proposed CAP adoption process and timeframes. For example, we are uncertain about the timing of the adoption of the proposed Climate Change Program, which includes a fee on development to fund CAP activities and reduction targets for new development.

We are also uncertain about the County's statement in CC-2 that it intends to adopt, concurrently with the General Plan update, "[r]eduction targets that apply to new development." If by this the County intends to establish carbon efficiency-based thresholds of significance for new development projects as set forth in Table CC-9, the document does not appear to contain substantial evidence to support them. (See CEQA Guidelines, § 15064.7, subd. (b).) For example, the table assumes that in 2020, each sector will retain its current percentage slice of the emissions pie, even as the pie shrinks. In fact, some sectors likely are more amenable to reductions than others. Further, the table assumes that new development need only achieve a sector-specific average carbon efficiency in order for the County to reach its sector-specific emissions target. This assumption runs counter to the likelihood that new development will have to achieve above-average efficiencies for the County to meet its emission targets, given the ongoing contribution of existing development, which is much less efficient. We do not mean to suggest that efficiency-based performance standards for new development cannot be part of a programmatic Climate Action Plan, but only that a lead agency must be able to show that those performance standards, together with all other measures and strategies (including some that may apply to existing development), are likely to achieve the community-wide emissions reduction targets.

The DEIR also states that the County shall adopt a second-phase CAP within one year of adoption of the General Plan update and that this CAP will include "economic analysis and detailed programs and performance measures." Does this mean that the County is committing to adopt a CAP that contains enforceable mitigation measures within a year?

We recognize that it may not be possible for the County immediately to adopt a fully realized Climate Action Plan as described in the Governor's Office of Planning and Research's proposed CEQA Guidelines (see § 15183.5, subd. (b)(1)) and in the Attorney General's Frequently Asked Questions (attached, see p. 6). What the County should do, however, is to (1) commit in the General Plan to adopting by a date certain a CAP with defined attributes (targets, enforceable measures to meet those targets, monitoring and reporting, and mechanisms to revise the CAP as necessary) that will be integrated into the General Plan; (2) incorporate into the General Plan interim policies to ensure that any projects considered before completion of the CAP will not undermine the objectives of the CAP⁹; and (3) for all GHG impacts the County has designated as significant, adopt feasible mitigation measures that can be identified today and that

⁹ See, e.g., Stockton Agreement, ¶ 9.

do not require further analysis. These actions will help the County avoid an argument that it is deferring climate change-related mitigation. (See CEQA Guidelines, § 15126.4, subd. (a)(1)(B).

1. Mining the Phase 1 CAP for Mitigation Strategies

The County should consider taking as many proposed actions out of the Draft CAP as possible, and make them policies of the General Plan so that they may be implemented right away. For example, the County may be able to begin auditing County buildings to determine if they could be upgraded for energy efficiency. The County has already done this with 10 of its buildings. Other actions the County may be able to undertake now include (1) developing a green building policy¹⁰ for leased County buildings; and (2) adopting an energy policy specific to the needs of its various departments responsible for infrastructure (e.g., idling restrictions for construction equipment, and water conservation and efficiency measures during construction).¹¹

The Draft CAP also contains potential actions for water use efficiency that the County should consider putting into the General Plan as policies. These actions include (1) conducting energy and water efficiency audits of water and drainage infrastructure, and implementing necessary conservation measures; (2) auditing and reducing the use of water at County facilities such as parks and golf courses; (3) incorporating water efficiency goals and measures into County green building programs; and (4) advertising and promoting the Energy Star rebate program.

The above are just a few examples of CAP actions that the County could readily incorporate as General Plan policies or mitigation measures. The County should review the CAP and move as many actions as possible from the CAP to the General Plan or DEIR. The County also needs to cross-check all three documents and incorporate relevant policies and measures into the General Plan. This will ensure not only that the documents are complete and consistent, but may also allow future development projects to benefit from the tiering allowed under CEQA.

¹⁰ The County, according to the CAP, is considering adopting a green building ordinance, but has not made a firm commitment to do so. Many jurisdictions have already adopted such ordinances (see <http://ag.ca.gov/globalwarming/greenbuilding.php>). The County should consider whether, at the same time that it adopts the General Plan, it can commit to adopting a mandatory green building ordinance by a date certain. We note that the City of Sacramento has agreed to adopt a green building ordinance by 2012, and we understand that the City and County intend to coordinate their efforts.

¹¹ The DEIR states that the County shall update the Energy Element of the General Plan to include policies on alternative energy production, but does not indicate a timeframe for completing this.

2. Other Potentially Feasible Mitigation

There is a great deal of discussion concerning the importance of reducing VMT in the CAP, General Plan, and DEIR. (See, e.g, the goal to “Reduce total vehicle miles traveled per capita in the community and the region.” CAP, p. 3.2-5.) Therefore, it is important that the DEIR fully explore feasible measures to reduce VMT, including land uses, policies and implementation measures. There are numerous additional measures the County might consider, including more incentives and requirements for accomplishing increased density and mixed use development, and transit-oriented development.

For example, the County could consider adopting a differential fee program that allows infill developments to pay lower fees than developments in outlying or greenfield areas. (See Stockton Agreement, ¶¶ 6.c., 7.c.) The California Air Pollution Control Officers Association (CAPCOA) recently issued a set of model general plan policies for GHG emissions. CAPCOA included several model policies “to provide financial and administrative incentives” to support desirable land uses and transit. (See CAPCOA GHG Model Policies for Greenhouse Gases in General Plans), policies LU 5.1 – 5.1.4, p. 79, available at <http://www/capcoa.org>.) In addition to using differential fees to support transit, the County could also consider requiring new development to be sufficiently dense to support transit and designed to be internally accessible to all modes of transit and transportation. (See Stockton Agreement, ¶¶ 5.b., 5.d..)

The County could also consider additional policies to increase densities. According to the County, subsequent to the adoption of the 1993 General Plan, development densities for specific plans in new growth areas averaged approximately 4.4 residential units per net acre, far below the proposed General Plan density requirement of 6.0 units per acre. As a result, housing to meet population growth now absorbs one-third more land than average under General Plan assumptions. (Inter-Departmental Correspondence for Agenda, October 23, 2002.)

Policy LU-6, for example, states that all residential projects involving more than ten units, excluding remainder lots and Lot A’s, shall not have densities less than 75% of zoned maximums, unless physical or environmental constraints make achieving the minimum densities impossible. We suggest changing the 75% to 100%. The DEIR suggests this change, but only if the Mixed Use Alternative is adopted. It would be desirable to make this change no matter which Alternative is selected. Also, the County should consider adding to the Draft Land Use Element policies that increase minimum densities in the various land use designations, reduce areas designated for low densities, and provide for density transfers to eliminate development from conservation or farmland.

The DEIR lists additional smart growth policies as well as strengthened policies that are part of the Mixed Use Alternative. (DEIR, pp. 3-81 to 3-82.) These policies should be considered regardless of what alternative is adopted.

Finally, if the County has not already done so, it could use the CAPCOA GHG Model Policies as a checklist to determine whether it has considered a reasonably full range of mitigation measures, or whether there are additional measures that could further reduce GHG emissions and foster sustainable development.

3. Ensuring Specific and Enforceable Mitigation

The County must ensure that the proposed mitigation measures, general plan policies, and implementation measures are specific and enforceable. Currently, they fall short.

Many of the policies in the Draft General Plan propose “promoting” instead of “requiring” actions, and state that certain measures “should” be done instead of stating that they “shall” be done. The Circulation Element, for example, includes discussions of the importance of providing a variety of transportation options enabling County residents to replace the private automobile with bicycling, walking and transit. However, numerous policy proposals, as presently worded, are not enforceable and therefore cannot be relied upon to reduce emissions.

The DEIR recognizes that policy wording must be strengthened. The Transportation and Circulation section contains a “smart growth analysis” that concludes by recommending that the County strengthen policies and standards in the proposed General Plan to mitigate the impacts on traffic and air quality “to increase the probability and magnitude of success of smart growth.” (DEIR, p. 9-130.) This recommendation is commendable, but there are many other ways that the General Plan could incorporate smart growth principles, in the form of stronger and additional policies, specific land use changes and alternatives, and implementation measures.

Conclusion

The County should be proud of a number of steps it has taken to combat climate change. It has compiled an emissions inventory and done a thorough analysis of emissions sources. It has also taken progressive steps to reduce its GHG emissions, such as approving flexible County workforce schedules, the SRWTP Cogeneration Facility, and the SCAS Jet Fuel Farm. The County has also stated its intent to fight climate change through better planning, as reflected in its Smart Growth Principles. In their current state, however, the General Plan and DEIR are unlikely to achieve the County’s objectives, and likely will not provide the CEQA streamlining benefits that an adequate and thorough programmatic document can deliver.

Joyce Horizumi
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Consistent with the purposes of CEQA, our comments are intended to assist the County in improving its General Plan and DEIR. We have put together additional information that we would be happy to share with the staff in an informal setting, and look forward to doing anything we can to assist the County in achieving its GHG reduction goals.

Sincerely,

/s/

LISA TRANKLEY
Deputy Attorney General

For EDMUND G. BROWN JR.
Attorney General