



County of San Diego

THOMAS E. MONTGOMERY
COUNTY COUNSEL

OFFICE OF COUNTY COUNSEL
1600 PACIFIC HIGHWAY, ROOM 355, SAN DIEGO, CA 92101
(619) 531-4860 Fax (619) 531-6005

C. ELLEN PILSECKER
CHIEF DEPUTY
Direct Dial: (619) 531-6229
E-Mail: ellen.pilsecker@sdcounty.ca.gov

August 10, 2016

Jan Chatten-Brown
Chatten-Brown & Carstens LLP
220 Pacific Coast Hwy., Suite 318
Hermosa Beach, CA 92054

Re: Request to Postpone Projects

Dear Ms. Chatten-Brown:

After review and consideration of your July 26, 2016 letter, Planning & Development Services (PDS) will continue to develop the County's Climate Action Plan (CAP) while processing project applications. PDS will not postpone action on projects requiring General Plan Amendments. The Board of Supervisors will have the opportunity to take action on each project when it is set for a public hearing.

Your letter reflects a misunderstanding of the role of a CAP, and of the General Plan Update Environmental Impact Report (GPU EIR). Just as the existence of a valid CAP does not guarantee a project's compliance with CEQA, the absence of a CAP does not preclude compliance. Even without an adopted CAP, each development project must comply with CEQA. The absence of a CAP does not preclude the imposition of any necessary mitigation measure as a condition of approval of a particular project.¹ If the EIR for a particular project identifies greenhouse gas (GHG) emissions as having a significant indirect impact, but the project does not adequately mitigate for that impact, the Sierra Club (or any other interested party) may challenge the project's compliance with CEQA.

¹ You cite two cases that deal with mitigation of impacts of specific development projects. Neither deals with the need for a CAP. Thus, neither supports your claim that a CAP is a prerequisite for any particular development project.

As to your comment about initiating proceedings pursuant to the writ, please note that neither the trial court's writ nor the court of appeal decision dealt with the processing of development projects. Each court found that the CAP did not meet the description of mitigation measure CC 1.2. The County is complying with the writ by preparing a new CAP that will be supported by appropriate CEQA review.

Putting the CAP in context, the preparation of a CAP was one mitigation measure set forth in the GPU EIR to address GHG emissions from build out under the general plan. There were seventeen other mitigation measures specifically dealing with climate change. The Board's unchallenged findings indicated that the various measures in combination would mitigate the impact to below a level of significance. The statement that the County cannot meet its General Plan goal of reducing GHG emissions without a CAP is not correct. All project-level mitigation measures that could be included in a CAP can be implemented at the project level without a CAP.

Your claim that a project cannot be found to be consistent with the General Plan until a new CAP is adopted does not comport with case law analyzing general plan consistency. A project may be found consistent with the General Plan even if it is not "in perfect conformity with each and every general plan policy." *Sierra Club v. County of Napa*, 121 Cal.App.4th 1490, 1509 (2004). Moreover, Policy COS 20.1 does not require a project to include a CAP. Approval of a development project would not obstruct the policy. Therefore, such a project would not be inconsistent with General Plan. *Id.*

The County is working diligently to prepare a new CAP. In addition, the County is taking other steps to support sustainability goals. Examples (with references to the County's website for additional information) include: the Strategic Energy Plan adopted in 2015²; the Comprehensive Renewable Energy Plan initiated by the Board in 2013³; the Active Transportation Plan, an update of the County's Bicycle and Pedestrian Plans, which is expected to be completed this fall⁴; and the County's Strategic Plan on Waste Reduction⁵.

² http://www.sandiegocounty.gov/general_services/Energy/Energy.html

³ <http://www.sandiegocounty.gov/pds/advance/CREP.html>

⁴ <http://www.sandiegocounty.gov/pds/advance/ActiveTransportationPlan.html>

⁵ <http://www.sandiegocounty.gov/content/sdc/dpw/recycling/plan.html>

The County looks forward to working with the Sierra Club and others as we undertake our public outreach sessions to obtain input as we prepare the new CAP. We welcome your constructive input in this process. Please see the Public Outreach and Engagement Plan on the CAP project website.⁶

Very truly yours,

THOMAS E. MONTGOMERY, County Counsel

By *C. Ellen Pilsecker*
C. ELLEN PILSECKER, Chief Deputy

⁶ <http://www.sandiegocounty.gov/pds/advance/climateactionplan.html>

