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**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**FOR THE COUNTY OF SAN DIEGO**

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| SIERRA CLUB,<br><br>Petitioner,<br><br>v.<br><br>COUNTY OF SAN DIEGO,<br><br>Respondent. | CASE NO.:<br><br>**THIRD SUPPLEMENTAL PETITION FOR WRIT OF MANDATE**<br><br>**IMAGED FILE**<br><br>(CALIFORNIA ENVIRONMENTAL QUALITY ACT) |

## INTRODUCTION

1. Petitioner Sierra Club ("Petitioner" or "Sierra Club") files this Third Supplemental Petition for Writ of Mandate seeking a Writ of Mandate to the County of San Diego to fully comply with the California Environmental Quality Act ("CEQA"), Health and Safety Code sections 21000, et seq., and the Writ of Mandate issued by this Court on May 4, 2015. This Court's Writ followed remand after the Court of Appeal's opinion in *Sierra Club v. County of San Diego* (2014) 231 Cal.App.4th 1152 affirmed this Court's ruling that the County's previous CAP was not adopted in the manner required by law in that it "fail[ed] to incorporate mitigation measures into the CAP as required by Public Resources Code section 21081.6." (*Id.* at 1167-68.) The Writ commanded the County to set aside its Climate Action Plan adopted in June 2012, to prepare a new Climate Action Plan ("CAP") (hereinafter "Revised CAP"), and to comply fully with CEQA and any and all other applicable laws.

2. On February 14, 2018, the County adopted a Revised CAP. The County has failed to comply with this Court's Writ, in that the Revised CAP does not contain additional (in excess of what would happen absent the activity to create offsets) and fully enforceable measures to mitigate the significant adverse effects on the environment of the County's adoption of the 2011 General Plan Update ("GPU"), and has failed to carry out Mitigation Measure CC-1.2 set out in the Program Environmental Impact Report (PEIR) for the GPU. Mitigation Measure CC-1.2 required the adoption by the County of a CAP that would achieve specified reductions in the emissions of greenhouse gases ("GHGs") from County operations and community emissions in the County by the year 2020. The Revised CAP fails to satisfy Mitigation Measure CC-1.2 in that it contains almost no enforceable measures to reduce GHG emissions, and will not reduce such emissions by 2030 to levels specified in state law. (Health and Safety Code sections 38550, 38566.) The County adopted a CAP that relies, among other things, on "County initiatives" to reduce GHG emissions that are unenforceable and unfunded. Further, despite the requirement in the GPU that GHG emissions reductions be made within the County (Mitigation Measure CC-1.2), the County adopted a CAP that allows GHG emissions *within* the County to

rise, if they are purportedly compensated for ("offset") by GHG emissions reductions *outside* the County, outside the state of California, and even on other continents.

3. Although transportation is responsible for about 45% of the GHG emissions in the County, the CAP does not commit to use the County's plenary land use authority over approximately 82% of the land within San Diego County to restrain the expansion of urban sprawl into the unincorporated rural and "back-country" areas to reduce the growth in driving (called "vehicle miles traveled," or "VMT") and its attendant GHG emissions. This is inconsistent with the County's General Plan, including, for example, the Conservation and Open Space Element, which encourages and supports land use development patterns and transportation choices that reduce pollutants and greenhouse gases. The EIR fails to analyze this inconsistency. Nor is the CAP consistent with the GHG reduction provisions of the region-wide Regional Transportation Plan and Sustainable Communities Strategy prepared by the San Diego Association of Governments ("SANDAG"), which is designed to reduce GHG emissions associated with driving.

4. On February 14, 2018, the County also adopted a new Threshold ("New Threshold") for determining the significance under CEQA of the GHG emissions caused by new residential development projects that require General Plan Amendments ("GPAs"), i.e., new projects that exceed the land use designation and/or intensity allowed in the GPU, and thus require the GPU to be amended before such a new project may qualify for a permit. This Threshold requires such projects to incorporate onsite GHG reductions measures from a County-adopted Checklist, but then allows such projects to mitigate the climate impacts of their remaining GHG emissions by obtaining *offsite* GHG emissions offsets. These offsets need not be obtained in San Diego County, as the GPU provides, but may be obtained anywhere in the world. Verification of the amount and the efficacy of these offsets need be shown only "to the satisfaction" of the Director of Planning and Development.

5. Obtaining offsets outside of San Diego County not only violates Mitigation Measure CC-1.2, which requires in-County GHG reductions, but also has other environmental impacts. Local offset projects would reduce co-pollutants and improve local air quality.

Further, new residential GPA development projects in the unincorporated County, and especially in the rural and back country areas, would generate added emissions of conventional air pollutants from new driving to and from these relatively remote locations, and the new development may lead to additional development in these areas, causing increased transportation and air pollutant emissions. While the lifespan of such residential developments is presumed in the CAP to be 30 years, any roads built or expanded to service these developments could continue to encourage and accommodate driving, and its attendant GHG and conventional air pollutant emissions, far beyond that time. Burdens from the County's failure to reduce GHG emissions by its fair share will cause at least incremental increases in the impacts of climate destabilization, including but not limited to drought, incidence of wildfires, and increase in conventional air pollutants, and from the cost of additional imported or recycled potable water, will also fall most heavily on poor communities and ethnic minorities.

6. The New Threshold allows and accommodates new development that exceeds the designation and intensity of land use set out in the GPU. Such new development may cause a significant adverse effect on the environment, caused by added demand for urban services, including roadway capacity, added GHG and conventional air pollutant emissions, and added water use that could require GHG-intensive importation of potable water from outside San Diego County or the production of additional potable water inside the County. Despite CEQA's mandate that an environmental assessment be performed of any project carried out or approved by a public agency that may harm the environment, the County did not perform such an analysis prior to its adoption of the New Threshold and Checklist. This violated both the express provisions of CEQA, and also its core purposes of ensuring that governmental decisions are made with environmental consequences in mind, inviting and including the public in all such decisions, and ensuring that any significant environmental harm is mitigated. (Public Resources Code sections 21000(g), 21002.1, 21002, 21003.)

7. The Sierra Club and other environmental groups submitted comments to the County and appeared to testify at public hearings before the County to urge the County to adopt a Revised CAP and New Thresholds that would be consistent with the GPU and would comply

with CEQA, rather than the CAP and Threshold it did adopt, and to offer feasible measures to reduce GHG emissions. The comments were fruitless.

## JURISDICTION

8. This Court has jurisdiction over the writ action under Code of Civil Procedure sections 1085 and 194.5, et seq., and under sections 21168 and 21168.5 of the Public Resources Code.

9. In addition, in its previous rulings in this case and its Writ issued on May 4, 2015, and pursuant to Public Resources Code section 21168.9(b), this Court retains jurisdiction over San Diego County until this Court determines that the County has fully complied with CEQA and all other applicable laws as to its CAP and Thresholds of Significance.

## PARTIES

10. Petitioner Sierra Club is a national nonprofit organization with more than 600,000 members nationwide, including almost 150,000 members in California, and approximately 12,000 members in San Diego and Imperial Counties.

11. The Sierra Club is dedicated to: exploring, enjoying, protecting, and preserving for future generations the wild place of the earth; practicing and promoting the responsible use of the earth's ecosystems and resources; educating and enlisting humanity to protect and restore the quality of the natural and human environment; and using all lawful means to carry out these objectives. The Sierra Club's concerns encompass climate stabilization, coastal issues, land use, transportation, wildlife and habitat preservation, and use and protection of public parks and recreation. The interests that this Petitioner seeks to further in this action are within the purposes and goals of the organization. Petitioner and its members have a direct and beneficial interest in the County's compliance with CEQA, with the measures in its own General Plan Update, and with the Judgment and Writ of this Court. The maintenance and prosecution of this action will confer a substantial benefit on the public by protecting the public from the environmental and other harms alleged herein, including but not limited to requiring informed and publicly transparent decision-making by the County.

12. The County of San Diego is a public agency under Section 21063 of the Public Resources Code. The County is authorized and required by law to hold public hearings, to determine adequacy of and certify environmental documents prepared pursuant to CEQA, and to take other actions in connection with the approval of projects within its jurisdiction.

**BACKGROUND AND STATEMENT OF FACTS**

13. On August 3, 2011, the County adopted a General Plan Update ("GPU"), in which the County committed to preparing a climate change action plan with detailed greenhouse gas ("GHG") emissions reduction targets and deadlines and " 'comprehensive and enforceable GHG emissions reduction measures that will achieve' specified quantities of GHG reductions." (*Sierra Club*, *supra*, 231 Cal.App.4th at 1156. The GPU adopted by the County in 2011 committed to achieving a reduction in GHG emissions to the level that existed in 1990 by 2020, pursuant to the Legislature's command in Health and Safety Code section 38550 (often referred to as "AB 32"). Since that time, the Legislature has acted to require a reduction in GHG emissions to 30% below the 1990 level by 2030. (Health and Safety Code section 38566 [often referred to as "SB 32"].)

14. As mitigation for the harm to the climate from GHG emissions that would be caused by the GPU, the County adopted Mitigation Measure CC-1.2, which "requires the preparation of a County Climate Change Action Plan." (*Sierra Club*, *supra*, 231 Cal.App.4th at 1159.) On June 20, 2012, the County adopted a CAP and Thresholds for determining the significance for CEQA purposes of GHG emissions, as well as an Addendum to the General Plan Update EIR.

15. On July 20, 2012, the Sierra Club filed the original Petition for Writ of Mandate in this case, challenging the County's CAP and Thresholds, alleging that the County had not followed the procedures required by law, and had not conformed to Mitigation Measure CC-1.2 in the GPU.

16. On April 19, 2013, this Court ruled in favor of the Sierra Club, concluding that the CAP was not properly adopted and violated CEQA. It did not rule on the validity of the Thresholds of Significance, since that was unnecessary in view of its invalidation of the CAP.

This Court entered Judgment and issued a Writ of Mandate on April 24, 2013. The County promptly appealed.

17. In November of 2013, while the County's appeal of this Court's ruling was pending, the County Director of Planning and Development Services released Staff-developed Thresholds of Significance.

18. On February 18, 2014, the Sierra Club filed a Supplemental Petition for Writ of Mandate challenging the Staff-developed Thresholds of Significance, and asking this Court to set them aside until and unless the County complied with the Judgment and Writ. The parties later stipulated to the rescission of the Thresholds, and the County Board of Supervisors rescinded them on April 8, 2015.

19. On October 29, 2014, the Court of Appeal affirmed this Court's ruling. In its opinion, the Court of Appeal stated: "By failing to consider environmental impacts of the CAP and Thresholds project, the County effectively abdicated its responsibility to meaningfully consider public comments and incorporate mitigation conditions." (*Sierra Club*, *supra*, 231 Cal.App.4th at 1173.)

20. On May 4, 2015, this Court issued a Supplemental Writ of Mandate ordering the County to set aside the CAP, findings, and 2013 Thresholds. The County was also ordered to file in its initial Return to the Writ an estimated schedule for preparing a Revised CAP and New Thresholds, and for complying with CEQA with regard to those actions. The County filed an initial Return detailing the rescission of the 2013 CAP and Thresholds, and projecting adoption of the CAP and EIR in "Spring 2016-Winter 2017," without mention of the Thresholds. The County filed further Returns detailing its very dilatory progress.

21. On July 29, 2016, the Director of Planning and Develoment Services issued the "2016 Climate Change Analysis Guidance," over the written protest of the Sierra Club.

22. In August 2017, the County released a draft Environmental Impact Report (EIR) for a Revised CAP and opened a public comment period on the Revised CAP and the Draft Supplemental EIR. The Sierra Club submitted comment letters detailing the defects of the Revised CAP on September 25, 2017 (letter to the County's Planning and Development

Services), on January 16, 2018 (letter to the Planning Commission and the Board of Supervisors), and February 12, 2018 (letter to the Board of Supervisors), raising all issues complained on in this Petition.

23. On February 14, 2018, the County Board of Supervisors considered the Revised CAP and its Final Supplemental EIR, along with other documents related to the Revised CAP. These included Guidelines for Determining Significance – Climate Change ("Significance Guidelines") and its associated Threshold of Significance ("New Threshold"), which would allow a project's GHG emissions to be found insignificant for CEQA purposes if the project's land use designation and intensity were consistent with the GPU and CAP, without necessarily quantifying the project's GHG emissions and making their total public, and obviating any requirement by the County to mitigate those emissions.

24. The Guidelines also would allow a project that requested General Plan amendment ("GPA projects") to be found consistent with the CAP if it incorporated design features in a Checklist also included in those Guidelines. GHG emissions that were not prevented by incorporation of these design features could be deemed insignificant for CEQA purposes if the applicant obtained GHG offsets according to a geographic priority list. The priority list requires GHG offsets within the unincorporated County to be sought first, but if none were available, such offsets could be sought in the County as a whole, then anywhere in the State of California, then anywhere in the United States, then anywhere in the world. Further, the County Director of Planning and Development Services is empowered to deem GHG offsets to be unavailable in any geographic tier if they are not economically "feasible" to obtain, with such infeasibility to be shown "to the satisfaction" of the Director. No standards for determining such infeasibility are provided. The Director might be free to determine that offsets in California are economically infeasible if cheaper offsets could be obtained somewhere in Africa or Asia.

25. The Supplemental EIR states that virtually no GHG offsets are now available in San Diego County (FEIR, p. 8-53), thus ensuring that applicants for GPA projects will seek such offsets outside the County, and probably outside the United States, where Petitioner is informed and believes they are the least expensive, but are also very difficult to verify and enforce.

26. Notwithstanding the Sierra Club's comments and those of other environmental and community groups, on February 14, 2018, as set above, the Board of Supervisors adopted the Revised CAP and its Mitigation Measure M-GHG-1, together with associated documents, including the Mitigation Monitoring and Reporting Program. The Board of Supervisors also certified the final EIR on the Revised CAP and adopted the Significance Guidelines, New Threshold, the Climate Action Plan Consistency Review Checklist ("Checklist"), and amendments to the GPU that removed deadlines and made other changes to Mitigation Measure CC-1.2.

27. Petitioner has a beneficial right to, and a beneficial interest in, Respondent's fulfillment of all its legal duties, as alleged herein.

28. Petitioner has no plain, speedy, or adequate remedy at law. Unless this Court enjoins and sets aside its action, the County will approve projects with climate change impacts without an adequate, science-based environmental analysis of those impacts, and without adequate, science-based mitigation for those impacts. The climate-altering GHG emissions from these and future such projects, emissions that will remain in the atmosphere and destabilize the climate for decades or centuries, will have lasting and adverse effects on the climate, to the detriment of all residents of San Diego County and the State of California.

29. A valid, science-supported assessment under CEQA of the Guidelines, Threshold, and Checklist is necessary to ensure that the effects of GHG emissions are properly evaluated and mitigated, and to comply with the commitments the County made in the 2011 General Plan Update.

30. The County is currently processing projects that would requirement amendments to the GPU in order to allow large commercial or residential development on lands that are not currently designated for such intensive use. This includes, but is not limited to, lands designated as open space, semi-rural, agricultural, and village residential (hereafter referred to as "greenfields"). (A chart of such proposed GPA projects was attached as Exhibit B to the Second Supplemental Petition for Writ of Mandate in this case.)

31. Failing to enjoin the County actions complained of herein will result in the need for individual lawsuits challenging the approval of each such greenfield project, which would not be an efficient use of judicial resources, and would require a significantly larger commitment of resources by Petitioner Sierra Club and other parties who want to ensure that the County will meet its commitment to achieve the GHG emissions reductions required by AB 32 and SB 32, and will not contribute to further climate destabilization.

**FIRST CAUSE OF ACTION**
**For Violation of Judgment**
**(Cal. Code of Civ.Pro. § 1085; Cal. Pub. Res. Code § 21168.5)**

32. All prior paragraphs are fully incorporated by reference here.

33. The County has a mandatory and ministerial duty to comply with the terms of this Court's April 24, 2013, and May 4, 2015 judgments and writs in this case, including the directive that the County comply fully with CEQA.

34. Petitioner is entitled to a further supplemental writ of mandate requiring the County to set aside the offending portions of the Revised CAP, Supplemental EIR and associated documents of approval, to revoke and set aside the approval of the Guidelines, Threshold of Significance, and Checklist, and to revoke and set aside the General Plan Amendments, all as approved on February 14, 2018, unless and until the County has fully complied with the judgments of this Court and with CEQA. This compliance includes completing and adopting a legally adequate CAP, completing and certifying a legally adequate EIR and associated documents, and adopting legally adequate Guidelines and Threshold(s) of Significance.

35. The County has failed to prepare and adopt a legally adequate CAP in that it relies for a significant portion of its projected GHG emissions reductions on the obtaining of offsets, which will likely be chiefly obtained from outside the County. The CAP allows offsets to be bought. Private market entities, commonly called offset "registries," purport to record and list programs or projects to reduce GHG emissions, supposedly verified, and which are not required

by other laws or regulations, but are to be carried out for the purpose of creating offsets. The registries then facilitate the sale of such GHG emissions reductions to businesses, government agencies, environmental groups, or other entities who wish to use the offsets to meet permit or other legal requirements to reduce their own GHG emissions. The CAP allows offsets to be identified by these private market registries if they merely demonstrate their purported competence "to the satisfaction" of the County's Director of Planning and Development Services ("Director"). No criteria are specified for the Director's "satisfaction."

36. The use of such offsets as mitigation for increases in GHG emissions from projects or activities under the CAP violates CEQA's requirement that mitigation measures be additional to any other legal requirement or existing program, and be fully enforceable (CEQA Guidelines, §§ 15126.4(a) and (c), 15183.5(b)(1)(D)), in that there is no substantial evidence that the out-of-County offsets allowed by the CAP will meet those criteria, or that the private registries recognized by the Director will list offsets that meet these criteria.

37. The County has violated CEQA by failing to provide full and legally adequate mitigation for the GHG impacts of the GPU. Although they were purportedly prepared to mitigate the GHG emissions impacts of the GPU, pursuant to GPU Mitigation Measure CC-1.2, the Revised CAP and the Supplemental EIR expressly deny that the CAP is such mitigation. Master Response to Comments number 13 in the final EIR for the Revised CAP states that: "[T]he CAP's GHG reduction measures themselves are not specifically 'mitigation measures' as defined under CEQA, nor are they specifically identified as mitigation in either the 2011 GPU PEIR or the Draft SEIR for the CAP." (FSEIR, p. 8-53.) As a result, the GPU lacks mitigation for its GHG emissions impacts on climate destabilization, in violation of CEQA. (Pub. Res. Code §§ 21002, 21081; CEQA Guidelines § 15091.)

38. The County has violated CEQA in that Measure T-4.1 of the CAP, a County initiative to invest in programs and projects that will result in GHG reductions, does not conform to CEQA's requirement that mitigation measures be fully enforceable, and the County's claims for its enormous level of GHG emissions reductions are not supported by substantial evidence. The T-4.1 measure, which is denominated a "County initiative" and not a

regulation or ordinance, would require the County to identify programs and individual projects that have the potential to reduce GHG emissions, and to select and invest in a sufficient number of such programs and projects to achieve nearly half the total of GHG emissions reductions that the CAP states the County must achieve. The CAP gives as examples of such programs and projects the retrofitting of houses with solar panels, the stocking of the County's own vehicle fleet with non-carbon dioxide-emitting vehicles, and the application of soil enhancers to agricultural land to increase the growth and spread of carbon dioxide-sequestering vegetation. However, neither the Revised CAP nor the Supplemental EIR commits the County to the selection of any of these programs or projects, and contains no deadlines or milestones for funding or carrying out any of them. In fact, shortly before adoption of the CAP, County staff stated that they were still performing feasibility studies to determine the cost and cost-effectiveness of possible T-4.1 programs and projects, but gave no definite date for their completion. Such studies, which should have been completed before the CAP was proposed for adoption, show that the County is still uncertain as to what T-4.1 programs and/or projects will be selected, and what criteria will be used to select them. In short, T-4.1 is uncertain and unenforceable, in violation of CEQA Guidelines § 15126.4(a)(2).

39. Measure T-4 also violates CEQA in that it defers the selection by the County of any of the potential GHG-reducing programs and projects to an unspecified future time and provides no criteria or performance standards for their success, in derogation of CEQA Guidelines § 15126.4(a)(1)(B). Without deadlines for the implementation of projects, or criteria for their success, the County lacks substantial evidence that Measure T-4.1 will actually decrease GHG emissions, or to what degree. This violates CEQA's requirements for mitigation.

40. The EIR is a document of public accountability. (*Laurel Heights Improvement Assn. v. Regents of the University of California* (1988) 47 Cal.3d 376, 392.) This EIR fails that crucial role. The General Plan's Mitigation Measure CC-1.2 requires a CAP that reduces the

GHG emissions from *County* operations by 17% (totaling 23, 572 MTCO2e[1]) and from community activities *in the unincorporated County* by 9%, measuring from their 2006 levels to the 2020 levels expected to be achieved by the CAP. However, the EIR does not make clear whether such in-County reductions will actually occur. The combination of allowing the use of out-of-County GHG emissions offsets, together with the reliance on T-4 County investments whose identity, efficacy, and completion dates are not specified, makes it impossible to determine whether the CAP will achieve the amounts of GHG emissions reductions within the County that the GPU promised, or whether the bulk of those emissions reductions – assuming they occur at all – will occur outside the County. This is crucial information for both decision-makers and the public, both because the public needs to know whether the County has kept its commitments in the GPU, and because, as alleged above, in-County GHG reductions will often come with co-benefits such as reduced emissions of conventional health-damaging pollutants, or the creation of jobs to carry out GHG reduction programs, such as installing solar panels on rooftops. The public is entitled to know whether the County has chosen an approach to GHG reduction whose co-benefits will be felt in the County, or whether those co-benefits will be enjoyed by other areas.

41. Further, where mitigation measures may have significant environmental impacts of their own CEQA requires that those impacts must also be analyzed and disclosed. (CEQA Guidelines § 15126.4(a)(1)(D).) The County has violated CEQA by failing to make such an analysis and disclosure here.

[1] "MTCO2e," or "metric tons of carbon dioxide equivalent," is a commonly used measurement for GHG emissions. The climate-destabilizing strength of different GHGs differs widely. To simplify matters, their amounts are usually presented based on a comparison of their climate-destabilizing power to the climate-destabilizing power of carbon dioxide (CO2), the most prevalent GHG. One ton of carbon dioxide emissions is represented as 1 MTCO2e. However, since methane is about 20 times more powerful at climate destabilization as carbon dioxide, one ton of methane is represented as if it were an equivalent amount of carbon dioxide, or 20 MTCO2e, with the "e" standing for "equivalent." The metric scale is used to measure these amounts so that discussions of GHG emissions worldwide will all be in the same measurement unit.

42. CEQA requires that an EIR "shall discuss any inconsistencies between the proposed project and applicable general plans, specific plans, and *regional plans*." (CEQA Guidelines § 15125(d); emphasis added.) The EIR violates CEQA by failing to analyze and discuss the consistency of the Revised CAP, and the Guidelines and New Threshold adopted with it, on the Regional Transportation Plan and Sustainable Communities Strategy ("RTP/SCS") prepared by SANDAG under Government Code §§ 65080, et seq. (commonly referred to as SB 375) for the purpose, inter alia, of using transportation funding and projects to support more compact land uses that reduce GHG emissions by reducing sprawl and the increased driving sprawl causes. (*Cleveland National Forest Foundation v. San Diego Assn of Governments* (2017) 17 Cal.App.5th 413, 430.) The County's approval of the Guidelines and the New Threshold may allow the approval of large residential developments in rural areas far from transit, thereby increasing driving and VMT over the amounts assumed by SANDAG in its RTP/SCS. The County's actions foster increases in VMT, but the EIR does not present an analysis of this growth, or its reasonably foreseeable impacts on the SANDAG plan.

43. SANDAG used a computer-based model to estimate the VMT to be expected in the future in the San Diego area. This model used assumptions as to whether growth would occur that were provided by local governments, including the County. However, the Guidelines and New Threshold may allow approval of large and significant projects that were not in the information contained in the SANDAG model. Yet, despite requests from SANDAG and others, the County did not re-run the SANDAG model using reasonable assumptions as to the new projects whose approval might be made possible by adoption of the Guidelines and New Threshold, to determine whether or not the County's action was consistent with the SANDAG RTP/SCS. This violated CEQA Guidelines § 15125(d).

44. In addition to its failure to analyze and discuss the impact on the RTP/SCS that the County's approval of the Guidelines and New Threshold may have, the EIR also fails as an informational document in that it does not analyze, disclose, or mitigate potential impacts of the Guidelines and New Threshold on potential increased VMT in the County, or on the resultant

increase in emissions, both of GHGs and of conventional pollutants, or on the increased use of energy resources in the form of fossil fuel combustion.

45. The California Supreme Court has called the mitigation and alternatives section "the core of an EIR." (*Citizens of Goleta Valley v. Bd. of Supervisors* (1990) 52 Cal. 3d 553, 564.) Here, the County did not adequately consider mitigation measures for inclusion in the CAP that were proposed by the Sierra Club and others. These included, for example, a shift in the use of parking to provide an incentive for reduced driving. The County's failure to adequately analyze such alternative measures and the County's rejection of such measures without substantial evidence violated CEQA's mandate that projects with significant impacts should not be approved where mitigation measures are available that would substantially lessen the significant environmental impacts of the projects. (Pub. Res. Code § 21002.)

45. In addition, the County violated CEQA by failing to adequately consider alternatives, such as the regional-plan-based alternative approach to the exercise of its land use powers proposed by Petitioner Endangered Habitats League to require that in newly planned projects, a "fair share" of VMT reduction occur, consistent with the regional VMT reductions anticipated by the SANDAG RTP/SCS (about 15%), requiring that newly planning development be focused within SANDAG Smart Growth Opportunity Areas, and requiring that a minimum percent of newly planned project GHG emission reductions occur on-site.

46. The EIR violates CEQA by making inadequate and dismissive responses to comments from the public and from other governmental agencies. An example is the County's response to comments questioning the analysis of the impact of the Revised CAP, the Guidelines, and the New Threshold of Significance on the SANDAG RTP/SCS. The EIR evasively responds that it is SANDAG's responsibility to ensure that the region complies with SB 375 through the RTP/SCS, "though it is acknowledged that the County is one of many agencies that comprise the region in helping SANDAG achieve this goal." (FEIR, p. 8-15.) The response ignores the fact that the RTP/SCS is based on land uses prescribed by local jurisdictions that establish the development patterns that are permitted, and SANDAG has no authority to alter these land uses. The County's response also ignores the elephant-in-the-room

fact that the County is such a jurisdiction, having plenary land use authority over *82% of the County's land* and, presumably, responsibility for "helping SANDAG" that is proportional to that degree of land use power and authority. An agency must provide "good faith, reasoned analysis" in response to comments on an EIR, per CEQA Guidelines § 15088(c). Here, the County has failed to make such a good faith, reasoned analysis of how its use of its land use power, and its adoption of the Revised CAP, the Guidelines, and the New Threshold of Significance, will "help" or harm SANDAG carry out the RTP/SCS. This violates CEQA.

47. Government Code § 65040.12 defines "environmental justice" as "the fair treatment of people of all races, cultures, and incomes with respect [as] to the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies." Here, the County has chosen not to accord such fair treatment to the many minority and low-income residents of the San Diego region. The failure of the County's Revised CAP, Guidelines, and New Threshold to contain enforceable strategies and measures to reduce GHG emissions can reasonably be expected to result in a failure of the Revised CAP to contribute San Diego's fair share of the GHG reductions required by AB 32 and SB 32. The consequences of this failure, such as increased wildfires, more severe and persistent droughts, and scarcer and more expensive water, will fall most heavily on environmental justice populations, just as the consequences of the County's permission for itself and developers to allow the purchase and use of GHG offsets to other geographic areas will deprive local environmental justice populations of the co-benefits (jobs, reduced conventional air pollutant emissions from driving) of those offsets. The EIR does not provide a full analysis and disclosure of these impacts on particularly vulnerable populations, in violation of CEQA's mandate of full public disclosure.

48. In each of the respects enumerated above, Respondent County of San Diego has violated its duties under the law, abused its discretion, failed to proceed in the manner required by law, and decided the matters complained of without the support of substantial evidence, all in violation of CEQA. It is imperative that the County have a legally valid CAP and Threshold in place as soon as possible to guide new development and ensure the County is able to meet its GHG emission reduction targets.

## PRAYER

WHEREFORE, Petitioner prays for relief as follows:

1. For an alternative and peremptory writ of mandate commanding Respondent County to immediately vacate and set aside its approvals of the Guidelines, Threshold, Checklist, and Mitigation Measure M-GHG-1 as identified in this Petition, and to refrain from relying upon them in any form in the processing of permits for development projects on unincorporated County lands;

2. For an alternative and peremptory writ of mandate commanding the County to revise its Climate Action Plan within one year of the date of writ issuance so that the Climate Action Plan and its supporting CEQA analysis fully comply with CEQA and all other applicable laws, including, but not limited to, the inclusion in the Climate Action Plan of verifiable and fully enforceable requirements for reductions in GHG emissions to all state-mandated levels, and deadlines and milestones for achieving the same;

3. For an alternative and peremptory writ of mandate commanding the County to file returns to the writ every 90 days detailing the progress being made to comply with CEQA; requiring that the County provide a list within the first 90-day period of all the mitigation measures recommended by members of the public or by County staff that were not incorporated into the Revised CAP, along with the County's evidence that those measures were either infeasible or would fail to achieve required emissions reductions; and within 120 days of issuance of the Writ, meet with Petitioners and other stakeholders to discuss adoption of additional mitigation measures that would achieve the emissions reduction goals set forth by the State;

4. For costs of this suit;

5. For reasonable attorneys' fees; and

6. For such other relief as this Court deems just and proper.

DATE: March 16, 2018

Respectfully Submitted,

CHATTEN-BROWN & CARSTENS

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