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VIA HAND DELIVERY

Marilyn Mirrasoul - Environmental Planner,
Development Services Department
City of San Diego
202 C Street, MS 5A
San Diego, California 92101

Re: Otay Mesa Planning Coalition Comments to Draft PEIR
for General Plan Update (Sections 5.2 and 5.3 - Global Warming)

Dear Ms. Mirrasoul:

We represent the Otay Mesa Planning Coalition ("Coalition") with respect to certain projects in Otay Mesa that are included in the ongoing Otay Mesa Community Plan Update ("OMCPU"). We are submitting these comments on behalf of the Coalition to the Draft Program Environmental Impact Report ("PEIR") prepared for the City of San Diego General Plan Update ("GPU"); we understand from you that the deadline for such comments was extended through the end of today. Please note that these comments only apply to the global warming/climate change sections of the PEIR - we are submitting separate comments to the remainder of the PEIR today as well.

As an initial matter, we would like to recognize the very substantial effort that City staff has invested in the research and preparation of Sections 5.2 and 5.3 of the Draft PEIR. The discussions of existing law and policy that those Sections include are very good on the whole, though we do have some comments and additions to those Sections as noted below. More importantly, the structure of "Mitigation Framework Measures" for future discretionary projects is a useful starting point and will be a helpful tool allowing the General Plan to provide a measure of certainty for future development with respect to climate change impacts and related mitigation measures.

Please note that we are focusing our comments to the above Sections on the proposed mitigation framework, so that it can include a range of acceptable mitigation measures and clarify the context in which they would be used. The concerns and comments in this letter are structured as follows:

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- Part A contains comments to the background discussions in Section 5.2 of the Draft PEIR.
- Part B discusses some of the uncertainties inherent in regulating climate change impacts, particularly for new development, and suggests additional language for inclusion in Section 5.3 of the Draft PEIR to clarify this context.
- Part C provides suggestions for clarifying the structure of the mitigation framework contained in Section 5.3 of the Draft PEIR.
- Part D discusses specific mitigation measures that could be included within the proposed mitigation framework.

A. Additions/Changes to Section 5.2

The following comments and proposed changes pertain to the paragraphs of Section 5.2 of the Draft PEIR indicated below (please note that certain of these changes are passed along from our air quality consultant, Shari Libicki of Environ Corp. - we can arrange for Environ to provide further detail on these points if needed):

BB-1 • Pg. 5-18: The relative contribution percentages in the first sentence on this page appear unusual to our air quality consultant, and are at odds with the following sentence on pg. 5-18 as well.

BB-2 • Pg. 5-18, first full paragraph: Please note that the term "anthropogenic" rather than "unnatural" is typically used; also it is the "decomposition of solid waste" not just "solid waste" that causes GHGs.

BB-3 • Pg. 5-18, Federal Plans: Please add to the end of this sentence ", other than certain federal plans allowing for voluntary reduction of greenhouse gas intensity.

BB-4 • Pg. 5-18-19, State Plans: Please note that this section omitted several other pieces of California greenhouse gas legislation: SB 1368, which is the bill requiring lower CO2 from baseline electricity generation, AB 1493, requiring lower CO2 emissions from cars, SB 107, requiring regulated electric utilities to increase their use of renewable electricity sources and thereby offset existing in-state fossil fuel generation; and SB 1505, requiring greenhouse gas emissions standards for certain in-state hydrogen production and vehicular transportation purposes. See Exhibit A for further details.

BB-5 • Pg. 5-22, Local Plans and Programs, third sentence of second paragraph: Our air quality consultant notes that these numbers are quite different than those from the rest of California; in particular, industry, which represents 20% of the emissions in the rest of

BB-1 The relative contribution of a GHG to global warming is based on two factors: the atmospheric concentration of the GHG and its ability to absorb radiation and trap heat in the atmosphere relative to other GHGs. Although carbon dioxide (CO_2) represents 84 percent of all GHG emissions in California, the relative contribution of CO_2 to global warming is smaller because other GHGs with lower atmospheric concentrations such as methane (CH_4) and nitrous oxide (N_2O) absorb 23 and 300 times more radiation in the atmosphere, respectively, than CO_2.

BB-2 Comment noted. The Final EIR has been amended to explain that the decomposition of solid waste results in GHG emissions.

BB-3 Comment noted. The Final EIR has been amended to include a discussion of federal climate policy.

BB-4 Comment noted. The Final EIR has been amended to include a discussion of Senate Bills 1368, 107, and 1505, and Assembly Bill 1493.

BB-5 The numbers referenced in the comment are from the City's Climate Protection Action Plan (CPAP), which was adopted by the City in 2005. Without knowing the state GHG emission inventory or source to which the commenter is referring, the City is unable to respond to the comment that the results of the GHG emissions inventory reported in the CPAP are different from statewide GHG emissions. The CPAP did not inventory GHG emissions from agricultural activities in the City.

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California, is low (perhaps it is intended to be grouped with the landfills?), and there is no agricultural contribution. Please clarify.

BB-6 • Pg. 5-23, second paragraph: After the reference to "recovering landfill gas", should this discussion note that the City has been or will be generating energy from the collected methane at landfills?

BB-7 • Pg. 5-23, second bullet under Transportation: Our air quality consultant notes that the SULEV designation is typical for criteria pollutants, not greenhouse gas; does the City mean hybrids? If so, should this say hybrids, or highly fuel efficient cars?

BB-8 • Pg. 5-23, second bullet under Energy Efficiency: We believe this should also refer to "active" landfills.

BB-9 • Pg. 5-25, first paragraph following table: Please note that our air quality consultant believes it is incorrect to say that "there are no universally accepted means of quantifying vehicular emissions of GHGs", since there apparently are several accepted methods of quantifying GHGs from automobiles, once the fuel and VMT is known - the City may mean to say that it is impossible to accurately predict future VMT, fuel efficiency and carbon in the fuel, particularly with the new low carbon fuel standards. Should this be revised accordingly?

BB-10 • Pg. 5-27, first partial paragraph on page: Concluding that .. .incremental GHG emissions associated with development under the Draft General Plan would cause a cumulatively considerable incremental contribution to the significant cumulative (worldwide) impacts… may be premature because local direct causal effects on worldwide climate change are still speculative. This type of conclusion could trigger the need for Statements of Overriding Considerations (SOCs) for every project developed under the General Plan. Consider revising this language in light of the mitigation framework approach proposed below, which is specifically intended to avoid the need for SOCs as further discussed herein.

BB-11 • Pg. 5-27, last paragraph, second line: Stating that "These general measures…may be implemented to **preclude** impacts" could unintentionally set an unattainable standard. It is highly likely that despite implementation of greenhouse gas mitigation measures, there will be incremental impacts unless new emissions are reduced to zero. It is advisable to avoid setting a "one-molecule" type standard where any emission increase, regardless of size, trips the threshold. Thus, consider striking the word "preclude" and replacing with "reduce." This comment is subject to the much more detailed mitigation framework recommendations below.

BB-6 This is a comment on information from the CPAP. This commenter is correct that the City uses recovered landfill gas to generate power. This item has already been included in the text below the referenced section. Please see the second bullet under the title, "Energy Efficiency and Renewable Energy."

BB-7 This is a comment on information from the CPAP. The CPAP states that the City will provide incentives for vehicles that meet the Super Ultra Low Emission Vehicle (SULEV) California tailpipe emission standard, such as providing preferred parking at City parking facilities and free meter parking.

BB-8 This is a comment on information from the CPAP. Comment noted.

BB-9 The DEIR states that "there are no universally accepted means of quantifying vehicular emissions of GHGs." This is a correct statement. As the comment points out, there are several accepted methods of quantifying GHG emissions from vehicles. Publicly available methods include but are not limited to: URBEMIS; Clean Air and Climate Protection (CACP) software; EMFAC, and the Climate Action Registry Reporting On-line Tool (CARROT). The statement in the DEIR is simply pointing out that none of these methods is universally accepted. The City provided a calculation of vehicular GHG emissions in the EIR using VMT, estimated fuel efficiency (miles per gallon), assumptions about the content of CO_2, CH_4, and N_2O in a gallon of gasoline, and assumptions about the global warming potential of each GHG. The City could have used other available methodologies and assumptions to calculate vehicular GHG emissions under the General Plan, although the results would not be anticipated to vary substantially from those presented in the DEIR. No revision to the DEIR is required.

BB-10 The comment that the "local direct causal effects on worldwide climate change are still speculative" is incorrect. The global scientific community has expressed through the *Intergovernmental Panel on Climate Change (IPCC) Fourth Assessment Report: Climate Change 2007* very high confidence that global warming is

caused by increased concentrations of GHGs in the atmosphere attributed to human activities; and that global warming will lead to adverse climate change effects around the globe. The incremental increase in GHG emissions associated with future development would cause a cumulatively considerable incremental contribution to the significant cumulative (worldwide) impacts when viewed in connection with worldwide GHG emissions.

Regarding the comment that the preparation of Statements of Overriding Considerations (SOCs) could be required for every project developed under the General Plan, environmental documentation required by CEQA for future development may be able to tier off of the global warming analysis of the General Plan EIR if the global warming impacts of such future development were adequately addressed in the General Plan EIR.

BB-11: The sentence referenced in the comment has been revised in the Final EIR to replace the word “preclude” with the words “avoid or reduce.”

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BB-12 • Should the mitigation measures adopted by the City include in some fashion a commitment by the City to more actively pursue the development and construction of additional mass-transit options (e.g. light rail, expanded trolley system, availability of bus rapid transit (BRT), etc.), including by continuing to pursue all available sources of regional, state-wide and federal funding for such transit options?

BB-13 • Should the City's mitigation measures also include encouraging "green" businesses (such as solar and wind power-related, consultants promoting greater climate change efficiency, etc.) to be located in the greater San Diego region?

B. General Concerns With Mitigation Framework Language

BB-14 . General Uncertainty. We are concerned that the language of Section 5.3 (Mitigation Framework), the language most applicable to future discretionary projects, does not adequately reflect the level of uncertainty that exists with respect to the impacts of new development on climate change. First, the speculative nature of a direct link between proposed new development and global climate change in general should be emphasized. Second, and more specifically, there is no generally accepted methodology for assessing the potential cumulative incremental climate change impacts related to new development; therefore, it should be noted that a quantitative assessment of these impacts at the General Plan level or at a project-specific level would not be practicable at this time. These points should be clearly spelled out in the Draft PEIR.

BB-15 The inclusion of a mitigation framework for future projects in the draft PEIR should not be understood to reflect a conclusion by the City (in its capacity as Lead Agency for CEQA review of the General Plan and future discretionary projects) that the effects of new development on climate change are necessarily significant. Rather, it should be noted that CEQA Guidelines Section 15064(g) requires significance determinations to be guided by the following principle:

> If there is disagreement among expert opinions supported by facts over the significance of an effect on the environment, the Lead Agency shall treat the effect as significant and shall prepare an EIR.

BB-16 Since there is significant disagreement among expert opinions on cumulative climate change impacts, particularly with respect to the impacts of new development, the above analysis could easily be applied to the climate change discussion in the Draft PEIR to justify the use of a mitigation framework for future projects, even though the significance of these projects' impacts on climate change is not clear.

2. Specific Ambiguities to be Described. In addition, language similar to the following should be included in the Draft PEIR to describe certain specific areas of ambiguity:

BB-12 The San Diego Association of Governments (SANDAG) is responsible for the planning and funding of the regional transportation network, including transit service such as the light rail Trolley system and planned Bus Rapid Transit (BRT) routes. As a result, the City has not identified the development and construction of mass-transit options, including funding for such options, as mitigation for the GHG emissions associated with future development. However, as discussed in the response to comment B-2, the City of Villages development strategy policies, which would focus growth into walkable, mixed-use villages served by high frequency transit service, thus increasing opportunities for use of public transit, were strengthened within the General Plan and included in the MMRP to ensure that these policies are imposed on future development.

BB-13 The Conservation Element has been revised to include a policy calling for the City to, "pursue the development of "clean" or "green" sector industries that benefit San Diego's environment and economy". The General Plan Action Plan identifies measures to implement this policy.

BB-14 As already discussed in the response to comment BB-10, the comment that the link between new development and global climate change is speculative in nature is incorrect. In addition, the response to comment BB-9 explains that although "there are no universally accepted means of quantifying vehicular emissions of GHGs", several methods of quantifying such emissions are available. The commenter appears to agree in comment BB-9, stating that, "there apparently are several accepted methods of quantifying GHGs from automobiles…" Available methods to quantify GHG emissions include, but are not limited to: URBEMIS; Clean Air and Climate Protection (CACP) software; EMFAC, and the Climate Action Registry Reporting On-line Tool (CARROT). The comment states that, "a quantitative assessment of these [global warming] impacts at the General Plan level or at a project-specific level would not be practicable at this time." Given the availability of such models, and the fact that the DEIR includes a quantitative assessment of GHG emissions at the General Plan

level, it would be incorrect to state that such a quantitative assessment is not practicable at this time.

Furthermore, CEQA Guidelines §15064(b) states that "[a]n ironclad definition of significant effect is not always possible…" and that "the determination of whether a project may have a significant effect on the environment calls for careful judgment on the part of the public agency involved, based to the extent possible on scientific and factual evidence." The DEIR states that GHG emissions from vehicular sources alone would total approximately 6.3 million tons of carbon dioxide equivalent (CO_2e) annually in 2020, and 6.7 tons of CO_2e annually in 2030. Projected 2020 GHG emissions associated with VMT are approximately 16 percent higher than 1990 levels and projected 2030 GHG emissions associated with VMT are approximately 24 percent higher than 1990 levels. The DEIR also concludes that energy consumption associated with future development would result in substantial levels of GHG emissions in excess of existing and 1990 levels. In the context of the state requirement under AB 32 to reduce statewide GHG emissions to 25 percent below 1990 levels by 2020, and the overwhelming scientific evidence that global warming is already occurring and that additional GHG emissions would only exacerbate the problem, the City has determined that the incremental GHG emissions associated with future development would cause a cumulatively considerable incremental contribution to the significant cumulative (worldwide) impacts when viewed in connection with worldwide GHG emissions.

BB-15 The comment is correct that, "the inclusion of a mitigation framework for future projects in the draft PEIR should not be understood to reflect a conclusion by the City…that the effects of new development on climate change are necessarily significant." As explained in the response to comment BB-14, the global warming impacts of the General Plan are considered cumulatively significant because future development would result in substantial levels of GHG emissions in excess of existing and 1990 levels in the context of AB 32 requirements for a 25 percent reduction in statewide GHG emissions below 1990 levels by 2020, and overwhelming scientific evidence that global warming is already

occurring and that additional GHG emissions would lead to additional warming and exacerbation of the adverse climate change effects. The City's determination of cumulatively significant global warming impacts is not based on a disagreement among expert opinions.

BB-16 The global scientific community has expressed through the *Intergovernmental Panel on Climate Change (IPCC) Fourth Assessment Report: Climate Change 2007* very high confidence that global warming is caused by increased concentrations of GHGs in the atmosphere attributed to human activities; that global warming is already occurring and will lead to adverse climate change effects around the globe; and that additional GHG emissions would lead to additional warming and exacerbation of the adverse climate change effects. As discussed in the DEIR, future development would result in substantial levels of GHG emissions in excess of existing and 1990 levels associated with increased VMT and increased energy consumption. It is clear that the incremental increase in GHG emissions under the General Plan would cause a cumulatively considerable incremental contribution to the significant cumulative (worldwide) impacts when viewed in connection with worldwide GHG emissions. Thus, there is substantial evidence that the global warming impacts of the General Plan are cumulatively significant. The commenter provides no facts or evidence supporting the claim that there is disagreement among expert opinions on cumulative climate change impacts.

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BB-17 the baseline - for example, some projects may provide residences closer to existing or future places of employment (or services/employment closer to existing or future residences) than is typical for existing suburban development in the City and County of San Diego. In such cases, existing methods for calculation of greenhouse gas emissions are likely to overstate the impacts by substantial margins.

BB-18 • Lack of "New" Impacts from New Development. Even more fundamentally, it is not at all clear that the continuing existence of new development (once construction is completed) represents "new" climate change impacts at all. The supposed climate change impacts that are at issue - primarily VMTs and energy use by dwelling units - are ultimately caused by human beings and their activities, rather than the existence of the dwelling units themselves. It would seem very unlikely that the existence of new development in San Diego would cause any increase in population from a global or national viewpoint. Even from a statewide or regional viewpoint, the evidence is mixed as to whether new development leads to additional immigration into the state or the region. In any event, since climate change is a global problem, the global perspective is likely the most appropriate for analyzing whether the impacts are "new".

C. Clarifications to Structure of Mitigation Framework

The mitigation framework contained in the PEIR should be revised and clarified in several very important respects, as described below, by articulating an appropriate performance standard, refining the application of the "feasibility" concept under CEQA in this context, and clarifying the purpose and effect of the mitigation framework.

BB-19 . Performance Standard. First and foremost, a defined performance standard for mitigation measures used by future discretionary projects should be articulated, to provide the necessary framework for the mitigation measures discussed below.[2] We believe that, given the uncertainties described above, it is not appropriate or feasible to articulate a specific quantitative or numeric performance standard for future projects at this time - rather, an appropriate qualitative standard should be incorporated into the Draft PEIR for review of future projects, which appears to be generally consistent with the approach taken in the current text of Section 5.3 of the Draft PEIR. This approach is supported by existing CEQA case law regarding cumulative impacts, in that an EIR is only required to quantify its cumulative impacts analysis when quantitative data are reasonably available; when such data are not available, the EIR should only briefly describe why the impact cannot be quantified and provide a general

[2] Use of a performance standard as set forth above will also help to prevent any risk that use of the mitigation framework structure could be viewed as impermissible "deferred mitigation" under CEQA, for both the PEIR and for future discretionary projects approved by the City.

BB-17 The City agrees with the comment that "AB 32 does not amend CEQA or otherwise dictate the type of document to be prepared under CEQA or the conclusions to be reached regarding a project's impacts". The DEIR for the General Plan and the significance conclusions thereof have been prepared in accordance with the requirements of the CEQA Statutes and Guidelines. However, it is the City's opinion that the GHG emissions reduction targets of AB 32 and Executive Order S-3-05 provide useful standards for determining the significance of the global warming impacts of a project under CEQA.

BB-18 The City again agrees with the comment that "AB 32 does not directly amend CEQA". Although "new development and significant redevelopment" is not explicitly categorized as a main source of GHG emissions in the CalEPA report referenced in the comment, new development and significant redevelopment would nevertheless significantly affect the level of GHG emissions from some of the main sources of GHG emissions within the City. For example, the increase in VMT and energy consumption associated with future development would result in increased GHG emissions in the transportation and electric power sectors, two of the main sources of GHG emissions cited in the CalEPA report referenced in the comment.

BB-19 The CEQA Guidelines §15064 provides a framework for determining the significance of the environmental effects caused by a project. No provisions of this section negate the City's obligation under CEQA to determine the significance of the global warming impacts of the General Plan prior to the adoption of a mitigation program or other program such as the one being prepared by CARB under AB 32.

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BB-20 • CEQA Conclusions Not Dictated by AB 32. CEQA requires disclosure of a project's potentially significant impacts. Some of those impacts may or may not be from greenhouse gases. However, the fact that the legislature enacted AB 32 does not amend CEQA or otherwise dictate the type of document to be prepared under CEQA or the conclusions to be reached regarding a project's impacts. Information gleaned from processes created as a result of AB 32 may be helpful in conducting any required CEQA analysis, but do not dictate the type of analysis required.

BB-21 • Nature of AB 32. AB 32 does not directly amend CEQA. Instead, it provides for creation of a greenhouse gas emissions program that will involve identification of sources, prioritization of sources for regulation based upon significance of source contribution to greenhouse gas emissions, and eventual regulation of those sources. New development and significant redevelopment is not recognized as a significant or direct source of greenhouse gas emissions.[1]

BB-22 • Phasing in of New Rules. The new rules will be phased in gradually over several years. Under AB 32, the California Air Resources Board (CARB) must identify significant sources or categories of sources of each greenhouse gas, and establish protocols and procedures for monitoring, quantifying and reporting the emissions by January , 2008. Next, CARB must issue a scoping plan to achieve emission reductions from specific sources or categories of sources by January , 2009. Finally, CARB must propose rules and caps for the sources by 2012. Until that time, the potential source characterization of, and significance of emissions contributions related to, new development will not be known, and numeric thresholds of significance cannot be established.

BB-23 • Interaction with Other Emissions Sources. Factually, the carbon footprint of new development derives from a variety of sources, and some of those sources, such as energy generation, are already subject to other requirements to achieve reductions in greenhouse gases (SB 107 and SB 1368 for example). The relationship between new development project impacts and the impacts of these other sources, each as mitigated by compliance with current requirements and as-yet-unestablished AB 32 reduction requirements, is far from clear.

BB-24 • Redirected Vehicle Trips. For many projects, the Vehicle Miles Traveled ("VMT") related to the project does not represent "new" VMT. At least a portion of the VMT calculated for the project may be re-directed VMT - that is, trips that are already occurring, but will now be in different locations or along different routes. In many instances, the actual VMT resulting from new development may be significantly less than

[1] CalEPA 2006 estimates of California's main source of greenhouse gases in 2002: transportation sector (41.2%), industrial sector (22.8%), electric power sector (19.6%), agriculture & forestry sector (8.0%), and other sources (8.4%).

BB-20 The comment is correct that the state has enacted legislation, such as Senate Bill (SB) 1368, to achieve reductions in GHG emissions. Under this legislation, the California Public Utility Commission (PUC) and California Energy Commission (CEC) have adopted standards requiring all new long-term commitments for baseload generation entered into by investor- and state-owned utilities have emissions not greater than combined cycle gas turbine plant (i.e., 1,100 pounds of CO_2 per megawatt-hour). Notwithstanding the fact future development would consume electricity generated in compliance with SB 1368, such development would still result in increased energy consumption, which in turn would result in increased GHG emissions relative to 1990 levels and existing conditions. Increased GHG emissions from energy consumption under the General Plan, when considered in combination with increased GHG emissions from VMT and other sources, remain cumulatively significant. As a result, the City has an obligation under CEQA to adopt feasible mitigation measures.

BB-21 The calculation of GHG emissions associated with projected VMT under implementation of the General Plan accounts for, in the words of the commenter, “new” and “re-directed VMT”. The projected VMT under the General Plan would result in increased GHG emissions, which would combine with the other sources of increased GHG emissions associated with future development to cause a cumulatively considerable incremental contribution to the significant cumulative (worldwide) impacts when viewed in connection with worldwide GHG emissions.

BB-22 The calculation of GHG emissions used in the DEIR is based on projected VMT within the City under implementation of the General Plan. Projected VMT is based on the future land use distribution within the City, which is anticipated to include the development of residences closer to existing or future places of employment/services, and vice versa, than is typical for existing suburban development in the City or county of San Diego. Thus, the existing calculation of GHG emissions in the DEIR is not likely to overstate GHG emissions by substantial margins by failing to account for anticipated future increases in jobs/services and residential proximity.

BB-23 The comment appears to imply that the "new" climate change impacts (i.e., GHG emissions) attributed to "the continuing existence of new development" after completion of construction are caused by human beings and their activities, rather than by developments (such as dwelling units) themselves, although it is unclear what the commenter means by "new" climate change impacts and how such "new" impacts are differentiated from other climate change impacts. In any event, the comment also cites VMT and energy use by dwelling units as primary examples of sources of GHG emissions that are not associated with development. While it is true that the "continuing existence of new development" would not cause GHG emissions (apart from the construction of such development) if such development was unoccupied and unused by human beings, it would be incorrect for the analysis of GHG emissions associated with development under the General Plan to assume that such development would not be used by human beings or affect their activities in any way. In fact, the types of building techniques and features used in new development (e.g., green building techniques and solar panels on rooftops), the distribution of development (e.g., the proximity of jobs, services and housing to each other and to high frequency public transit), and other aspects of new development would significantly affect energy use in dwelling units and how far and how often people drive (i.e. VMT), which in turn would significantly affect future levels of GHG emissions. Thus, rather than having no effect on human beings and their activities, "the continuing existence of new development" significantly affects human activities, such as driving and energy consumption, that result in GHG emissions.

Furthermore, the comments that new development in San Diego is very unlikely to "cause any increase in population from a global or national viewpoint", and that "the evidence is mixed as to whether new development leads to additional immigration into the state or the region" are not relevant to the DEIR's evaluation of GHG emissions associated with future development. The General Plan represents the constitution for development in the City. Thus, rather than examine whether or not new development allowed under the General Plan would cause population increases (at a

local, national, or global scale) that would in turn lead to increased GHG emissions, the DEIR examines whether development that is anticipated to occur under the General Plan in response to projected population growth would result in increased GHG emissions, and whether or not the increased GHG emissions would constitute a significant environmental impact under CEQA; the DEIR concludes that the General Plan would result in increased GHG emissions and that the incremental increase in GHG emissions would cause a cumulatively considerable incremental contribution to the significant cumulative (worldwide) impacts when viewed in connection with worldwide GHG emissions. This is a logical approach given that new development significantly affects human activities, like driving and energy consumption, that result in GHG emissions as explained above.

BB-24 See the response to comment B-1 for a discussion of the City's approach to meet its obligation under CEQA to examine and require feasible options for mitigating the GHG emissions of future development. The inclusion of General Plan policies that reduce GHG emissions in the MMRP for the Final EIR ensures that they will be imposed on future development and not deferred to some later date. Pursuant to CEQA Guidelines §15097(b), "(t)he monitoring plan (for a general plan) may consist of policies included in (the) plan-level document".

description of the cumulative impact.[3] The Draft PEIR, with the changes suggested herein, should provide the necessary descriptions to satisfy this standard.

BB-25

(a) Qualitative Standard Authorized by CEQA. Given the evolving standards and other uncertainties described above, we believe that the most appropriate qualitative performance standard would be to require such mitigation measures as are needed to achieve compliance with all local, state and federal laws and standards controlling or establishing thresholds for greenhouse gas emissions (as they may be revised and amended from time-to-time) as well as with the updated General Plan. This approach would allow a measure of certainty to future development while still permitting the applicable performance standards to be updated in accordance with regulatory changes. The foregoing approach is specifically authorized by CEQA Guidelines Section 15064(h)(3), which allows mitigation of a project's cumulative impacts through compliance with appropriate plans and mitigation programs, as follows:

> (3) A lead agency may determine that a project's incremental contribution to a cumulative effect is not cumulatively considerable if the project will comply with the requirements in a previously approved plan or mitigation program which provides specific requirements that will avoid or substantially lessen the cumulative problem (e.g., water quality control plan, air quality plan, integrated waste management plan) within the geographic area in which the project is located. Such plans or programs must be specified in law or adopted by the public agency with jurisdiction over the affected resources through a public review process to implement, interpret, or make specific the law enforced or administered by the public agency. (Emphasis added.)

Section 15064(h)(3) also provides for stricter standards to be imposed in appropriate cases, by noting that:

> If there is substantial evidence that the possible effects of a particular project are still cumulatively considerable notwithstanding that the project complies with the specified plan or mitigation program addressing the cumulative problem, an EIR must be prepared for the project.

Under the above standard, additional environmental analysis of climate change impacts could be required, and additional mitigation measures imposed, in cases where it is clear that existing

[3] See CEB, Practice Under the California Environmental Quality Act, pages 676-678, citing various cases, including *Al Larsen Boat Shop Inc. v. Board of Harbor Commissioners* (1993) 18 CA 4th 729.

BB-25 The comment references CEQA Guidelines §15064(h)(3), which allows a lead agency to determine that a project's incremental contribution to a cumulative effect is not cumulatively considerable if the project will comply with the requirements in a previously approved plan or mitigation program which provides specific requirements that will avoid or substantially lessen the cumulative problem. The City agrees that the adoption of a plan or program with specific requirements to avoid or substantially lessen the cumulative problem of global warming could reduce the General Plan's incremental contribution to the cumulatively significant problem of global warming to less than cumulatively considerable. However, the City has determined that there are currently no approved plans or mitigation programs at the local, state, or federal level which provide specific requirements to avoid or substantially lessen the cumulative problem of global warming that will avoid or substantially lessen the General Plan's incremental contribution of GHG emissions to the significant cumulative (worldwide) impacts when viewed in connection with worldwide GHG emissions. As discussed in the EIR, no GHG emission reduction measures have yet been adopted under AB 32 and it is unknown if any adopted measures will apply to local governments. Furthermore, the measures included in the CPAP do not apply to discretionary development projects that are anticipated to occur under the General Plan. As a result, the City has an obligation under CEQA to examine and require feasible mitigation measures. See the response to comment B-1 for a discussion of the City's approach to meet its obligation under CEQA to examine and require feasible mitigation measures that reduce the GHG emissions of future development.

plans and mitigation programs do not address a particular project's specific climate change impacts. However, we would anticipate that the framework specified under the General Plan would be sufficient for most future residential, commercial and industrial projects that do not generate substantial "new" impacts of their own.

BB-26 (b) Compliance with Regulations or Standards Upheld. Under California law, mitigation measures that require compliance with the lead agency's or another agency's environmental regulations or standards are generally acceptable when the lead agency has "meaningful information" that reasonably justifies "an expectation of compliance" with such regulations or standards, and where the measure is subject to performance criteria such as those typically found in applicable ordinances, rules, and standards. Courts have upheld mitigation measures such as submittal of a final grading plan for review and approval by a city engineer where the plan is subject to performance criteria included in ordinances, codes and other adopted standards.[4]

BB-27 (c) Need for Coordinated Regional Approach. The clearest justification for use of the above qualitative performance standard - i.e., compliance with all applicable plans and mitigation programs - is that a coordinated regional approach is essential to achieve any realistic impact on the cumulative problem of climate change. Put another way, the only meaningful way of addressing the issue is through implementation of consistent state-wide and/or regional mitigation programs and standards of general applicability. To force individual projects to adopt measures in excess of such requirements - in a case-by-case, "ad hoc" manner - would have almost no beneficial effect on a region's contributions to climate change impacts, in the absence of general requirements that can be updated and applied to new development. As such, compliance with applicable plans and mitigation programs is the only realistic way to address the cumulative impacts of climate change in the coordinated fashion that is needed.

BB-28 2. Parameters for "Feasibility" Concept / Safe Harbor. In light of the above performance standard, the references to "feasible mitigation" and "to the extent feasible" in Section 5.3 of the Draft PEIR should be clarified to confirm that application of the performance standard above to individual projects will provide the appropriate "feasible" level of mitigation. Under Section 15364 of the CEQA Guidelines,

> "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.

By adopting the performance standard above, the PEER will set the "feasibility" level for climate change mitigation to be applied to development under the General Plan, thus providing clarity

[4] See, e.g., *Gentry v. City of Murrieta*, 36 Cal.App.4th 1359, 1395; *Sacramento Old City Association v. City Council* (1991) 229 Cal.App.3d 1011, 1029-1030.]

BB-26 Comment noted.

BB-27 As discussed in the response to comment BB-25, the City has determined that there are no currently approved plans or mitigation programs with specific requirements to avoid or substantially lessen the cumulative problem of global warming that will avoid or substantially lessen the General Plan's incremental contribution of GHG emissions to the significant cumulative (worldwide) impacts when viewed in connection with worldwide GHG emissions. As a result, the City is required by CEQA to identify feasible mitigation measures to reduce the global warming impacts of the General Plan. See the response to comment B-1 for a discussion of the City's approach to meet its obligation under CEQA to examine and require feasible mitigation measures that reduce the GHG emissions of future development.

BB-28 As discussed in the response to comments BB-25 and BB-27, the City has determined that the "performance standard" referenced by the commenter (i.e., compliance with approved plans or mitigation programs) would not avoid or substantially lessen the General Plan's incremental contribution of GHG emissions to the significant cumulative (worldwide) impacts when viewed in connection with worldwide GHG emissions. Therefore, such a performance standard would not provide feasible mitigation under CEQA. See the response to comment B-1 for a discussion of the City's approach to meet its obligation under CEQA to examine and require feasible mitigation measures that reduce the GHG emissions of future development.

and avoiding the heated debates that would otherwise ensue over what constitutes appropriate mitigation. In particular, it would help to avoid arguments by project opponents that a discussion of "feasible" mitigation measures for future projects should require analysis of each project's economics and profitability, which recent experience has shown to be very contentious (e.g. conflicting studies and expert testimony, confidentiality concerns, protracted delays). Instead, this approach will provide the City with a menu of possible mitigation measures to be selected, with the above qualitative standard for determining how many of such measures need to be applied to a given project, and allow the City to determine that compliance with this standard constitutes the "feasible" level of mitigation. This would operate, in effect, as a "safe harbor" for environmental review of future development, with the resulting benefits of certainty and predictability. (In the absence of such a standard, new development in the City would be significantly hampered if not shut down altogether, which would further reduce the affordability of residential, commercial and industrial space.)

BB-29

3. Updating of CEQA Significance Thresholds/New City Bulletin. A vitally important part of the mitigation framework structure will be for the City to revise its CEQA Significance Thresholds to discuss and articulate the above qualitative performance standard. The CEQA Significance Thresholds should also discuss (and/or incorporate) the mitigation measures set forth in Part D below - this could perhaps be done by preparation of a new City Bulletin (similar to the existing Biology Guidelines) that would list out and discuss the various mitigation measures available for compliance with existing laws and standards. Such Bulletin could then be referenced and incorporated in the revised CEQA Significance Thresholds.

BB-30

4. Purpose and Effect of Mitigation Framework. In connection with all of the foregoing, the PEIR would need to clearly specify that the purpose of the "Mitigation Framework" discussion in Section 5.3 is to establish a framework that allows future discretionary projects to be approved by the City without the need for preparation of a full EIR or adoption of a Statement of Overriding Considerations with respect to climate change impacts, to the extent that such project is consistent with the mitigation framework under the General Plan and the revised CEQA Significance Thresholds. Put another way, climate change impacts of future projects would then be considered to be covered by the scope of the PEIR pursuant to CEQA Guidelines 15168(c) and deemed to be mitigated to a level below significance, as long as appropriate measures are implemented per the above standards. This would save the City and future project applicants enormous time, effort and expense that otherwise might be required to evaluate the individual climate change impacts of each such project, due to the uncertain significance of individual projects' impacts. Naturally, to the extent that future discretionary projects might have other significant impacts under CEQA (i.e. in areas other than climate change), preparation of an EIR (perhaps with an SOC) or a mitigated negative declaration may nonetheless be required.

. Updating of Rules and Standards. The Draft PEIR should make clear that the applicable rules and standards to be applied to future discretionary projects under the above

BB-29 Comment noted. The Development Services Department periodically updates its CEQA Significance Thresholds.

BB-30 As discussed in the response to comment BB-10, environmental documentation required by CEQA for future development may be able to tier off of the global warming analysis of the General Plan EIR if the global warming impacts of such future development were adequately addressed in the General Plan EIR.

BB-31 performance standard will be subject to continual updating in accordance with changes to applicable local, state and federal laws and standards. This will allow new information received by governmental bodies and new regulations promulgated by CARS to be incorporated into the mitigation programs required for each development project that obtains discretionary approval from the City. As such, the applicable regulatory scheme will be flexible enough to satisfy future requirements.

BB-32 6. Compliance with Limitations on Recirculation. It is also very important for the City to conclude in the PEIR (and to confirm in other documents such as the revised CEQA Significance Thresholds) that the adoption of the mitigation framework for climate change impacts will not trigger recirculation of any CEQA documents that have already been certified for existing projects, or preparation of a subsequent or supplemental EIR for any such projects. To achieve this result, the PEIR and the CEQA Significance Thresholds should confirm that adoption of the mitigation framework will not constitute "substantial changes" with respect to the circumstances of any such project or "new information of substantial importance" for such project under Section 15162 of the CEQA Guidelines. Given the substantial uncertainties regarding the existence, scope and severity of climate change impacts for new development, the City as lead agency can easily reach this conclusion. This conclusion is also required by existing case law, under the two recent CEQA decisions discussed below:

- In *American Canyon Communities et al. v. City of American Canyon et al.*, Case No. 26-27462, the court found that there was no need to prepare a supplemental EIR for a development with a certified EIR based on new asserted impacts from climate change, since the passage of AB 32 did not constitute "significant new information" for purposes of CEQA.

- Similarly, in *NRDC v. Reclamation Board*, Case No. 06 CS 01228, relating to issuance of an encroachment permit for a "super levee", the court found that the effects of climate change did not constitute "significant new information" requiring new environmental review.

By including the necessary confirmations in the PEIR that recirculation of certified CEQA documents will not be required solely because of the new mitigation framework, the City will help forestall litigation that would otherwise be likely over the climate change impacts of existing projects (potentially arising both from developers and from project opponents).

D. Additional Mitigation Measures.

BB-33 The mitigation framework section (Section 5.3 of the Draft PEIR) and the revised CEQA significance thresholds should specify a "menu" of particular mitigation measures that could be used on future discretionary projects in connection with the above structure. This would allow CEQA compliance without need for a Statement of Overriding Considerations for

BB-31 As already discussed in the responses to comments BB-25, -27, and -28, currently adopted local, state, and federal plans and programs would not reduce the global warming impacts of the General Plan to a level less than cumulatively significant. As a result, the City has identified an approach to mitigate the global warming impacts of future development. However, the City acknowledges that local, state, and federal plans or program adopted or updated in the future may reduce the global warming impacts of future development if and when they are adopted.

BB-32 The recirculation of certified CEQA documents would not occur, as the recirculation requirements of CEQA do not apply to certified documents. In addition, future projects requiring preparation of subsequent or supplemental EIRs or any other environmental documentation required by CEQA may be able to tier off of the global warming analysis of the General Plan EIR if the global warming impacts of such future projects were adequately addressed in the General Plan EIR.

BB-33 See the response to comment B-1 for a discussion of the City's approach to meet its obligation under CEQA to examine and require feasible mitigation measures that reduce the GHG emissions of future development. In addition, future development requiring environmental documentation under CEQA may be able to tier off of the global warming analysis of the General Plan EIR if the global warming impacts of such future projects were adequately addressed in the General Plan EIR.

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each project, by allowing the City to conclude that the climate-change-related impacts of each individual project are not directly or cumulatively significant. It is important to emphasize that all of these mitigation measures would not (and could not) be required by the City - in many instances, a future discretionary project would only be able to implement a few of them. In all cases, a project would be permitted to select only the mitigation measures that are needed to bring it into accordance with all local, state and federal laws and standards controlling or establishing thresholds for greenhouse gas emissions at the time the project's application is deemed complete, as per the above performance standard. None of these measures therefore should be understood to be "mandatory", beyond compliance with such standard.

A list of some proposed measures (by no means exhaustive), which we have broken down into three separate categories for convenience, is set forth below for the City's consideration:

BB-34 1. Location-Based Mitigation Measures (where appropriate given geographic considerations).

- Compliance with the City of Villages policies contained in the Strategic Framework Element of the General Plan (including some of the specific measures discussed below).
- Transit-oriented development in accordance with applicable SANDAG policies, including location of projects in or near major transportation corridors and along current or proposed transit lines and connections, either in the Regional Transportation Plan or City planning documents.
- Mixed-use development, which facilitates reduced automobile use due to proximity of complementary uses.
- Encouraging compatible higher-density development in areas already partially urbanized; use of mixed-use and infill planning and development strategies; clustering of developments.
- Compliance with regional planning criteria (e.g. SANDAG policies), including with respect to the jobs/housing balance and location of housing near employment and transportation centers.
- Development of an integrated pedestrian and bicycle network to facilitate travel that is not reliant on consuming carbon-based fuels, or linking into such a network.

BB-34 See the response to comment B-1 for a discussion of the City's approach to meet its obligation under CEQA to examine and require feasible mitigation measures that reduce the GHG emissions of future development.

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BB-35

2. Mitigation Through Design and Construction Improvements

- Urban forestry: Enhanced landscaping, including planting of selected tree species demonstrated to provide maximum shade and CC>2 absorption benefits (i.e. carbon storage). Trees planted near dwelling units also act as insulators from weather thereby decreasing energy requirements (subject to applicable brush management and/or setback requirements).
- Water conservation measures, including incorporation of drought-resistant landscaping materials and efficient, satellite controlled sprinkler systems where cost-effective.
- Compliance with outdoor lighting codes designed to reduce energy and output.
- Compliance with State Energy Insulation Standards.
- Compliance with local energy and water conservation codes and policies.
- Compliance with Title 24 Department of Energy energy conservation design criteria.
- Participating in the U.S. Green Building Council's LEED certification program, or adopting energy efficiency/sustainability measures equivalent to those that would be required for LEED certification without obtaining actual certification.
- Minimizing and recycling construction-related waste.
- Encouraging use of biodiesel for heavy equipment during construction of projects.
- Utilizing combinations of construction materials with lower carbon footprints - for example, the use of wood as a building material to promote carbon sequestration (GHG impacts were estimated to be 26% higher with steel and 31% higher with concrete when compared to wood).
- Using salvaged and recycled-content materials for buildings, hard surfaces and non-plan landscaping materials.
- Increasing water conservation measures in the home and landscaping.
- Installing solar energy devices and using passive heating, natural cooling and reduced pavement.
- Installing electric vehicle charging stations where a likelihood of use and benefit can be demonstrated.

BB-35 See the response to comment B-1 for a discussion of the City's approach to meet its obligation under CEQA to examine and require feasible mitigation measures that reduce the GHG emissions of future development.

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- Encouraging use of "low emission fireplaces".
- Encouraging use of "green roofs", including rooftop gardens.
- Joining California Energy Commission's New Solar Homes Partnership, with associated energy-efficiency requirements.
- Encouraging site design to minimize energy use by taking advantage of sun-shade patterns, prevailing winds, and sunscreens.
- Compliance with Urban Heat Island Mitigation policy (if adopted), including by using light-colored and reflective roofing materials and paint, light-colored roads and parking lots, shade trees in parking lots, and shade trees on the south and west sides of new or renovated buildings.
- Encouraging use of energy efficient building materials, including alternative formulations of cement and asphalt that have substantially lower GHG emissions.

BB-36 3. Operational Mitigation Measures

- Compliance with Air Quality Management District rules and policies (including Rules 401, 402 and 403), and grading code and construction air quality policies designed to limit idling and limit construction equipment emissions, including ozone precursor emission controls, preparation of diesel emission reduction plans, requirements for use of ARB-certified equipment of post combustion controls, compliance with state construction vehicle emissions standards, etc.
- Preparation and implementation of Transportation Management plans to reduce VMT and to encourage van and carpool formation, telecommuting, alternative work schedules, personalized commute consulting, rideshare promotions, carpooling subsidies, bus and commuter rail service coordination, improved bicycle access and facilities, voluntary employer-based trip reduction programs, traffic calming measures, youth transportation, etc.
- Compliance with VMT reduction programs and policies, including programs and features (trails, bike lanes, bus stops and turnouts etc.) to encourage alternative forms of transportation, such as carpooling, walking and biking.
- Incorporation of congestion reducing measures and design features that will reduce vehicle emissions related to idling, including high LOS at signaled intersections, adequate ingress and egress, provision of dedicated turn lanes, synchronization of traffic signals, and other similar measures.

BB-36 See the response to comment B-1 for a discussion of the City's approach to meet its obligation under CEQA to examine and require feasible mitigation measures that reduce the GHG emissions of future development.

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- Encouraging new office developments with more than specified numbers of parking spaces to offer a parking "cash-out" program providing payments to those who do not use parking spaces for use of public transit or otherwise.

- Implementation of recycling programs to achieve City and State recycling goals, by installation and use of appropriate recycling and waste receptacles.

- Encouraging energy generation from alternative sources (e.g. facilitating installation of renewable energy generation devices by homeowners by allowing for appropriate electrical connections on request, use of recycled methane from landfills for energy generation, etc.).

BB-37 Again, the PEIR should make clear that many or most projects will only be able to implement a few of the above measures. Projects that are able to utilize more of the foregoing mitigation measures than is required by existing mitigation plans and programs should be given appropriate credit in some form - e.g. preferred processing of City permits (e.g. "front of the line" priority along with fast-track and/or expedited review), credits against any future local regulatory requirements and/or fees that may be imposed on existing projects, other incentives specified under the voluntary California Green Builders Program created by the BIA, tax incentives, etc. An example of the foregoing type of project could include high density development located close to transit that also employs solar panels and appropriate energy efficiency measures. Creating appropriate incentives for these types of development could greatly assist the City with achieving its goals regarding GHG reduction.

BB-37 See the response to comment B-1 for a discussion of the City's approach to meet its obligation under CEQA to examine and require feasible mitigation measures that reduce the GHG emissions of future development.

E. Conclusion/Summar

On behalf of the Coalition, we request that the above comments and changes be incorporated into the Draft PEIR. We appreciate your cooperation and assistance throughout this process, and would be happy to discuss any of the above concerns and mitigation measures with you further.

Please feel free to contact either John Ponder (619-338-6646) or Rafael Muilenburg (858-720-8908) of our firm with any questions related to the foregoing or for any further information desired. Thank you.

Very truly yours,

John E. Ponder

for SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

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Exhibit A

For informational purposes, a more detailed summary of other new California greenhouse gas legislation is provided below:

AB 1493 Summary: Approved in July 2002, this bill requires the California Climate Action Registry, in consultation with the State Air Resources Board, to adopt procedures and protocols for the reporting and certification of reductions in greenhouse gas emissions from mobile sources for use by the state board in granting emission reduction credits. It also requires regulations that achieve the maximum feasible reduction of greenhouse gases emitted by passenger vehicles and light-duty trucks and any other vehicles determined by the state board to be vehicles whose primary use is noncommercial personal transportation in the state. Under the bill, the regulations would apply only to motor vehicles manufactured in the 2009 model year, or any model year thereafter.

SB 1368 Summary. Approved in September 2006, and entitled "Greenhouse Gas Emissions Performance Standard for Baseload Electrical Generating Resources," SB 1368 requires the California Energy Commission and the California Public Utilities Commissions to adopt regulations to prohibit new capital investments in power plants serving the public unless their greenhouse gas emissions are as low or lower then GHG emissions from new natural gas power plants. This greenhouse gas performance standard will apply to all in-state and out-of-state generators, whether fueled by coal of other fuels. This bill will make it more difficult to upgrade or develop coal-powered and other fossil fueled power plants.

SB 107 Summary. SB 107, "California Renewable Electricity Standard," expands California's existing Renewable Electricity Standard (RES) to require that regulated electric utilities increase their use of wind, solar and other renewable electricity sources to achieve a 20% goal of renewable energy source by 2010. The bill also requires that electricity delivered into the state meet this goal, thereby offsetting the existing in-state fossil fuel generation. All investor-owned and municipal utilities must address carbon emissions in their long-term procurement plans. For the first time, municipal utilities must report progress toward meeting this goal. This law is considered an initial step to pave the way for the use of tradable renewable energy credits to achieve compliance.

SB 1505 Summary. This bill sets complete life-cycle emissions standards for hydrogen used for transportation in the state in order to ensure emissions are reduced. The bill also requires a certain percentage of this hydrogen be produced from renewable sources. SB 1505 requires the GHG emissions of hydrogen vehicular fuel be reduced by 30% on a per-mile basis when compared to the average gasoline vehicle. Source-to-tank emissions of nitrogen oxides (NOx) and reactive organic gases (ROG) must also be reduced by 50% compared to gasoline baseline, and the emissions of toxics must also be reduced to the maximum extent feasible. The statute also would require a 33.3% of the transportation hydrogen be produced from eligible renewable sources.