PUBLIC REQUEST TO ADDRESS
THE BOARD OF SUPERVISORS
COUNTY OF LOS ANGELES, CALIFORNIA

MEMBERS OF THE BOARD

HILDA L. SOLIS
HOLLY J. MITCHELL
LINDSEY P.HORVATH
JANICE HAHN
KATHRYN BARGER

Correspondence Received

			The following individuals submitted comments on agenda item:	
Agenda #	**Relate To**	**Position**	**Name**	**Comments**
8.		**Oppose**	Dakota Kelly	Let's work on cleaning the streets first and then worry about the climate action plan.
		Other	Dawn Elliott	N/A
			Dawn Elliott	N/A
		Item Total	**3**	
Grand Total			**3**	

As of: 3/12/2024 8:45:44 AM

Attn: Board Services Division
383 Kenneth Hahn Hall of Administration
Los Angeles, California 90012

Re: 2045 Climate Action Plan, Project No. 2019-002015-(1-5)

Good governance is efficient, and maximizes results with a minimum of public sector involvement.

The Climate Action Plan can generate maximum results with the simple strategy of increasing residential density throughout the county. Doing so will greatly reduce greenhouse gas emissions, and also address LA County's housing crisis – beneficial results that do not require public funding or taxation. Limiting increased land-use density to locations "near transit" is insufficient, and neither takes advantage of the opportunity nor addresses the need.

Additionally, the Climate Action Plan can maximize results by accelerating the transition to renewable energy (including appropriate energy storage strategies). The ongoing decreases in renewable energy and storage costs justifies an aggressive policy approach. Merely participating in the Clean Power Alliance is insufficient, and will delay the countywide transition to 100% renewable energy.

The Climate Action Plan should focus on readily achieved measures, like the two mentioned above, not "aspirations".

Thank you,
Ed Salisbury
2514 30th Street
Santa Monica, CA

PALMDALE WATER DISTRICT
A CENTURY OF SERVICE

BOARD OF DIRECTORS

W. SCOTT KELLERMAN
Division 1

DON WILSON
Division 2

GLORIA DIZMANG
Division 3

KATHY MAC LAREN-GOMEZ
Division 4

VINCENT DINO
Division 5

DENNIS D. LaMOREAUX
General Manager

ALESHIRE & WYNDER LLP
Attorneys

February 8, 2024

Clerk of the Board of Supervisors
Attn: Board Services Division
383 Kenneth Hahn Hall of Administration
Los Angeles, CA 90012

Sent Via E-mail

RE: PWD COMMENTS ON THE 2045 CAP AND DPEIR

Dear Board of Supervisors:

Thank you for the opportunity to comment on the Draft Program Environmental Impact Report (DPEIR) for the 2045 Climate Action Plan (CAP) and the 2045 Climate Action Plan. Palmdale Water District (PWD) has reviewed the documents. We encourage the Board of Supervisors consider the inclusion of the following strategy within the CAP:

1. Table E-1 Greenhouse Gas Strategy, Measure, and Action Implementation Details.

a. Strategy 7 – Conserve Water

Add the following strategy:

5.6 Partner with the County water districts and retail suppliers to explore the potential for widespread utilization of indirect potable reuse through full-scale projects that puts recycled water to its highest beneficial use and includes a carbon removal strategy through direct air capture.

PWD is currently in the implementation phase of an indirect potable reuse project that will utilize tertiary treated recycled water and provide a new water supply that meets 25% of the District's demand by 2030, which shows PWD's commitment to the future water supply reliability for sustainable growth within the Antelope Valley. Additionally, the project includes a direct air capture system that uses the byproduct (brine) from the advanced water treatment system to remove carbon dioxide from the air, which can assist LA County with achieving carbon neutrality.

Palmdale Water District looks forward to working in partnership with the County's Department of Regional Planning and Chief Sustainability Office on the implementation of projects within the plan. PWD's Pure Water Antelope Valley (Pure Water AV) achieves several of the strategies identified in the CAP.

Should you have any questions, please feel free to contact to me at (661) 456-1017 or dlamoreaux@palmdalewater.org or Scott Rogers, Engineering Manager, at (661) 456-1020 or srogers@palmdalewater.org.

Very truly yours,

DENNIS D. LaMOREAUX,
General Manager

DDL/SR/dh

CC: Palmdale Water District Board of Directors
Supervisor Kathryn Barger, Fifth District

Medina, Annette

From: John Lloyd <boyonabike62@gmail.com>
Sent: Friday, February 9, 2024 7:54 AM
To: PublicComments
Subject: Support Climate Action Plan (CAP)

Follow Up Flag: Follow up
Flag Status: Flagged

Dear Supervisors,

I am a resident of LA County (D5) and an environmental historian at Cal Poly Pomona, where I also serve on the campus Alternative Transportation Committee. I am writing to ask you to support the County draft Climate Action Plan (CAP), which is based on a sound analysis of what LA County must do to meet its climate and equity goals.

I was particularly impressed with the plan's transportation and land use elements, which tackle the largest source of greenhouse gas emissions (GHGs), our transportation. The draft CAP offers a realistic pathway to reduce transportation GHGs and improve health, affordability, and equity for all residents.

I urge you to adopt the plan and follow through on its recommendations in a timely manner.

Sincerely,
--
John Lloyd
Sierra Madre, CA

January 12, 2024

Los Angeles County Board of Supervisors
500 West Temple Street
Los Angeles, CA 90012

To the Honorable Supervisors Hilda L. Solis, Holly J. Mitchell, Lindsey P. Horvath, Janice Hahn, and Kathryn Barger

Re: Request for Both a One-Year Postponement of Further Consideration of Proposed 2045 Climate Action Plan (CAP) and an Impartial Economic Impact Analysis of CAP.

Dear Hon. Chair Horvath and Supervisors,

Our organizations again join to express our profound concern with the CAP based on alarming testimony provided by staff at the November 15, 2023 hearing before the Planning Commission.

In response to numerous questions by Commissioners, staff repeatedly asserted that (i) the CAP was "an aspirational document" (Deputy Director Chung), (ii) the more than 200 new CAP goals, implementation measures, and performance objectives, which we refer to as "measures" in this letter, "are not required for individual development projects" (Section Head Hua), and (iii) our urgent request for an impartial economic analysis of the CAP "would not further the goals of an aspirational plan" (Director Bodek).

However, this staff testimony about the "aspirational" intent or interpretation of the CAP is contradicted completely by the actual text in the proposed General Plan Amendments (GPA) and the CAP itself. Even Director Bodek separately admitted that CAP compliance is "required" under the California Environmental Quality Act (CEQA).

Under California law, the General Plan is the legal "constitution" of the County. The proposed GPA requires the County to "facilitate the **implementation and maintenance of the Climate Action Plan** to **ensure** that the County **reaches its climate action and greenhouse gas emission reduction goals**." (Proposed GPA amendment to Policy AQ 3.1)

The CAP prescribes numeric GHG emission reduction goals for 2030, 2040 and 2045. The CAP uses the term "aspirational" in exactly one context, when describing a "net zero"

greenhouse gas goal for the whole of the county in 2045 – and the CAP repeatedly says that "net zero" is an aspiration – not a goal like the numeric standards for 2030, 2040 and 2045. In contrast, **the CAP uses the term "require" 166 times when describing the CAP compliance measures, and more specifically identifies more than 100 measures that are "required" to meet the GHG reduction numerical goals set for 2030, 2040 and 2045**.

It is the written words of the GPA and CAP, which expressly include "required" throughout the CAP, not the oral testimony and "aspirational" intent of staff, which will be enforced by courts in lawsuits filed by opponents of the \Board's majority vote approval of plans, projects and funding priorities.

At the November 15th Planning Commission hearing, one Commissioner asked Staff was to clarify what aspects of the CAP or CEQA Checklist might be voluntary rather than mandatory. Director Boden then clarified, "it's voluntary to participate in the CEQA checklist. It is not voluntary from a CEQA compliance perspective…. So you either have to mitigate it on your own in your own CEQA document; or you can work with us to mitigate it through our checklist."

The "CEQA checklist" referenced by Ms. Bodek is extremely narrow and appears tailored for higher density infill housing. It is entirely unworkable for county-scale water and transportation infrastructure, economic development projects, and housing projects (including housing projects that are fully consistent with the Housing Element and approved entitlements).

As Ms. Bodek explained, that will leave "developers" – but also the county itself, and other public agencies seeking discretionary approvals or funding from the county – all on their own in needing to do a "CEQA document" that needs to apply all of the CAP's "requirements" to "ensure" the County achieves its 2035, 2040 and 2045 numeric GHG "goals" and required "climate actions."

This is why infeasible, unattainable, ambiguous, incomplete, and at times nonsensical measures in the CAP create no predictable consistency compliance pathway for future CEQA documents. Moreover, because even "fair arguments" of CAP inconsistencies or non-compliance can be readily challenged in a Negative Declaration, more plans, projects and funding decisions will require full EIRs – and EIRs increase the time, cost, and litigation risks of getting anything approved, financed, or built, even if these projects are fully consistent with this Board's approval of non-CAP plans and projects.

San Diego County's Board of Supervisors received similar assurances from staff - "it's only aspirational" - when it embedded one of the state's first CAPs into its General Plan in 2011. In the next twelve years, the County lost a consecutive series of lawsuits challenging approvals of projects and implementation measures, which were based on argued non-compliance with the CAP. The courts enforced the words of the CAP within the legal framework of the General Plan – not the "aspirational" intent of staff or Board members in office in 2011. Only after spending millions of dollars on three teams of county outside lawyers as approved housing and infrastructure projects were stalled or abandoned, and paying the attorneys' fees of the county's CAP-enforcing anti-project opponents, has San Diego County now proposed a precisely crafted replacement CAP, which aims to replace scores of sweeping "aspirational" 2011 measures with a

handful of carefully drafted commitments to propose specific future ordinances – in an analytical framework that correctly describes the massive GHG reductions already mandated by state law which will reduce GHG emissions in San Diego with or without the CAP.

Sonoma County also lost its CAP lawsuit, and many jurisdictions have chosen not to embed or reference their CAPs in General Plans. For example, even San Francisco declined to include its CAP in its General Plan – and only after the CAP was issued by the Mayor's office (without Board of Supervisors' approval) did San Francisco learn that CAP compliance costs even for such a dense, transit-served, temperate city and county with no agricultural, aerospace or significant manufacturing sectors would cost up to $22 billion according to UC Berkeley climate scientists.

As we noted in our prior letter and as was described by many other stakeholders, the CAP includes sweeping measures governing our core infrastructure, our core economic sectors, our core resources of land and water that are already governed by other Supervisor-approved plans and policies, and our core values as well as statutory mandates such as delivering more housing as required by the Housing Element and approved projects.

Neither the CAP nor the accompanying Program EIR disclose the many inconsistencies and conflicts between the CAP and the County's infrastructure, economic, and housing goals. For example:

- The CAP ignores the Housing Element, and demands that more than half of all new housing be located within high quality transit corridors (HQTAs) that have a maximum 15-minute interval between buses during the morning and evening commute, and likewise have evening and weekend service. There are presently only four (4) small HQTAs located anywhere in the county unincorporated area north of the San Gabriel Mountains, and the approved Housing Element calls for tens of thousands of new homes to be built in this area outside these HQTAs.

- The CAP ignores the recent plans, contracts, and projects of the county's water suppliers (including the County's own department, and the Waterworks Districts), as well as state law, and includes a measure to reduce water imported to the County to 10% of total supply – with all remaining water needs to be supplied from rain, surface streams, groundwater, and treated wastewater. The CAP is also inflexible and hostile to emerging and proven technologies: it excludes desalinization, for example, as an acceptable local water source. However, neither housing nor jobs can be created without water, and managing water to meet the demands of large populations has been a necessity since well before the Roman Empire (and the remains of the aqueduct system that survive to this day).

- The CAP includes a measure calling for achievement of an "employment density" of 300 employees per acre, completely wiping out small businesses, retailers, manufacturing, logistics, and infrastructure facilities in favor of high-rise, high cost structures packed with people at a density that was achieved on the West Coast (pre-COVID) only by

downtown San Francisco. Staff nevertheless repeated its endorsement of this measure – and all measures – at the Planning Commission hearing.

We continue to be deeply discouraged by staff's unwillingness to remove these and other egregious and infeasible CAP measures, its insistence on embedding the CAP into the County's General Plan, and its refusal to clearly explain how public and private sector projects and plans which are ineligible for the simplistic and narrow "checklist" would have to comply with each measure of the CAP under CEQA. We are deeply disturbed by staff's repeated refusal to provides substantive written responses to our prior letter and letters submitted by other stakeholders (enclosed for ease of reference) and summary dismissal of these concerns as "not requiring a written response under CEQA." Finally, we are also deeply discouraged by staff's refusal to acknowledge the proven weaponization of CAPs through CEQA lawsuits to enable opponents to raise even more legal challenges to the implementation of this Board's decisions to approve plans, policies, projects, and funding priorities in your role as the county's elected representatives.

We urge your Board to pause further consideration of the CAP for one year, and during that period to direct the preparation of an impartial economic analysis of the CAP. We believe the Los Angeles Economic Development Commission (LAEDC) is the appropriate entity to complete this analysis, based on its track record of preparing impartial reports for this Board that are informed by its deep understanding of the diversity, equity, and opportunity considerations in our county. LAEDC has previously been funded by the County; and the fact that it has a diverse board with multiple stakeholders is a strength – not, as implied by staff at the Planning Commission, a bias.

Thank you for your service,

Jeff Montejano
Chief Executive Officer
BIASC

Jon Switalski
Executive Director
Rebuild SoCal Partnership

Enclosures: [list and include PDF copies of comment letters from 2022 on earlier version of CAP, and this version, from BIALA, BILD, bus coalition etc.]

July 18, 2022

Submitted via electronic mail: climate@planning.lacounty.gov

Thuy Hua, Supervising Regional Planner
County of Los Angeles, Department of Regional Planning
320 West Temple St., 13th Floor
Los Angeles, CA 90012

Re: Building Industry Association Comment Letter – 2045 Climate Action Plan

Dear Ms. Hua:

Building Industry Association of Southern California, Inc., Los Angeles/Ventura Chapter (BIA-LAV) is a non-profit trade association focused on building housing for all. BIA-LAV and our members have long supported sustainability and environmental stewardship, as our society and regulators grapple with the causes and effects of climate change. On behalf of our membership, we respectfully provide these comments on Los Angeles County's (the "County")[1] Draft 2045 Climate Action Plan (the "CAP").

Despite the challenges associated with climate change, providing a large supply of new homes affordable to all income levels is a critical and recognized policy objective set forth in the County's recently-adopted Housing Element. It is the homebuilders who will or will not be entitling and building that housing. In light of the broader housing goals that we all share, BIA-LAV has previously expressed its concern about recent layering of new general plan policies which, taken together, work to unduly constrain our members' ability to produce needed housing particularly by constricting the geographic areas of the County that can be developed. Now, the CAP and its policy framework, if adopted, will add to that layering by creating more constraints and adding to the high cost of housing, which will further constrict the supply of new homes that are affordable to lower and middle income residents. There is a recognized, persistent housing supply crisis throughout California; and Los Angeles County, as the most populous county in the State, is ground zero of the crisis.

According the County's 2021 Housing Element Annual Progress Report ("Housing Report"), for the eight (8) year period from 2014 through 2021, 8,854 housing units have been permitted in the County, which translates to an average of only 1,107 units

[1] "County" refers to the unincorporated areas of Los Angeles County unless otherwise apparent from the reference context.

per year for the period.[2] According to statistics in the Housing Report, the level of production fell far short of the assessed housing needs of County residents according to the County's allocation of the so-called fifth cycle (2014 – 2021) Regional Housing Needs Assessment ("RHNA"), which called for 18,586 total units at all income levels – more than twice the number of units that were permitted (8,854 or 1,107 annually). Moreover, the County's RHNA allocation in the current Housing Element cycle (the 6th cycle RHNA, which addresses the need for new homes during the period from April 2021 – April 2029, calls for 90,052 new units to meet the County's assessed housing needs, or 11,257 units annually. Given these numbers, ***the County should be striving to achieve a more than tenfold increase in the level of housing production when compared to the actual level that was realized in the last eight years***.

Thus, at the current pace of housing production, during this current (i.e., the sixth) RHNA cycle, the County's housing stock will fall 81,196 units below the assessed need. Simple supply and demand realities indicate that, under such circumstances, housing costs are guaranteed to rise – making the region even more unaffordable than it already is. While we recognize that the County is not responsible for actually constructing new homes, it is responsible for its policies, which will either facilitate housing production and accommodate market participants or drive away housing production with policies that make such development uneconomical within the County. Based on the actual new home permit numbers in recent years, the homebuilding market is demonstrating the undesirability of producing housing in the County under current governmental constraints, let alone under additional ones.

It is against this backdrop that we present the following comments to specific strategies set forth in the CAP that are of most concern to our members, which we are certain will – if implemented – negatively impact housing production and significantly increase housing costs.

Strategy 1: Decarbonize the Energy Supply

Strategy 1 proposes a series of measures to decarbonize the energy supply used in the County. The introductory text states that "[n]ew and innovative approaches are needed to bring the benefits of renewable energy to all residents while protecting and increasing affordable housing."[3] The CAP posits that on-site, renewable energy programs have not reached the communities that are most in need of lower energy costs.[4] Actions proposed under Measure ES5 would establish GHG requirements for new development. The feasibility of the proposed requirements is uncertain and would increase development costs and create new litigation risk for projects.

Implementing Action ES5.1 would require the County staff to identify "new requirements for new development, including reach codes, ordinances, and conditions of

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[2] Housing Element Annual Progress Report, CY 2021, Table B. Table B is described as providing "the status of the County's progress toward meeting its RHNA for the housing element period as of CY 2021, based on the building permit activity reported in Table A2. The RHNA is adjusted to account for RHNA transfers to cities for annexations during the housing element period."

[3] CAP, pg. 3-10.

[4] CAP, pg. 3-10.

approval to reduce GHG emissions from energy use, transportation, wastewater and other sources."[5] "Reach codes" are local codes that are purposefully more stringent than state requirements. Promising to exceed evolving State requirements appears imprudent given that the State (through the work of the Building and Standards Commission, California Public Utilities Commission, California Energy Commission, etc.) periodically updates energy efficiency requirements, with a view to reducing GHG emissions and taking squarely into account the feasibility of doing so. While we would understand the desire to align with the State's ambitious GHG reduction goals and aspirations, there is no reason for the County to get ahead of the State to impose requirements that are stricter or imposed even sooner than those indicated by the State after a very hard look involving abundant public participation.

Additionally, Implementing Action ES5.1 suggests there should be new conditions of approval aimed at reducing GHG emissions. Conditions of approval for a discretionary project must be "roughly proportional" to the impacts of the project; and conditions cannot be imposed based on mere desire. New development is already far more energy efficient and results in fewer GHG emissions than does existing development. This energy efficiency promises to continue and increase as State building codes and technology evolve in the future. Even if there were no constitutional constraints on conditioning new developments, the County should not make perfection the enemy of the good by seeking to accelerate the already rapidly evolving energy efficiency and GHG reductions guaranteed by State standards.

Implementing Action ES5.1 all but admits it's pursuit will result in higher housing costs by suggesting the need for financial support and incentives to defray the new costs imposed as they affect affordable housing. But the CAP suggests nothing to defray costs imposed upon the broad swath of middle income households which must compete for market rate housing. Once again, the new housing market is asked to bear a financial burden which only promises to drive up housing costs for virtually all County residents. The County should consider broader financial relief to defray implementation costs on middle income and workforce housing.

Implementing Action ES5.2 requires the development of a consistency review checklist[6] (the "Checklist") pertaining to new development, to be used to demonstrate consistency with CAP strategies, measures and actions, indicating that the Checklist is "required for discretionary projects" and can be used for CEQA streaming provided the project does not require a general plan amendment. Projects that are not consistent with the CAP and not expressly exempted must prepare a project-specific quantitative GHG analysis and must incorporate CAP checklist measures "to the extent feasible." Neither the CAP nor the CAP Checklist identifies a significance threshold that will apply to projects that are not consistent with the CAP's arbitrary exemptions.

Thus, it is not clear whether (i) the County would require implementation of all feasible CAP Checklist Measures in order to have less-than-significant GHG impacts, or (ii) if a project could show sufficient mitigation by some other measure (for example, consistency with the State's Scoping Plan Update or credits and offsets). Additionally, if

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[5] CAP, pg. 3-18.

[6] CAP, Appendix F.

a project is not using the CAP for CEQA streamlining and is preparing a "comprehensive project specific analysis of GHG emissions pursuant to CEQA," then why would the project still be required to incorporate CAP measures to the extent feasible? What mechanism will be used to impose this requirement? These resulting uncertainties increases project litigation risk. Litigation by project opponents already affects many housing developments resulting in delay and ultimately higher costs to the homebuyer.

Under the Checklist, a project may be screened-out if it meets certain criteria. Notably, a project that would achieve net-zero GHG emissions may be screened-out; but the County's definition of "net zero" GHG emissions appears to be both narrower than and inconsistent with CARB's Scoping Plan. Here again, the County does not need to get out ahead of the California Air Resources Board ("CARB") and its Scoping Plan. A project may propose alternative GHG reduction measures to those in the CAP Checklist only by providing a qualitative description of the proposed measures and quantitative documentation showing how the alternative measure will achieve the same or greater level of GHG reductions as the corresponding CAP requirement. However, carbon offset credits are not permitted to be used as alternative project emission reduction measures – even though such offsets would indeed reduce GHG emissions. This narrow approach ignores the fact that the County has previously approved large master planned communities that have adopted innovative net zero GHG emissions strategies that include use of carbon offset credit. The County's approach to GHG reduction should be broad given the fact that climate change impact from GHG emissions is a global issue and the Scoping Plan does not prohibit the use of quality carbon offsets as long as the project first maximizes onsite and local GHG reduction opportunities..

Finally, according to the Checklist, projects that would achieve net-zero GHG emissions may only screen-out if the "*existing on-site development is similar to the proposed project…"* This means that the existing land use type and the project's land use type(s) are to be reasonably similar, subject to LA County's discretion."[7] What this language appears to do is prevent all greenfield development from "screening out." The County is considering a policy that discriminates against greenfield development and discourages housing types that are desired by many homebuyers as discussed in more detail under Strategy 7, below. Again, this approach would be more restrictive than the Scoping Plan, which may impair housing and is not necessary for the County to align with the State's climate goals.

Strategy 5: Decarbonize Buildings

A cornerstone of the CAP is the decarbonization of new development and existing buildings. This endeavor will undoubtedly be both costly and potentially prohibitive. A far more measured approach is needed -- particularly now, when housing costs are already soaring and housing supply is woefully short of demand. Decarbonization is better framed as a long-term policy goal to be implemented only after full analysis and study to determine whether local electric infrastructure can handle increased loads and the nature and effect of any infrastructure upgrades that may be required. This analysis

[7] Checklist, p. F-7.

is critical given uncertainty with respect to the reliability of the electric grid and its ability to carry increased loads as evidenced by periodic blackouts on days with heavy electric loads.

CAP Measure E1 aims to electrify all existing buildings. As part of this measure, Implementing Action E1.1 proposes to require existing buildings, major retrofits, and renovations to switch natural gas water and space heating to electric water and space heating at point of sale. Implementing Action E1.3 proposes to adopt a Zero Net Emission ("ZNE") ordinance for building renovations based on certain unspecified criteria and Implementing Action E1.4 aims to phase out gas-powered infrastructure and appliances as they need replacement.

While electrifying existing buildings is a well-intended strategy to address climate change, in the near term, the County should consider and balance the need to solve the immediate housing problems (undersupply and unaffordability) against the incremental environmental benefits from the proposed electrification mandate. As explained above, lack of housing affordability and supply is a serious problem in the County. Requiring existing buildings to switch natural gas systems to electric systems will shift the extra costs to both renters and home purchasers. In addition, natural gas systems may reduce not only energy costs to the consumer but energy consumption as well when as compared to electric. Again, California is rapidly improving code requirements and is pursuing ambitious ZNE goals—there is no need for the County to get out ahead of the State on this issue to the detriment of new housing.

Prior to adoption of any decarbonization ordinance, the CAP should require a thorough study of economic impacts to residents and businesses to be presented to the Board of Supervisors that recommends measures to ensure that residents and business will not be impacted by rolling black outs or increased energy costs. Reliability and lower energy costs should be a key component of the CAP to ensure social equity for all. The CAP's retrofitting goals should incorporate cost efficiency with funding and incentives for middle and low income residents.

Presently, the only available practical, large-scale alternative to natural gas or propane heating is to use electric heat pumps. As we pointed out in previous comments, federal studies have long indicated that electric heat pumps operate relatively inefficiently when ambient temperatures fall. One such federal study last decade indicated that efficiency drops when ambient temperatures fall below 45 degrees.[8] Although gradual technological improvements have been made and will presumably continue, it is nonetheless entirely foreseeable that electric heat pumps will continue to have relatively limited efficacy when ambient temperatures drop to low levels, which is inevitable by degree in many parts of the County. When this fact is combined with the fact that electrical power outages at different scales are inevitable from time to time, the County must recognize that such de-carbonization could require citizens to flee their homes from time to time for warmth. Homeowners already have limited or no use of wood burning fireplaces to comply with other environmental

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[8] U.S. Department of Energy Office of Energy Efficiency & Renewable Energy, *Measure Guideline: Heat Pump Water Heaters in New and Existing Homes*, Feb. 2012, at 8 https://www.nrel.gov/docs/fy12osti/53184.pdf.

concerns. This electrification measure will unfairly shift the cost of climate change mitigation to lower income citizens.

Measure E2, similarly, aims to electrify all new buildings and new development. Implementing Action E2.1 proposes to adopt an ordinance requiring all new buildings to be fully electric with no natural gas hookups. Implementing Action E2.1 also includes affordable housing considerations in these requirements, and proposes to develop financial support measures to defray potential additional first costs on affordable housing. Implementing Action E2.2 proposes to adopt a ZNE ordinance for all new residential buildings built after 2025 and all new nonresidential buildings built after 2030, and also proposes financial support measures to offset first costs on affordable housing.

As pointed out above, market rate housing is where the overwhelming percentage of households compete for housing. While it is unclear how "financial support" would be structured, the proposed financial support foreseeably would not alleviate higher costs to the middle income households that compete for housing in the market rate housing sector. Again, financial support for the middle income and workforce housing should be considered.

The CAP should recognize that new housing is built with the latest technologies that are the water, energy and GHG efficient. Because new homes in California are already the most energy efficient in the Nation, focusing on new construction misses the mark. The California Energy Commission ("CEC") Energy Efficiency Action Plan already has goals to double energy efficiency savings by 2030, which is ambitious, but a more realistic goal than the County's proposed Measure E2. CEC's goals, which were established after very careful consideration of the current and foreseeable feasibility of progressive steps, are also considered the most forward-looking and progressive in the nation.[9] The CEC's Action Plan states that "the critical path for success will lie with the state, stakeholders, and utilities encouraging and working with the marketplace, including leveraging capital and accelerating the transformation."[10] The CEC envisioned a climate change policy that takes a holistic, flexible approach which considers the marketplace and various stake holders. A rigid, linear approach of requiring all new buildings to have net zero emissions would inevitably disrupt and impede the homebuilding market. The County should allow the CEC's studious processes and evolving mandates set the pace rather than pursue overly ambitious policies that will foreseeably further curtail homebuilding activity and increase homebuilding costs.

Strategy 7 Conserve Water

Measure E6 aims to reduce indoor and outdoor water consumption. Implementing Action E6.1 would require a water conservation ordinance for new development, but

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[9] American Progress, *States Laying Road Map Climate Change Leadership*, https://www.americanprogress.org/article/states-laying-road-map-climate-leadership.

[10] California Energy Commission, *2019 Energy Efficiency Action Plan*, at 1-2, https://www.energy.ca.gov/programs-and-topics/programs/energy-efficiency-existing-buildings#:~:text=The%20plan%20is%20organized%20by,emissions%20from%20the%20building%20sector.

imposes a net-zero water ordinance for new greenfield development. Yet, County staff have recognized that net-zero water mandates are infeasible.

The County's proposed policy of discriminating against new greenfield developments is arbitrary, and appears legally unsound. The policy would make greenfield development even more costly at a time when suburban housing demand plainly is growing. A growing body of compelling evidence shows that both jobs and housing demand are fleeing the more urbanized areas in favor of suburban and relatively bucolic "work from home" environs, accelerating a trend that was already evident before the pandemic. One recent study shows the COVID-19 pandemic has accelerated an antecedent trend towards urban exodus toward the suburbs, the exurbs, and significantly smaller cities – primarily in sunbelt states with less constrictive land use policies but also substantially higher per capita Greenhouse Gas ("GHG") emission rates.[11] For example, between 2019 and 2021, U.S. consumer preference for larger homes in less dense areas grew from 53% to 60%. With "work from home" becoming the new norm, increased VMT from suburban developments, and its impact to climate change, becomes less of a concern. Additionally, since GHG emissions and climate change is a global issue, accommodating demand for suburban and exurban living in California, a low GHG per capita state, would result in less GHG emissions on the whole than if this demand is funneled to other states with higher GHG per capita emission rates.

Also, new data has been garnered recently by the scientists worried about the increasingly ominous outlook for climate change concerning the GHG implications of different housing typologies and densities. One recent study on the topic of urban sustainability shows the life-cycle, per capita GHG impacts of taller buildings, such as those which are being strongly promoted by the existing land use policies throughout the County and the cities located within it, are global climate change-harmful on a per capita, life-cycle basis when compared to lower, less intense development.[12] The study strongly indicates that the type of mid-rise and high-rise infill development that is now preferred may be harmful from a life-cycle, per capita GHG standpoint.

The County should coordinate and work with all local water agencies (LADWP, etc.) to promote and invest in the use of recycled water, recharge opportunities, desalination, rain harvesting, etc. Such measures will conserve the use of potable water.

Conclusion

While we commend the County for its desire to address climate change and the need to be aligned with the State's GHG emission goals, many of the CAP's policy directives, while well intended, promise to increase housing costs, further dampen the already dismal housing production in the County, further reduce homeownership

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[11] Stephan D. Whitaker, *Did the COVID-19 Pandemic Cause an Urban Exodus?" Federal Reserve Bank of Cleveland*, Feb. 5, 2021, https://www.clevelandfed.org/newsroom-and-events/publications/cfed-district-data-briefs/cfddb-20210205-did-the-covid-19-pandemic-cause-an-urban-exodus.

[12] Francesco Pomponi, "Decoupling Density from Tallness in Analysing the Life Cycle Greenhouse Gas Emissions of Cities," Nature Partners Journal – Urban Sustainability, July 5, 2021, https://doi.org/10.1038/s42949-021-00034-w.

opportunities and reasonable rental rates, and further erode the economic status of the middle class and of the most vulnerable residents of our county. The CAP should focus on opportunities and incentives to retrofit the current built environment that generates more GHG emissions and is less energy and water efficient than new development.

The County should not endeavor to leap-frog ahead of the State and CEC when it comes to energy and water efficiency mandates for new construction. The County should not impose restrictions that are more rigorous than the Scoping Plan, as noted in the examples above. Most importantly, the County should not be arbitrarily discriminating against much-needed edge, greenfield and new town development at a time when housing is being built in the County at a rate less than one-tenth of the rate that is needed. Housing developments which already incorporate energy and water efficiency practices should streamlined.

Accordingly, as the representatives of the homebuilding industry, we urge the County to reconsider its content in light of our comments and consider a change in direction to encourage and foster more homebuilding activity in the County. BIA/LAV will continue to work with the County to address the housing crises, and in doing so, we hope and trust that the County will consider our concerns and adopt housing friendly policies.

Bill McRenyolds, President
BIASC/ LA Ventura Chapter

De'Andre Valencia, Senior VP
BIASC/ LA Ventura Chapter

May 15, 2023

Submitted via electronic mail: climate@planning.lacounty.gov

Attn: Thuy T. Hua, Supervising Regional Planner
County of Los Angeles, Department of Regional Planning
320 West Temple St., 13th Floor
Los Angeles, CA 90012

Re: Building Industry Association of Southern California, Inc. – Comment Letter Concerning the County's Revised Draft 2045 Climate Action Plan

Dear Ms. Hua:

Building Industry Association of Southern California, Inc., Los Angeles/Ventura Chapter (BIA-LAV) is a non-profit trade association of businesses and individuals in the vital homebuilding industry in the Counties of Los Angeles and Ventura. In essence, BIA-LAV's members are those who are the most active in building the new homes and communities in which Angelenos will live. BIA-LAV and its members have long supported governmental efforts aimed at achieving sustainable development and sound environmental stewardship, and will continue to do so.

We write today to provide comments concerning Revised Draft 2045 Climate Action Plan ("RDCAP") in response to its publication by the County of Los Angeles (the "County") regional planning staff. Last week, we were disappointed that the County's staff declined to extend the review period for the RDCAP. It is a very complex document, spanning nearly 1000 pages and dozens of legal and scientific topics, such as agriculture, jobs, energy and water supply and reliability, economic development, housing, infrastructure, public works, transportation, and water. While we and others had been repeatedly assured by the County's staff that the RDCAP was to be an "aspirational" plan, what has been proposed would be legally enforceable in many problematic ways, and would add hundreds of additional pages to the County's general plan.

We had scheduled for last Monday a meeting with the County's staff to discuss the RDCAP. We postponed the meeting because we were and are still– with the assistance of consultants and attorneys – assessing the sweeping consequences of this proposed, massive amendment to the County's general plan and other key, already-approved policy priorities. The program environmental impact report

(PEIR) that accompanied the RDCAP reflects even more technical and legal content, and hundreds of more pages to digest. Indeed, the PEIR's deficiencies alone are vast and overwhelming; and it does not begin to explain or analyze the many conflicts and consequences of the RDCAP vis-a-vis the already-approved general plan, community plans, area plans, and specific plans. The RDCAP plainly has staggering implications to the housing industry; but it generally lacks scientific or technical support for the regulatory burdens that it would impose on projects. Given the sheer volume of material to digest, BIA-LAV will continue to analyze the RDCAP and PEIR with an aim toward providing additional comments to the County and its decisionmakers.

Since the passage long ago of California's Assembly Bill 32 (2006), in which the State Legislature expressed the policy goal of substantially reducing anthropogenic greenhouse gases ("GHG") emissions, our staff and members, as well as our regional and state associational counterparts, have followed and participated in regulatory initiatives intended to address climate change and GHG emissions. During that time, we have seen a wide range of regulatory proposals for GHG regulations which, if they had been imposed uncritically, would have wreaked havoc on our members and their ongoing homebuilding efforts. None of the proposals that we have seen before would so broadly and unduly impose upon and decimate the homebuilding industry as would the RDCAP as it is now presented.

BIA-LAV appreciates that the County's staff feels obligated to propose strong measures aimed to reduce the GHG emissions and incorporate them into an updated climate action plan ("CAP"). Indeed, the urgency of the climate crisis demands action that is both smart and effective. That notwithstanding, if the RDCAP were to be adopted as proposed, it would impose an entirely unmanageable set of new regulatory burdens affecting the potential production of housing and development of communities within the County. The RDCAP should be substantially revisited, corrected and qualified, resulting in a better-reasoned and wise CAP update. Our reasoning is set forth in the discussion that follows.

First, however, as a threshold matter, we must emphasize that both California as a whole and Los Angeles County in particular remain mired in a worsening housing crisis. In recent years, the State Legislature has acknowledged the woeful state of housing supply when enacting the following pronouncements:

> "California has a housing supply and affordability crisis of historic proportions. The consequences of failing to effectively and aggressively confront this crisis are hurting millions of Californians, robbing future generations of the chance to call California home, stifling economic opportunities for workers and businesses, worsening poverty and homelessness, and undermining the state's environmental and climate objectives."[1]

> "California's housing picture has reached a crisis of historic proportions despite the fact that, for decades, the Legislature has enacted numerous statutes intended to significantly increase the approval, development, and affordability of housing for all income levels …."[2]

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[1] Calif. Government Code section 65589.5(a)(2)(A).

[2] Calif. Government Code section 65589.5(a)(2)(J).

> "While the causes of this crisis are multiple and complex, the absence of meaningful and effective policy reforms to significantly enhance the approval and supply of housing affordable to Californians of all income levels is a key factor."[3]

Notwithstanding the clear urgency of such legislative pronouncements, thus far the County has failed to adopt and implement the kinds of reasonable land use policies that are needed to foster substantially more homebuilding in the County.

To illustrate, as we noted in our previous comment letter concerning an earlier draft of proposed CAP revisions, during the eight (8) year period from 2014 through 2021, the County issued permits for the construction of only 8,854 housing units, which translates into an average issuance of only ***1,107*** housing permits annually during the entire eight-year period. This figure falls woefully short of the assessed need for additional housing in the County. Pursuant to state law, the County's recent allocation of the Regional Housing Needs Assessment ("RHNA allocation"), required the County to identify and zone parcels on which to accommodate 90,052 new housing units within the eight-year period April 2021 through April 2029; and the preponderance of the RHNA allocations were imposed to meet pent-up, unmet existing demand rather than current population growth. The County's RHNA allocation therefore equates to ***11,257*** housing units annually, which is greater than ten times larger than the County's rate of actually permitting new housing during the eight (8) year period ending 2021.

Moreover, even as our economy has recovered following the recent pandemic, the rate at which new housing has been constructed within the County's unincorporated jurisdiction has continued to decline. The County reported in the Department of Regional Planning's general plan and housing element annual progress report for 2022 that the County issued certificates of occupancy for only ***956*** housing units on unincorporated County land during all of 2022.[4] Collectively, the constituents of the housing market are speaking loudly to the County's policy makers, saying: Clearly, the County is not taking necessary steps to foster, incentivize, spur and approve new homebuilding – even though the County's own housing element approval makes housing production a policy priority, and even though without solving the housing supply crisis little to no progress can be made on other key policy priorities, like homelessness, racial equity, employee retention and recruitment, and a stable tax and revenue base for the County to pay for its many legally mandated and critically important duties.

If the RDCAP were adopted as proposed, the abysmal current level of housing production within the County will only worsen. In light of both (i) the undeniable need to build much more housing supply in the County, and (ii) the ongoing failure of the County to accommodate new housing supply, the County's decisionmakers should reject the RDCAP's proposed policies because they would both further delay and discourage new housing and community development, and further drive up the costs, the litigation risks and the uncertainty of trying to build housing –

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[3] Calif. Government Code section 65589.5(a)(2)(B).

[4] See *General Plan and Housing Element Annual Progress Reports CY 2022*, LEAP Reporting Table and Summary Table spreadsheets.

or pretty much anything, including without limitation public works, infrastructure, and advanced manufacturing facilities.

Against this backdrop, our most fundamental and urgent concerns about the RDCAP are as follows:

- **First, the sheer number of new regulatory measures, tests and standards reflected in the RDCAP – including new limitations, prescribed implementation measures and potential mitigation impositions – exceeds 100 in total.** Given the limitations of today's technologies, scores of these new prescriptions cannot presently and feasibly be met. Many of the prescriptions remain insufficiently defined in the RDCAP, in that they will rely on future County studies and policy pronouncements or ordinances. Because of the many uncertainties that the RDCAP leaves unaddressed, the RDCAP as proposed would impose upon projects that are presently seeking or soon will seek approval new requirements which can neither be fully fathomed nor met presently.

  Similarly, the draft PEIR prepared for the RDCAP fails to adequately analyze the alleged GHG reductions of the many proposed programs and measures. It lacks technical substantiation for the projected GHG reductions. Consequently, the RDCAP improperly takes credit for as-yet-unadopted programs and foreshadowed or promised measures that have neither been properly evaluated under CEQA nor demonstrated to be likely successful. The CAP's "alternative" compliance pathway is not quantified; and an indicated program for off-site mitigation possibility is promised for formulation and adoption to only sometime in the future.

  Notwithstanding the above, the RDCAP states that all of its measures will, upon its adoption, immediately become part and parcel of the County's general plan. If so, then every project that cannot meet every one of these new measures (to the extent relevant) will be rendered inconsistent with the General Plan. BIA/LAV's members cannot imagine that the County would, in one fell swoop, add so many new benchmarks, thresholds, limitations and areas for close examination, analysis, and potential dispute and litigation to the County's already arduous and prohibitive project approval processes. Thousands of consultants would need to be employed and become educated about such new regulatory prescriptions and tests as might apply to proposed projects, which would add tremendously to the time, expense and complexity of project reviews and approvals. Therefore, first, ***the RDCAP should be pared back very substantially to reduce the sheer number of new prescriptions, calculations and tests that it now includes; and any resulting CAP update should not be incorporated into the County's general plan*** (as is discussed in more depth below). The County should explore instead adopting only a few, relatively plain measures concerning which there is substantial stakeholder agreement concerning their affordability, feasibility and effectiveness.

- **Second,** ***many of the proposed new requirements are foreseeably impossible to meet – either across the board or in a vast number of circumstances, and the legal devastation this would cause shatters the remainder of the Board's approved general plan, area plans, community plans, specific plans, and other approved plans and projects. The County should remove from the RDCAP all measures that cannot be***

feasibly implemented with certainty based on technical, legal and economic factors that exist today. Even though some of the RDCAP measures establish quantitative, inflexible mandates that are effective in 2045, 2045 is barely 20 years away; and nearly every single home or mixed-use project heretofore approved by the County currently will foreseeably continue to exist in 2045. The RDCAP generally fails to consider the foreseeable interplay among existing development, fully or partially approved pending development, and further development that is yet to be proposed. When the RDCAP is considered with circumspection, many of its measures are actually illegal under current laws and regulations.

For example, the RDCAP aims to require all projects to comply with the RDCAP's new mandate that no more than ten percent (10%) of its water supply will come from water imported into the County. Projects approved today cannot abrogate the County's water supply agreements, create new water regulations that allow for potable use of recycled water, or pretend that cisterns can supply future apartment buildings and manufacturing facilities – especially since new projects cannot under water quality laws result in hydromodification impacts to downgradient streams and habitat areas. There is no evidence that the County can implement its housing element in compliance with RHNA law and meet this water supply mandate, nor is it clear whether – given that the mandate retroactively implicates all pre-existing water uses in the County – any new project can use any amount of stored or imported water, even as a 10% blending source. Simply put, the sources and uses of water in the County, ongoing consumption needs, and the current, foreseeable and imaginable technologies all preclude such an achievement. The BIA/LAV's members, as the homebuilders and leaders in community development who must strive to supply new homes against a backlog of demand, know from their many required demonstrations of water supply reliability that such a tight limitation on imported water cannot be achieved at any cost in the foreseeable future.

We therefore urge the County's staff to contact the Metropolitan Water District of Southern California (MWD), the Los Angeles Department of Water and Power (LADWP) and other water purveyors operating within the county, as well as the State Water Resources Control Board, the Los Angeles County Regional Water Quality Control Board, and the state Department of Health Services, to ascertain their understanding of how this RDCAP measure could actually be implemented in homes might be built next year and will be existing in 2045 – or allow any applicant to demonstrate reliable water supply consistent with the RDCAP's stated tests alongside water supply assessment law and the California Environmental Quality Act (CEQA). Even the voluntary, very costly, and stringent CalGreen Tier II water standard, which most projects are unable to meet, does not prescribe such an unachievable 10% water import cap, nor does it mirror the RDCAP's anti-innovation approach of dictating only three exclusive water treatment technologies (reclaimed water, grey water, and tap-to-toilet water) which County residents and businesses would be allowed to use to meet the test.

Similarly, the RDCAP aims to establish a new land use limitation or goal such that projects where employment will occur must aim for an employment density of 300

employees per acre. Concerning this proposal, BIA/LAV respectfully requests first and foremost that ***all construction and development activities should be expressly excluded from any such employment density requirement or analysis***. Land development and construction activities tend naturally to be logically phased; and work is undertaken serially out of necessity. Critical paths required for any given construction undertaking do not allow for different tradespersons to be piled atop all at once, such as would be required to meet or approach any arbitrary per-acre employment density goal for construction.

Even when looking beyond construction activities, the 300-person per acre employment density goal seems irrational as applied generally to nearly all parts of the unincorporated county. Such a goal might be sensible and achievable only a very few select parts of the largest and most mature cities (such as pre-pandemic New York City) – not in the unincorporated county areas. In well-planned "new town" areas and still maturing communities, however, meeting any such employment density target would be obviously impossible. A one-acre strip mall in which is located a dozen small businesses does not employ 300 people; nor does a modern automated factory, hybrid technology and entertainment venues, or agriculture production or processing. The RDCAP's employment density metric appears from nowhere; and its expected GHG reduction is never quantified. It is impossible to imagine that any mixed-use projects (which are generally favored by regional planners) could ever come close to meeting such a requirement; but the RDCAP nonetheless threatens to impose it as a new General Plan mandate.

In fact, the infeasibility of the many RDCAP requirements becomes apparent when one considers the RDCAP Checklist, set forth in Appendix F (the "Checklist"). Under any level of scrutiny, the Checklist is overly prescriptive and lacks any potential feasibility in most land use contexts. Its sweeping and overly ambitious provisions fail to consider the many implementation challenges that it would create for housing projects. The RDCAP and its appendices include no meaningful technical support indicating how and when actual GHG reductions might be achieved in the prescriptive categories identified by the Checklist.

Individual projects should not be forced into such a one-size-fits-all framework without a supporting technical basis for the approach; nor should infeasibility need to be proven for the components of such a long laundry list of requirements. For example, even if one were to assume that a given project could, factually, achieve net-zero GHGs by avoiding and reducing all of its GHG emissions through some combination design features and other measures, there is no technical or scientific consensus concerning how one might substantiate the individual or combined effects of trying to meet the standards that the Checklist contains. Moreover, forcing projects to comply with *every* element of the Checklist – or to otherwise mitigate for their failure to do so – would, at minimum, require undue heroics and excessive costs, and could effectively require projects to become "net-negative" in terms of their GHG impacts. A far better approach would be to account for the inherent differences between a wide range of projects by providing flexibility and alternative compliance pathways, while aiming for

a more reasonable and equitable degree of betterment from projects in terms of their GHG-emissions characteristics.

Finally concerning the Checklist and the RDCAP's discussion about it, if a project cannot demonstrate consistency with the CAP, then the project applicant must prepare a "full" GHG analysis – presumably in an environmental impact report (EIR), even if the project would otherwise qualify for CEQA streamlining or an addendum. The RDCAP states, however, that even such a full EIR process will not excuse the project applicant from complying with each and every single Checklist measures "to the extent feasible." Thus, no consideration is given when the required analysis of a project viewed as a whole demonstrates relative wisdom and expediency of not complying with a particular Checklist measure, or when an already-approved suite of GHG reduction mandates included in state or federal laws and regulations differs from the CAP prescriptions, or when a project would add no or negligible GHG emissions, or would otherwise provide quantified GHG reduction benefits. Any project for which there must be undertaken a full GHG analysis should be able to demonstrate whether it has a less than truly significant GHG impact (based upon a reasonable threshold) irrespective of the Checklist.

We therefore urge the County to instead consider the California Air Resources Board's (CARB) Scoping Plan approach to GHG mitigation, which should include the use of CARB-certified GHG-reduction offsets methodology and dispensation for projects that have already garnered CARB's approval thereunder. The County should be proud of the two master planned communities located within the County which have demonstrated net-zero GHG emissions under CARB's methodology. Instead, the RDCAP as proposed summarily rejects the approaches that CARB uses. CARB's 2022 scoping plan and CEQA itself both recognize that there are multiple pathways by which to demonstrate consistency with California's climate action policies. So too should the County's CAP update recognize multiple potential pathways toward compliance – and not embed into the County's General Plan a mindboggling suite of consultant-generated new mandates that were never before presented as mandates even within the County's own department, let alone to other critical agency, public, business, and homebuilder stakeholders.

For example, the County submitted, and the California Department of Housing and Community Development ("HCD") approved, a new housing element in the County's general plan. The RDCAP makes new housing generally infeasible, for reasons mentioned above (e.g., water) and in light of the scores of other mandatory RDCAP measures. The RDCAP therefore directly undermines the potential implementation of the County's housing element. If the County had proposed, along with its housing element, to add to the length and complexity of its housing project approval process, eviscerate CEQA streamlining for housing (and thus delayed housing approvals by multiple years), add countless thousands of dollars to the cost of producing each housing unit, and impose more than 100 new approval standards for new housing, then HCD would have rejected the housing element as a gross violation of housing and civil rights laws. It should be viewed as no less a violation of those law for the County to impose these same burdens in another section of the general plan (i.e., in a CAP update

which the County proposes to incorporate into the general plan) a scant few months later.

Importantly, the County's current CAP was upheld in recent CEQA litigation, as was project-level compliance therewith. This was owing no doubt to the relatively prudent, achievable, and clear content of the current County CAP. BIA-LAV respectfully asserts that maintaining the current CAP would be vastly more reasonable than would be adopting the RDCAP as it is proposed.

- ***Third, the RDCAP should be revised to clearly express the flexible and aspirational nature of its many provisions, and – most importantly – to expressly preempt its weaponization under the California Environmental Quality Act (CEQA). To this end, any finalized CAP update should not be made part and parcel of the County's general plan.*** BIA/LAV is concerned that the County's planning staff espouse the view that the RDCAP as proposed should be viewed as mainly aspirational and not so mandatory as to unduly prejudice any project approvals and development. Respectfully, based on our members' many decades of experience in litigation related to project approvals, BIA/LAV cannot regard the RDCAP as anything less than dangerously over-prescriptive. As written, all of the RDCAP measures would indeed be mandatory – albeit **s**ubject to both (i) off-site mitigation "opportunities" and (ii) possible forgiveness based on infeasibility findings (which might be obtained only after a great expense of time, money and process). Once the RDCAP measures become effective, they would affect virtually any and all projects that will thereafter be considered.

  In California, locally adopted climate action plans legally may be wholly aspirational; or they may instead be mandatory either in part or in whole. Therefore, the County should take care to express its intentions about which elements of any updated CAP will be mandatory in order to prevent the potential and indeed foreseeable weaponization of the updated CAP through CEQA litigation. Notably, San Diego County has been subjected to rounds of litigation due to its uncritical incorporation of its supposedly aspirational climate action plan update in its general plan. As a result of such litigation, that county's own projects, and all private projects that come before the county, can be subjected to legal challenge for the county's failure to strictly enforce its climate action plan update.[5]

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[5] See, e.g., "Enviro Law Group Sues San Diego for Missing Climate Goals in Mira Mesa," Voice of San Diego, Feb. 21, 2023, found at https://voiceofsandiego.org/2023/02/21/enviro-law-group-sues-san-diego-for-missing-climate-goals-in-mira-mesa/; "San Diego Climate Group Sues City over Lack of Enforcement and Unidentified Funding for Its Climate Action Plan," by Dorian Hargrove, September 14, 2022, found at https://www.cbs8.com/article/news/local/san-diego-climate-group-sues-city-over-climate-action-plan/509-8980fa39-67e6-447b-b999-b23e969ca6d0.

Accordingly, BIA/LAV urges the County to include a well-considered "statement of limitation of use" in any CAP update, so as to avoid any arguable claim that the plan's components should be used as a foil under CEQA. Good examples of such statements of limitation of use exists, such as the Southern California Association of Government's (SCAG) statement pertaining to its use of transportation analysis zone (TAZ) maps for modeling in its 2023 Regional Transportation Plan/Sustainable Communities Strategy (RTP/SCS), and SCAG's 2012 RTP/SCS disclaimer of CEQA implications related to its long list of potential climate action mitigation concepts.

- ***Fourth, the County should expressly and clearly grandfather all projects that will have commenced their pursuit of development approval prior to the effective date of any climate action plan revision – so that those projects will be subject only to the County's currently-adopted climate action plan, and not to an updated CAP***. Some community development projects, even if they are not yet finally and completely approved, have been contemplated for years or even decades and long been reflected in the County's general plan, local area plans, as well as in the Southern California Association of Governments (SCAG) Regional Transportation Plan/Sustainable Community Strategy for several successive four-year cycles. BIA/LAV's members have been actively pursuing and are at various stages of continuing to pursue and implement identified development and project approvals from the relevant agencies of the County. Importantly, these many activities have been undertaken with an aim to comply with the County's currently adopted climate action plan.

  It would be a tremendous waste of the effort and costs already incurred, and thus unduly burdensome, to require such project applicants to revise their plans and proposals to conform to changes that might be reflected in a new climate action plan may result from the RDCAP if and to the extent it is adopted. Therefore, finalization of any updated CAP should include a clear provision grandfathering all project applications that will have been commenced prior to an express implementation date.

- ***Fifth, the most unreasonable suggestion in the RDCAP is the proposal to establish a GHG mitigation "trading" policy whereby alternative, offsite compliance can be demonstrated only by reducing GHG within the County's limits.*** In its comments above, BIA/LAV urges the County to avoid making its many new GHG tests and hurdles binding in such a way that either onsite compliance or heroic offsite mitigation might be required as a component of project approval. Unless it is corrected before it is finalized, the RDCAP indicates a contrary result, and – even worse – indicates that project proponents should be able to mitigate GHG reduction shortcomings by seeking to reduce GHG away from the project (i.e., off-site), but only by mitigating within the county's borders. In effect, then, the County is proposing a mitigation "trading pool" (such as that employed in "cap and trade" regimes). But rather than the trading pool being reasonably broad and deep, it is instead proposed only the size of a small pond.

  There is no legitimate reason to limit the scope of the potential GHG emissions "trading pool" to the County's spatial limits. The anthropogenic GHG gases that contribute to climate change are emitted worldwide in broadly varying ways and amounts throughout differing societies, states and countries for reasons ranging from abject poverty and the

relative wealth or dearth of advanced technology to wanton over-consumption. If and to the extent that local project proponents in the County might be required to mitigate their projects' respective GHG emissions, they should be free to seek out the most economical, effective and efficient ways to do so. Indeed, California should be exporting the best technologies and the best and most affordable climate change policies far and wide, especially given that most other states and many nations need better direction far more than does California.[6]

It will be far more difficult, taxing and costly to identify and implement offsite GHG reduction measures if one is limited to doing so only within County's spatial limits. As noted above, the RDCAP presently leaves unanswered many questions about how to quantify what levels of mitigation might be sufficient. Limiting the spatial range of potential measures available would unduly add to project costs whenever more affordable GHG-reduction potential exists outside of the County. In addition, there would likely be additional agency costs involved in administering and policing a circumscribed, county-specific trading pool which can be avoided if the County were to instead align the CAP update with the approach that CARB champions at the state level.

Specifically, CARB, which the State Legislature tasked in 2006 with the primary regulatory power to address GHG emissions, has long approved of and pointedly applauded GHG mitigation that goes beyond county borders, such as the landmark arrangements proposed, promised and, when allowed, put in place by the developers of certain large master planned communities within the County.[7] CARB's most recent scoping plan for GHG reductions specifies that, while localized off-site mitigation offsets may be preferable, non-local offsets and credits should be available to enlarge the feasibility of mitigation.[8] Limiting the trading pool for any off-site GHG emissions mitigation to within the County's borders would assure that the County will have the

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[6] California slightly trails only New York and Maryland in terms of having the lowest per capita GHG emissions in the nation (even though California is relatively vast); and Californians are rapidly adopting electric vehicles at a relatively fast pace, which suggests that California will soon have the lowest per capital GHG emissions in the nation. Moreover, Los Angeles, Orange, Riverside and San Bernardino counties accounted for 40 percent of the 369,364 battery-powered vehicles registered in California in 2020, suggesting that Los Angeles County residents better the state average in terms of having very low per capita GHG emission. "Southern California Continues to Dominate EV Industry," *Governing the Future of States and Localities*, April 2, 2021, found at: https://www.governing.com/next/southern-california-continues-to-dominate-ev-industry.

[7] In its 2022 Scoping Plan, CARB expressly recognized two master planned communities located within the County's jurisdiction (the Newhall Ranch and Centennial projects) as exemplary "net zero GHG" projects. See 2022 Scoping Plan, Appendix D, pp. 24-25, found at https://ww2.arb.ca.gov/sites/default/files/2022-11/2022-sp-appendix-d-local-action.pdf.

[8] See CARB's 2022 Scoping Plan, App. D – Local Action Plans, p. 31, similarly found at: https://ww2.arb.ca.gov/sites/default/files/2022-11/2022-sp-appendix-d-local-action.pdf.

most expensive and the least efficient and effective GHG off-site mitigation program imaginable. Such would be inconsistent with the County's obligation to help foster the construction of affordable housing for all of its citizens. Therefore, the County should consider adopting the CARB scoping plan's tiered approach to mitigation, prioritizing onsite and local measures, followed by non-local measures, or should instead provide technical justification for deviating from the scoping plan's recommended prioritization.

- ***Sixth and lastly, the RDCAP would, if adopted, violate federal constitutional principles that prevent federal, state or local governments from disproportionately overburdening – as a condition of land use approval – new development and redevelopment in relation to the relative burdens that are similarly shouldered by the jurisdiction's population as a whole.*** As noted above, BIA/LAV urges the County to reject making the many new tests and prescriptions set forth in the RDCAP mandatory. We instead urge the County to be clearly indicate the new CAP measures as aspirational or "directive" only (i.e., non-mandatory); and we ask the County to not include such measures in its general plan whereupon they might be weaponized by project opponents.

  If and to the extent that the County were to reject our requests, many of the new tests and standards reflected in the RDCAP, individually and collectively, would constitute unduly burdensome impositions and conditions of approval which would violate the so-called *Nolan/Dollan/Koontz* line of Supreme Court of the United States opinions. [9] Taken together, these Supreme Court rulings prevent local, state and federal governments from requiring any citizen a person to give up a constitutional property right in exchange for a discretionary benefit conferred by the government – for example, where an exaction demanded has too little or no relationship to the benefit, or where the degree of the exactions that are demanded by permit conditions are not "roughly proportional" to the projected impacts of the development. This is called the doctrine of "unconstitutional conditions."[10]

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[9] The *Nollan, Dolan,* and *Koontz* trilogy of Supreme Court opinions consists of *Nollan v. California Coastal Comm'n*, 107 S.Ct. 3141 (1987), *Dolan v. City of Tigard*, 114 S.Ct. 2309 (1994), and – most recently – *Koontz v. St. Johns River Water Management Dist*., 133 S.Ct. 2586 (2013).

[10] In *Koontz*, the Supreme Court recapped and explained its opinions in *Nollan* and *Dolan*, and further expounded on the doctrine of unconditional conditions, when finding that a governmental agency had imposed disproportionately oppressive conditions in connection with its offer to approve a permit. application. Specifically, the Court explained the doctrine of unconstitutional conditions as it pertains to citizens' right to apply for permission to develop one's respective property, explaining that the doctrine vindicates the Constitution's enumerated rights (here, the Fifth Amendment right to just compensation for the governmental taking of property). As applied in *Koontz*, the doctrine prevents the government from coercing citizens into giving up their rights; and the Court explained that *Nollan* and *Dolan* represent a special application of the doctrine applicable when owners apply for land-use permits. As the Court explained, the standards set out

Briefly, if the RDCAP were adopted as it is now proposed, it would force all permit applicants to submit to permit conditions that are vastly more imposing than, and grossly disproportionate to, any requirements that the County is willing to impose upon its existing property owners or their tenants. If and to the extent that the permit applicant can show that it is infeasible to achieve net-zero GHG emissions onsite, then the permit applicant will next be required to mitigate off-site (but only within the County) to otherwise achieve net-zero emissions. Beyond that, only if and to the extent that the applicant runs the full gamut of expensive, time-consuming and ultimately risky CEQA processes might the applicant be ultimately excused in an ad hoc and discretionary manner from any further mitigation on grounds of economic infeasibility under CEQA. The weaponization of CEQA through such a permit process would then be complete.

Essentially, the RDCAP therefore would operate to put all new development and redevelopment on a permanent fast in terms of their potential GHG emissions. It would be as if though new development and redevelopment applicants must forever undertake and maintain both a starvation diet and incessant exercise in order to eliminate all body fat; and – if and to the extent the applicant is unsuccessful in doing so – must buy equivalent gym memberships for other County citizens to compensate for any shortcomings. Such demands are tremendously disproportionate to what little – if anything – is asked of the citizenry generally in terms of their respective GHG emissions reductions.

Although the County's staff suggests that many aspects of it are merely "aspirational" rather than mandatory, as the RDCAP is now proposed, the only aspect of it that is truly aspirational is the hope that all of the County's many millions of citizens will magically all become GHG-neutral by the year 2045. Apparently, the RDCAP aims to make a bit of progress toward such a county-wide aspiration by overburdening those who must apply for permission to develop or redevelop homes and property and overtaxing those who may buy, rent or build prospectively built housing. Indeed, the County seems poised to impale all land-use permit applicants with a broad sword in order to fund and make relatively small dents in the GHG emissions of the County's other citizens, who might benefit from the off-site mitigation exactions that the RDCAP promises to impose.

Such a policy approach and its effects would be inconsistent with the pronouncements from the California Legislature which are quoted above – specifically about the need for "meaningful and effective policy reforms to significantly enhance the approval and supply of housing affordable to Californians of all income levels…." We believe that the RDCAP's policies are also inconsistent with the spirit and letter of the doctrine of unconstitutional conditions as it was explained by the Supreme Court of the United States in *Koontz*.

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in *Nollan* and *Dolan* address the danger of governmental coercion in the land-use permitting context while also accommodating the government's legitimate need to offset the public costs of development through land use exactions. See *Koontz*, 133 S.Ct. 2594-96.

Conclusion

We commend the County for its desire to address climate change and the need to be aligned with the State's GHG emission goals. That notwithstanding, many of the RDCAP's policy directives, however well-intended they may be, promise to increase housing costs substantially, further dampen the already dismal housing production in the County, further reduce homeownership opportunities, further increase housing rental rates, and further erode the economic status of the middle class and the most vulnerable residents of the County. We respectfully urge the County to revise the RDCAP substantially in light of our comments above.

Sincerely,

De'Andre Valencia, Senior VP
BIASC/ LA Ventura Chapter

October 3, 2023

Submitted via email: ELuna@planning.lacounty.gov; THua@planning.lacounty.gov

Los Angeles County Department of Regional Planning
320 West Temple Street, 13th Floor
Los Angeles, CA 90012

Re: Public Comment Extension – Updated Draft 2045 County Climate Action Plan

Dear Chair Michael Hastings,

The Los Angeles/Ventura County Chapter of the Building Industry Association of Southern California, Inc. (BIASC-LAV) is a non-profit trade association of nearly 1,000 companies employing over 100,000 people, all affiliated with building housing for all. To our understanding, the updated draft 2045 County Climate Action Plan will be released to the public on October 15, 2023, with a Regional Planning Commission hearing scheduled for November 15th.

Given the complexity of the Revised Draft 2045 County Climate Action Plan, we request that you extend the public comment period for an additional 30 days to give stakeholders ample time to review.

BIASC-LAV submitted a letter on May 15th outlining our major concerns regarding the Revised Draft 2045 County Climate Action Plan and still has not received any written response from the County. It is impossible given how cataclysmic the last draft we saw would be, and the fact that staff has had 6 months to field comments, but the regulated community will have only 30 days to digest and react to another draft is difficult, to say the least.

We respectfully request that you extend the public comment period by an additional 30 days. We look forward to continuing working with the County on these important issues.

Please feel free to reach out to us with any questions. If you have any questions, please contact dvalencia@bialav.org.

Sincerely,

De'Andre Valencia, Senior Vice President
BIASC/LA Ventura Chapter

November 7, 2023

Los Angeles County Board of Supervisors
500 West Temple Street
Los Angeles, CA 90012

To: Supervisor Hilda L. Solis, Supervisor Holly J. Mitchell, Supervisor Lindsey P. Horvath, Supervisor Janice Hahn, Supervisor Kathryn Barger

The County of Los Angeles must continue to lead the global fight against climate change. As such, effective climate leadership requires comprehensive policy decisions that align with other critical needs, including building the housing and infrastructure in plans that elected leaders have already approved. To that end, the sustainability of the outcome *and* process are critical considerations.

After a careful review of the proposed 2045 Climate Action Plan, the undersigned organizations regrettably find the sustainability of the policy itself to be lacking in several key areas that ultimately undermine the desired outcome. Therefore, **until corrective actions can be implemented, we respectfully request an official postponement of the Proposed 2045 Climate Action Plan (CAP).**

Advancing a CAP needs to remain a top priority for the County of Los Angeles but such a plan must address and align with labor, infrastructure, equity, and housing, not to mention inclusion of existing County legal mandates. The draft under consideration does not meet that standard.

To remediate concerns and bring unified support for the 2045 CAP, several key actions must be taken:

1. **Economic Impact Analysis**: Engage an impartial entity such as the Los Angeles Economic Development Corporation to conduct a comprehensive fiscal analysis of 2045 CAP impacts. A proposed CAP in San Francisco was estimated to cost up to $22,000,000,000 to implement. Understanding the pressure points this policy may create will allow for adequate identification, preparation, and planning for the industries impacted. It is important to understand what Los Angeles County must plan for with this proposal.
2. **Weaponization Avoidance**: Include language within the 2045 CAP to ensure the policy is not weaponized by NIMBY and no-growth advocates to stop smart growth in Los Angeles County. For example, San Francisco already decided a CAP doesn't belong in the General Plan. A CAP should not undermine already approved infrastructure, housing, and other projects (including those eligible for trillions of federal and state funding) that already comply with California's strict climate,

environmental, labor, and public health laws. CAP must remain an aspirational document setting targets for the County.

3. **Ensure Alignment:** Ensure alignment with existing Los Angeles County-approved projects and plans. For example, the CAP's goal of limiting imported water conflicts with water supply and demand plans, Urban Water Management plans, approved contracts by the County's waterworks districts, County Public Works, and other water agencies such as the Metropolitan Water District.
4. **Reasonable Density**: Draft 2045 CAP language calls for 300 employees per acre. Only about 50 census tracts in the entire country (areas such as Manhattan, NY) have that employment density. The County's current employment density is 6 employees per acre. We can't create manufacturing, production, logistics, or even the small business jobs (which are the backbone of our economy and our diverse workforce) with a CAP employment mandate that demands more already underutilized high-rise office towers on unincorporated County lands.
5. **Right Size CEQA Reliance**: The 2045 CAP language applies only to projects that are required to comply with the California Environmental Quality Act (CEQA). This 1970 law has been repeatedly used to block housing and infrastructure projects, has created a financial bonanza for lawyers and consultants, and decades-long delays for projects that comply with every one of California's strict environmental and public health laws. As such, California isn't getting its fair share of funding for infrastructure and green jobs because procedural statutes like CEQA take years to complete, and then take more years to litigate. Implementation of the 2045 CAP will prevent important infrastructure projects from ever being considered.
6. **Leadership First**: 2045 CAP language defers critical decisions on equity, housing, infrastructure, and job creation to the staff level where it will occur outside the public review process and eliminates the ability of the Board of Supervisors to assess individual projects. Strong leadership is needed to address these issues at adoption as opposed to the current language's approach.
7. **Enhance Carbon Offset Credit Criteria.** As written currently, the CAP will only allow LA County carbon offsets. The strict exclusion and location limitation create a hindrance and will hamper project development due to cost impacts. It is not aligned with the state approach which references a locational hierarchy with flexibility to use carbon offset credits and/or reductions outside of California and creates an unnecessary barrier to projects. Furthermore, the County has not established a local County offset program. The CAP must recognize CARB-approved offsets and offsets recognized by CARB in determining when projects are "net zero" for greenhouse gas emission reductions.
8. **Inconsistent With Federal Law.** CAP Measure E2.1 proposes the adoption of an ordinance to ban the use of natural gas in new buildings. The directive to adopt such an ordinance runs afoul of *California Restaurant Assn v City of Berkeley* where the Ninth Circuit held that City of Berkeley regulations to prohibit gas connections to new buildings was preempted by the federal Environmental Policy and Conservation Act (EPCA). The Ninth Circuit ruled that EPCA expressly preempts state and local energy use regulations that effectively prohibit use of natural gas appliances covered by EPCA, including those used in household and restaurant kitchens. EPCA provides, with respect to covered products, that "no State regulation concerning the energy efficiency, energy use, or water use of such covered product shall be effective with respect to such product."

   To the extent the CAP proposes the adoption of an ordinance to eliminate use of natural gas in new buildings, it directly contradicts the holding in the *California Restaurant Assn* case. This is significant because the CAP's GHG reduction analysis relies in part on the GHG reductions that would result from the natural gas ban. The CAP projects this measure would reduce GHG emissions by 22,639 MTCO2e by 2045. (CAP, pg. 3-49.) In the absence of such a natural gas ban,

the GHG reduction analysis would need to be rerun and alternative measures to reach the overall projected GHG reductions would be needed. The CAP's inconsistency with federal law must be addressed prior to its adoption.

There is no legal mandate, or deadline, to approve the staff's current proposed CAP. Further, the County has already adopted dozens of equity, infrastructure, environmental, housing, climate, job-creation, sustainability, and economic development mandates – and as the CAP itself notes. This grants the County the ability to protect the environment while crafting the 2045 CAP language with unified support in process and outcome. **The importance of getting the 2045 CAP correct cannot be overstated.**

Of note, our undersigned organizations have a history of policy disagreements on how best to build livable communities within the Southern California region. However, as it relates to the current 2045 CAP proposal, **we are unified in our position**. We respectfully request an official postponement until we can meet with you and your staff to address our concerns and implement substantive solutions through enhanced collaboration with your Planning Department.

Thank you for your thoughtful consideration.

Sincerely,

Jeff Montejano
Chief Executive Officer
BIASC

Jon Switalski
Executive Director
Rebuild SoCal Partnership

BUILDING INDUSTRY LEGAL DEFENSE FOUNDATION

November 13, 2023

Members of the Regional Planning Commission of Los Angeles County:
Commissioner Yolanda Duarte-White, District 1
Commissioner David W. Louie, District 2
Vice Chair and Commissioner Pam O'Connor, District 3
Commissioner W. Moon, District 4
Chair and Commissioner Michael R. Hastings, District 5
500 West Temple Street
Los Angeles, CA 90012

Fesla Davenport, Chief Executive Officer of Los Angeles County
Dawyn R. Harrison, Los Angeles County Counsel
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Director Kelly LoBianco, Economic Opportunity
510 S. Vermont Ave, 11th Floor
Los Angeles, CA 90020

Agricultural Commissioner Kurt Floren
12300 Lower Azua Road
Arcadia, CA 91006-5872

RE: Proposed Amendments to Los Angeles County General Plan, Approval of Los Angeles 2045 Climate Action Plan, and Certification of Accompanying Environmental Impact Report: Urgent Request to Defer Action

Dear Commissioners, Chief Executive Officers, and Directors:

The Building Industry Legal Defense Foundation (BILD) is the litigation and legal advocacy arm of the Building Industry Association of Southern California, which includes our BIA-Los Angeles/Ventura chapter.

BILD joins with our colleagues in organized labor, with other public agencies, and with dozens of business leaders and business associations, in urging you to defer taking action on the Proposed Amendments to the Los Angeles County General Plan (specifically, the Air Quality Element thereof), the proposed 2045 Climate Action Plan, and the accompanying Program EIR.

We have been repeatedly informed that members of the Planning Commission and other County leaders have been advised that the CAP is merely aspirational and does not include any new mandates. This is FALSE.

In fact, staff is asking this Commission to adopt 17 amendments to the Los Angeles County General Plan which include "implementation and maintenance of the Climate Action Plan to ensure that the County reaches its climate action and greenhouse gas emission reduction goals." This is neither advisory nor aspirational: this approach requires the CAP to be recognized and implemented as part of the County's General Plan.

The breadth of the CAP is clear from the CAP itself: it is "a **comprehensive suite of strategies, measures and actions that are geographically specific to unincorporated Los Angeles County and is to be implemented through County and external agency partnerships**." (CAP, p. 1-2) After approval by the Board of Supervisors, the CAP is to be implemented solely by a County staff "team" that will determine, at a future unspecified time, which CAP measures should be prioritized based on "equity," which CAP measures have funding sources, and what is the "optimal" extent of implementation of each CAP measure. (CAP, p. 4-2) Only after staff first unilaterally makes its equity, funding and implementability determinations for each CAP provision, will staff "conduct engagement" – and potentially, for some unspecified subset of CAP measures, then come back to this Commission and the Board to adopt new ordinances or codes. (*See* Six-Step CAP implementation process on p. 4-2 of CAP) Until then, staff and its unnamed "agency partners" have free reign to implement the CAP however they choose, and third parties are free to sue the County for any and all actions or inaction which they allege are "inconsistent" with the CAP policies.

As shown in greater detail below, there is nothing hypothetical or speculative about this outcome: San Diego County fell into this CAP abyss in 2011 with what its staff and counsel assured the Board were "aspirational" goals, but which in fact have been (predictably) strictly and rigorously enforced by the courts against the County in a string of CAP lawsuits that blocked housing production and other projects, and cost the County millions in its own attorneys' fees, as well as paying the attorneys' fees of parties that have repeatedly sued the County to block not just projects but even block amendments to the CAP itself!

If adopted, the CAP will constitute a new legal mandate applicable to all County departments and all discretionary County activities, including plans, policies, projects, grant applications, and

funding decisions. The CAP could then be applied to harm voter-approved transportation, water, and other infrastructure projects. Indeed, the CAP could then be applied to jeopardize infrastructure/economic development projects that are otherwise eligible for federal funding, and even implementation of the County's approved Housing Element. Furthermore, the CAP could even be applied to challenge the procurement of goods and services, and to the maintenance, expansion, and replacement of equipment and facilities. All County leaders, including Department heads, receiving this letter will need to learn and comply with the CAP before proceeding with long-planned projects, and will need to devote hundreds of additional hours of staff time and consultant cost to provide substantial evidence of CAP consistency – or incur further costs and delays in seeking Board approval of CAP modifications with a corresponding General Plan modification.

In short, all County actions – not just approvals of private projects – will be required to align and be consistent with this new CAP as required by the accompanying new General Plan amendments. We respectfully and urgently request a pause on taking any action to approve the CAP until an impartial analysis is undertaken by a third-party expert, such as the Los Angeles Economic Development Commission along with all affected County departments, of the CAP's fiscal impacts, its impacts on the County's approved plans, policies and projects for infrastructure, equity, housing and jobs, and its equity impacts.

We also urge that the CAP, once it is appropriately evaluated and revised, not include an open-ended delegation to staff of discretion to decide when and whether to decide if a measure is consistent with the County's commitment to equity, or whether it can even be implemented at all, as is currently proposed in Chapter 4 of the CAP. The state's other ambitious climate scoping plan, approved by the California Air Resources Board (CARB) in 2022, expressly acknowledges that pursuing it would impose economic harms disproportionately on middle and lower income families earning less than $100,000 per household; and CARB expressly acknowledged that these harms would disproportionately befall the Black and Latino households that comprise the outsize majority of lower income households. CARB 2022 Scoping Plan, p. 125-126. CARB staff, working in a climate action silo, selected their Scoping Plan measures in open disregard for racial equity, which is why the County's 2045 CAP – more like the current 2020 CAP – needs to be clear, unambiguous, legally feasible, and implementable in full consistency with the county's other important policies and duties.

1. The CAP is Not "Aspirational" – It is Legally Binding General Plan Mandate

The CAP explains that it includes three GHG compliance deadlines: 2030, 2035 and 2045 for meeting county greenhouse gas (GHG) reduction targets established for those dates. The CAP also includes what it describes as an "aspirational" 2045 "net zero" target.[1] Except for the 2045 aspirational "net zero" target, the CAP is embedded in the General Plan and as such upon adoption it becomes a legal mandate of the county; and thus it is not a mere "aspiration."

[1] It is noteworthy that the County's non-regulatory greenhouse gas reduction targets, which were not included in the General Plan or made otherwise enforceable by code or regulation, were approved before the Legislature enacted many recent, very stringent new statewide GHG mandates such as the required transition to an all-renewable electric energy supply and the ban on continued sale of internal combustion engines.

The legally binding nature of the CAP is suggested by decades of judicial decisions such as the following.

- Dozens of appellate court decisions have confirmed that the General Plan serves as the "Constitution" for local land use planning in California, and consistency with the General Plan is a legal mandate – not an aspiration. "The requirement of consistency is the lynch pin of California's land use and development laws." *De Bottari v. City of Norco* (1985) 171 Cal.3rd 1204. As further explained by the Office of Planning & Research in its current General Plan Handbook: "An action, program, or project is consistent with the general plan if, considering all its aspects, it will further the objectives and policies of the general plan and will not inhibit or obstruct their attainment." https://opr.ca.gov/docs/OPR_C9_final.pdf, p. 254.

- San Diego County, an early pioneer in requiring CAP implementation in its General Plan in 2011, was assured by its staff and legal counsel that the CAP was "aspirational" and would not constrain the Board's authority to implement other critical county goals such as approving housing and infrastructure. But, the courts disagreed: not only was the CAP fully enforceable, but over the next ten years the County has lost numerous subsequent lawsuits challenging the County's authority to amend or even interpret the CAP to allow approval of new housing and other projects. *See, e.g., Golden Door Properties, LLC v. County of San Diego* (2020) 53 Cal.App. 5th 733. San Diego County was also required to give its opponents more than a million dollars in legal fees, including in a NIMBY case to block nearby housing that was filed by a luxury spa that cost more than $10,000 per person for a minimum one-week stay.

- Advice that the CAP is somehow "optional" or "not applicable to private projects" is likewise flat wrong as a matter of law. The General Plan is the "constitution" in land use planning, which the City of Los Angeles just again learned the hard way this last summer from an appellate panel that concluded the City improperly approved a tourist hotel project because it failed to apply the Housing Element in the General Plan to the hotel project. *United Neighborhoods for Los Angeles v. City of Los Angeles (2023) ___ Cal.App.5th__.*

2. The CAP Creates 455 New Causes of Action for Activists to Sue the County

The advocacy groups supporting the CAP, such as the Center for Biological Diversity, frequently litigates against the County and County-approved projects. The CAP provides CBD and its anti-development allies with literally hundreds (precisely, 455) new legal arguments to wage their litigation wars against County-approved actions based on each action's inconsistency with the CAP. The sprawling CAP package the Board is being asked to approve includes:

- **17 newly revealed amendments to the General Plan** itself, none of which were disclosed or analyzed in three rounds of EIR documentation.
- **10 new CAP "strategies**," including many over which the County lacks any jurisdiction or control but which the state has already legislated, such as the mandated transition away from internal combustion engines.

- **36 CAP "measures,"** including measures that courts have already ruled are illegal such as banning natural gas from new development. *California Restaurant Ass'n v. Berkeley* (2022) 65 F.4th 1045.
- **137 more CAP "performance objectives,"** including the patently illegal demand that "locally-sourced" (stormwater, groundwater, and treated wastewater) rather than imported water meets 50% of County's water demand in just over ten years (2035) and 90% of county water demand by 2045. (CAP p. 3-54) This is a prohibition on water imports that directly contradicts the water supply plans of all Waterworks Districts, the Department of Public Works, and the Metropolitan Water District. There is no indication that municipal wastewater can be recycled into the quantities of lawful potable water supply which might ever approach the quantities that will be needed. Yet the CAP does not acknowledge or allow for other potential water supply solutions (such as desalination) and that all projects must demonstrate adequate water supplies over time under both CEQA and applicable water laws. The CAP provides no alternative pathways for meeting water supply needs; nor does the Program EIR for the CAP evaluate the impacts of the CAP's imposition of massive new restrictions on water imported or stored outside the County.
- **91 additional CAP "implementation actions"** that include additional prescriptive mandates such as mandating that all newly-purchased light-duty vehicles must be ZEVs (p. 3-39) (potentially including sheriff patrol cars), and that 70% of all medium-duty and heavy-duty County fleet vehicles be ZEVs by 2035 (p. 3-40) (including fire engines, sanitation trucks, heavy construction equipment – none of which are commercially available or meet applicable public safety and functionality performance standards)
- **And another group of 162 prescriptive "tracking metrics"** required to show compliance with some but not all of the preceding strategies, measures, performance objectives, and/or implementation actions.

The CAP does not specify which of these more than 455 provisions apply to which types of County decisions. Instead, the CAP applies to every action (except for development projects that are exempt from CEQA), which include but are not limited to: (a) applying for or accepting grants or other funding, or approving construction, of mixed income inclusionary housing projects or transitional supportive housing; (b) applying for or accepting grants or other funding, or approving construction, of infrastructure including transportation, water, public health, educational, emergency response, and other public facilities or equipment; (c) procuring repairs or replacements of existing equipment, fixtures and facilities inclusive of contract renewals or extensions that occur after approval of the CAP; (d) siting or expanding other County facilities or relocating employees; or (e) approving housing and job/economic development projects.[2]

The legal risks the CAP creates for the County and all applicants seeking County approval, based on the sheer volume of these sprawling, contradictory, and vague CAP provisions, cannot be underestimated – nor can the extent to which the CAP is flatly at odds with already-approved County General Plans, Urban Water Management Plans, infrastructure improvement plans, and already-pending federal and state grants.

[2] The CAP's declaration that projects that are exempt from CEQA are "deemed" to comply with the CAP is unsupported by any rationale, and unexamined in any component of the Program EIR. CEQA exemptions enacted by the Legislature cover an eclectic range of projects from the conversion of mobile home parks to subdivisions, to the alteration of oil pipelines up to 8 miles long outside refineries.

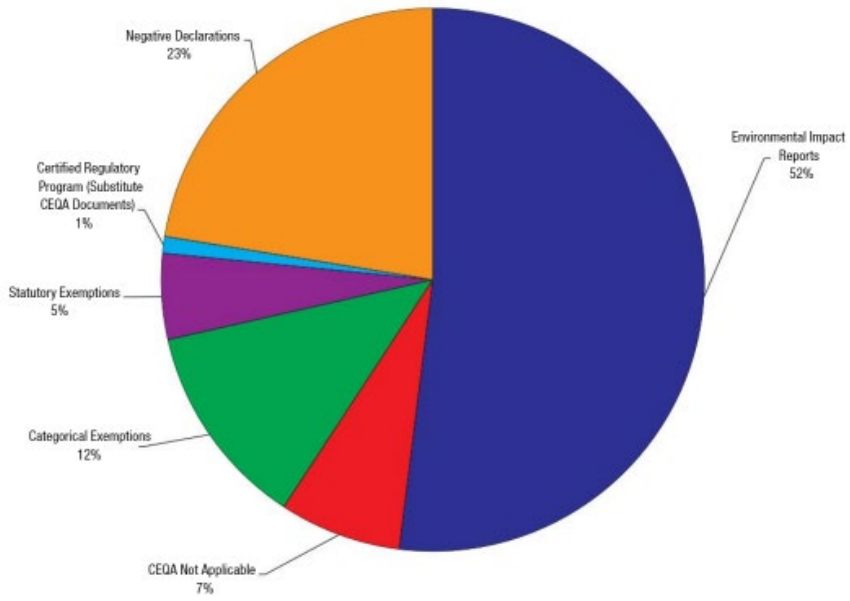
The CAP does not even explain how these 455 new provisions relate to – and are consistent or inconsistent with - other approved elements of the General Plan, such as last year's updated Housing Element, the Mobility Element, the Safety Element, the Public Services and Facilities Element, and the Economic Development Element.

3. The CAP would impose many One-Size-Fits-All Mandates that Disregard the Diversity and Differences in the County's Approved Area Plans, Community Plans, and Specific Plans

The CAP is also a "one-size-fits-all" County mandate that ignores the fact that the County's General Plan is itself comprised of multiple Area Plans and Community Plans – as befits a geography that is larger than a state, with vastly diverse climates, demographics, and economic drivers. The CAP thus runs roughshod over the years of painstaking work by thousands of stakeholders to create Area Plans, Community Plans, and Specific Plans that do take these complex localized needs into account.

Upon adoption, the CAP would instantly apply to all future County decisions in all of these areas – and actions that are inconsistent with the CAP cannot lawfully proceed without addressing the CAP inconsistency under CEQA and applicable land use laws. For example, projects that are consistent with these already-approved plans that would otherwise qualify for a CEQA exemption or Negative Declaration will instead need to prepare an Environmental Impact Report (EIR), and require Board approval of an amendment to either the General Plan/Area Plan/Community Plan – or the CAP itself. Nowhere in the CAP is there sufficiently clear indication that the type of "tiering" that normally applies to follow-on planning and approvals will apply to projects that become subject to the CAP. As shown in the Figure below, EIRs are far more likely to get sued than projects that are otherwise exempt or eligible for a Negative Declaration under CEQA.

Figure 8: CEQA Compliance Tracks Targeted by CEQA Lawsuits



Produced by: Hernandez, Friedman, DeHerrera

EIRs are also more likely to lose in court than exempt projects: in a 15-year study of all CEQA appellate court cases, agencies lost 43% of EIR challenges but only 20% of exemption challenges. https://www.hklaw.com/files/Uploads/Documents/Articles/0504FINALCEQA.pdf, p. 9-10. As vividly demonstrated by San Diego County CAP's litigation ordeal, which is also consistent with Sonoma County's CAP courtroom lose, courts have strictly construed CAP compliance requirements to overturn county approvals. *See California Riverwatch v. County of Sonoma* (2017), trial court decision available here: http://transitionsonomavalley.org/wp-content/uploads/2017/07/Order-Granting-Writ-7-20-17.pdf

4. The CAP Unlawfully Conflicts with the Economic Development Element of the General Plan, Area Plans and Community Plans.

The first "performance objective" of Measure T2 of Strategy 2 is: "By 2030, achieve a job density of 300 jobs per acre." As our colleagues at BizFed and the Southern California Leadership Council have noted publicly, of the county's 810 planning zones, only 9 have more than 20 jobs per acre – and none has anything remotely close to 300 jobs per acre. https://www.dailynews.com/2023/11/09/los-angeles-countys-aspirational-climate-action-plan-threatens-real-results/ This particularly outlandish CAP provision prompted a distinguished academic expert in a recent New Geography column to note that "Los Angeles County Proposes Job Creation Ban" available at https://www.newgeography.com/content/007950-los-angeles-county-proposes-job-creation-ban#:~:text=Overall%2C%20the%20Los%20Angeles%20urban,jobs%20per%20acre%20(Note).

In fact, only 74 census tracks anywhere in America had a 300 jobs/acre density, and all but one (in pre-COVID Downtown San Francisco) were located in the highest density, high rise cities on the East Coast and in Chicago.

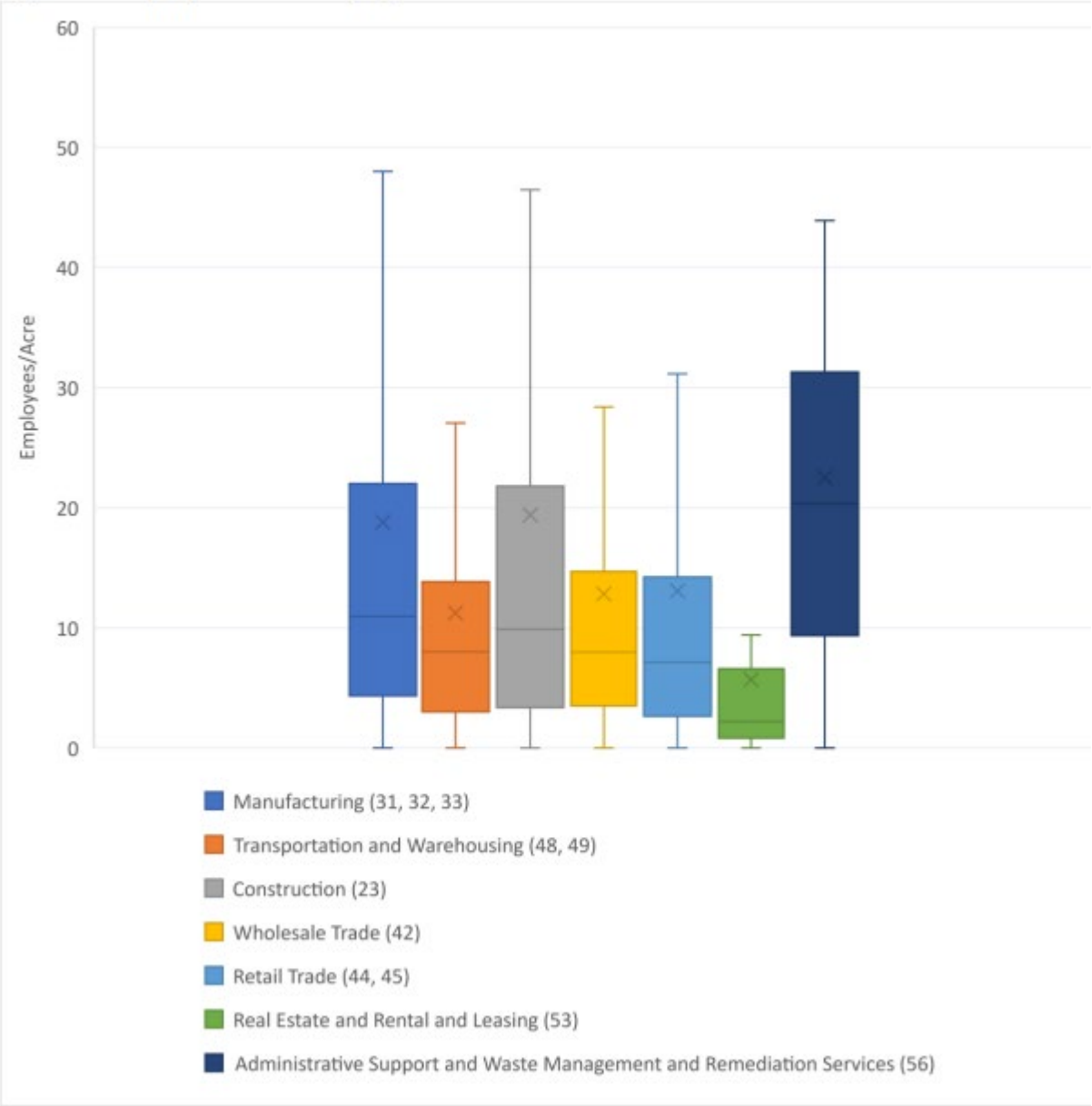
- This 300 jobs/acre "jobs density" performance objective, like many other CAP measures, unconnected to the reality of Los Angeles County, and urgently demonstrate the need for an impartial analysis of the CAP by the Los Angeles Economic Development Commission, which has both the knowledge of the economy and a track record of producing credible non-partisan evaluations for public and policymaker consideration.

- For example, the small business community is a cornerstone of the Los Angeles economy, and there is exceptionally strong participation by women and communities of color in the local economy: the CAP is not merely hostile to these important community members, it ignores them – both in the CAP itself (which postpones "equity" considerations to a staff-level decision after the Board rubber stamps the entire CAP and hands implementation responsibility to staff as proposed in Chapter 4 of the CAP), and in the accompanying EIR.

- In fact, none of the sectors targeted for economic growth in the General Plan achieve anything close to this 300/acre job density, including entertainment, tourism, fashion, aerospace, trade, education, publishing, manufacturing, and biomedical. None of these or any related job classification comes remotely close to this 300 employee/acre density CAP provision. As noted below, choking off lower-density job growth includes an inherent bias

favoring white-collar, high-rise jobs – and create a racially exclusionary barrier to the kind of higher wage jobs that County residents deserve to access as part of a diverse economy that provides upward mobility to County residents without college degrees.

Figure 3: Employment Density by select NAICS Sector



Source: https://scholarsbank.uoregon.edu/xmlui/bitstream/handle/1794/26252/CRohan_ExitProj_Final.pdf?sequence=1&isAllowed=y#:~:text=The%20Guidebook%20provides%20some%20basic,varies%20by%20and%20within%20industries.&text=type.

- The CAP also ignores the Los Angeles County Strategic Plan for Economic Development, and the economic development plans of each and every Area Plan and Community Plan. This 300 employee/acre job density performance objective, as well as many other CAP provisions, appears to confirm that the CAP was developed in a silo with little regard (or

intentional rejection) of other critical County tasks, goals, objectives, projects, and priorities.

- The Program EIR accompanying the CAP includes less than 5 pages of analysis on the CAP's effects on jobs, housing and population combined, and then conclude that – because the CAP would not create unplanned homes or jobs, displace existing housing, or add new population – it would have a less than significant environmental impact. There is no analysis of the environmental consequences of not proceeding with various CAP-noncompliant General Plan provisions, or of not proceeding with planned but not yet fully-approved housing or infrastructure projects based on CAP inconsistency as described herein.

- The Program EIR's Land Use consistency analysis is equally inadequate: the EIR's authors identify the General Plan Economic Development Element as an applicable Land Plan, for example, but in the "consistency table" included as Table 3.12-2 first assumes approval of the proposed General Plan amendments to find General Plan consistency with the CAP – and thereby fails to evaluate consistency of the CAP with the existing General Plan, which is in violation of CEQA. Table 3.12.-2 then acknowledges the 300 jobs/acre "performance objective" as a CAP/General Plan consistency issue, but then identifies only Housing Element Policy 3.1 (promoting mixed income housing to increase housing choices) to conclude that this absurd 300/acre job density CAP is indeed consistent with "relevant plans." The Program EIR is legally flawed in that it avoids analyzing and recognizing the obvious inconsistency between the CAP and the Economic Development Element as well as other County policies.

- The Program EIR also acknowledges the General Plan and the Antelope Valley Area Plan, but then ignores completely the County's other 12 Area and Community Plans, or the County's approved Specific Plans, which apply to geographically distinct and economically diverse areas within the County (as is recognized, for example, in the Housing Element and the Economic Development Element). The Program EIR fails as an informational document, and the missing identification and evaluation of these relevant plans in the EIR is one of many prejudicial legal errors.

- These and other provisions demonstrate that the CAP would operate as an anti-job, anti-economic development, anti-Housing Element (including but not limited to the 300 jobs/acre performance objective) measure; such that the Program EIR is fatally flawed in its failure to disclose, analyze, or mitigate for the physical blight of homelessness and joblessness that is the reasonably foreseeable consequence of approving a CAP that contradicts and undermines the Housing Element and Economic Development Elements of the General Plan, and other County-approved plans, programs, policies and projects.

- The CAP's methodology, which counts only greenhouse gas emissions (GHG) occurring within the boundaries of unincorporated Los Angeles County, and credits only GHG emission reductions within this unincorporated land area, establishes a GHG reduction for every person or job who moves out of the county and into a city (or out of the region or state entirely). The Program EIR fails to account for this population/job "leakage" bias,

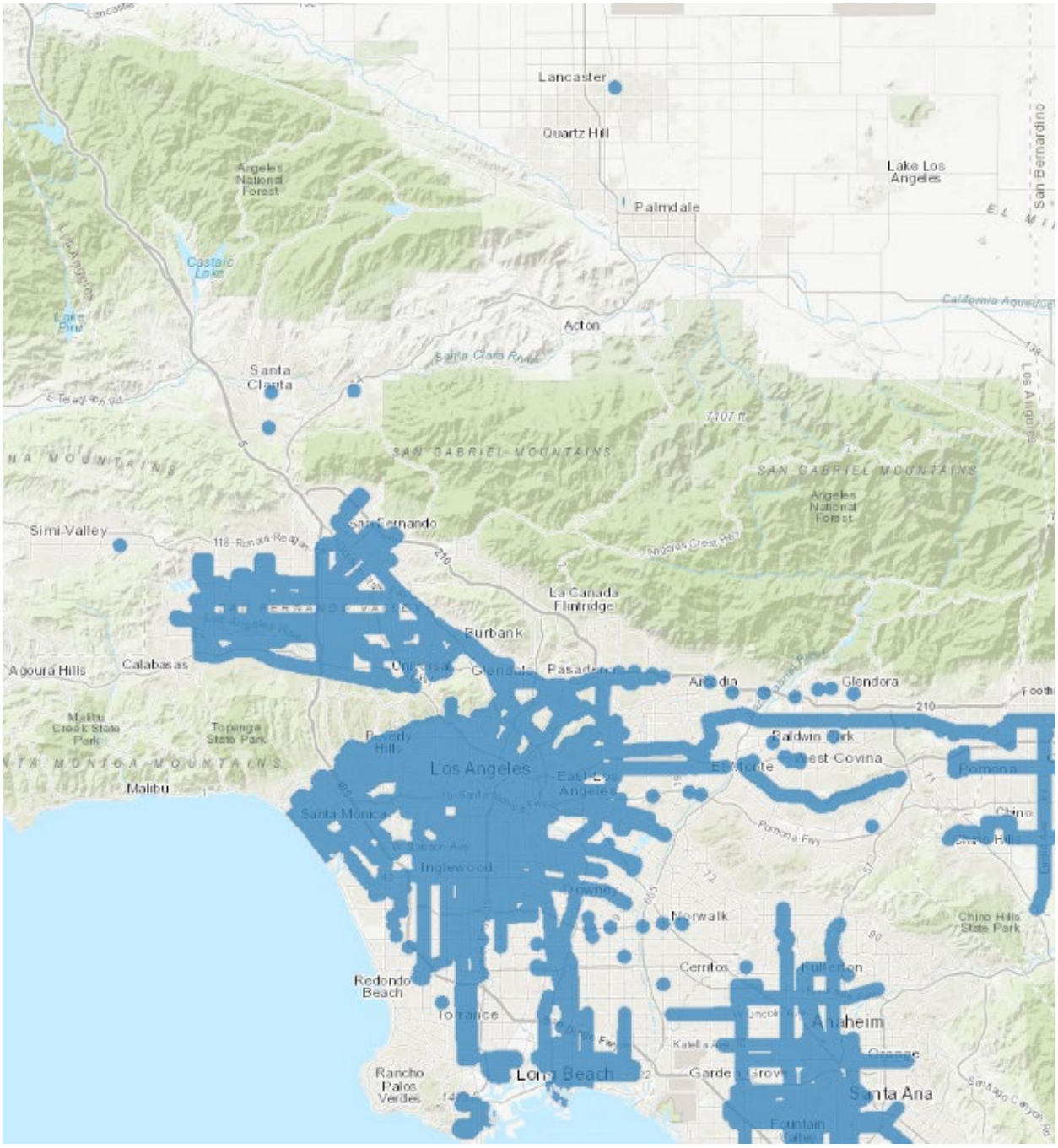
which of course does not result in any reductions of global GHG but does count toward meeting the county's GHG reduction goals. This perverse methodology rewards job losses, rewards mass exoduses and the stultification of housing production within the county, none of which has any beneficial effect on climate change. Agencies do not have the discretion to choose an arbitrary or capricious methodology for assessing impacts to the actual environment (as opposed to impacts only to or within a legal jurisdiction). The Program EIR and CAP itself may not lawfully use this anti-growth or negative growth metric under General Plan law or under CEQA.

5. The CAP Unlawfully Conflicts with Housing Element and Undermines Housing Production.

Among dozens of similar fatal CAP land use and CEQA legal flaws, another "performance objective" included in the third of four "performance objectives" in Measure T1 of Strategy 2 is: "Locate a majority of residential and employment centers in unincorporated Los Angeles County within 1 mile of a HQTA [High Quality Transit Area]." An HQTA is defined as the one-half mile around a transit stop or along a transit corridor that operates with a 15-minute or less wait time for a bus during peak transit hours. These bus lines require a minimum four-bus, two-shift fleet – equipment and staffing costing many millions of dollars per year to operate. However, the County's approved Housing Element includes 1,625 sites in its housing inventory, concerning all of which the County is required to approve projects if it receives eligible housing project applications. The County is also required to approve accessory dwelling units and junior accessory dwelling units in nearly all single-family neighborhoods; and the Housing Element includes scores housing policy and legal compliance obligations such as distributing new housing throughout communities under the civil rights law to affirmatively further fair housing. None of these realities comport with the CAP's prescription that 50+% of new housing is required to be within 1/2 mile of a 4-bus transit line operating at 15 minute intervals during peak hours.

General Plans that are internally inconsistent are illegal, and courts have imposed and may impose the draconian remedy of halting all new development pending adoption of an internally consistent and legally adequate General Plan. *See, e.g., Save El Toro Assn. v. Days* (1977) 74 Cal.Appl. 3d 64. The Program EIR also blatantly ignores the housing distribution requirements in the County's approved Housing Element.

The CAP's 50+% HQTC objective is inconsistent with the County's approved General Plan Housing Element, and accompanying Area and Community Plans, as showed in the SCAG map (see map below) which shows HQTCs (not to scale). These 1-mile-wide bands along higher frequency bus routes do not reach more than 90% of unincorporated Los Angeles County. Bus ridership changes and service cutbacks also mean many of these lines do not meet the required 15-minute interval, four-bus per peak commute hour in both the afternoon and morning, HQTC criteria.



As also acknowledged by the Housing Element, only about 5.7% of County residents use transit to get to work – and this Figure includes all the cities as well as the unincorporated county area. The term "High Quality Transit Corridor" does not even appear in the approved Housing Element, but the CAP now demands that 50+% of new housing be located in these unexamined, undisclosed locations – with equally undisclosed information about what Housing Element goals and policies are undermined by the CAP.

The Program EIR does not address this – or many hundreds of other – direct contradictions between this 50+% HQTC CAP housing measure and the Housing Element. It does not explain how a housing project proposed today is supposed to show "consistency" with an absolute CAP mandate that 50% of its water supply is from recycled grey water or potable reuse water by 2035, or how the project is supposed to show consistency with the CAP's 2045 mandate that 90 percent of its water supply is from recycled grey water or potable reuse water. Instead, it is reasonably foreseeable that no new projects will be able to meet such objectives given the current and foreseeable realities.

6. The Program EIR Willfully and Repeatedly Ignores Comments Filed by Agencies and Stakeholders Identifying Flaws in the CAP and in the Program EIR

The Program EIR includes numerous foundational and fatal legal flaws, in addition to the specific deficiencies identified above.

Failure to Respond to Comments: An EIR is a mandatory disclosure document required to be sufficient to facilitate informed public comment and agency decision-making. A Draft EIR must include all required analyses, and must "show its work" by explaining its analytical methodologies, significance conclusions, mitigation determinations, and alternatives evaluation. The draft Program EIR was initially released in May of 2022 (2022 DEIR). Numerous agencies and other interested parties commented on the Draft EIR, including by way of example a letter submitted from the Los Angeles County Sanitation District. Numerous additional comment letters were submitted by various organizations and individuals.

The Final EIR unlawfully fails to respond to comments on the 2022 DEIR. To avoid doing so, it issued a Recirculated Draft EIR in 2023 (2023 DEIR), which included almost no changes to either the draft CAP or to the 2022 DEIR, and conspicuously failed to include comments or responses on the 2022 DEIR as required by CEQA. Instead, it asserted that it had no obligation to respond to comments because it issued a sham 2023 DEIR which superseded the 2022 DEIR. When the Los Angeles County Sanitation District again raised their concerns, in a short new comment letter that re-submitted nearly 40 pages of comments that had been ignored, the Final EIR responds with four short paragraphs, on less than two pages of text, explaining why no responses to the 2022 DEIR were required – nor were any given.

This kabuki exchange, which was repeated for the many other thoughtful comments submitted on the 2022 EIR, makes a mockery of the CEQA public review and comment process. It constitutes an illegal tactic to avoid directly responding to the many significant concerns that the County's Sanitation District had raised through the sham tactic of issuing a revised DEIR. The agency, not the public commenters, have a duty to respond to public comments and engage with the public. The artifice of issuing a revised DEIR that has virtually no substantive changes (to significance conclusions, mitigation measures, or anything else) violates CEQA.

The County also unlawfully failed to respond to questions about the CAP itself, even though it is an environmental plan that – by definition – affects the physical environment. The pro forma "responses" in the Final EIR fall into three buckets, none of which are sufficient to comply with CEQA:

- Comments on the CAP were ignored unless the commenter raised a specific comment about the Program EIR itself. The CAP is an environmental plan, the entirety of which is supposed to govern all future physical activities to the environment subject to the CAP (a universe which as noted above includes all discretionary activities that could affect the physical environment undertaken or approved by the County). CEQA requires meaningful responses to the environmental concerns which are raised by the public, not just meaningful responses to criticism of the EIR's content.

- Comments on the CAP that questioned how the CAP would actually be applied to specific County activities were unlawfully deferred on the grounds the CAP was not itself a physical project and the EIR was a mere "programmatic" EIR, so any questions about how the CAP would work in relation to any particular project or action were "speculative." There is nothing speculative about the dozens of infrastructure, housing, economic development, procurement, grant applications, and other actions currently being reviewed by the County. There is nothing speculative about asking how a newly mandated General Plan provision would apply to actions to implement previously-approved Area Plans, Community Plans and Specific Plans. There is nothing speculative about asking which employment projects would be inconsistent with the CAP because they did not employee 300 people per acre, or get 50-90% of their water supply from grey water or potable reuse water. None of these is "speculative;" and all required substantive replies.

- Comments about the increased litigation risks created by the CAP, given the woes of San Diego County where thousands of approved new homes were blocked by CAP-based CEQA lawsuits, or Sonoma County, or other jurisdictions where CAP litigation has been threatened, were likewise summarily dismissed based on the assertion that such litigation was likewise "speculative." Litigation is not speculative: if approved, this CAP creates an existential risk to current and future infrastructure projects as recognized by labor leaders, public agencies, and business leaders.

- Comments about the legal infeasibility of CAP measures, such as banning natural gas in new development or requiring illegal treated wastewaters to provide potable water supplies, were also sidestepped in the responses provided in the Final EIR.

As has been noted in the authoritative CEB CEQA Treatise (Kostka & Zischke): "The most important part of the Final EIR is its response to comments on the draft EIR." The CEQA statute requires that a lead agency must evaluate and prepare "written responses" in the final EIR. Cal. Pub. Res. Code section 21009(d). Courts have held that the "responses to comments contained in a final EIR are an "integral part" of an EIR's substantive analysis of environmental issues." *Cleveland Nat'l Forest Found. V. San Diego Ass'n of Gov'ts* (2017) 3 Cal5th 497, 516.

Should there be any remaining doubt as to the seriousness of the flaws in the Program EIR, or the multitude of such flaws, below are additional comments on the Program EIR which have been informed by the Final EIR's unlawful failure to respond to comments, and to other issues which were raised in comment letters but given short shrift in comments, and by the more precisely

framed legal flaws in the CAP and Program EIR given the Final EIR's hyper-legalistic refusal to respond to comments.

7. The Project Described and Analyzed in the Program EIR Is Not "Complete, Stable, and Accurate."

A complete, stable and accurate project description is a foundational requirement of an EIR. The "project" is a sprawling document spanning over 200 pages, with a collective content of 455 new provisions variously categorized as strategies, measures, implementation actions, performance objectives, and metrics. The Program EIR does not describe the whole of the CAP. The CAP is also described as "aspirational" – but only for the 2045 "net zero" compliance provisions; the 2030, 2035 and 2045 GHG reductions are quantified mandates included for example in the Program EIR's description of the CAP's performance objectives. The Program EIR fails to differentiate between CAP measure that are immediately enforceable, and those that are mere aspirations. The CAP unlawfully defers finalization of numerous measures to later agency action at an unknown date and with an unknown effect, including but not limited to unlawful deferral of both a VMT mitigation bank or GHG offset program. The CAP asserts that the County's "climate implementation team" reserves the authority to modify the CAP, may or may not complete subsequent analyses of equity, funding and implantability for some unspecified number of CAP provisions, and may – or may not – choose to propose new ordinances or other actions in the future. The CAP also includes legally infeasible measures to be achieved on a non-aspirational (aka mandatory) time frame, such as the use of treated wastewater as a water supply or a ban on natural gas in new development. Any one of these defects makes the CAP an unstable and incomplete Project Description under CEQA.

8. By Failing to Have a Complete and Stable Project Description, the EIR Fails to Identify or Adequately Analyze the Impacts of the CAP.

Without a stable and accurate project description, every analytical section of the EIR – from agriculture and aesthetics to transportation and public utilities – is woefully inaccurate under CEQA. There are dozens of examples of shoddy or missing analysis:

- The CAP demands that 80% of the agricultural irrigation water (with a lower mandate for 2030 and 2035) used in the County be derived from treated wastewater or other non-imported sources; these sources are presently unavailable, the infrastructure required to achieve any increment of progress toward this goal would require construction of infrastructure and vast new piping systems to convey sewage (in population centers) to treatment facilities to storage and distribution facilities required to irrigate (distant) agricultural lands is ignored. The CAP does not disclose the need for (let alone the impacts of) the vast new water supply infrastructure system – or what agricultural productivity would be lost if this CAP mandate could not be accomplished. It does not disclose the "baseline" of existing agricultural water use sources, even though this information is readily available from other County departments and Waterworks Districts. It does not disclose the impacts, including increased risk of contaminants and nitrate concentrations, from migrating over to a recycled water supply – or the legal limitations of this type of water to irrigate food crops, and the resulting food crop conversion impacts. The

Agriculture section of the EIR simply notes that some apparent construction projects "facilitated by the Draft 2045 CAP could impact farmland, and provides as an example building new utility scale solar projects. As the California Supreme Court observed years ago in response to a similar shoddy 2-page alternatives "analysis" provided by the Regents of the University of California, the idea that this EIR could take 100 years of agricultural water supply and simply blithely demand that it be converted to treated wastewater "blinks at common sense" – and certainly violates CEQA. See *Laurel Heights Improvement Ass'n v. Regents of University of California* (1993) 6 Cal.4h 1112.

- The Land Use Section of the EIR identifies the CAP's strategies, measures and performance objectives as collectively the "project" it is evaluating in the Program EIR, identifies scores of applicable land use plan policies, but then identifies only one (Antelope Valley) of the County's dozen-plus approved Area Plans/Community Plans/Specific Plans – a fatal legal flaw in that these adopted plans are in geographically distinct areas of the County, which the CAP would affect in differential but unexamined and undisclosed ways. For example, the CAP's demand for the majority of housing to be built within 1/2 mile of high frequency public transit would preclude housing in the vast majority (well over 90%) of the County lands that do not have HQTC proximity.

- Table 3.12-2 in the Land Use Section of the EIR is the only purported "analysis" of the CAP's consistency with the scores of land use policies, from more than a hundred County General Plan elements, goals and policies that the EIR itself identifies are "applicable" to the CAP. The Table then fails to identify General Plan Goals and Policies, or any other Plan content, with which the CAP is inconsistent – including, for example, the fact that none of the economic sector job growth priorities in the General Plan's Economic Development Element can support a worker density of 300 employees/acre. Table 3.12-2 goes on at length to describe the CAP's consistency with a non-regulatory County plan (which is not included in the General Plan, or in any ordinance or otherwise applicable regulation – the "OurCounty" Sustainability Plan.) along with a regional plan approved by SCAG. Here too the DEIR "blinks" at common sense, as enforced by the courts most recently against the city of Los Angeles as noted above. The Table is incomplete even assuming that the Chapter's list of applicable plans, policies and objectives are complete. In fact the Chapter list is itself incomplete: there is no mention, nor is there any analysis, of the General Plan's Economic Development Element at all.

The Program EIR cherry picks from among the 455 provisions of the CAP, and the resulting "analysis" is all over the map – but uniform in its avoidance of any evaluation of the CAP's employment/economic development, housing or water provisions in relation to the County's Land Use, Housing, Economic Development, and other adopted plans and policies. Without "blinking" it is obvious that numerous CAP measures – including just the few identified above relating to employment, housing, water, agriculture and infrastructure – conflict with and therefore will undermine these important plans, goals and policy mandates. Population, job and economic displacement, as housing and job prospects dim and infrastructure becomes less reliable and more costly, is one of dozens of reasonably foreseeable environmental impacts of CAP implementation. None are acknowledged, analyzed, or mitigated in this fatally flawed Program EIR.

9. The CAP's Evaluation of Alternatives is Legally Insufficient

The CAP discloses that the vast majority of GHG emissions that occur from human activities within unincorporated Los Angeles County are from vehicular use (mostly on-road), and energy used in buildings (mostly electricity), which collectively account for about 85% of the County's GHG emissions. Agriculture is only 1%, waste and wastewater management (9%), and industrial processing and product use (5%). California is a climate leader, and the CAP goes on to disclose that state law mandates will dramatically reduce GHG in each of the target years (2030, 2035 and 2045), with or without the CAP, in fact, as shown in Figure 2-6 of the CAP.

None of the Alternatives evaluate the extent to which the CAP will result in the absence of job growth (since no employers on County lands presently come close to 300 employees/acre), in the absence of reliable water supplies (since for more than a century Los Angeles – like all massive metropolitan areas dating back to at least Ancient Rome – rely significantly on imported water), in the absence of Housing Element implementation, and in the absence of funded infrastructure construction projects that are critical even to serve present County needs.

There can be no legally adequate alternatives analysis without reference to the project objective, which is to achieve the three target GHG reductions by 2030, 2035 and 2045. As shown in Figure 2-6 of the CAP, however, California is on track to meet these targets with or without a County CAP. The Program EIR was required to evaluate a CAP that consists "solely" of bridging the gap between the GHG emission reductions that the State government has already mandated by legislation and regulation, and those that the State has not (yet) mandated by legislation or regulation such as emission reductions from wastewater and waste treatment. This Alternative would place the county on a level playing field with every other jurisdiction in California, and allow for an informed decision-making process about what specific additional measures, affecting what specific sectors and what specific demographics and what specific geographic areas, would close the gap to meet the 2030 2035 and 2045 GHG reductions required by the CAP.

The foundational flaws in the Project Description, the incomplete environmental analysis and willful failure to identify or mitigate for reasonably foreseeable adverse impacts of the CAP on agriculture, economic development, housing and infrastructure, resulted in the omission of dozens of significant unavoidable adverse impacts of CAP implementation. Had those impacts been lawfully identified, the need for an alternative focused on closing the gap between state-mandated GHG reductions and CAP targets would have been obvious. In either event, one or more reasonable alternatives to lessen or avoid significant CAP impacts should have been and should be considered in full.

10. Conclusion

Imposing a one-size-fits-all, all-sector, all-geography, all-encompassing CAP on the entirety of Los Angeles County unincorporated lands is a daunting task – and 455 separate measures may well be what staff advises is necessary. However, this sprawling, ambiguous and contradictory new package of General Plan amendments and the CAP itself is collectively a "project" subject to CEQA, and the CEQA analysis that staff has presented is nowhere near legally sufficient (nor was the CEQA process lawful including by way of example the summary dismissal of comments).

The CAP is a "ready, fire, aim" mandate that will tie this county in endless knots and lawsuits, as was the case in San Diego County. Even San Francisco wisely decided not to embed their CAP in their General Plan, and that was before they got an after-the-fact fiscal study done that showed CAP implementation would cost upwards of $22 Billion in the state's most temperate climate, most transit-served, tragically office worker/tourist-dependent economy, 49-square mile city of about 800,000 people. https://www.law.berkeley.edu/research/clee/research/climate/california-climate-action/funding-sf-cap/ Los Angeles County is the size of a state; it is more populous than many states; it has more climate zones and a more diverse economy than most states.

We respectfully request that the CAP be paused, pending independent third-party review by the Los Angeles Economic Development Commission, which has both the knowledge of the county's economy and the track record of independent and honest analysis. The CAP should be substantially trimmed down, to include only those measures that are legally and technically feasible, and can be funded and implemented in alignment with other critical county priorities. A legally adequate EIR should be prepared for the revised CAP. We did not oppose the 2020 CAP, which was legally feasible and has not created the litigation black hole of the type suffered by San Diego. We look forward to supporting a CAP update once these processes are complete and pledge our participation in the CAP and EIR study and revision process.

Thank you for your consideration of these comments.

Sincerely,

Adam Wood
Administrator
Building Industry Legal Defense Foundation
17192 Murphy Avenue, #14445
Irvine, CA 92623

November 14, 2023

Los Angeles County Board of Supervisors
500 West Temple Street
Los Angeles, CA 90012

To: Supervisor Hilda L. Solis, Supervisor Holly J. Mitchell, Supervisor Lindsey P. Horvath, Supervisor Janice Hahn, Supervisor Kathryn Barger

RE: Concerning the County's Pending Climate Action Plan Update -- Request for a One Year Pause to Undertake Greater Stakeholder Involvement and an Economic Impact Analysis: A follow-up to our letter submitted on November 8, 2013.

Dear Chair Hahn and Hon. Supervisors,

The Building Industry Association of Southern California (BIASC), which represents homebuilders, and Rebuild SoCal Partnership, which represents the trade organizations, respectfully ask you to direct County staff and the Planning Commission to delay – for the reasons set forth below – consideration of the current draft of the Revised Draft Climate Action Plan (RDCAP). Although our two organizations often hold differing views concerning how best to promote and build livable communities within the Southern California region, as it relates to the current 2045 CAP proposal, **we are unified in our position that the RDCAP should be improved through substantially more stakeholder input and study**.

On November 8, 2023, our organizations submitted a joint letter, which is attached and outlined the substance of our most pressing concerns about the RDCAP. Since then, we believe that the need for a pause in the consideration of the RDCAP is most imperative, so that concrete steps can be taken to both (i) address the many concerns that have been expressed concerning the RDCAP, and (ii) allow for the RDCAP to be revised into a policy document that will bring all stakeholder groups into greater agreement concerning updated CAP measures.

Per this letter, we jointly ask for a **1-year pause in the process of considering the RDCAP specifically to allow for several defined tasks to be undertaken. First, we believe that it is imperative that the County undertake an economic impact analysis to understand the foreseeable economic impacts of the RDCAP**. As referenced in our previous letter, it would be prudent to engage an impartial entity such as the Los Angeles Economic Development Corporation to conduct a comprehensive fiscal analysis of 2045 CAP impacts. A proposed CAP in San Francisco was estimated to cost up to $22,000,000,000 to implement. Understanding the pressure points this policy may create will allow for adequate identification, preparation, and planning for the industries impacted. It is important to understand what Los Angeles County must plan for with this proposal.

Specifically concerning the requested economic study, we believe that this one-year pause should be used as follows:

- 3 months for the scoping and bidding process
- 6 months to complete the study
- 3 months of public review and finalization of the study

Secondly, a number of concerns have been expressed about both the legal sufficiency of the environmental review undertaken concerning the RDCAP and the foreseeable legal ramifications of its many mandates. To address these concerns, we respectfully ask for both the time and a process to allow these legal concerns to be discussed and addressed with representatives of the stakeholder groups.

BIASC and Rebuild SoCal Partnership would commit to working with the County and other stakeholder groups to ensure a timely and transparent analysis of the RDCAP. For these reasons, BIASC and Rebuild SoCal Partnership unite in this request; and we respectfully ask for your favorable consideration.

Thank you,

Jeff Montejano

Chief Executive Officer

BIASC

Jon Switalski

Executive Director

Rebuild SoCal Partnership

December 21, 2023

Los Angeles County Board of Supervisors
500 West Temple Street
Los Angeles, CA 90012

Construction Industry Coalition On Water Quality

Coalition Members:

AGC CALIFORNIA

BUILDING FORWARD
BIA
ADVOCATING FOR BUILDERS SINCE 1923

SCCA
Southern California Contractors Association

UNITED CONTRACTORS

To the Honorable Supervisors Hilda L. Solis, Holly J. Mitchell, Lindsey P. Horvath, Janice Hahn, and Kathryn Barger

Re: The County's Proposed 2045 Climate Action Plan (CAP) Update Provisions Concerning Water Supply and Our Request for a One-Year Pause to Allow Greater Stakeholder Involvement and an Economic Impact Analysis of the CAP.

Dear Hon. Chair Horvath and Supervisors,

Construction Industry Coalition on Water Quality (CICWQ) represents management and union labor from four construction industry trade associations working in Southern California. We are writing this letter to ask you to:

(1) Address critical deficiencies and inconsistencies in 2045 CAP Appendix E. (Implementation Details), Strategy 7: (Conserve Water) (hereinafter, the "Strategy") and

(2) Support the requests made by Building Industry Association of Southern California, the Rebuild Southern California Partnership, and others to delay action on the CAP 2045 for at least one year while additional economic and fiscal study and discussion can be undertaken. In this letter, we address our concerns about the Strategy; and we offer specific recommendations for critically needed revisions.

The Strategy contains several proposals for measures and actions that are problematic concerning the housing, building, and construction industries working in Los Angeles County. Most glaring is the fact that the Strategy excludes any reference to the specific, Los Angeles County-based water conservation and local supply reliability strategies (Water Plan Strategy 1 and Strategy 3) that were recently published in the County of Los Angeles Water Plan (Water Plan) – which was just released to the public in December 2023.

In addition, several of the "strategy/measure/actions" and corresponding goals and metrics proposed in the Strategy (E.5 and E.6) are (i) unnecessary in light of existing water agency supply plans, (ii) redundant with existing state and locally approved water regulations, codes, and ordinances, and (iii) unhelpful in creating jobs as well as adequate housing to meet State and local mandates by promoting duplicative regulation which then reduces affordability.

The Water Plan was prepared by County Public Works and approved by the Board of Supervisors on December 5, 2023. The Water Plan's intent and purpose are more specific and measurable than the Strategy, and the former describes in detail how local water conservation and reliability efforts will be pursued in a public, transparent, collaborative, and multi-agency manner while achieving greenhouse gas reductions for climate resiliency. The Water Plan should be acknowledged and used to inform decision-makers concerning the formulation of the Strategy.

We are especially concerned with the Strategy's sections E.5, 5.1, and 5.4, and Sections E.6 and E.6.1. These sections introduce several different "strategy/measure/action[s]" to (i) achieve local water supply resiliency at the expense of other proven local sources, (ii) promote a requirement to install individual gray water systems at the home or business property scale, and (iii) propose to develop an entirely new water conservation ordinance for new property development in the unincorporated area of Los Angeles County.

All of these proposals are unworkable in relation to the building and construction industry and the housing sector, especially in light of the new Water Plan and its specific and measurable performance strategies for improving conservation efforts and increasing local water supply reliability within a collaborative multi-agency framework. We agree that recycled water and indirect potable reuse sources should be studied and pursued at a regional scale; but we have great concerns about individual, on-site reclamation systems and any mandates to use graywater recovery systems.

We ask the County to consider revising the Strategy substantially to address:

- How the goals described in the Strategy were derived.
- How do such goals align and support existing water agency supply plans?
- How much of each new water supply component (recycled, gray, indirect potable reuse) is responsible for the proposed reduction of other water sources (including imported water) in Los Angeles County?
- Why is graywater system development (outlined in E.5.1 and E.5.4) emphasized, and how does it compare with recycled water and indirect potable reuse, which offer much greater potential to increase regional local water supply?

- Why was the new Los Angeles County Water Plan not considered in formulating the Strategy?
- Why is a new water conservation ordinance with a Net Zero component proposed for all new greenfield developments, when the State has just adopted the most stringent indoor and outdoor conservation planning mandate in the U.S.?
- Given the complexity of water, why is the CAP not deferring to the various water plans prepared by the experts, the water agencies, who must also comply with ghg goals as well as additional state and federal mandates?

Our hope at CICWQ is that the County will, in the next year – while it also conducts a thorough economic and fiscal analysis of the 2045 CAP, re-examine and revise the Strategy to make it consistent with and supportive of the Los Angeles County Water Plan 2023 strategies and performance metrics.

Thank you for your consideration.

Sincerely,

Michael W. Lewis
Executive Vice President
Construction Industry Coalition on Water Quality

CICWQ is an advocacy, education, and research 501(c)(6) non-profit group of trade associations representing builders and trade contractors, home builders, labor unions, landowners, and project developers.

CICWQ membership is comprised of members from four construction and building industry trade associations in southern California: The Associated General Contractors of California, Building Industry Association of Southern California, Southern California Contractors Association, and United Contractors.

Collectively, members of these associations build a significant portion of the transportation, public and private infrastructure, and commercial and residential land development projects in California.

BUILDING INDUSTRY LEGAL DEFENSE FOUNDATION

December 29, 2023

Los Angeles County Board of Supervisors
500 West Temple Street
Los Angeles, CA 90012

To the Honorable Supervisors Hilda L. Solis, Holly J. Mitchell, Lindsey P. Horvath, Janice Hahn, and Kathryn Barger

Re: The County's Proposed 2045 Climate Action Plan (CAP) Update Is Impossibly Prescriptive and Must Be Corrected; Our Request for a One-Year Pause to Allow Greater Stakeholder Involvement and an Economic Impact Analysis of the CAP.

Dear Hon. Chair Horvath and Supervisors,

The Building Industry Legal Defense Foundation (BILD) is the litigation and legal advocacy arm of the Building Industry Association of Southern California, which includes the latter's Los Angeles/Ventura chapter. We write to express our concern about the testimony put forth by the County's Planning Department staff ("Planning Staff") before the Planning Commission (the "Commission") at its November 15, 2023, hearing (the "Hearing"), at which the Commission voted to forward on to the Board of Supervisors (the "Board") the draft 2045 Climate Action Plan (the "CAP") and accompanying draft programmatic environmental impact report.

For the reasons explained below, we urge the Board to forgo consideration or adoption of the CAP as it presently reads, and instead instruct Planning Staff to address the following concerns.

At the Hearing, Planning Staff both (i) dismissively misrepresented the key points of opposition that we and other organizations put forth concerning the Revised CAP, and (ii) presented to the Commission misleading testimony concerning the foreseeable effects of the CAP if it were to be adopted without substantial revision. Most problematic is that Planning Staff repeatedly told the Commission that the CAP's scores of stated numerical goals, targets, objectives, and outcomes will be harmlessly construed as merely "**aspirational**" and "**not mandatory**" as applied to any

individual private and public projects and plans that will be brought to the County for approval.[1] Most definitely, Planning Director Bodek stated as follows: "[***An economic study*** of the CAP by LAEDC] would *not further the goals of an aspirational plan*. *Again I want to say this: This plan is not a mandate*."

However, Director Bobek then came close to confessing the real problem with the CAP when she was asked by a commission whether a project applicant's use of the California Environmental Quality Act (CEQA) "streamlining checklist" that the CAP would establish was "voluntary." Ms. Bodek replied as follows:

> "It is voluntary. Well, it's voluntary to participate in the CEQA checklist. **It is not voluntary from a CEQA compliance perspective. California CEQA requires emissions GHG analysis. So you either have to mitigate it on your own in your own CEQA document; or you can work with us to mitigate it through our checklist. It's your choice as a developer.**"

With this one statement, Director Bodek touched, only momentarily and too lightly, on the true CEQA implications of the proposed CAP's numerical goals, targets, objectives, and outcomes. The truth is that, if the CAP were to be approved as it is now written, then future project applicants will be required to either (i) comply strictly with the "new streamlining checklist" (which will be nearly impossible in most foreseeable situations, expensive and time-consuming in even the best

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[1] In addition to the testimony of Planning Director Bodek, individual representatives of the Planning Staff testified as follows:

Regional Planner Iris Chi: "The performance objectives found in the 2045 CAP are county goals, *not requirements or mandates for individual projects*."

Section Head Thuy Hua: *The measures and actions that we have in the CAP actually don't have restrictions*, but instead they're county-wide goals, and the [CAP-prescribed] actions *encourage things* such as the recycled use of water where it is available. * * * * *So we don't prohibit and we don't restrict on a development-level basis*; and indeed we are not restricting [swimming] pools. We'd certainly like for residents to still have [swimming] pools.

Again, Section Head Thuy Hua: Specifically for the 300 jobs per acre analysis, I want to reiterate that the numbers, the performance objectives that we've developed are county goals. *They are not applied on a project-by-project basis*. *They are not required for individual development projects*. And they're not applied county-wide either. * * * * And again this is a county goal. It is not applied on a project-per-project basis. Certainly, if projects choose to do so, we strongly encourage it, because it's a great approach to a balanced land use strategy.

Deputy Director Connie Chung: And we also wrote the document. So, we're very familiar with how it works. And, again, it's how it's being structured. So, *when we say that it is an aspirational document, it's because that's how it's been designed*.

cases), or (ii) ***be saddled with new and insufferable burdens due to the CAP under normal, non-streamlined CEQA processes***. Simply put, ***unless wholesale revisions are made to the CAP before its adoption, the CAP will operate under CEQA to foist upon project applicants crushing new obligations to comply with the many numerical goals, targets, objectives, and outcomes that are reflected throughout the CAP***.

Planning Staff argued that industry representatives' concerns about the potential adverse consequences to individual, public and private plans or projects, and to housing and economic development projects, are based on our misunderstanding or confusion. We note that Planning Staff has also advanced, in connection with the CAP, Policy AQ 3.1 of the Air Quality Element amendments, which states that the revised Air Quality Element will: **"[f]acilitate the implementation and maintenance of the Climate Action Plan to ensure that the County reaches its climate action and greenhouse gas emission reduction goals**." The CAP then invokes the term "require" 166 times when discussing CAP compliance obligations; and the CAP identifies in detail more than 100 measures that are "required" to meet the 2030, 2035 and 2045 goals. In contrast, neither the Air Quality Element, approving Resolutions or findings, or the CAP itself, once uses the term "aspirational" in relation to the specific 2030, 2040 and 2045 "GHG reduction goals," compliance with which must be "ensured" to be consistent with the General Plan Air Quality Element. Indeed, the term "aspirational" is used in only one context within the CAP, and that is concerning the overall aspirational goal for the county to reach a "net zero GHG" standard by 2045.

It is reckless to both (on the one hand) amend the Air Quality Element of the General Plan to both "require" "climate action" and "ensure" that the CAP's "greenhouse gas emission reduction goals" will be met, while (on the other hand) positing that all of the CAP's many numerical goals, targets, objectives, and outcomes are merely "aspirational" vis-à-vis the County's discretionary land use powers. Many of the CAP's required actions and promised goals conflict with the County's own approved water plans, projects, contract, and water service obligations, create litigation risks for both the County and private project applicants, will put at risk taxpayer and ratepayer funding, and create a legal morass affecting numerous stakeholders within the County and its residents and employers.

Three examples can illustrate the potential for the weaponization under CEQA of the numerical goals, targets, objectives, and outcomes that reside in the CAP.

First, the CAP establishes the goal of having more than 50% of all housing located within the unincorporated county be located within High Quality Transit Areas (HQTAs). But such HQTAs are almost non-existent out in unincorporated areas of the county, which has the only relative abundance of minimally developed land which could be developed for new housing. For example, there are presently only four (4) small HQTAs located anywhere in the unincorporated county area north of the San Gabriel Mountains.

Therefore, if the CAP were to be approved with the more-than-50% located in HQTAs housing goal intact, then all newly proposed housing projects that cannot satisfy the proposed CEQA streamlining checklist process would – pursuant to CEQA – be compared and contrasted against the County's HQTA housing goal. Moreover, any CEQA "thresholds of significant," whether they

are generally applicable or ad hoc (i.e., case-by-case), pertaining to proposed housing projects would be subject to vexatious litigation risks unless the project is to be located within an HQTA. And, because both (i) the actual distance of a proposed development site from existing HQTAs can hardly be mitigated, and (ii) the cost of moving or creating new HQTAs would be prohibitive, litigation risks would rise concerning the physical and economic feasibility and efficacy of mitigating for any such spatial "deficiency."

Planning Staff has made no effort to address this concern, except to testify that all of the numerical goals, targets, objectives, and outcomes that reside in the CAP are aspirational and nonbinding as they relate to individual projects and developments. Importantly, though, the CAP itself contains no statements that would justify such testimony; and, if the CAP were to be adopted as an operative policy document without substantial correction, it will be of no help that the Deputy Director testified to the Commission that Planning Staff *designed* the CAP to be aspirational – when the CAP's and the Air Quality Element's texts read otherwise.

A similar CEQA problem would exist with regards to the CAP's stated goals about water supply. The CAP includes impossible-to-meet numerical goals, targets, objectives, and outcomes related to minimizing the use of imported water within a generation while magically increasing the use of recycled water. These stated goals are contrary to all recent plans and projections of agencies more directly responsible for area water supply, including the Metropolitan Water District and the County's Public Works Department. Future projects and plans that are proposed for unincorporated county area, if they cannot satisfy the proposed CEQA streamlining checklist process, would – pursuant to CEQA – be compared unfavorably against the County's impossible CAP water supply goals. And again, any CEQA "thresholds of significant," whether they are made generally applicable or ad hoc (i.e., case-by-case), pertaining to proposed projects and plans and water supply would be subject to CEQA challenge unless they were all consistent with the CAP's stated water supply goals. The County needs to ponder whether it could ever again exercise its police power, or exercise reasonable forbearance in relation thereto, or even exercise its so-called governmental proprietary powers, in any way other than to meet the CAP's stated numerical goals.

The third example relates to the CAP's assertion that the County will pursue a county-wide goal, within a generation, of achieving an average employment density of 300 jobs per acre wherever in the unincorporated county area employment might occur. A disproportionately large amount of the Planning Staff's testimony generally about the "aspirational" nature of the CAP focused specifically on the 300 jobs per acre job density goal, which Planning Staff sought to distinguish as a particularly non-binding "Tier 2" requirement. As Section Head Thuy Hua testified:

> "Specifically for the 300 jobs per acre analysis, **I want to reiterate that the numbers, the performance objectives that we've developed are county goals. They are not applied on a project-by-project basis. They are not required for individual development projects. And they're not applied county-wide either**."

Thus, the Planning Staff seems to believe that the county goal of 300 jobs per acre wherever there is employment will exist in the CAP without any effect whatsoever. Such a belief betrays a lack of understanding of how quantifications can be weaponized under CEQA and used for vexatious

purposes. The CAP states that project applicants must provide the following analysis and results concerning the job density goals (Appendix F of Final Draft – October 2023, pg. F-23):

- Describe how the project will achieve a job density of 300 jobs per acre; OR
- Describe why this action is not applicable to your projects; OR
- ***Describe why such actions are not incorporated into your project***.
- IN ADDITION, provide the job density of the project in terms of jobs per acre.

Anyone who understands the mischief that can be advanced by those who choose to weaponize CEQA will recognize that this Tier 2 obligation invites complaints concerning the reasoning that project applicants might offer for not incorporating the 300 jobs per acre metric into the respective project – especially when it is foreseeable that most development projects in the unincorporated county area will of course aim for and realize job densities much closer to zero than 300 jobs per acre. The sheer enormity of the proposed job density metric invites lawsuits against projects that would create jobs at much lower but far more reasonable job densities.

The Planning Staff seems unable to recognize that the 300 job per acre employment density goal made applicable to the entirety of the unincorporated county land area (a 2,653.5 square mile area) is wildly impossible. As several public commenters pointed out that, of the 810 transportation analysis zones (TAZs) in the unincorporated county area, only nine (i.e., only 1%) have a job density over 20 jobs per acre. The remaining 99% of TAZs in the unincorporated county area have TAZs far below 20 jobs per acre; and ***in most TAZs in the unincorporated county area, the density is a very small fraction of one job per acre***.

In addition, Planning Staff apparently mistook what the public commenters stated about the 300 jobs per acre goal. Specifically, Section Head Thuy Hua mistakenly testified as follows:

> "Similarly, just to round back again to the job density discussion, as **some of the commenters noted that the existing job density is about 20 jobs per acre,** I think that [quantification] contributes to a lot of the traffic that maybe some of us had experienced this morning. And so we are not looking towards achieving and aiming for current conditions. We are striving for more. We are striving for better. Hence, the goal for the County."

It was not true, as Ms. Hua testified, that the commenters had testified that "the existing job density is about 20 jobs per acre," because the commenters' testimony had instead been that only 9 out of 810 TAZs located in the unincorporated county (1%) had jobs densities at or above 20 jobs per acre, but no TAZs even reached 100 jobs per acre. By inference, the other 801 TAZs in the unincorporated county (99%) have job densities *below* 20 jobs per acre. Indeed, according to the TAZ employment data provided by Southern California Association of Government (SCAG), ***the average*** (i.e., the arithmetic mean) ***job density across the unincorporated county area is only about 1/6th of a job per acre***. Specifically, SCAG estimated that, in 2019, there were only an estimated 276,297 jobs located in the unincorporated Los Angeles County area, and there are more

than 1,704,640 acres – 2,653.5 square miles – located in the unincorporated county area. Hence, there was, as of 2019, 0.1628 job per acre on average within the unincorporated county area.

Therefore, such an absurdly sky-high job density goal – 300 jobs per acre – is likely close to two orders of magnitude away from any foreseeable reality concerning the County's unincorporated lands. Given these facts, it is shocking that some of the Planning Staff would mistakenly hear and accept as presumably correct any assertion that "the existing job density is about 20 jobs per acre" when, in fact, the average existing job density in the unincorporated county is 1/120th of that figure. This should be viewed as serious cause for pause to anyone who must rely on the Planning Staff's work on the CAP.

The Planning Staff, which has remained defiantly unbudging concerning the 300 jobs per acre average job density goal, has similarly loaded up the CAP with scores of other unrealistic numerical goals, targets, objectives, and outcomes. In doing so, Planning Staff argues without any textual support that all such numerical goals, etc., are innocuous because they are all merely "aspirational," and that they will therefore never prejudice any individual development project or specific plan. With respect, we urge the Board to ponder the possibility that many of the numerical goals settled upon by Planning Staff are – by degree – some sizable distance away from any possible reality. We urge the Supervisors to recognize that the plain text of the CAP does **not** support Planning Staff's insistence that all of the CAP's goals, etc., are non-binding on and will not prejudice individual projects and plans. We respectfully urge the Board to direct Planning Staff to revisit the CAP and undertake the crafting of major revisions to it.

Thank you for your consideration of these comments.

Sincerely,

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