

October 23, 2020

Via e-mail

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Re: Proposed amendment to General Plan Policy OS-10.11
October 27, 2020 Agenda Item 9

Dear Members of the Board of Supervisors:

LandWatch Monterey County urges the Board of Supervisors to accept its Planning Commission's unanimous recommendation to require the actual **adoption** of a Climate Action Plan ("CAP") by year-end 2022 if the Board acts to amend General Plan Policy OS-10.11. This would result in the County missing the currently mandated adoption deadline for a CAP by only 10 years. Any further delay would be unconscionable and would result in an ineffective CAP by affording insufficient time to meet the 2030 greenhouse gas reduction targets.

In particular, **the Board should reject staff's proposal that the amended policy merely require "completion" of the CAP without a deadline for adoption.** This is a formula for further delay in the CAP, which was supposed to have been completed by October 2012. Furthermore, mere "completion" of a CAP is a meaningless milestone because it could be met by anything resembling a CAP, regardless whether it were an effective CAP or the Board actually adopted it.

A. Further delay in adopting a CAP is unconscionable and would likely preclude meeting 2030 emission reductions.

As staff explain, the Board must amend General Plan Policy OS-10.11 in order to incorporate the new SB 32 greenhouse gas reduction target to replace the now obsolete reduction target referenced in Policy OS-10.11. The new reduction target in SB32 is more stringent than the former target because the scientific consensus recognizes that

insufficient reductions have been attained under the current regulatory regime to address the global threat of climate change. That consensus recognizes that the longer we wait to attain reductions, the more urgent and demanding the needed reductions become. The County must become part of the solution, not the problem, by committing itself to **adoption** of a CAP by 2022 that ensures the County will make its fair share of reductions.

The proposal to amend Policy OS-10.11 would set an emission reduction target calling for a 40% reduction from 1990 levels **by 2030**. Attaining those needed reductions by 2030 will be difficult enough in the eight years that would remain after a 2022 adoption, but it would likely prove impossible if the County waits any longer to take action. The 2010 General Plan EIR acknowledges the need for “widespread reductions of GHG emissions,” that the County must “do[] its part,” and that “County land use discretion can substantially influence the GHG emissions from new development.” (2010 GP DEIR, p. 4.16-16.) The County will need at least eight years to implement the needed reductions.

B. If the County removes the date certain for adoption, it may not rely on the proposed Addendum.

Staff propose that the Board meet its CEQA obligation in amending the 2010 General Plan by adopting an Addendum. CEQA permits the Board to rely on an addendum rather than prepare a subsequent EIR here **only** if there is no substantial evidence that the change to the General Plan would result in new or more severe significant impacts. (CEQA, § 21166.)

Reliance on an addendum would be improper without a commitment to **adopt** the CAP by year-end 2022 because, without that commitment, the CAP would become uncertain. The staff report claims that, because the reduction targets are more stringent, the amendment of Policy OS-10.11 would be “equal or more effective at mitigating climate change impacts” and would not “increase the severity of previously identified impacts.” Staff ignore the reality that without a commitment to **adopt** the CAP there is no substantial evidence to support a finding that impacts would not be more severe. The Board would be abandoning the existing policy that mandates adoption of a CAP by 2012 for a policy that does not mandate adoption of a CAP at all.

Furthermore, the CAP is identified as mitigation in the 2010 General Plan EIR. Implementation of a mitigation measure may not be delayed beyond the start of the project activity that causes the impact in question. (*POET, LLC v. State Air Resources Board* (2013) 218 Cal.App.4th 681, 740.) The County has commenced the implementation of the project – the 2010 General Plan – and has already delayed the implementation of the CAP mitigation by ten years. Adopting a policy that permits further delay would violate this critical CEQA policy.

Finally, mitigation must be “fully enforceable.” (14 CCR, § 15126.4(a)(2).) Without a committed date for adoption of the CAP, Policy OS-10.11 is not enforceable and would

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become uncertain and vitiated as mitigation. An agency may not modify a mitigation measure in a way that reduces its effectiveness without preparing a subsequent EIR to assess the effects of the change. (*Lincoln Place Tenants Ass'n v. City of Los Angeles* (2005) 130 Cal.App.4th 1491, 1508.) Thus, in *Sierra Club v. County of San Diego* (2014) 231 Cal.App.4th 1152, 1174, the Court held that the County was required to prepare an SEIR, and not rely on an addendum, where it had not implemented its general plan policy requiring enforceable greenhouse gas reduction commitments but instead took action that fell short of those commitments. Here, the amendment of Policy OS-10.11 to eliminate a date certain for its implementation would reduce its effectiveness by permitting additional delay and rendering it unenforceable. If the County takes that route, it must prepare a subsequent EIR and cannot rely on the proposed Addendum.

Thank you for the opportunity to comment.

Yours sincerely,

M. R. WOLFE & ASSOCIATES, P.C.

A handwritten signature in blue ink, appearing to read "JF".

John Farrow

JHF:hs

Cc: Michael D. DeLapa