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By Electronic Mail and Telecopy

Planning Commission
City of San Diego
1222 First Avenue, 4th Floor
San Diego, CA 92101

RE: Hearing: November 1, 2007 -- DOCKET ITEM-6: GENERAL PLAN UPDATE,
PROJECT NO. 104496.

Dear Members of the Planning Commission:

The Attorney General submits these comments on the Final Environmental Impact Report ("EIR") and City of San Diego Draft General Plan Update ("General Plan"). We appreciate the revisions that have already been made to the General Plan as a result of the Attorney General's comments on the Draft EIR and the specific suggestions for revisions and additions that we provided to City staff. We are writing to request that you endorse those revisions, and to further request that you make some additional changes that we previously suggested, but that have not yet been included in the Draft General Plan. We believe the additional changes discussed below are appropriate mitigation measures under CEQA to reduce or avoid climate change impacts from future development in the City of San Diego.

Policy CE-A.5.a. "Design new and major remodels to City buildings to achieve, at a minimum, the Silver rating goal identify by the Leadership in Energy and Environmental Design (LEED) Green Building Rating System to conserve resources, including but not limited to energy and renewable resources."

A substantial amount of city operations may occur in leased buildings. Therefore, this policy should apply to leaseholds, particularly where a building is built or remodeled to the City tenant's specifications. The Governor's Executive Order for green building (Executive Order S-20-04) requires that state agencies: "Seek[ing] out office space leases in buildings with a U.S. EPA Energy Star rating." Given the trend for construction of new office buildings that are LEED certified, and the ability to retrofit existing buildings to achieve an Energy Star rating, the General Plan policy should also require: "New city leaseholds or lease renewals/extensions should be buildings that are LEED certified or have a U.S. EPA Energy Star rating."

Policy CE-A.5.d. "Improve the energy efficiency of commercial buildings."

This policy should be more specific to indicate how and when the City intends to

improve the energy efficiency of existing commercial buildings. The policy should be revised to state: “Upgrade the energy efficiency of commercial buildings at the time of sale, renovations, or additions.” The policy as written is unclear as to how it would happen and does not ensure that any energy improvements will actually occur. A cost-effective way to reduce energy use is to implement energy and water conservation measures in existing buildings that pay for themselves in energy savings over time. The City may further refine the type, scope and expenditure limit of the required energy efficiency improvements in an ordinance or code provision that implements this policy.^{1/}

Policy CE-A-9. “Reuse building materials, use materials that have recycled content... to the extent possible, through factors such as: • Scheduling time for deconstruction and recycling activities to take place during project demolition and construction phases.”

We request changing this to state “... through factors including: • Requiring contractors to schedule time for deconstruction and recycling activities to take place during project demolition and construction phases.” We also request adding: “The City shall take the actions necessary to establish landfill facilities to recycle construction and demolition debris.”

The construction and demolition recycling ordinance passed by the City several years ago has not gone into effect, apparently due to lack of appropriate recycling facilities at the landfill. Obviously, some further efforts are required by the City to obtain the necessary facilities. Numerous other cities have been able to do so, and have construction/demolition recycling ordinances in effect.^{2/}

Policy CE-A.10. The policies in CEA-A.10. a. and b. require that buildings have refuse and recycling areas, but they do not state that building occupants are required to recycle. It is feasible and appropriate to require recycling in all buildings, as a method to reduce emissions of methane (a potent greenhouse gas) generated by garbage in landfills. Therefore, the following policy should be added to the General Plan: “Require recycling in all residential (single and multi-family) and non-residential buildings.” Voluntary programs simply do not provide the assurance required by CEQA that feasible mitigation measures to reduce a project’s impacts will be carried out.

1. See, City of Berkeley Commercial Energy Conservation Ordinance http://www.cityofberkeley.info/bmc/Berkeley_Municipal_Code/Title_19/72/index.html and descriptive brochure at: www.ebenergy.org/ceco/cecoinfo.doc

2. See, for example: <http://greenbuildings.santa-monica.org/whatsnew/waste.ordinance.html>; www.oaklandpw.com/Page323.aspx and also www.oaklandpw.com/Page39.aspx; http://www.ci.glendale.ca.us/public_works/Constr_Dem_Debris_Recycling_Ord.asp; and http://www.co.el-dorado.ca.us/EMD/solidwaste/const_debris_recycle_ord.html.

Policy CE-A.11.

This section requires sustainable landscape design and maintenance, and lists numerous implementation measures. We previously requested that the following measure should be added: “Maximize use of reclaimed water for irrigation.” Alternatively, this could say: “Use reclaimed water to meet the water needs of new development to the maximum extent feasible.” Such a policy would not require actions that are not feasible.^{3/} However, when it is feasible, new development should be required to provide the infrastructure needed to allow use of reclaimed water to contribute to the water demands of the development.^{4/}

Policies In CE-F. (Air Quality)

Increasing the use of bicycles can reduce vehicle trips and therefore reduce emissions of greenhouse gases, as well as ozone-forming chemicals from vehicles. The General Plan addresses facilities for bicycle parking to some extent in two policies. Policy ME-E.6 states: “Require new development to have site designs and on-site amenities that support alternative modes of transportation.” Policy ME-F.4 states: “Provide safe, convenient, and adequate short- and long-term bicycle parking facilities and other bicycles amenities for employment, retail, multifamily housing, schools and colleges, and transit facility uses.” The General Plan should include a clearer statement indicating that new retail and commercial development, because it has the potential to generate vehicle trips, must include bicycle facilities as a mitigation measure to reduce the number of vehicle trips. We request that you add the following policy: “Provide bicycle parking/storage facilities in new retail or commercial development.” This could be included either in the Conservation Element (CE-F) or in the Mobility Element (ME-F).^{5/}

3. “Feasible” as used in the California Environmental Quality Act (“CEQA”) is defined as: “Capable of being carried out in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social, and technological factors.” (Title 14, Cal. Code of Regs., § 15364).

4. This would also supplement the policy in the Public Facilities Element that states: “Continue to develop the recycled water customer base, and expand the distribution system to meet current and future demands.” (PF-H.1.e.). We appreciate that several other provisions have been added to the Public Facilities Element that can contribute to reducing greenhouse gas emissions, such as implementing water conservation plans (PF-H.1.b) and considering and minimizing the energy impacts of proposed water projects (PF-H.3.c.).

5. We note that City staff has added to the General Plan a policy to implement parking strategies to reduce the number and length of automobile trips (Mobility Element ME-G.5). (This was identified as a feasible mitigation measure in the Draft EIR). A recent handbook on parking pricing measures to reduce automobile trips prepared by the San Francisco Bay Area Metropolitan Transportation Commission is attached, and may be helpful in implementing this policy. (“Reforming Parking Policies to Support Smart Growth, Toolbox/Handbook: Best Practices & Strategies For Supporting Transit Oriented Development in the San Francisco Bay

Policy CE-A.13. Regularly monitor and update the City's Climate Protection Action Plan.

We appreciate City staff's addition of this policy. We hope that you will consider making it even stronger by adding that an update will include an inventory of private greenhouse gas emissions in the city and identify programs the City will implement to reduce the climate change impacts of existing private buildings and vehicle use. This would supplement the General Plan policies that apply to *new* development and generally do not address the energy use of existing buildings, and the people who live and work in the those buildings.

Conclusion

Appendix C of the Final EIR (at p.6-12) sets forth the City's responses to the Attorney General's comments on the Draft EIR. These responses do not specifically address the suggested changes/mitigation measures identified above, or discuss any reasons why they are not feasible. We request that you include the requested changes in the General Plan as mitigation for climate change impacts of new development, or explain in the findings for approval why the actions are not feasible.

Thank you for your consideration of these comments and the willingness of your staff to work cooperatively on these issues.

Sincerely,

/S/

SANDRA GOLDBERG
Deputy Attorney General

For EDMUND G. BROWN JR.
Attorney General

cc: Shirley R. Edwards
Chief Deputy City Attorney