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9

FILED-Central District  
SUPERIOR COURT  
SAN BERNARDINO COUNTY  
AUG 28 2007  
By *Stephanie Chandler*  
Deputy

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
11 FOR THE COUNTY OF SAN BERNARDINO  
12

13 THE PEOPLE OF THE STATE OF )  
CALIFORNIA, ex rel. ATTORNEY )  
14 GENERAL EDMUND G. BROWN JR., )  
15 ) Petitioner,  
16 ) v.  
17 COUNTY OF SAN BERNARDINO, SAN )  
BERNARDINO COUNTY BOARD OF )  
18 SUPERVISORS )  
19 ) Respondents.  
20 )  
21 )  
22 )  
23 )  
24 )

Case No.: CIVSS 0700329  
[ ~~HANDWRITTEN~~ ] ORDER  
REGARDING SETTLEMENT  
(California Environmental Quality  
Act, Pub. Resources Code, §§ 21168,  
21168.5; Code of Civ. Proc. §§ 1085,  
1094.5)

25 After review and consideration of the proposed settlement agreement between the People of  
26 the State of California, ex rel. Attorney General Edmund P. Brown and the County of San  
27 Bernardino, San Bernardino County Board of Supervisors, the Court hereby approves the parties'  
28 settlement agreement (a true and correct copy of which is attached as Exhibit A to this Order) and

1 incorporates that settlement agreement into this Order. As a result, this matter is hereby dismissed  
2 with prejudice.

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IT IS SO ORDERED, ADJUDGED, AND DECREED.

Dated:           **AUG 28 2007**          

**DONALD ALVAREZ**  
\_\_\_\_\_  
HON. JUDGE DONALD ALVAREZ

# CONFIDENTIAL SETTLEMENT DOCUMENT

## SETTLEMENT AGREEMENT

This Settlement Agreement (“*Agreement*”) is entered into as of the 21st day of August, 2007 by and among: Petitioner, the PEOPLE OF THE STATE OF CALIFORNIA, ACTING BY AND THROUGH ATTORNEY GENERAL EDMUND G. BROWN JR. (“*Attorney General*”) and Respondents, the COUNTY OF SAN BERNARDINO AND SAN BERNARDINO COUNTY BOARD OF SUPERVISORS (“*County*”) in San Bernardino County Superior Court Case No. CIVSS 700329. Collectively, the Petitioner and Respondents may be referred to as the “*Parties.*”

### RECITALS

**A.** On March 13, 2007, the County adopted an update to its General Plan (“*General Plan Update*”), approved a variety of Community Plans, and also approved related amendments to its Development Code (collectively “*General Plan Approvals*”). The General Plan Approvals provide a blueprint for the physical development of land in those areas under the County’s jurisdiction, consistent with protection of the natural resources, economy, environment, and quality of life in that area, out to the year 2030; and

**B.** A primary goal of the General Plan Update is Goal CO 4, to ensure good air quality for the County’s residents, businesses, and visitors to reduce impacts on human health and the economy. Goal CO 4 is supported by Policies CO 4.1 – 4.12, which are in turn implemented by a series of General Plan programs, all aimed at ensuring good air quality for the County; and

**C.** The County prepared an environmental impact report for the General Plan Approvals (“*General Plan EIR*”), which was certified by the County on March 13, 2007; and,

**D.** It is the County’s position that the General Plan EIR, after providing substantial disclosure and analysis of greenhouse gas emission and climate change issues, and including a factual and reasoned determination, appropriately concluded that there is no available methodology for determining whether greenhouse gas emissions attributable to the General Plan Update are significant. Accordingly, it is the County’s position that the County correctly determined, based on substantial evidence, that further discussion in the General Plan EIR of greenhouse gas emissions and climate change would be speculative; and,

**E.** It is the Attorney General’s position that the General Plan EIR did not adequately analyze the adverse effects of implementation of the General Plan Update on air quality and climate change and did not adopt feasible mitigation measures to minimize the adverse effects of implementation of the General Plan Update on climate change and air quality; and,

**F.** The Attorney General filed a petition in San Bernardino Superior Court on April 12, 2007 (Case No. CIVSS 700329) challenging the adequacy of the General Plan EIR pursuant to the California Environmental Quality Act (“CEQA”) and alleging that that the General Plan EIR did not comply with the requirements of CEQA in its analysis of greenhouse gas emissions, climate change, and diesel engine exhaust emissions; and,

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**G.** The County, which is proud of its leadership role in addressing air quality impacts on human health and the economy, wishes, in advance of any regulatory guidance from state agencies, to take further steps to consider measures to reduce greenhouse gas emissions in areas within the County's jurisdiction; and,

**H.** The parties to this case wish to reach an amicable resolution of the case that meets the needs of the public and that will allow the continued effectiveness of the General Plan Update while also addressing mutual concerns of the County and the Attorney General;

**NOW THEREFORE**, in consideration of the above Recitals, which are an essential part of the Agreement and are therefore incorporated by reference, and for other good and valuable consideration, the receipt and adequacy of which is acknowledged, it is hereby agreed as follows:

### AGREEMENT

#### 1. County Actions

**1.1 General Plan Amendment.** The County shall prepare an amendment to its General Plan adding a policy that describes the County's goal of reducing those greenhouse gas emissions reasonably attributable to the County's discretionary land use decisions and the County's internal government operations, and calls for adoption of a Greenhouse Gas Emissions Reduction Plan. For the purposes of this Agreement, *Greenhouse Gases* shall be defined per section 38505 of California Health and Safety Code Division 25.5, California Health and Safety Code Division 25.5, the California Global Warming Solutions Act ("**AB 32**") to include all of the following: carbon dioxide, methane, nitrous oxide, hydro-fluorocarbons, per-fluorocarbons and sulfur hexafluoride. The Parties recognize that amendment of the General Plan is a discretionary act and that nothing in this Agreement limits, in any manner, the County's exercise of its police power under the California Constitution.

**1.2 Greenhouse Gas Emissions Reduction Plan.** As part of its ongoing implementation of the General Plan pursuant to Goal CO 4, including Policies 4.1 – 4.12, and their implementing programs, and pursuant to the General Plan amendment described in Section 1.1 subparagraph (a) of this Agreement, the County agrees to prepare a Greenhouse Gas Emissions Reduction Plan. The Plan shall include:

(a) An inventory of all known, or reasonably discoverable, sources of Greenhouse Gases that currently exist in the County. In determining what is a source of Greenhouse Gas emissions, the County may rely on the definition of "greenhouse gas emissions source" or "source" as defined in section 38505 of AB 32 or its governing regulations. The Parties recognize and agree that definitive data sources do not exist for creating this inventory. Further, the Parties recognize that the inventory will include estimates of the emissions sources that currently exist, but agree that the estimates shall be supported by substantial evidence and will represent County's best efforts. In the interest of conserving public funds, the County will look first to state and regional air quality boards and agencies for the data on which the inventory is to be based.

(b) A baseline inventory of the Greenhouse Gases currently being emitted in the County from all source categories in the inventory prepared under subparagraph (a). The Parties recognize and agree that definitive data sources do not exist for creating this inventory.

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Further, the Parties recognize that the baseline inventory will include estimates, but agree that the estimates shall be supported by substantial evidence and will represent County's best efforts. The date of the baseline shall be the same as the date of the Notice of Preparation issued for the environmental review of the Greenhouse Gas Emissions Reduction Plan pursuant to Section 1.3 of this Agreement. In the interest of conserving public funds, the County will look first to state and regional air quality boards and agencies for the data on which the inventory is to be based.

(c) An inventory of the Greenhouse Gases emitted in the County in 1990 from all source categories in the inventory prepared under subparagraph (a). The Parties recognize and agree that definitive sources do not exist for creating this inventory. Further, the Parties recognize that the 1990 inventory will include estimates, but agree that the estimates shall be supported by substantial evidence and will represent County's best efforts. In the interest of conserving public funds, the County will look first to state and regional air quality boards and agencies for the data on which the inventory is to be based.

(d) A projected inventory of the new Greenhouse Gases that can reasonably be expected to be emitted in the year 2020 due to the County's discretionary land use decisions pursuant to the General Plan Update, as well as new Greenhouse Gases emitted by the County's internal government operations. The Parties recognize and agree that definitive sources do not exist for creating this inventory. Further, the Parties recognize that the projected inventories will include estimates, but agree that the estimates shall be supported by substantial evidence and will represent County's best efforts. In the interest of conserving public funds, the County will look first to state and regional air quality boards and agencies for the data on which the inventory is to be based.

(e) A target for the reduction of those sources of emissions reasonably attributable to the County's discretionary land use decisions and the County's internal government operations, and feasible Greenhouse Gas emission reduction measures whose purpose shall be to meet this reduction target by regulating those sources of Greenhouse Gases emissions reasonably attributable to the County's discretionary land use decisions and the County's internal government operations.

(f) To the extent the provisions of AB 32, or the provisions of any regulations adopted by California Air Resources Board ("**CARB**") pursuant to AB 32 conflict, with the provisions of this Agreement or the Greenhouse Gas Emissions Reduction Plan, the County's compliance with AB 32 or its governing regulations shall be deemed compliance with this Agreement. Further, in the preparation of the Greenhouse Gas Emissions Reduction Plan, the County's reliance on data and standards promulgated by CARB pursuant to AB 32 shall be presumed to satisfy the terms of this Agreement. To the extent the proposed measures or commitments by the County to regulate sources of Greenhouse Gases pursuant to this Agreement are more restrictive than AB 32 or its governing regulations, the County's compliance with AB 32 or its governing regulations shall be deemed compliance with this Agreement. However, nothing in this Agreement precludes the County's discretionary adoption of measures or commitments over and above the requirements of AB 32 or its governing regulations. Finally, execution of this Agreement by County shall not preclude County from receiving appropriate credit for early voluntary reductions of its greenhouse gas emissions pursuant to AB 32, specifically Health and Safety Code section 38562(b)(3).

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(g) Where the requirements of CEQA or of AB 32 conflict with the requirements of this Agreement as to County approval of any individual project, the requirements of the statutes shall prevail. Nothing in this Agreement shall be interpreted as an obligation on the County's part to impose any greater restrictions or measures on any individual project, subject to a County discretionary land use decision, than what would otherwise be required pursuant to the County's compliance with CEQA.

(h) Nothing in this Agreement limits the County's discretion to determine what policies and provisions shall be included in the Plan. Further, the Parties recognize that the adoption of the Plan is a discretionary act and that nothing in this Agreement limits, in any manner, the County's exercise of its police power under the California Constitution.

**1.3 Environmental Review of Greenhouse Gas Emissions Reduction Plan.** The County shall conduct environmental review of the General Plan amendment described in Section 1.1 of this Agreement and the Greenhouse Gas Emissions Reduction Plan described in Section 1.2 of this Agreement pursuant to the California Environmental Quality Act ("*CEQA*"). In conducting environmental review of the Plan, the County's reliance on data and standards promulgated by CARB pursuant to AB 32 shall be presumed to satisfy the terms of this Agreement. The Parties recognize that the County retains discretion in its review and certification of the environmental review prepared pursuant to this Agreement. As well, nothing in this Agreement shall limit or impair the right of the Attorney General to comment on, or take other action regarding, such CEQA compliance as he deems appropriate.

### **1.4 Timing and Scoping.**

(a) The County agrees to use best efforts to prepare and adopt the General Plan amendment, the Greenhouse Gas Emissions Reduction Plan, and the environmental review of those documents, as described in Section 1.1 subparagraph (a), Section 1.2, and Section 1.3 of this Agreement, within 30 months from the execution of this Agreement. The County further agrees to use best efforts to meet the following general benchmarks after execution of this Agreement: (1) solicitation and selection of a consultant or consultants to prepare the documents described in Sections 1.1 subparagraph (a), 1.2, and 1.3 of this Agreement – 9 months, (2) preparation of the inventories described in Section 1.2 subparagraphs (a), (b), (c), and (d) of this Agreement – 15 months, (3) publication of a draft environmental impact report pursuant to section 1.3 of this Agreement – 24 months.

(b) At the beginning of its preparation of the documents described in Sections 1.1 subparagraph (a), 1.2, and 1.3 of this Agreement, the County will engage in a public scoping process to solicit comments, including comments regarding the appropriate methodology and measures to employ and include in the documents.

**1.5 Good Faith Consultation.** Parties will consult in good faith as the Greenhouse Gas Emissions Reduction Plan and its attendant environmental review are developed and evaluated by the County. Through that consultation, the County may seek a reasonable extension of the time limits described in Section 1.4 of this Agreement from the Attorney General if the County reasonably determines that such an extension is needed to complete the documents described in Section 1.1 subparagraph (a), 1.2, and 1.3 of this Agreement. The Attorney General shall not unreasonably withhold its consent to such extensions.

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**1.6 Diesel Engine Exhaust Control Measures.** Within 12 months of the execution of this Agreement, unless further time is required to comply with CEQA, the County shall adopt, in its discretion, feasible measures to control the emissions of diesel engine exhaust on projects and facilities under the County's discretionary land use jurisdiction. The Parties recognize that the adoption of these measures is a discretionary act and that nothing in this Agreement limits, in any manner, the County's exercise of its police power under the California Constitution. For the purposes of this Agreement, "***Diesel Engine Exhaust***" shall mean the combination of chemicals, elements, and compounds emitted by any diesel engine in a mobile source (e.g., a diesel vehicle such as a truck or bus, or a piece of mobile construction equipment such as a crane or excavator). The following measures may be considered by the County, in its discretion, for adoption as amendments to existing County laws, regulations and/or policies:

(a) construction equipment used on discretionary projects within the County's jurisdiction to use clean alternative (i.e., non-diesel) fuels, or use equipment that has been retrofitted with diesel particulate reduction traps or equivalent control technology, using equipment certified by CARB;

(b) limits on the idling of diesel trucks and off-road mobile sources of any type to ten minutes associated with County discretionary land use approvals;

(c) distribution centers, warehouses, truck stops and other facilities where diesel trucks may reside overnight or for periods of several hours, to provide, and trucks using those facilities to use, on-site electrical connections to power the heating and air conditioning of the cabs of such trucks, and any refrigeration unit(s) of any trailer being pulled by the trucks, instead of operating the diesel engines and diesel refrigeration units of such trucks and trailers for these purposes.

**1.7 Environmental Review of Diesel Engine Exhaust Control Measures.** Prior to the adoption of the measures described in Section 1.6 of this Agreement, the County will conduct the appropriate level of environmental review of the measures required by CEQA, which may include consideration of the use of exemptions pursuant to California Code of Regulations, Title 14, Chapter 3, sections 15061(b)(3) or 15308. The Parties recognize that the County retains discretion in its environmental review. As well, nothing in this Agreement shall limit or impair the right of the Attorney General to comment on, or take other action regarding, such CEQA compliance as he deems appropriate.

**1.8 Reconciliation between Diesel Engine Exhaust Control Measures and Greenhouse Gas Emissions.** The Parties acknowledge that air quality, and especially PM2.5 particulate matter of the type associated with diesel engine exhaust, is of substantial concern to the health of the residents of the County. The Parties further acknowledge that activities taken under the terms of this Agreement to reduce diesel engine exhaust may impact the targets identified in paragraph 1.2(e).

## 2. Attorney General's Actions

**2.1 Dismissal.** Within five (5) business days of the execution of this Agreement, the Attorney General will seek from the Court an order dismissing this action with prejudice and incorporating this Agreement by reference.

**2.2 County Recovery of Costs.** The Parties recognize and acknowledge that San Bernardino County will be one of the first local governments in California, which through this

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lawsuit (Case No. CIVSS 700329), is required by law to incur significant costs to comprehensively address greenhouse gas emissions through an amendment to its general plan. In complying with these new legal requirements as set forth in this Agreement, the County estimates that the costs may exceed \$500,000.00. The Attorney General agrees to use his best efforts, including contacting state and other officials, to assist the County in obtaining funding that may be available through any and all state and federal sources.

**2.3 Cooperation Regarding Diesel Engine Exhaust Emissions:** The Attorney General agrees to cooperate with the County to support the adoption, by the State legislature, State agencies, or by other local jurisdictions, of measures to restrict the flow of Diesel Engine Exhaust Emissions into the County, and to enforce existing laws and regulations as may be promulgated to restrict the flow of Diesel Engine Exhaust Emissions into the County. The Parties agree that the Attorney General retains the prosecutorial discretion granted by the California Constitution and applicable law, and nothing in this Agreement shall limit or impair the right of the Attorney General to choose which actions to prosecute and the adoption of which measures to support. The Attorney General will use his best efforts to support the County in reducing diesel exhaust emissions in the County.

**2.4 Challenge to General Plan Update.** The Attorney General will take no action to prevent or halt the immediate effectiveness of the General Plan Update that is the subject of this action. The Attorney General further agrees that, should the Attorney General file any suit challenging any action taken by County to comply with this Agreement, he will not seek any order halting or impairing the implementation of the General Plan Update and will confine any request for relief to the General Plan amendment described Section 1.1, the Greenhouse Gas Emissions Reduction Plan described in Section 1.2, and/or the Diesel Engine Exhaust Control measures described in Section 1.6 of this Agreement and their attendant approvals and environmental review documents.

**2.5 Timely Comments on Proposed Projects.** In an effort to avoid future litigation, the Attorney General will make reasonable efforts to provide any comments on proposed projects in response to the County's Notice of Preparation of environmental documents, and, if requested by the County in response to its receipt of those comments, the Attorney General will consult with the County throughout the process and prior to the preparation of any draft environmental impact report.

**2.6 Attorneys Fees.** Attorney General shall bear its own costs and attorneys' fees.

**2.7 Support of County's Actions.** The Attorney General recognizes that San Bernardino County will be one of the first local governments in California to address greenhouse gas emissions in its general plan documents, and that as one of the first, it faces some novel challenges. The Attorney General supports the County's efforts, and that support may include letters and judicial intervention on the County's behalf.

**2.8 Transportation Projects.** The Attorney General agrees to consult with the San Bernardino County Counsel before filing any suit for non-compliance with CEQA or AB 32 concerning greenhouse gas emissions involving transportation projects within San Bernardino County. The Parties will use their best efforts to resolve disputes without litigation.



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### **3. Termination of Agreement.**

Upon the County's adoption of 1) the amendment to its General Plan described in Section 1.1 of this Agreement, 2) the Greenhouse Gas Emissions Reduction Plan described in Section 1.2 of this Agreement and 3), the Diesel Engine Exhaust Control measures described in Section 1.6 of this Agreement, this Agreement shall terminate and shall be of no further force or effect.

### **4. No Admission**

Nothing in this Agreement shall be deemed as an admission or denial as to the validity of any claims or defenses.

### **5. No Modification.**

No addition to or modification of any term or provision of the Agreement shall be effective unless set forth in writing and signed by the Parties.

### **6. Entire Agreement**

The Parties agree that this Agreement sets forth the final entire agreement between them and relating to the subject matter and that this document merges and supersedes all prior discussions, agreements, understandings, representations, and all other communications between them relating to the subject matter of this Agreement.

### **7. Warranty of Authority**

Each Party represents and warrants that it has the right, power and authority to execute this Agreement. Each Party further represents and warrants that it has the exclusive right to prosecute and compromise the claims released by this Agreement and that it has neither made nor suffered to be made any sale, assignment, transfer, conveyance, pledge, hypothecation, or encumbrance of any kind whatsoever of any right, claim, demand, obligation, cost, expense, sanction, grievance, action, cause of action, controversy, debt, damage, arbitration, liability, duty, penalty, attorney fee, charge, suit, punitive damage, injury, loss, agreement, contract, promise, or lien released, canceled, rescinded or discharged hereby, and that it is the sole and absolute legal and equitable owner thereof, free and clear of any interest of any other person or entity. Each Party represents and warrants that it has given any and all notices, and obtained any and all consents, powers and authorities, necessary to permit it, and the persons executing this Agreement for it, to enter into this Agreement.

### **8. Written Waiver**

A waiver of any Party's right to enforce any provision of this Agreement shall not be effective unless such a waiver is made expressly in writing. An express waiver of any one breach shall not be deemed a waiver of any other breach of the same or any other provision of this Agreement.

### **9. Legal Representation**

The Parties affirm that they have been represented by counsel of their own choosing regarding the preparation and negotiation of this Agreement and the matters and claims set forth herein, and that each of them has read this Agreement and is fully aware of its contents and its legal effect. Neither Party is relying on any statement of the other Party outside the terms set forth in this Agreement as an inducement to enter into this Agreement.

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### 10. Joint Preparation

The language of all parts of this Agreement shall in all cases be construed as a whole, according to its fair meaning, and not strictly for or against any party. No presumptions or rules of interpretation based upon the identity of the party preparing or drafting the Agreement, or any part thereof, shall be applicable or invoked.

### 11. Equal Dignity

This Agreement may not be altered, amended, modified or otherwise changed except in writing duly executed by an authorized representative of each of the Parties.

### 12. Binding on Assignees

This Agreement shall be binding on and inure to the benefit of the heirs, successors and assigns of the Parties to the Agreement.

### 13. California Law

This Agreement shall be governed by and construed in accordance with the laws of the State of California. Should any part of this Agreement be found to be invalid, the validity of any remaining parts or provisions shall not be affected thereby.

### 14. Counterparts

This Agreement may be executed in counterparts, each of which will be deemed an original. This Agreement shall be binding upon the receipt of facsimile signatures.

### 15. Notices

Any notice required or permitted to be given pursuant to this Agreement shall be in writing and shall be deemed to be given when served personally, or on the third day after mailing if mailed by United States mail, postage prepaid, addressed to the address for each Party set forth below:

#### **Attorney General:**

Edmund G. Brown, Jr.  
Attorney General of the State of California  
Susan Durbin  
Deputy Attorney General  
1300 I Street  
Sacramento, CA 95814

#### **County:**

Ruth E. Stringer  
County Counsel  
385 North Arrowhead Avenue, 4<sup>th</sup> Floor  
San Bernardino, CA 92415-0140

### 16. Captions

Captions are included herein for ease of reference only. The captions are not intended to affect the meaning of the contents or scope of this Agreement.

CONFIDENTIAL SETTLEMENT DOCUMENT

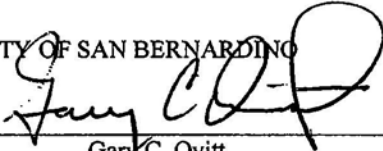
17. Further Assurances

The Parties will execute all further and additional documents as shall be reasonable, convenient, necessary or desirable to carry out the intent and provisions of this Agreement.

IN WITNESS WHEREOF this Agreement is executed and agreed to by the following, as of the last date set forth below.

It is so agreed.

COUNTY OF SAN BERNARDINO



Gary C. Ovitt  
Vice-Chairman, Board of Supervisors

Dated:

8/21/07

PEOPLE OF THE STATE OF CALIFORNIA, ACTING BY AND THROUGH ATTORNEY GENERAL EDMUND G. BROWN JR.

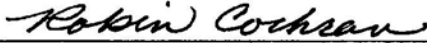


Susan Durbin  
Deputy Attorney General

Dated:

8/16/07

APPROVED AS TO LEGAL FORM



County Counsel

Date:

8/21/07