



Mayor Arapostathis and Council  
City of La Mesa  
City Council Chambers  
La Mesa City Hall  
8130 Allison Ave.  
La Mesa, CA 919

June 17, 2016

**Re: Clarify La Mesa’s Legal Requirements for the Climate Action Plan Under CEQA**

Dear Mayor Arapostathis and City Council,

Thank you for recently hearing an update on the status of La Mesa’s Climate Action Plan (CAP). As we stated in our comments at the June 14, 2016 hearing, we are pleased to see the progress made to improve the 2015 draft CAP in an attempt to ensure the plan is on solid legal ground and will bring the City into compliance with CEQA, as well as protect future generations of La Mesans from the threats of climate change. We are eager to partner with you in advancing a CAP that fulfills these obligations.

In order to facilitate moving this process forward successfully, we are writing to clarify your obligations under the law. We were concerned to read in the staff report that Climate Action Campaign “preferred” your Climate Action Plan to be enforceable and measurable. This is not merely a preference of our organization; it is the law. Similar to the City and County of San Diego, La Mesa identified the development of a Climate Action Plan, along with specific greenhouse gas (GHG) reduction targets, as key measures under CEQA to mitigate for the GHG impacts of your updated General Plan. Mitigation measures under CEQA are legally binding. Thus, the Climate Action Plan and its GHG reduction targets are legally binding. Below, we outline your legal obligations in greater detail, as a follow up to the letter we sent in June 2015.

**1. The La Mesa Climate Action Plan Is a Binding Mitigation Measure under CEQA**

Like the recent County of San Diego Climate Action Plan that was rescinded at the mandate of the California Supreme Court, (*Sierra Club v. County of San Diego*, 231 Cal. App. 4th 1152, 1167(2014).) the La Mesa Climate Action Plan is a binding mitigation measure under CEQA for the GHG impacts of your 30-year General Plan Update (2012), which maps out the growth and development for the City of La Mesa through 2030.

The EIR for the 2012 General Plan commits the City to mitigate potential impacts from GHG emissions with Mitigation Measure GHG-1: “Develop and Adopt a Climate Action Plan”, which states:

“The City shall prepare and adopt, within 18 months from the adoption of the 2012 General Plan, a plan to reduce GHG emissions (i.e., a CAP) that complies with the requirements of CEQA Section 15183.5. The CAP will include, *at a minimum*, (emphasis added) the following features: ...

- “Establish a GHG emissions limit, below which e GHG emissions resulting from the implementation of the 2012 General Plan would not be considered cumulatively considerable, including achieving a 15% GHG reduction target by 2020.”
- Establish policies, measures, and actions that will be implemented to reduce GHG emissions in the City that will achieve the specified emissions target.
- Implement a mechanism to monitor progress and, if the CAP is not achieving specified emissions limits, update the CAP.”

## 2. The CAP Must Plan and Act Through 2030, the General Plan’s Timeline

Because the CAP is a mitigation measure in the General Plan EIR, the CAP must reduce emissions from the activities occurring through the planning horizon of the plan, which is 2030, not 2020. The General Plan EIR acknowledges that the CAP must at a minimum hit the 2020 target. It does not suggest it is limited to doing so, and CEQA requires the CAP meet the target based on all activities in the General Plan through 2030.

In *Cleveland Nat’l Forest Foundation v. SANDAG on the Regional Transportation Plan*, Judge Taylor recognized a similar shortcoming regarding a truncated planning horizon. (*Cleveland Nat’l Forest Foundation v. SANDAG*, Case No. 2011-00101593, Final Ruling, p. 12). The City should therefore adopt an enforceable CAP with specific actions that will result in measurable reductions through the General Plan horizon (i.e., 2030).

Further, Governor Brown signed Executive Order B-30-15 last year, setting a GHG reduction goal of 40 percent below 1990 levels by 2030, which is in line with what is needed to protect our quality of life using best available science and is consistent with the Executive Order S-3-05, which calls for an 80 percent statewide GHG reduction by 2050. Combining science, policy and law, in addition to what is in the best interest of the public health and safety of La Mesa residents, the City must expand the scope of the draft CAP to at least year 2030 -- as staff rightly recommends.

## 3. The CAP Must Have Enforceable Targets and Measures with Detailed Deadlines

Since the CAP is intended to serve as mitigation required in the General Plan EIR, the specific CAP GHG reduction targets must be enforceable as mitigation under CEQA. Mitigation measures must be enforceable and once adopted, cannot be defeated by ignoring them. (Cal. Pub. Res. Code § 21081.6(b); *Sierra Club v. County of San Diego*, 231 Cal. App. 4th 1152, 1167 (2014).)

CEQA itself requires enforceable mitigation measures. (CEQA Guideline§15126.4(a)(2) [“Mitigation measures must be fully enforceable through permit conditions, agreements, or other legally binding instruments.”]. “A public agency shall provide that measures to mitigate or avoid significant effects on the environment are fully enforceable through permit conditions, agreements, or other measures.” (Pub. Res. Code §21081.6(b)). Because the CAP is a mitigation measure, it must be enforceable.

Unfortunately, the 2015 draft CAP had only voluntary measures to reach even the 2020 target. This voluntary approach to the measures were specifically written as such in the measure descriptions in the CAP. For example:

- E-1 Building Retrofit Outreach. “Encourage *voluntary* (emphasis added) energy efficiency retrofits...”
- E-2 Shade Tree Outreach. “Develop a shade tree outreach campaign....to *voluntarily* plant shade trees.”
- E-6 Solar Photovoltaic Outreach. “Promote the *voluntary* installation of solar PV systems....”
- E-7 Solar Hot Water Heater Outreach Program. “Promote *voluntary* installation of solar hot water heaters....”

The Courts in the *Sierra Club v. County of San Diego* case regarding the County’s CAP were clear: where a Climate Action Plan is mitigation for the activities in the planning horizon of a General Plan, there must be enforceable standards with detailed deadlines, as well as substantial evidence that each mitigation measure will achieve the GHG reduction numbers assigned to each strategy. The unenforceable strategies in the 2015 draft CAP do not meet these standards.

Thus, it is necessary for the City of La Mesa to not only redraft the 2015 CAP to set a 2030 target, but also craft new enforceable mitigation measures with substantial evidence and detailed deadlines for 2020 and 2030.

#### 4. City of San Diego City Attorney Recently Issued Legal Memo on Climate Action Plans as Enforceable Documents

Similar to La Mesa, the City of San Diego identified the development of a Climate Action Plan as a mitigation measure under CEQA for the greenhouse gas impacts of their General Plan Update. In December 2015, they adopted a legally binding Climate Action Plan to fulfill those legal obligations. The City Attorney of San Diego even released a legal memo recently confirming the role of the Climate Action Plan under CEQA and the enforceability of the GHG reduction targets and the measures (see attached and below):

Regarding enforceability of the CAP, the San Diego City Attorney’s office says the following:  
“Since the CAP is intended to serve as mitigation required in the General Plan EIR, the issue is whether the specific CAP targets are enforceable as mitigation under CEQA. Mitigation measures must be enforceable and once adopted, cannot be defeated by ignoring them. Cal. Pub. Res. Code § 21081.6(b); *Sierra Club v. County of San Diego*, 231 Cal. App. 4th 1152, 1167 (2014)....

...The CAP targets are legally binding to the extent required by the CEQA mitigation measure for the General Plan. That measure requires the City to “regularly monitor, update and implement the City’s [Climate Action Plan] to ensure, at a minimum, compliance with all applicable federal, state, and local laws.” CEQA requires that mitigation measures be enforceable. Cal. Pub. Res. Code § 21081.6(b).”

Regarding which emissions targets are acceptable, the San Diego City Attorney’s office says:

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“It is generally settled that the statewide 2020 target set forth in A.B. 32 and the 2008 Scoping Plan is an acceptable criterion for determining significance under CEQA...

... the California Supreme Court also recently...noted that the 2050 target identified in Executive Order No. S-3-05 may nonetheless be applicable since A.B. 32 codified the 2020 goal and did not indicate any intent to abandon the 2050 goal, but rather cited Executive Order No. S-3-05 and indicated its intent that the climate policy efforts the order initiated continue. Ctr. for Biological Diversity, 62 Cal. 4th at 223 n.6.”

### **Conclusion**

Thank you again for the opportunity to weigh in on this critically important planning document. According to the most recently available data and climate scientists, there is no greater threat to the future of humanity than climate change. It is incumbent on us to protect our kids and grandkids from the adverse impacts of a heated planet.

We look forward to working with you to continue to improve this draft CAP, and again urge you to send this document back to staff so it can pass legal muster and protect public health and safety of all La Mesa residents.

Sincerely,



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