Appendix A

Notice of Preparation and Public Comments Letters

NOTICE OF PREPARATION
OF A DRAFT FOCUSED ENVIRONMENTAL IMPACT REPORT

Date:	July 24, 2018
To:	Agencies and Interested Parties
From:	Napa County Planning, Building, and Environmental Services Department
Subject:	**Notice of Preparation of a Draft Focused Environmental Impact Report for the Climate Action Plan**
Review Period:	July 24, 2018 through August 22, 2018

Napa County (County) proposes to prepare and adopt a Climate Action Plan (CAP) to both reduce greenhouse gas (GHG) emissions and help the community adapt to the effects of climate change in the unincorporated County, consistent with State and local guidance. A CAP is a document that includes policies, measures, and strategies to reduce GHG emissions and adapt to climate change, as well as to improve the health, safety, mobility, and livability of the greater community. The objectives of the CAP are to reduce GHG emissions, streamline project reviews consistent with the California Environmental Quality Act (CEQA) by serving as a "qualified GHG reduction plan" under CEQA Guidelines Section 15183.5, provide strategies for the community to use in adapting to the effects of climate change, and prioritize measures to comply with California environmental and land use planning laws.

PURPOSE OF THIS NOTICE OF PREPARATION

In accordance with the California Code of Regulations (CCR) Section 15082, the County has prepared this notice of preparation (NOP) to inform agencies and interested parties that an EIR will be prepared for the above-referenced project. The purpose of an NOP is to provide sufficient information about the project and its potential environmental impacts to allow agencies and interested parties the opportunity to provide a meaningful response related to the scope and content of the EIR, including mitigation measures that should be considered and alternatives that should be addressed (CCR Section 15082[b]).

The project location, description, and potential environmental effects are summarized below.

PROJECT LOCATION

Napa County is located in the northern San Francisco Bay area, approximately 50 miles due west of Sacramento, California. The County is bordered by Lake County to the north, Yolo and Solano County to the east, Sonoma County to the west, and San Pablo Bay to the south (Exhibit 1).

The planning area for the CAP is the same planning area that was considered by the 2008 General Plan (GP), which encompasses all unincorporated land in Napa County (Exhibit 2). The unincorporated County includes approximately 789 square miles.

PROJECT DESCRIPTION

Project Background

In June 2008, the County prepared and adopted the *2008 Napa County General Plan Update* (2008 GP) and certified the Final Program Environmental Impact Report (PEIR) (SCH# 2005102088), which assessed the potential environmental impacts of implementing the 2008 GP. Within the GP, the County adopted goals, policies, and action items aimed at reducing GHG emissions. Further, the County adopted Action Item CON CPSP-2 which specifically called on the County to develop a GHG emissions inventory in a manner consistent with AB 32 and then to develop an emission reduction plan that included consideration of a "green building"

ordinance and other mechanisms "shown to be effective at reducing emissions." PEIR Mitigation Measure 4.8.7a implemented Action Item CPSP-2.

Subsequently, the County prepared a Draft CAP and presented it to the Board of Supervisors (BOS) in 2012. However, that plan was not adopted.

In 2017, a new Draft CAP was prepared and released for public review. The Final Draft CAP was presented to the County's Planning Commission in July 2017. Following the hearing, the County determined that additional revisions to the Draft CAP, as well as the preparation of an EIR would be required. These changes will be incorporated into the text of the Revised Draft CAP and proposed GHG Reduction Measures.

Climate Action Plan

The CAP implements 2008 GPU Action Item CON SPSP-2 and PEIR Mitigation Measure 4.8.7a, consistent with State legislation and policies that are aimed at reducing statewide GHG emissions. The CAP has been prepared to be consistent with the requirements of AB 32 (2006), which tasked the California Air Resources Board (ARB) with developing a Climate Change Scoping Plan to establish an interim target to achieve 1990 levels of GHG emissions by 2020 and provide a path for local governments to contribute their fair share of the GHG reductions necessary to achieve the target; SB 32 (2016), which requires a 2030 statewide GHG reduction target of 40 percent below 1990 levels; and Executive Order (EO) S-3-05, which established a longer-term 2050 statewide GHG reduction goal of 80 percent below 1990 levels.

To achieve these objectives and align with the State's 2020 and 2030 targets and long-term 2050 goal, the CAP will:

- include a summary of baseline GHG emissions and forecasted growth of these emissions in 2020, 2030, and 2050;
- identify GHG emissions reduction targets and goals to reduce the unincorporated County's GHG emissions in 2020, 2030, and 2050;
- identify and evaluate strategies, measures, and actions to comply with statewide GHG reduction targets and goals; and,
- identify the expected climate change effects on the County, including areas of vulnerability, and adaptation strategies, measures, and actions that could be implemented to reduce these effects.

The CAP will also be used for future project-specific environmental documents by maintaining consistency with the tiering and streamlining provisions of Section 15183.5 of the State CEQA Guidelines. Where projects are determined to be consistent with the CAP, the EIR will provide the appropriate level of environmental review to allow future projects to tier from and streamline their analyses of GHG emissions pursuant to CEQA Guidelines Section 15183.5(b)(2).

As part of ongoing implementation and monitoring of the CAP, the CAP strategies and measures will be assessed and monitored. Reporting on the status of the actions, periodic updates to the GHG emissions inventory, and other monitoring activities will provide the mechanisms to ensure that the County is making progress towards the CAP's stated goals.

The CAP will also include provisions for how the County's operations contribute their fair share of GHG reductions through local actions and operations.

The CAP will consider GHG reduction strategies for the following sectors:

- On-Road Transportation,
- Building Energy (Electricity & Natural Gas),
- Agriculture,
- Land Use Change,
- Multi-Sector Strategies,
- Off-Road Vehicles and Equipment,
- Solid Waste,
- Water and Wastewater, and
- High-GWP Gases.

The proposed GHG Reduction Measures and Adaption Measures under consideration for inclusion in the Revised Draft CAP are listed in Attachment A of this NOP. This list of proposed measures is a good faith attempt at disclosing project details at the time the NOP is prepared, and the list may be modified or changed in the Revised Draft CAP document or as a result of public comments on the Revised Draft CAP.

Potential Environmental Effects

Pursuant to CEQA and California Code of Regulations (CCR) Section 15064, the discussion of potential effects on the environment in the EIR shall be focused on those impacts that the County has determined may be potentially significant. The EIR will also evaluate the cumulative impacts of the project when considered in conjunction with other related past, current, and reasonably foreseeable future projects. The County has determined that the project could result in potential environmental impacts in the following topic areas, which will be further evaluated in the EIR:

- Aesthetics,
- Agriculture and Forestry Resources,
- Air Quality,
- Biological Resources,
- Cultural and Historical Resources,
- Greenhouse Gas Emissions,
- Energy,
- Hazards and Hazardous Materials,
- Hydrology and Water Quality,
- Land Use and Planning,
- Noise,
- Transportation and Traffic,
- Tribal Cultural Resources, and
- Utilities and Service Systems.

CEQA allows a lead agency to limit the detail of discussion of the environmental effects that are not considered potentially significant (PRC Section 21100, CCR Sections 15126.2[a] and 15128). CEQA requires that the discussion of any significant effect on the environment be limited to substantial, or potentially substantial, adverse changes in physical conditions that exist within the affected area, as defined in PRC Section 21060.5 (statutory definition of "environment"). Environmental issue areas scoped out of the focused EIR will include an explanation of why these issues would not result in significant environmental effects and are not required to be evaluated further. Environmental issue areas that would be scoped out of the focused EIR are listed below.

- Geology and Soils
- Mineral Resources
- Population and Housing
- Public Services
- Recreation

Alternatives to be Evaluated in the EIR

In accordance with the State CEQA Guidelines (14 CCR Section 15126.6), the EIR will describe a range of reasonable alternatives to the project that are capable of meeting most of the project's objectives and that would avoid or substantially lessen any of the significant effects of the project. The EIR will also identify any alternatives that were considered but rejected by the lead agency as infeasible and briefly explain the reasons why. The EIR will provide an analysis of the No Project Alternative and will also identify the environmentally superior alternative.

Documents Available for Public Review

The NOP is available for public review at the following locations:

Napa County Planning, Building, and
Environmental Services Department
1195 Third Street, Suite 210
Napa, California

Napa Main Library
580 Coombs Street
Napa, California

The NOP is also available for public review online at:

https://www.countyofnapa.org/592/Climate-Action-Plan

Providing Comments

Agencies and interested parties may provide the County with written comments on topics to be addressed in the EIR for the project. Because of time limits mandated by State law, comments should be provided **no later than 5:00 p.m. on August 22, 2018**. Please send all comments to:

> Napa County Planning, Building, and Environmental Services Department
> Attention: Jason Hade
> 1195 Third Street, Suite 210
> Napa, CA 94559
> Telephone: (707) 253-4417
> Fax: (707) 299-4320

Comment letters may also be submitted electronically via e-mail at: Jason.Hade@countyofnapa.org. Comments provided by email should include "Climate Action Plan Project NOP Scoping Comment" in the subject line, and the name and physical address of the commenter in the body of the email. All comments on environmental issues received during the public comment period will be considered and addressed in the Draft EIR, which is anticipated to be available for public review in mid- to late-2018

Public Scoping Meeting

A public scoping meeting will be held by the County concurrently with a Planning Commission public hearing on the Revised Draft CAP to inform interested parties and receive comments about the project and the Draft EIR review process. Attendees will have an opportunity to communicate directly with County and consulting staff. The meeting time and location are as follows:

> **Wednesday, August 15, 2018, starting at 9:00 a.m., or as soon thereafter as the matter may be heard.**
> Napa County Administration Building, Third Floor Board Chambers
> 1195 Third Street, Napa

The meeting space is accessible to persons with disabilities. Individuals needing special assistive devices will be accommodated to the County's best ability. Assistive listening devices are available for the hearing impaired from the Clerk of the Board; please call (707) 253-4580 for assistance. If an ASL interpreter or any other special arrangement is required, please provide the Clerk of the Board with 48-hour notice by calling (707) 253-4417.

REFERENCES

Napa County. 2008. *General Plan EIR*. Available: https://www.countyofnapa.org/1760/General-Plan.

EXHIBITS

Exhibit 1: Regional Map

Exhibit 2: Project Map

ATTACHMENTS

A Proposed GHG Reduction Measures and Adaptation Measures under Consideration

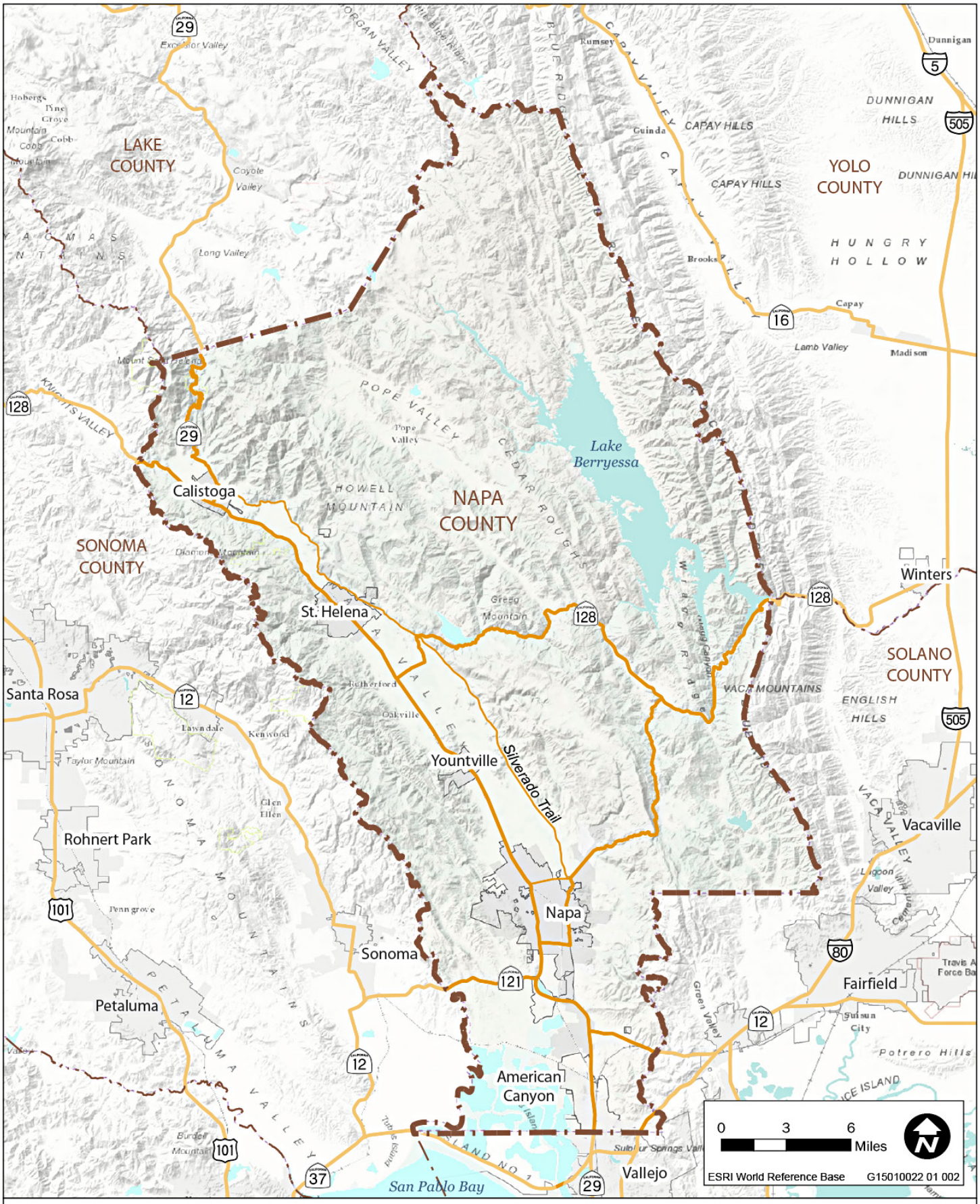

Exhibit 1

Project Location

ASCENT ENVIRONMENTAL

Exhibit 2 **Regional Location**

ASCENT ENVIRONMENTAL

Attachment A

Proposed GHG Reduction and Adaptation Measures Under Consideration

GHG Reduction Measure Number	Emissions Sector	Measure Name
AG-1	Agriculture	Support the conversion of stationary diesel or gas-powered irrigation pumps to electric pumps
AG-2	Agriculture	Support use of electric or alternatively fueled agricultural equipment.
AG-3	Agriculture	Support the use of Tier 4 final Diesel Equipment for Off-Road Agricultural Equipment.
AG-4	Agriculture	Support reduced application of inorganic nitrogen fertilizer.
AG-5	Agriculture	Support the Bay Area Air Quality Management District (BAAQMD) in efforts to reduce open burning of removed agricultural biomass and flood debris.
AG-6	Agriculture	Encourage and support the use of carbon farming and other sustainable agricultural practices in the County.
BE-1	Building Energy	Require compliance with California Green Building Standards Code (CALGreen) Tier 1 Green Building standards and Tier 1 Building Energy Efficiency Standards for eligible alterations or additions to existing buildings
BE-2	Building Energy	Require compliance with CALGreen Tier 1 Green Building standards and Tier 1 Building Energy Efficiency Standards for all new construction, and phase in ZNE standards for new construction, beginning with residential in 2020 and non-residential by 2030
BE-3	Building Energy	Increase participation in MCE's Deep Green option (100% Renewable Energy).
BE-4	Building Energy	Require new or replacement residential and commercial water heating systems to be electrically powered and/or alternatively fueled (e.g., solar water heating) for all residential land uses
BE-5	Building Energy	Expand current renewable energy and green energy incentives and update local ordinances.
BE-6	Building Energy	Select MCE's Deep Green Option for all County-owned facilities.
BE-7	Building Energy	Support waste-to-energy programs at unincorporated landfills.
BE-8	Building Energy	Work with PG&E, Bay Area Renewable Energy Network (BayREN), MCE, property-assessed clean energy (PACE) financing programs, and other regional partners to incentivize energy efficiency improvements in existing buildings.
BE-9	Building Energy	Require energy audits for major additions to or alterations of existing buildings.
BE-10	Building Energy	Develop a program to allow new development to offset project greenhouse gas (GHG) emissions by retrofitting existing income-qualified homes and buildings.
BE-11	Building Energy	Encourage solar panel installations on commercial roof spaces
HG-1	High Global Warming Potential (GWP) Gases	Encourage registration of facilities in the California Air Resources Board (CARB) Refrigeration Management Program and incentivize installation of low-GWP refrigerant systems.
HG-2	High Global Warming Potential (GWP) Gases	Incentivize the use of low-GWP refrigerants
MS-1	Wastewater	Support efforts to increase Napa Green Certified wineries and vineyards land in the County, with a goal of achieving a 100- percent certification rate for all eligible wineries and properties by 2030
MS-2	Multiple Sectors	Work with other local jurisdictions within the County to develop a unified Climate Action Plan.
MS-3	Multiple Sectors	Promote the sale and consumption of locally- grown foods and/or products.
MS-4	Multiple Sectors	Establish a local carbon offset program in partnership with Sustainable Napa County.

GHG Reduction Measure Number	Emissions Sector	Measure Name
LU-1	Land Use Change	Establish targets and enhanced programs for oak woodland and coniferous forest preservation and mandatory replanting
LU-2	Land Use Change	Refine protection guidelines for existing riparian lands.
LU-3	Land Use Change	Repurpose or otherwise prevent burning of removed trees and other woody material from land use conversions of oak woodlands and coniferous forests.
OR-1	Off-Road Transportation	Require Tier 4 equipment for all construction activity and mining operations as a condition for approval by 2030.
OR-2	Off-Road Transportation	Promote use of alternative fuels for recreational marine vessels.
SW-1	Solid Waste	Encourage expansion of composting program for both residential and commercial land uses.
SW-2	Solid Waste	Meet an 80% Waste Diversion Goal by 2020 and a 90% Goal by 2030
TR-1	On-Road Transportation	Update Transportation System Management Ordinance (for Employers).
TR-2	On-Road Transportation	Adopt parking reduction ordinance revisions.
TR-3	On-Road Transportation	Increase affordable housing, especially workforce housing, in Napa County.
TR-4	On-Road Transportation	Support efforts to allow commuter service to operate on railroad rights-of-way
TR-5	On-Road Transportation	Support efforts of solid waste collection services to convert diesel solid waste collection vehicles to use compressed natural gas (CNG).
TR-6	On-Road Transportation	Support efforts of transit agencies to increase availability and accessibility of transit information.
TR-7	On-Road Transportation	Support alternatives to private vehicle travel for visitors.
TR-8	On-Road Transportation	Support Napa County's incorporated cities in developing transit-oriented development unique to the needs of the Napa Region.
TR-9	On-Road Transportation	Support interregional transit solutions.
TR-10	On-Road Transportation	Work with Napa County's incorporated cities, Napa Valley Transportation Authority (NVTA), and neighboring regions to increase presence of park and ride facilities near residential centers.
TR-11	On-Road Transportation	Promote existing ride-matching services for people living and working in the unincorporated County.
TR-12	On-Road Transportation	Increase the supply of electric vehicle charging stations.
TR-13	On-Road Transportation	Promote Telecommuting at Office Based Businesses.
TR-14	On-Road Transportation	Develop and implement active transportation projects
TR-15	On-Road Transportation	Require new development projects to evaluate and reduce vehicle miles traveled (VMT).
WA-1	Water	Amend or revise water conservation regulations for landscape design.
WA-2	Water	Adopt a new water conservation ordinance for commercial and residential land uses limiting outdoor watering.
WA-3	Water	Expedite and/or reduce permit fees associated with water conservation installations in existing facilities.
WA-4	Water	Require water audits for large new commercial or industrial projects and significant expansions of existing facilities.
Adaptation Measure Number	**Category**	**Measure Name**
Temp-1	Temperature	Map Critical Infrastructure Locations Vulnerable to Extreme Heat Events
Temp-2	Temperature	Develop Outreach Programs for Outdoor Workers

GHG Reduction Measure Number	Emissions Sector	Measure Name
Temp-3	Temperature	Educate Residents on Heat-Related Illness Prevention
Temp-4	Temperature	Encourage the installation of Cool Roof Technologies and Rooftop Gardens
Temp-5	Temperature	Incorporate Cool Pavement Technology
Temp-6	Temperature	Improve Parking Lot Shading and Landscaping
Temp-7	Temperature	Update the County's Excessive Heat Emergency Response Plan
Temp-8	Temperature	Support Research on the Effects of a Warmer Climate on the Agriculture and Wine Industries
Temp-9	Temperature	Understand the Tolerance of Current Wine Grape Varieties to Withstand Increased Temperatures
Temp-10	Temperature	Develop Outreach Programs for Winemakers
Temp-11	Temperature	Develop and Implement Strategies to Increase Energy Resiliency
Fire-1	Wildfire Risk	Map and Identify Locations That Are Newly at Risk, or at Higher Risk for Fire Hazards
Fire-2	Wildfire Risk	Map Critical Infrastructure Locations Vulnerable to Wildfires
Fire-3	Wildfire Risk	Collaborate with the Napa County Firefighters Association in the Dissemination of Wildfire Information
Fire-4	Wildfire Risk	Coordinate Emergency Preparedness Systems
Fire-5	Wildfire Risk	Collaborate on Programs to Reduce Fire Hazards
Water-1	Water Supply and Quality	Evaluate Vulnerabilities of Water Supply Systems and Networks
Water-2	Water Supply and Quality	Consider Innovative Options to Meet Future Demand
Water-3	Water Supply and Quality	Promote Use of Rainwater Catchment Systems
Water-4	Water Supply and Quality	Support Napa Green Land Certification Efforts
Water-5	Water Supply and Quality	Collaborate with Agencies to Identify Future Water Supplies and Explore Alternative Supply Sources
Water-6	Water Supply and Quality	Pursue Grant Funding Opportunities for Water Resource Planning Projects
Flood-1	Flood Risk	Update the County's Operational Area Hazard Mitigation Plan to Address Flooding and Climate Change
Flood-2	Flood Risk	Partner with Incorporated Towns and Cities and Local Organizations to Address Flooding
Flood-3	Flood Risk	Identify Potential Streamside Restoration Areas
Flood-4	Flood Risk	Encourage the Replanting of Bare or Disturbed Areas
Flood-5	Flood Risk	Coordinate Emergency Evacuation and Supply Transportation Routes
Flood-6	Flood Risk	Improve Sewage and Solid-Waste Management Infrastructure
Flood-7	Flood Risk	Improve Capacity of Storm Water Infrastructure
Flood-8	Flood Risk	Increase Use of Pervious Surfaces and Landscaping in Developed Areas
Flood-9	Flood Risk	Map Critical Infrastructure Locations Vulnerable to Flooding
Flood-10	Flood Risk	Understand the Tolerance of Current Wine Grape Varieties to Withstand Increased Flooding
Flood-11	Flood Risk	Design Programs to Address Vector- and Waterborne Diseases
SLR-1	Sea-Level Rise	Identify Areas Affected by Sea-Level Rise

GHG Reduction Measure Number	Emissions Sector	Measure Name
SLR-2	Sea-Level Rise	Update Napa County's Operational Area Hazard Mitigation Plan to Incorporate Sea-Level Rise
SLR-3	Sea-Level Rise	Floodplain Mapping Coordination
SLR-4	Sea-Level Rise	Support Ongoing Analysis of Sea-Level Rise Data
SLR-5	Sea-Level Rise	Create a Comprehensive Outreach Strategy
SLR-6	Sea-Level Rise	Incorporate Sea-Level Rise Effects into Capital Improvement Plans
SLR-7	Sea-Level Rise	Assess Sea-Level Rise Impacts on Agriculture

STATE OF CALIFORNIA
NATIVE AMERICAN HERITAGE COMMISSION
Environmental and Cultural Department
1550 Harbor Blvd., Suite 100
West Sacramento, CA 95691
Phone (916) 373-3710
Email: nahc@nahc.ca.gov
Website: http://www.nahc.ca.gov
Twitter: @CA_NAHC

Edmund G. Brown Jr., Governor

July 30, 2018

Jason Hade
Napa County
1195 Third Street, Room 210
Napa, CA 94559

RE: SCH#2018072058, Napa County Climate Action Plan, Napa County

Dear Mr. Hade:

The Native American Heritage Commission has received the Notice of Preparation (NOP) for the project referenced above. The California Environmental Quality Act (CEQA) (Pub. Resources Code § 21000 et seq.), specifically Public Resources Code section 21084.1, states that a project that may cause a substantial adverse change in the significance of an historical resource is a project that may have a significant effect on the environment. (Pub. Resources Code § 21084.1; Cal. Code Regs., tit.14, § 15064.5 (b) (CEQA Guidelines Section 15064.5 (b)). If there is substantial evidence, in light of the whole record before a lead agency, that a project may have a significant effect on the environment, an environmental impact report (EIR) shall be prepared. (Pub. Resources Code § 21080 (d); Cal. Code Regs., tit. 14, § 15064 subd.(a)(1) (CEQA Guidelines § 15064 (a)(1)). In order to determine whether a project will cause a substantial adverse change in the significance of a historical resource, a lead agency will need to determine whether there are historical resources with the area of project effect (APE).

CEQA was amended significantly in 2014. Assembly Bill 52 (Gatto, Chapter 532, Statutes of 2014) (AB 52) amended CEQA to create a separate category of cultural resources, "tribal cultural resources" (Pub. Resources Code § 21074) and provides that a project with an effect that may cause a substantial adverse change in the significance of a tribal cultural resource is a project that may have a significant effect on the environment. (Pub. Resources Code § 21084.2). Public agencies shall, when feasible, avoid damaging effects to any tribal cultural resource. (Pub. Resources Code § 21084.3 (a)). **AB 52 applies to any project for which a notice of preparation or a notice of negative declaration or mitigated negative declaration is filed on or after July 1, 2015.** If your project involves the adoption of or amendment to a general plan or a specific plan, or the designation or proposed designation of open space, on or after March 1, 2005, it may also be subject to Senate Bill 18 (Burton, Chapter 905, Statutes of 2004) (SB 18). **Both SB 18 and AB 52 have tribal consultation requirements.** If your project is also subject to the federal National Environmental Policy Act (42 U.S.C. § 4321 et seq.) (NEPA), the tribal consultation requirements of Section 106 of the National Historic Preservation Act of 1966 (154 U.S.C. 300101, 36 C.F.R. § 800 et seq.) may also apply.

The NAHC recommends consultation with California Native American tribes that are traditionally and culturally affiliated with the geographic area of your proposed project as early as possible in order to avoid inadvertent discoveries of Native American human remains and best protect tribal cultural resources. Below is a brief summary of portions of AB 52 and SB 18 as well as the NAHC's recommendations for conducting cultural resources assessments. **Consult your legal counsel about compliance with AB 52 and SB 18 as well as compliance with any other applicable laws.**

AB 52

AB 52 has added to CEQA the additional requirements listed below, along with many other requirements:

1. Fourteen Day Period to Provide Notice of Completion of an Application/Decision to Undertake a Project: Within fourteen (14) days of determining that an application for a project is complete or of a decision by a public agency to undertake a project, a lead agency shall provide formal notification to a designated contact of, or tribal representative of, traditionally and culturally affiliated California Native American tribes that have requested notice, to be accomplished by at least one written notice that includes:

a. A brief description of the project.
b. The lead agency contact information.
c. Notification that the California Native American tribe has 30 days to request consultation. (Pub. Resources Code § 21080.3.1 (d)).
d. A "California Native American tribe" is defined as a Native American tribe located in California that is on the contact list maintained by the NAHC for the purposes of Chapter 905 of Statutes of 2004 (SB 18). (Pub. Resources Code § 21073).

2. Begin Consultation Within 30 Days of Receiving a Tribe's Request for Consultation and Before Releasing a Negative Declaration, Mitigated Negative Declaration, or Environmental Impact Report: A lead agency shall begin the consultation process within 30 days of receiving a request for consultation from a California Native American tribe that is traditionally and culturally affiliated with the geographic area of the proposed project. (Pub. Resources Code § 21080.3.1, subds. (d) and (e)) and prior to the release of a negative declaration, mitigated negative declaration or environmental impact report. (Pub. Resources Code § 21080.3.1(b)).
   a. For purposes of AB 52, "consultation shall have the same meaning as provided in Gov. Code § 65352.4 (SB 18). (Pub. Resources Code § 21080.3.1 (b)).

3. Mandatory Topics of Consultation If Requested by a Tribe: The following topics of consultation, if a tribe requests to discuss them, are mandatory topics of consultation:
   a. Alternatives to the project.
   b. Recommended mitigation measures.
   c. Significant effects. (Pub. Resources Code § 21080.3.2 (a)).

4. Discretionary Topics of Consultation: The following topics are discretionary topics of consultation:
   a. Type of environmental review necessary.
   b. Significance of the tribal cultural resources.
   c. Significance of the project's impacts on tribal cultural resources.
   d. If necessary, project alternatives or appropriate measures for preservation or mitigation that the tribe may recommend to the lead agency. (Pub. Resources Code § 21080.3.2 (a)).

5. Confidentiality of Information Submitted by a Tribe During the Environmental Review Process: With some exceptions, any information, including but not limited to, the location, description, and use of tribal cultural resources submitted by a California Native American tribe during the environmental review process shall not be included in the environmental document or otherwise disclosed by the lead agency or any other public agency to the public, consistent with Government Code sections 6254 (r) and 6254.10. Any information submitted by a California Native American tribe during the consultation or environmental review process shall be published in a confidential appendix to the environmental document unless the tribe that provided the information consents, in writing, to the disclosure of some or all of the information to the public. (Pub. Resources Code § 21082.3 (c)(1)).

6. Discussion of Impacts to Tribal Cultural Resources in the Environmental Document: If a project may have a significant impact on a tribal cultural resource, the lead agency's environmental document shall discuss both of the following:
   a. Whether the proposed project has a significant impact on an identified tribal cultural resource.
   b. Whether feasible alternatives or mitigation measures, including those measures that may be agreed to pursuant to Public Resources Code section 21082.3, subdivision (a), avoid or substantially lessen the impact on the identified tribal cultural resource. (Pub. Resources Code § 21082.3 (b)).

7. Conclusion of Consultation: Consultation with a tribe shall be considered concluded when either of the following occurs:
   a. The parties agree to measures to mitigate or avoid a significant effect, if a significant effect exists, on a tribal cultural resource; or
   b. A party, acting in good faith and after reasonable effort, concludes that mutual agreement cannot be reached. (Pub. Resources Code § 21080.3.2 (b)).

8. Recommending Mitigation Measures Agreed Upon in Consultation in the Environmental Document: Any mitigation measures agreed upon in the consultation conducted pursuant to Public Resources Code section 21080.3.2 shall be recommended for inclusion in the environmental document and in an adopted mitigation

monitoring and reporting program, if determined to avoid or lessen the impact pursuant to Public Resources Code section 21082.3, subdivision (b), paragraph 2, and shall be fully enforceable. (Pub. Resources Code § 21082.3 (a)).

9. Required Consideration of Feasible Mitigation: If mitigation measures recommended by the staff of the lead agency as a result of the consultation process are not included in the environmental document or if there are no agreed upon mitigation measures at the conclusion of consultation, or if consultation does not occur, and if substantial evidence demonstrates that a project will cause a significant effect to a tribal cultural resource, the lead agency shall consider feasible mitigation pursuant to Public Resources Code section 21084.3 (b). (Pub. Resources Code § 21082.3 (e)).

10. Examples of Mitigation Measures That, If Feasible, May Be Considered to Avoid or Minimize Significant Adverse Impacts to Tribal Cultural Resources:
    a. Avoidance and preservation of the resources in place, including, but not limited to:
        i. Planning and construction to avoid the resources and protect the cultural and natural context.
        ii. Planning greenspace, parks, or other open space, to incorporate the resources with culturally appropriate protection and management criteria.
    b. Treating the resource with culturally appropriate dignity, taking into account the tribal cultural values and meaning of the resource, including, but not limited to, the following:
        i. Protecting the cultural character and integrity of the resource.
        ii. Protecting the traditional use of the resource.
        iii. Protecting the confidentiality of the resource.
    c. Permanent conservation easements or other interests in real property, with culturally appropriate management criteria for the purposes of preserving or utilizing the resources or places.
    d. Protecting the resource. (Pub. Resource Code § 21084.3 (b)).
    e. Please note that a federally recognized California Native American tribe or a nonfederally recognized California Native American tribe that is on the contact list maintained by the NAHC to protect a California prehistoric, archaeological, cultural, spiritual, or ceremonial place may acquire and hold conservation easements if the conservation easement is voluntarily conveyed. (Civ. Code § 815.3 (c)).
    f. Please note that it is the policy of the state that Native American remains and associated grave artifacts shall be repatriated. (Pub. Resources Code § 5097.991).

11. Prerequisites for Certifying an Environmental Impact Report or Adopting a Mitigated Negative Declaration or Negative Declaration with a Significant Impact on an Identified Tribal Cultural Resource: An environmental impact report may not be certified, nor may a mitigated negative declaration or a negative declaration be adopted unless one of the following occurs:
    a. The consultation process between the tribes and the lead agency has occurred as provided in Public Resources Code sections 21080.3.1 and 21080.3.2 and concluded pursuant to Public Resources Code section 21080.3.2.
    b. The tribe that requested consultation failed to provide comments to the lead agency or otherwise failed to engage in the consultation process.
    c. The lead agency provided notice of the project to the tribe in compliance with Public Resources Code section 21080.3.1 (d) and the tribe failed to request consultation within 30 days. (Pub. Resources Code § 21082.3 (d)).

The NAHC's PowerPoint presentation titled, "Tribal Consultation Under AB 52: Requirements and Best Practices" may be found online at: http://nahc.ca.gov/wp-content/uploads/2015/10/AB52TribalConsultation_CalEPAPDF.pdf

SB 18

SB 18 applies to local governments and requires local governments to contact, provide notice to, refer plans to, and consult with tribes prior to the adoption or amendment of a general plan or a specific plan, or the designation of open space. (Gov. Code § 65352.3). Local governments should consult the Governor's Office of Planning and Research's "Tribal Consultation Guidelines," which can be found online at: https://www.opr.ca.gov/docs/09_14_05_Updated_Guidelines_922.pdf

Some of SB 18's provisions include:

1. Tribal Consultation: If a local government considers a proposal to adopt or amend a general plan or a specific plan, or to designate open space it is required to contact the appropriate tribes identified by the NAHC by requesting a "Tribal Consultation List." If a tribe, once contacted, requests consultation the local government must consult with the tribe on the plan proposal. **A tribe has 90 days from the date of receipt of notification to request consultation unless a shorter timeframe has been agreed to by the tribe.** (Gov. Code § 65352.3 (a)(2)).
2. No Statutory Time Limit on SB 18 Tribal Consultation. There is no statutory time limit on SB 18 tribal consultation.
3. Confidentiality: Consistent with the guidelines developed and adopted by the Office of Planning and Research pursuant to Gov. Code section 65040.2, the city or county shall protect the confidentiality of the information concerning the specific identity, location, character, and use of places, features and objects described in Public Resources Code sections 5097.9 and 5097.993 that are within the city's or county's jurisdiction. (Gov. Code § 65352.3 (b)).
4. Conclusion of SB 18 Tribal Consultation: Consultation should be concluded at the point in which:
    a. The parties to the consultation come to a mutual agreement concerning the appropriate measures for preservation or mitigation; or
    b. Either the local government or the tribe, acting in good faith and after reasonable effort, concludes that mutual agreement cannot be reached concerning the appropriate measures of preservation or mitigation. (Tribal Consultation Guidelines, Governor's Office of Planning and Research (2005) at p. 18).

Agencies should be aware that neither AB 52 nor SB 18 precludes agencies from initiating tribal consultation with tribes that are traditionally and culturally affiliated with their jurisdictions before the timeframes provided in AB 52 and SB 18. For that reason, we urge you to continue to request Native American Tribal Contact Lists and "Sacred Lands File" searches from the NAHC. The request forms can be found online at: http://nahc.ca.gov/resources/forms/

NAHC Recommendations for Cultural Resources Assessments

To adequately assess the existence and significance of tribal cultural resources and plan for avoidance, preservation in place, or barring both, mitigation of project-related impacts to tribal cultural resources, the NAHC recommends the following actions:

1. Contact the appropriate regional California Historical Research Information System (CHRIS) Center (http://ohp.parks.ca.gov/?page_id=1068) for an archaeological records search. The records search will determine:
    a. If part or all of the APE has been previously surveyed for cultural resources.
    b. If any known cultural resources have been already been recorded on or adjacent to the APE.
    c. If the probability is low, moderate, or high that cultural resources are located in the APE.
    d. If a survey is required to determine whether previously unrecorded cultural resources are present.

2. If an archaeological inventory survey is required, the final stage is the preparation of a professional report detailing the findings and recommendations of the records search and field survey.
    a. The final report containing site forms, site significance, and mitigation measures should be submitted immediately to the planning department. All information regarding site locations, Native American human remains, and associated funerary objects should be in a separate confidential addendum and not be made available for public disclosure.
    b. The final written report should be submitted within 3 months after work has been completed to the appropriate regional CHRIS center.

3. Contact the NAHC for:
    a. A Sacred Lands File search. Remember that tribes do not always record their sacred sites in the Sacred Lands File, nor are they required to do so. A Sacred Lands File search is not a substitute for consultation with tribes that are traditionally and culturally affiliated with the geographic area of the project's APE.
    b. A Native American Tribal Consultation List of appropriate tribes for consultation concerning the project site and to assist in planning for avoidance, preservation in place, or, failing both, mitigation measures.

4. Remember that the lack of surface evidence of archaeological resources (including tribal cultural resources) does not preclude their subsurface existence.
    a. Lead agencies should include in their mitigation and monitoring reporting program plan provisions for the identification and evaluation of inadvertently discovered archaeological resources per Cal. Code Regs., tit. 14, section 15064.5(f) (CEQA Guidelines section 15064.5(f)). In areas of identified archaeological sensitivity, a certified archaeologist and a culturally affiliated Native American with knowledge of cultural resources should monitor all ground-disturbing activities.
    b. Lead agencies should include in their mitigation and monitoring reporting program plans provisions for the disposition of recovered cultural items that are not burial associated in consultation with culturally affiliated Native Americans.
    c. Lead agencies should include in their mitigation and monitoring reporting program plans provisions for the treatment and disposition of inadvertently discovered Native American human remains. Health and Safety Code section 7050.5, Public Resources Code section 5097.98, and Cal. Code Regs., tit. 14, section 15064.5, subdivisions (d) and (e) (CEQA Guidelines section 15064.5, subds. (d) and (e)) address the processes to be followed in the event of an inadvertent discovery of any Native American human remains and associated grave goods in a location other than a dedicated cemetery.

If you have any questions, please contact me at my email address: Sharaya.Souza@nahc.ca.gov.

Sincerely,

Sharaya Souza
Staff Services Analyst
(916) 573-0168

cc: State Clearinghouse

Middletown Rancheria
Tribal Historic Preservation Department
P.O. Box 1035
Middletown, CA 95461

August 3, 2018 Via Electronic Mail

Mr. Jason R. Hade
County of Napa
Planning, Building & Environmental Services
1195 Third Street, Suite 210
Napa, CA 94559

Re: Notification of Proposed Project Pursuant to Public Resources Code 21080.3.1
Climate Action Plan
Napa County, CA

Dear Mr. Hade:

The Middletown Rancheria (Tribe) is in receipt of your letter dated July 24, 2018 regarding the Climate Action Plan located in Napa County, California.

Though we have no specific comments at this time, should any new information or evidence of human habitation be found as the project progresses, we request that all work cease and that you contract us immediately. We do have a process to protect such important and sacred resources.

Thank you for the opportunity to provide comments to the above referenced project. The Tribe looks forward to continuing to be a part of the County's process.

Nothing herein should be construed to be a waiver of or limitation of any of the Tribe's rights in law, in equity, or otherwise. All rights, claims and remedies are specifically reserved.

Should you have any questions, please do not hesitate to contact me.

Sincerely,

Sally Peterson
Tribal Vice-Chairwoman

Phone (707) 987-3670 ext 1307 *Fax (707) 987-9091*

YOCHA DEHE
CULTURAL RESOURCES

August 9, 2018

Napa County
Attn: Jason Hade, Planner III
1195 Third Street, Suite 210
Napa, CA 94559

RE: Climate Action Plan

Dear Mr. Hade:

Thank you for your project notification letter dated, July 24, 2018, regarding cultural information on or near the proposed Climate Action Plan, Napa County. We appreciate your effort to contact us.

The Cultural Resources Department has reviewed the plan. We respectively decline any comment on the project at this time.

Should you have any questions, please feel free to contact the following individual:

Reimann Rouse, GIS Analyst
Yocha Dehe Wintun Nation
Office: (530) 723-2805
Email: rrouse@yochadehe-nsn.gov

Please refer to identification number YD – 08072018-02 in any correspondence concerning this project.

Thank you for providing us with this notice and the opportunity to comment.

Sincerely,

Marilyn Delgado
Director of Cultural Resources

Hade, Jason

From: Jerry Bernhaut <j3bernhaut@gmail.com>
Sent: Monday, August 20, 2018 2:53 PM
To: Hade, Jason
Subject: Comment on NOP for EIR for Climate Action Plan

Dear Mr. Hade,

I would like to submit the following additional comment on behalf of California River Watch (CRW):

In anticipation of the alternatives analysis in the EIR, California River Watch proposes the evaluation of a temporary moratorium or significant limitation on new wineries/vineyard expansions and tourist destinations to provide an adequate assessment of feasible measures to reduce Sonoma County's GHG emissions. As discussed in comments by CRW submitted on August 25, 2018, if there was a good faith effort to estimate, in the CAP GHG Inventory, trans regional emissions generated by wine distribution and tourism, such a moratorium would constitute an environmentally superior alternative while the County considered how to reduce its emissions to meet the targets designated in the CAP.

Under Government Code § 65858. "Interim ordinance as urgency measure
(a) Without following the procedures otherwise required prior to the adoption of a zoning ordinance, the legislative bodyof a county, city, including a charter city, or city and county, to protect the public safety, health, and welfare, may
adopt as an urgency measure an interim ordinance prohibiting any uses that may be in conflict with a contemplated general plan, specific plan, or zoning proposal that the legislative body, planning commission or the planning department is considering or studying or intends to study within a reasonable time. That urgency measure shall
require a four-fifths vote of the legislative body for adoption. The interim ordinance shall be of no further force and
effect 45 days from its date of adoption. After notice pursuant to Section 65090 and public hearing, the legislative
body may extend the interim ordinance for 10 months and 15 days and subsequently extend the interim ordinance for
one year. Any extension shall also require a four-fifths vote for adoption. Not more than two extensions may be
adopted."

Please send a brief response indicating receipt of these comments.

Thank you for your attention,

Jerry Bernhaut

Attorney for CRW

Exhibit One

Via Electronic Mail and USPS (w/attachments)

Jason R. Hade
Napa County Planning Building & Environmental Services Department
1195 Third Street, Suite 210
Napa, California 94559
jason.hade@countyofnapa.org

Re: Comments on Napa County's Draft Climate Action Plan

Dear Mr. Hade:

These comments are submitted on behalf of the Center for Biological Diversity (the "Center") regarding Napa County's Draft Climate Action Plan (the "Draft CAP"). While the Draft CAP identifies many significant sources of greenhouse gas ("GHG") emissions in the Napa County and proposes some measures to address them, the Draft CAP does not provide specific, mandatory, and enforceable policies necessary to adequately fulfill the County's legal responsibilities under state law.

The Center is a non-profit, public interest environmental organization dedicated to the protection of native species and their habitats through science, policy, and environmental law. The Center has over one million members and online activists throughout California and the United States. The Center has worked for many years to protect imperiled plants and wildlife, open space, air and water quality, and overall quality of life for people in Napa County.

I. The County's Role in Combating Climate Change.

The County is charged with reducing GHG emissions in the County. As the California Air Resources Board ("CARB") explains:

> ***Essential partners in achieving California's goals to reduce GHGs, local governments have broad influence and authority over activities that contribute to significant direct and indirect GHG emissions***. Through their planning and permitting processes, local ordinances, outreach and education efforts, and municipal operations many local governments have become leaders in reducing GHG emissions.[1]

[1] California Air Resources Board, "Local Government Actions for Climate Change" (Apr. 2016), available at https://www.arb.ca.gov/cc/localgovernment/localgovernment.htm.

The County thus has the opportunity – and responsibility – to holistically assess the GHG emissions of activities in the County and develop and implement policies to significantly reduce these emissions.

II. The Draft CAP Cannot Allow Projects to Evade CEQA Review.

The Draft CAP states that the County will "streamline" the CEQA analysis of individual projects with a checklist in Appendix D. As a preliminary matter, this checklist was not included with the Draft CAP, rendering it impossible to evaluate. Moreover, the specific impacts and required mitigation measures for individual projects will vary widely. As such, it is unlikely that a checklist – even if it is developed – will adequately analyze and mitigate GHG impacts of all individual projects in the County in the future.

At the conclusion of the Draft CAP, the County claims that the "CAP meets the criteria identified in Section 15183.5 and is therefore considered a 'qualified' CAP." As currently drafted, the County's CAP does not come close to meeting the requirements for streamlined CEQA review. A guidance document from the California Attorney General states that while a CAP may constitute "reasonable mitigation" under CEQA, the CAP should include the following elements: "an emissions inventory (to assist in developing appropriate emission targets and mitigation measures); emission targets that apply at reasonable intervals through the life of the plan; enforceable GHG control measures; monitoring and reporting (to ensure that targets are met); and mechanisms to allow for the revision of the plan, if necessary, to stay on target."[2]

The Draft CAP does not contain binding and enforceable GHG control measures. Notably, the words "encourage," "promote," or "support" occur many dozens of times in the sections describing the Draft CAP's implementation measures. The California Attorney General expressly disapproved such non-binding measures:

> **Can a lead agency rely on policies and measures that simply "encourage" GHG efficiency and emissions reductions?**
>
> No. Mitigation measures must be "fully enforceable." ***Adequate mitigation does not, for example, merely "encourage" or "support" carpools and transit options, green building practices, and development in urban centers***. While a menu of hortatory GHG policies is positive, it does not count as adequate mitigation because there is no certainty that the policies will be implemented.[3]

The California Attorney General further states that programmatic plans to reduce GHG emissions pursuant to CEQA Guidelines section 15183.5 must "[i]dentify a set of specific, enforceable measures that, collectively, will achieve the emissions targets…."[4] Such vague

[2] California Attorney General's Office, "Climate Change, the California Environmental Quality Act, and General Plan Updates: Straightforward Answers to Some Frequently Asked Questions" (Sept. 2009) available at http://ag.ca.gov/globalwarming/pdf/CEQA_GP_FAQs.pdf.
[3] *Id.*
[4] California Attorney General's Office, "CEQA and General Planning," available at https://oag.ca.gov/environment/ceqa/planning.

measures also are clearly inconsistent with CEQA Guidelines section 15183.5(b)(1)(D), which states that measures should have "performance standards" which demonstrate they will achieve the planned reductions on a project by project basis.

Accordingly, while the Draft CAP may contain a set of worthwhile goals for the County to pursue, the Draft CAP fails as a CEQA compliance tool because it generally relies upon non-enforceable measures. In Table 5-1, which summarizes all measures, the Draft CAP expressly notes that many of these implementation measures are "voluntary." Even many of the measures characterized as "mandatory" are not truly mandatory because they just require the County to "support" or "promote" the actions of other entities.

In addition, other measures in Table 5-1 which are characterized as "mandatory" cryptically state in the "other considerations" column that the measure "requires County collaboration & administrative capacity." This suggests that even these purportedly "mandatory" measures will be implemented only if sufficient administrative capacity (e.g., funds) is available. The Draft CAP never explains what this phrase means or whether it essentially conditions implementation of these implementations on the potential availability of unspecified funds or other "capacity." Given the budget shortages routinely facing local governments, the Center is concerned that these implementation measures will never be implemented due to lack of funding (and that the Draft CAP allows this result).

III. The Emissions Inventory Is Incomplete.

The Draft CAP lists nine categories of GHG emissions in its GHG inventory: Building Energy Use, On-Road Vehicles, Solid Waste, Agriculture, Off-Road Vehicles, High GWP Gases, Wastewater, Land Use Change, and Imported Water Conveyance. However, the Draft CAP does not appear to include some potentially significant categories of emissions, such as rail emissions. Other Draft CAPs, such as the San Francisco Draft CAP, include rail emissions.[5]

The CAP should also set forth the emissions categories in more detail. A guide prepared by the Bay Area Air Quality Management District ("BAAQMD") recommends listing the GHG emissions of specific items such as streetlights and traffic signals.[6]

In addition, other agencies, including CARB, separately categorize emissions from the residential, industrial, and commercial sectors. In contrast, the Draft CAP appears to aggregate at least some of these emissions together in the "Building Energy Use" category. While Appendix A does appear to list the separate emissions totals for these sectors (Appx. A at Table 4), this information should be in the text of the CAP and separate mitigation strategies should be developed for each sector.

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[5] Climate Action Plan for San Francisco (Sept. 2004) https://sfenvironment.org/sites/default/files/fliers/files/climateactionplan.pdf.

[6] Strategic Energy Innovations and Bay Area Air Quality Management District, "Conducting A Municipal Greenhouse Gas Emissions Inventory: A Practical Guide" (Aug. 2009), available at http://www.ca-ilg.org/sites/main/files/file-attachments/Municipal_GHG_Inventory_Guidebook.pdf.

IV. The Draft CAP Should Not Plan On Failing To Meet Long-Term Goals.

Table 3-2 claims that – with the Draft CAP's GHG reduction measures – the County's GHG emissions will exceed the County's 2020 target by 57,138 metric tons of carbon dioxide equivalents ("MTCO2e") per year and the County's 2030 target by 145 MTCO2e per year. (Draft CAP at 3-5.) Exceeding the County's 2030 target by only 145 MTCO2e per year leaves very little room for variations between the County's estimated and actual reductions in GHG emissions – it is possible that the County will miss the 2030 target.

Furthermore, Table 3-2 states that the County would still need to reduce emissions by 158,306 MTCO2e per year to meet the County's 2050 target. In other words, the Draft CAP expects the County ***not*** to reach this long-term target. The County should not be enacting a Draft CAP that contemplates failing to achieve long-term targets in GHG reductions. Instead, the County should be evaluating and implementing stronger mitigation measures to put the County on track to reach all of its goals.

The County's plan not to meet its long-term GHG targets also makes the Draft CAP not consistent with CEQA Guidelines section 15183.5(b)(1)(D), which requires that the document demonstrate that it will achieve planned reductions on a project by project basis. Accordingly, compliance with the CAP, even if fully implemented, cannot be used to demonstrate that a particular project is consistent with the County's targets.

V. The Draft CAP's GHG Reduction Strategies and Measures Are Inadequate.

A. The Building Energy Measures do not demonstrate that they will result in significant GHG reductions.

The County acknowledges the very significant role of buildings in generating GHG emissions. For example, the Draft CAP estimates that building energy currently accounts for 31 percent of the County's emissions. (Draft CAP at 4.) Unfortunately, the Draft CAP does not set forth long-term strategies to curb emissions generated by new development. This is especially unacceptable because the County plans to allow such projects to move forward merely by meeting certain unspecified requirements on a "checklist." Because (a) these projects will lock in significant GHG emissions for many decades and (b) the County has conceded its proposed measures will fail to meet long-term targets, these projects should be required to implement stronger mitigation measures.

In particular, the Draft CAP sets forth ten "Building Energy Measures" in Table 3-3. Unfortunately, many of these measures are extremely vague and do not require any specific actions of regulated parties. For instance, BE-1 merely provides that the County will "work with" PG&E and other utilities on efficiency programs. This fails to actually require any utilities or regulated parties to take any concrete actions to reduce GHG emissions. Likewise, BE-2 does not require regulated parties to actually reduce GHG emissions – it just suggests that the County will perform more energy audits. Furthermore, despite the lack of any identifiable GHG reductions of BE-1 and BE-2, the Draft CAP incorrectly concludes that "improved air quality" and "reduced fossil fuel reliance" will be "co-benefits" of these measures. (Draft CAP at 3-8.)

BE-3 and BE-4 require compliance with California Green Building Standards. However, significant portions of the California Green Building Standards are already mandatory.[7] BE-3 and BE-4 do not specify what standards (if any) will be required under the Draft CAP that go above and beyond what state law already requires.

The Draft CAP also does not explain how it arrived at the 15 percent reduction under Tier 1 Standards and 30 percent reduction above current standards. (*See* Draft CAP at 3-8.) Indeed, California's 2016 Building Standards, which are effective on January 1, 2017, already require that buildings are 28 percent more efficient the 2013 Building Standards.[8]

The Draft CAP further notes that the state is likely to adopt a zero net energy ("ZNE") standard in 2020, and that the County would incorporate the ZNE standard into its local building code. The Center urges the County to be a leader in fighting climate change by adopting the ZNE ***now*** instead of waiting for action on the state level.

BE-5 also does not require the County to actual take any concrete steps. Rather, it simply requires the County to "consider" subsidizing the extra cost of the Marin Clean Energy Deep Green Program. The County thus cannot claim either GHG reductions or "co-benefits" of improved air quality and reduced fossil fuel reliance merely because it considers taking a concrete action.

BE-6 states that the County will reduce GHG emissions by requiring electric or alternatively fueled water heaters. Yet, BE-6 does not appear to expressly require that the electricity powering these water heaters come from renewable or low-carbon sources.

BE-7 states that the County "will continue to provide expedited permitting incentives for installing solar panels, electric vehicle charging stations, and wind turbines." (Draft CAP at 3-10.) While incentives are helpful in increasing user adoption of these technologies, incentives alone are insufficient. The County should take steps to *require* certain amounts of solar or wind and EV charging stations in new residential and commercial development. Likewise, the Center appreciates that the County has "set a goal" of approving 20,000 kw of solar permits by 2030. Yet, once again, the Draft CAP does not explain how merely "incentivizing" solar will result in the County reaching this goal. The Draft CAP should set forth both "carrot" and "stick" approaches to reach aggressive renewable energy goals instead of relying solely upon voluntary incentives.

BE-8 indicates that the County will develop a program for new development to offset its emissions by retrofitting existing buildings. (Draft CAP at 3-10.) While retrofitting existing buildings is a critical strategy for reducing GHG emissions, such retrofitting activities should not serve as a substitute for reducing emissions from new buildings. New buildings should

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[7] *See* California Building Standards Commission, "California's Green Building Code," available at http://www.bsc.ca.gov/Home/CALGreen.aspx.

[8] *See* California Energy Commission, "2016 Building Energy Efficiency Standards Frequently Asked Questions," available at http://www.energy.ca.gov/title24/2016standards/rulemaking/documents/2016_Building_Energy_Efficiency_Standards_FAQ.pdf.

independently be required to reduce their GHG emissions through energy efficiency and renewable energy, and other programs should incentivize or require retrofits to existing buildings. Implementing GHG reduction measures within the new construction can also sometimes be the most cost-effective means to significant reduce emissions.

As noted above, none of these measures explain how they will result in quantifiable reductions in GHG emissions. Nonetheless, the Draft CAP claims without citation to facts or evidence that BE-4, BE-5, BE-6, BE-7, and BE-9 will reduce GHG emissions by specific amounts. The CAP must explain how these mostly voluntary programs will actually lead to these claimed GHG emission reductions.

B. The Draft CAP should require implementation of proven green building techniques, including LEED.

Using green building techniques can substantially reduce GHG emissions from buildings. Green buildings help reduce the amount of energy used to light, heat, cool and operate buildings and substitute carbon-based energy sources with alternatives that do not result in GHG emissions. (Commission for Environmental Cooperation 2008.) Currently, green buildings can reduce energy usage by 30 percent or more and carbon emissions by 35 percent. (Commission for Environmental Cooperation 2008.) The technologies available for green building are already in wide use and include "passive solar design, high-efficiency lighting and appliances, highly efficient ventilation and cooling systems, solar water heaters, insulation materials and techniques, high-reflectivity building materials and multiple glazing. Additionally, the U.S. Green Building Council (USGBC), a private, nonprofit corporation, has established a nationwide green building rating system, called Leadership in Energy and Environmental Design ("LEED"). The LEED standard supports and certifies successful green building design, construction and operations. It is one of the most widely used and recognized systems, and to obtain LEED certification from the USGBC, project architects must verify in writing that design elements meet established LEED goals. Below are some specific measures the CAP should include:

- Incorporating the USBGC's LEED or comparable standards for energy- and resource efficient building;
- Requiring buildings to be designed for passive heating and cooling, and natural light, including building orientation, proper orientation and placement of windows, overhangs, skylights, etc.;
- Requiring buildings to be designed for maximum energy efficiency, including the maximum possible insulation, use of compact florescent or other low-energy lighting, use of energy efficient appliances, etc.;
- Reducing the use of pavement and impermeable surfaces;
- Requiring water re-use systems;
- Installing light emitting diodes (LEDs) for traffic, street and other outdoor lighting
- Limiting the hours of operation of outdoor lighting;
- Maximizing water conservation measures in buildings and landscaping, using drought tolerant plants in lieu of turf, planting shade trees;

- Requiring installation of the maximum possible photovoltaic array on building roofs and/or building sites to generate all of the electricity required by the building, and utilizing wind energy to the extent necessary and feasible;
- Installing solar water heating systems to generate all of the building's hot water requirements; and
- Installing solar or wind powered electric vehicle and plug-in hybrid vehicle charging stations to reduce emissions from vehicle trips.

The California Energy Commission also published a report that details numerous strategies that local governments can use to reduce GHG emissions through green building ordinances and solar programs.[9]

C. The Draft CAP does not contain adequate measures to mitigate sprawl development.

The Building Energy Measures section is further inadequate because it fails to consider holistic strategies to create low-carbon communities. More specifically, while this section provides some measures attempting to reduce emissions at the level of individual buildings, it does not contain planning strategies to require growth to occur near employment centers and walkable neighborhoods. While the Transportation Measures section touches upon these topics, neither section provides concrete measures to limit sprawl development and require any new development to occur near existing job centers.

D. The On-Road Transportation Measures are impermissibly vague.

The On-Road Transportation Measures suffer from many of the same defects as the Building Energy Measures. Many of these measures do not require the County or regulated parties to take any concrete steps to reduce GHG emissions. Instead, they require the County to "consider," "promote," or "support" certain plans or programs.

For example, TR-3 states that the County will "encourage" and "promote" transit-oriented development. (Draft CAP at 3-13.) TR-3 does not explain in any detail how it will encourage and promote this worthy goal, but still claims quantifiable reductions in GHGs from its "promoting" activities. (*See* Table 3-4.)

TR-9 states that the County will "work" with neighboring jurisdictions to install park and ride facilities. Again, while park and ride facilities might assist in reducing transportation-related GHG emissions, the CAP should include specific proposed locations for park and ride facilities and a plan with adequate funding to establish these facilities. Without any specific details and commitments, the County cannot claim any GHG reductions from this measure.

Moreover, TR-11 does not actually require electric vehicle charging stations at wineries, industrial centers, hotels, major visitor attractions, and multifamily complexes; it just requires the County to "promote" them. (Draft CAP at 3-15.) The County should incentivize such charging

[9] *See* California Energy Commission, "Energy Aware Planning Guide" (Feb. 2011), available at http://www.energy.ca.gov/2009publications/CEC-600-2009-013/CEC-600-2009-013.PDF.

stations through substantial rebates and also require a minimum number of stations on new construction.

TR-1 comes close to actually requiring concrete actions, but stops short of establishing measurable targets in increased vanpool ridership. (Draft CAP at 3-12.) It also does not commit to any particular ordinance and instead generally cites to a few other ordinances. This is insufficient to demonstrate an annual GHG reduction of 4,818 MTCO2e. (*See* Table 3-4.)

There are many other measures which the County could implement to reduce GHG emissions from the transportation sector. For example, the County could offer rebates to consumers who purchase or lease plug-in or electric passenger cars and trucks; CARB has already implemented a similar program called the Clean Vehicle Rebate Project.[10] The County also could implement a local program similar to CARB's Hybrid and Zero-Emission Truck and Bus Voucher Incentive Project.[11] This program provides vouchers to purchasers of California purchasers and lessees of hybrid and zero-emission trucks.

E. The Draft CAP does not contain adequate Solid Waste Measures.

The Draft CAP contains only two Solid Waste Measures – "encouraging" expansion of composting programs (SW-1) and meeting an 80 percent waste diversion goal by 2020 and 90 percent by 2030 (SW-2). Regarding SW-1, the Draft CAP should demonstrate what concrete steps the County will be taking to actually expand composting programs. Regarding SW-2, the Draft CAP states that the 80 percent waste diversion goal is just that – a "target" or goal. (Draft CAP at 3-17.) The Draft CAP should specifically demonstrate how that goal will be met. The County could work towards meeting these goals by establishing local programs similar to CalRecycle's Greenhouse Gas Reduction Grant and Loan Programs, which provides financial incentives for capital investments in infrastructure for aerobic composting, anaerobic digestion and recycling and manufacturing facilities that will reduce GHG emissions.[12]

The Draft CAP also does not provide evidence indicating that all forms of Solid Waste emissions were considered in the inventory, including methane emissions. Similarly, the Draft CAP does not explain how emissions from solid waste sources such as landfills were calculated.

F. The Draft CAP does not contain adequate Agriculture Measures.

As with measures in other categories, the Agriculture Measures contain vague and non-binding language regarding the County's desire to "support" or "work" with various entities. Given agriculture's significant role in producing GHG emissions, such measures are plainly inadequate. The Agriculture Measures section of the Draft CAP also does not acknowledge the

[10] *See* California Air Resources Board, "Clean Vehicle Rebate Project," available at https://www.arb.ca.gov/msprog/aqip/cvrp.htm.
[11] *See* California Air Resources Board, "Hybrid and Zero-Emission Truck and Bus Voucher Incentive Project," available at https://www.arb.ca.gov/msprog/aqip/hvip.htm.
[12] *See* CalRecycle, "Greenhouse Gas Reduction Grant and Loan Programs," available at http://www.calrecycle.ca.gov/Climate/GrantsLoans/.

role of agriculture in deforestation, and the carbon sequestration benefits of keeping forests intact.

Researchers have identified other specific measures to reduce GHG emissions associated with agricultural operations. For example, GHG emissions can be reduced through decreasing fertilizer use and limiting tillage.[13] In addition, the California Attorney General encourages local governments to consider requirements for carbon and nitrogen-efficient agricultural practices.[14]

In addition, the County should take what steps it can within its jurisdiction to reduce GHG emissions from livestock operations. The County should proactively work to comply with California's new policies regulating methane emissions, perhaps by offering incentives to agricultural operations that voluntary implement the new standards prior to their effective dates.

G. The Draft CAP should contain stronger Water and Wastewater Measures.

Water conservation measures are beneficial not only because they conserve scarce water resources but also because wastewater and water importation generate GHG emissions. (*See, e.g.*, Table 2 in Appx. A of Draft CAP.) While the Water and Wastewater Measures outlined in the Draft CAP are a step in the right direction, the County should incorporate additional water conservation measures into the Draft CAP. For example, the Draft CAP should require that new construction include "purple" piping and provide incentives to include purple piping in existing construction. Other cities in Northern California are already adopting purple piping programs – for example, the City of Pleasanton is implementing a purple piping program.[15] Similarly, the Draft CAP should require or at least incentivize the use of wastewater recycling facilities. In addition, the County should consider implementing the water savings strategies detailed on CARB's Local Government Toolkit for AB 32 (known as "CoolCalifornia").[16]

In section 4.3.3 of the Draft CAP, the County proposes other measures to "prepare for variable water supplies and preserve water quality." (Draft CAP at 4-18.) The Draft CAP should more specifically detail the steps it will take with respect to Measures Water 1 through 6. By their own terms, these measures only require the County to "evaluate," "consider," and "promote," certain systems or programs to reduce water usage. The Draft CAP should instead set forth plans to adopt mandatory programs for on-site graywater systems and use of recycled water. The Draft CAP also should not defer these measures for four to eight years ("mid-term"), as proposed for Measure Water 2, 3, 5, and 6. (*See* Table 4-3.) Instead, measures should be adopted and implemented as soon as possible.

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[13] *See* Duke Nicholas Institute, "Greenhouse Gas Mitigation Opportunities in California Agriculture" (Feb. 2014), available at http://aic.ucdavis.edu/publications/california%20economics%20for%20GHG%20dduke%20report.pdf.
[14] California Attorney General's Office, "Climate Change, the California Environmental Quality Act, and General Plan Updates: Straightforward Answers to Some Frequently Asked Questions" (Sept. 2009) available at http://ag.ca.gov/globalwarming/pdf/CEQA_GP_FAQs.pdf.
[15] *See* http://www.cityofpleasantonca.gov/gov/depts/os/env/purple_pipes_project.asp
[16] *See* CoolCalifornia.org, "Water-saving strategies," available at http://www.coolcalifornia.org/tip/water-lg.

H. The Draft CAP's Land Use Change Measures are not sufficient to reduce GHGs.

The County plays a crucial role in ensuring that land use changes in the County do not generate significant GHG emissions. The California Supreme Court recently recognized this role when it stated that "[l]ocal governments [] bear the primary burden of evaluating a land use project's impact on greenhouse gas emissions." (*Center for Biological Diversity v. Department of Fish & Wildlife* (2015) 62 Cal.4th 204, 230.)

While the Draft CAP correctly identifies the critical role that trees play in sequestering carbon, the Draft CAP states that the County expects to allow 8,000 acres of forests to be destroyed pursuant to due to general plan projections. (Draft CAP at 3-32.) The Air Resources Board's most recent climate change Scoping Plan makes clear that local land use planning must take an integrated approach that *avoids* conversion of forests to other uses.[17] In an era of climate change and deforestation, the deforestation sanctioned in the CAP is not only contrary to explicit state policy but also scientifically unacceptable. The County should be finding ways to save its remaining forests instead of planning for their destruction in a Climate Action Plan.

The Land Use Change Measures will not protect Napa's forests or achieve significant GHG reductions. LU-1 proposes compensating for the destruction of each tree by planting two more. Planting trees does not guarantee that the planted trees will grow to a size that mitigates the carbon sequestration benefits lost by destroying the pre-existing tree. The Draft CAP further does not explain where these trees will be planted, or who will be responsible for ensuring that the trees grow over their lifespan. Tree planting activities also are plainly insufficient to compensate for the carbon sequestration and biological benefits of old growth forests in the County. Moreover, neither the Draft CAP nor any of its appendices provide any evidence suggesting that merely planting additional trees will adequately mitigate for the loss of pre-existing trees.

The County's recent conduct with respect to specific projects has been particularly troubling. Citing the same policies listed in the Draft CAP, the County recently greenlighted the destruction of over 14,000 large trees and countless smaller trees near Atlas Peak for the Walt Ranch Erosion Control Plan. The County should be safeguarding its remaining natural resources and their carbon sequestration benefits instead of allowing them to be destroyed for more vineyards and development.

The County should implement much stronger measures to protect its remaining trees. For instance, the Draft CAP states its program will "target a minimum preservation rate of 30 percent of existing onsite trees." (Draft CAP at 3-25.) This appears to mean that the Draft CAP would allow destruction of 70 percent of onsite trees. The Draft CAP should instead require a minimum preservation rate of 95 percent, and require mitigation through conservation easements for preexisting forests to the extent that requirement cannot be reached. In short, the Draft CAP

[17] California Air Resources Board, First Update to the Climate Change Scoping Plan: Building on the Framework at 60, 74 (May 2014), available at https://www.arb.ca.gov/cc/scopingplan/2013_update/first_update_climate_change_scoping_plan.pdf (visited March 6, 2017).

should seek to adopt a "no net loss" policy for forest carbon stocks, much as it attempts to do in LU-2 for riparian lands.

Finally, the Draft CAP does not provide adequate evidence supporting the emissions data for the Land Use emissions, or whether it has calculated emissions from all types of GHGs, including black carbon. The Draft CAP also does not contain analysis of the GHG emissions associated with burning trees or other biomass.

VI. The Vulnerability Assessment Should Consider Impacts on Fish and Wildlife.

The Vulnerability Assessment in the Draft CAP explains many of the impacts and risks arising from climate change, including increased temperatures, increased wildfire risk, and increased likelihood of flooding. The Draft CAP further explains how these changes can impact the wine and agricultural industries and sensitive populations of people. However, neither the Draft CAP nor Appendix C analyze or consider the impacts on fish and wildlife of increased temperatures, wildfires, and flooding.

Climate change already is having a major adverse impact on numerous plant and animal species. (Cameron and Scheel, 2001.) Climate change impacts species by altering the climatic conditions that species need to survive or use a particular location as habitat, including particular temperature, type of food, water levels and water abundance, or weather conditions. (Schwartz, et. al., 2006.) This causes massive migration shifts, with species seeking out other areas featuring their needed climatic conditions. (Schwartz, et. al., 2006.) However, such migration shifts are not simple. For many species, their habitat is already so limited that there is no other location they can practically relocate to. In addition, major impediments such as urban areas can keep species from reaching other habitats. Species migration can also cause increased food and habitat competition as more species attempt to forage, hunt, or breed, in smaller areas. Migration also has the potential to cause many of the issues commonly associated with invasive species.

For many species, migration just is not possible – as their habitats quickly change, they will be unable to adapt in time, and will become extinct. Extinction as a direct result of climate change is an imminent possibility for numerous species. (Cameron and Scheel, 2001).

The threat of climate change-induced species extinction is found to be highest in species with a small current distribution (Schwartz, et. al. 2006). This makes sense given that the reason that these species have small habitats in the first place is that they are "habitat specialists," meaning they can only survive in a very specific set of climatic/habitat conditions. (Schwartz, et al., 2006.)

The Draft CAP should acknowledge and disclose the profound impacts that climate change is and will continue to have on fish and wildlife in the County. Because the Draft CAP does not acknowledge or analyze these issues, the section on Adaptation Strategies and Measures does not include any measures to assist fish, wildlife, or special status species in adapting to climate change. The Draft CAP should closely consider measures to protect special status species that inhabit the County, which are most at risk to extinction. For instance, the California

foothill yellow legged frog is currently at risk of extinction, and studies indicate that the effects of climate change will further impede the species ability to survive.[18]

VII. The Implementation Strategy Should Provide More Detail Regarding The County's Implementation Plans.

The Draft CAP correctly acknowledges that ensuring that measures translate into actual GHG emissions reductions is critical to the success of the Draft CAP. (Draft CAP at 5-3.) The Draft CAP further states that the County will develop "more detailed implementation schedules for each measure." (CAP at 5-4.) Again, the CAP cannot function as a means to "streamline" future CEQA review when the timeframes and details regarding the implementation of the CAP's mitigation measures are not even included in the document. (*See Federation of Hillside & Canyon Ass'ns v. City of Los Angeles* (2000) 83 Cal.App.4th 1252, 1261 [mitigation measures must be fully enforceable through permit conditions, agreements, or other measures so that feasible mitigation measures will actually be implemented as a condition of development].)

VIII. The Draft CAP Should Require More Consistent Monitoring Of Progress.

The Draft CAP provides that the County will need to review and update the GHG emissions inventory periodically every five years, track the community's progress on the implementation status of each measure in the Draft CAP, and report back to the Board of Supervisors and the public at least every five years. (Draft CAP at 6.) Delaying an update on these items for an additional five years could frustrate the County's ability to meet its climate change goals. The Draft CAP should provide for more sustained monitoring in order to ensure that objectives are being met, such as updates on the above items every two or three years.

The CAP should specify what categories of information will be included in monitoring reports. For example, monitoring reports should include data on the projected and actual GHG reductions for each individual implementation measure.[19] In section 5.3 ("Monitoring and Updates"), the Draft CAP does indicate that County staff will evaluate the GHG emission reduction measures' capacity, cost, effectiveness, and benefits of each individual measure. The CAP should make it clear that these evaluations will be included in the monitoring report. Without such data specific to each implementation measure, the County will be unable to evaluate whether measures are achieving planned reductions in GHGs.

Finally, the CAP should provide for public participation in the monitoring process and allow for notice and opportunity to comment on each monitoring report. The public should be notified when evaluations occur on specific mitigation measures and invited to provide input.

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[18] *See* Center for Biological Diversity, "Comments on Status Review of Foothill Yellow Legged Frog," Docket No. #FWS-R8-ES-2015-0050 (Aug. 2015) at 122-123 (referencing studies), available at https://www.biologicaldiversity.org/species/amphibians/foothill_yellow-legged_frog/pdfs/CBD_comments_on_FYLF_8-28-15.pdf.

[19] *See* California Air Resources Board, "Climate Action Planning Resource Guide," available at http://www.coolcalifornia.org/climate-action-planning-resource-guide.

IX. The County Should Prepare An EIR.

CEQA Guidelines section 15183.5(b)(1)(F) expressly requires that a climate action plan be adopted in a public process "after environmental review. Similarly, subdivision (b)(2) provides that "[a] plan for the reduction of greenhouse gas emissions, ***once adopted following certification of an EIR or adoption of an environmental document***, may be used in the cumulative impacts analysis of later project." Accordingly, the statute expressly contemplates that a local agency will prepare an EIR in connection with a CAP. In reviewing the County's CAP website[20] there does not appear to be any indication that the County is preparing an EIR for the CAP. The CAP cannot be used to streamline CEQA review absent this analysis.

X. Conclusion.

Thank you for the opportunity to submit comments on the Draft CAP. We look forward to working to assure that the Final CAP sets forth a specific and enforceable plan to reduce the County's GHG emission in accordance with state law. Please do not hesitate to contact the Center with any questions at the number listed below.

Sincerely,

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[20] http://www.countyofnapa.org/CAP/.

References

California Air Resources Board, "Climate Action Planning Resource Guide."
http://www.coolcalifornia.org/climate-action-planning-resource-guide.

California Air Resources Board, "Clean Vehicle Rebate Project."
https://www.arb.ca.gov/msprog/aqip/cvrp.htm.

California Air Resources Board, "First Update to the Climate Change Scoping Plan: Building on the Framework" (May 2014).
https://www.arb.ca.gov/cc/scopingplan/2013_update/first_update_climate_change_scoping_plan.pdf.

California Air Resources Board, "Hybrid and Zero-Emission Truck and Bus Voucher Incentive Project."
https://www.arb.ca.gov/msprog/aqip/hvip.htm.

California Air Resources Board, "Local Government Actions for Climate Change" (Apr. 2016).
https://www.arb.ca.gov/cc/localgovernment/localgovernment.htm

California Attorney General's Office, "Climate Change, the California Environmental Quality Act, and General Plan Updates: Straightforward Answers to Some Frequently Asked Questions" (Sept. 2009).
http://ag.ca.gov/globalwarming/pdf/CEQA_GP_FAQs.pdf.

California Attorney General's Office, "CEQA and General Planning."
https://oag.ca.gov/environment/ceqa/planning.

California Building Standards Commission, "California's Green Building Code."
http://www.bsc.ca.gov/Home/CALGreen.aspx.

California Energy Commission, "2016 Building Energy Efficiency Standards Frequently Asked Questions."
http://www.energy.ca.gov/title24/2016standards/rulemaking/documents/2016_Building_Energy_Efficiency_Standards_FAQ.pdf.

California Energy Commission, "Energy Aware Planning Guide" (Feb. 2011).
http://www.energy.ca.gov/2009publications/CEC-600-2009-013/CEC-600-2009-013.PDF.

CalRecycle, "Greenhouse Gas Reduction Grant and Loan Programs."
http://www.calrecycle.ca.gov/Climate/GrantsLoans/.

Cameron and Scheel, 2001. Getting Warmer: Effect on Global Climate Change on Distribution of Rodents in Texas. Journal of Mammalogy, Vol 82, No. 3: 652-680.
http://jmammal.oxfordjournals.org/content/jmammal/82/3/652.full.pdf.

Center for Biological Diversity, "Comments on Status Review of Foothill Yellow Legged Frog," Docket No. #FWS-R8-ES-2015-0050 (Aug. 2015).
https://www.biologicaldiversity.org/species/amphibians/foothill_yellow-legged_frog/pdfs/CBD_comments_on_FYLF_8-28-15.pdf

Climate Action Plan for San Francisco (Sept. 2004).
https://sfenvironment.org/sites/default/files/fliers/files/climateactionplan.pdf.

CoolCalifornia.org, "Water-saving strategies."
http://www.coolcalifornia.org/tip/water-lg.

Duke Nicholas Institute, "Greenhouse Gas Mitigation Opportunities in California Agriculture" (Feb. 2014).
http://aic.ucdavis.edu/publications/california%20economics%20for%20GHG%20dduke%20report.pdf.

Schwartz, M.W., Iverson L.R., Prasad A.M, Matthews S.N. O'Conner, R. 2006. Predicting Extinctions as a Result of Climate Change. Vol. 87, No. 7: 1611-1615.
https://kb.osu.edu/dspace/bitstream/handle/1811/49027/1/fac_IversonL_Ecology_2006_87_7.pdf

Strategic Energy Innovations and Bay Area Air Quality Management District, "Conducting A Municipal Greenhouse Gas Emissions Inventory: A Practical Guide" (Aug. 2009).
http://www.ca-ilg.org/sites/main/files/file-attachments/Municipal_GHG_Inventory_Guidebook.pdf.

Exhibit Two

Via Electronic Mail and USPS (w/Attachments)

Jason R. Hade
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Re: Comments on Napa County's Final Draft Climate Action Plan

Dear Mr. Hade:

These comments are submitted on behalf of the Center for Biological Diversity (the "Center") regarding Napa County's Final Draft Climate Action Plan (the "Final CAP"). The Final CAP and the County's response to comments do not adequately address the Center's previously stated concerns regarding the procedural and substantive inadequacies of the Draft CAP. As with the Draft CAP, the Final CAP is not sufficient as a compliance mechanism under the California Environmental Quality Act ("CEQA") because it does not provide specific, mandatory, and enforceable policies necessary to adequately fulfill the County's legal responsibilities to mitigate greenhouse gas ("GHG") emissions arising from within the County. In addition, the Center hereby incorporates by reference its comments on the Draft CAP, which were submitted to the County on March 9, 2017 (the "March 9th Letter").

The Center is a non-profit, public interest environmental organization dedicated to the protection of native species and their habitats through science, policy, and environmental law. The Center has over one million members and online activists throughout California and the United States. The Center has worked for many years to protect imperiled plants and wildlife, open space, air and water quality, and overall quality of life for people in Napa County.

I. The General Plan EIR does not adequately serve as a CEQA compliance document.

In the March 9th Letter, the Center noted that it did not appear that the County had prepared an EIR for the Draft CAP. In its Responses to Comments and in the "CEQA Memorandum" thereafter issued by the County, the County has taken the position that the General Plan EIR serves as the CEQA environmental review document for the Final CAP. The CEQA Memorandum references what is asserted to be a hyperlink to the General Plan EIR, but the hyperlink merely directs the user to a database containing various County documents. (*See* CEQA Memorandum at 1.) After reviewing the database, Center staff were able to locate

portions of the General Plan EIR in various separate PDFs, but it is unclear whether the entire document is available. To the extent that the County is continuing to maintain that its CEQA compliance is based upon the General Plan EIR, the General Plan EIR – including comments on the General Plan EIR[1] – should have been easily accessible to the public so that the public can comment on whether that document adequately fulfills its purported role as an EIR for the Final CAP. The Final CAP should be recirculated along with the documents that the County believes support its CEQA compliance.

The CEQA Memorandum claims that the General Plan EIR "contained an extensive discussion of climate change and GHG emissions in Section 3.4.4 of the Final EIR, including potential strategies for reducing emissions in compliance with AB 32." (CEQA Memorandum at 1.) Yet, an "extensive discussion" of a topic is not the same as an adequate project description. Under CEQA, a "project" is defined as "the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment . . . ." (*Tuolumne County Citizens for Responsible Growth, Inc. v. City of Sonora* (2007) 155 Cal.App.4th 1214, 1222 (citing CEQA Guidelines § 15378, subd. (a).) An "accurate, stable and finite project description is the *sine qua non* of an informative and legally sufficient EIR." (*Cnty. of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 193; (*San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645, 655 (project description held unstable and misleading) [hereinafter "*San Joaquin Raptor*"].) "However, a curtailed, enigmatic or unstable project description draws a red herring across the path of public input." (*San Joaquin Raptor*, 149 Cal.App.4th, at 655.).

The County is correct that section 3.4.4 of the Final EIR contains a general discussion of climate change and states that the County plans to prepare a "greenhouse gas reduction plan" to "reduce GHG emissions to 1990 levels by 2020." (General Plan Final EIR at 3.0-50.) This brief section – which is in the Final EIR's response to comments – does not qualify as a project description. More importantly, nowhere in the Final EIR is a detailed discussion of the various environmental impacts associated with the Final CAP. This omission is unsurprising given that the Final CAP did not exist at the time the General Plan EIR was drafted or certified.

The lack of analysis of the Final CAP's environmental impacts is not merely a theoretical problem with the CAP. By the County's own admission, the Final CAP will "streamline" CEQA review for discretionary projects in the County, thereby acting as a catalyst for future development – among many other impacts, the Final CAP will allow development applicants to avoid further CEQA review for GHG impacts even when they destroy up to 70 percent of the tress on their lands. The Final CAP's streamlining of development may also lead to growth-inducing impacts. Yet, the County never acknowledges the impacts of the CAP. By the same token, no environmental review document exists that analyzes the effectiveness (or lack thereof) of the mitigation measures proposed in the Final CAP.

[1] Indeed, the Center submitted a letter that identified deficiencies in the General Plan EIR (referenced as Letter 138) in the General Plan EIR, which is hereby incorporated by reference.

The CEQA Memorandum also is inconsistent with the General Plan EIR. On the one hand, the CEQA Memorandum recounts that the General Plan EIR stated that even with the "preparation of an emission reduction plan such as the Climate Action Plan now proposed," GHG impacts would be "significant and unavoidable." (CEQA Memorandum at 1.) On the other hand, the CEQA Memorandum states that the Final CAP would "effectively mitigate the impact." (*Id*. at 2.) The County is thus changing its position regarding the purported effectiveness of a CAP. The County's change in position is at odds with its claim in the Responses to Comments that there "have been no changes to the General Plan, no changes to circumstances, and no new information of substantial importance that would necessitate supplemental environmental review." Instead, the County's change in position indicates that all of these changes have occurred.

Moreover, the County's claim that the General Plan EIR functions as the environmental review document for the Final CAP is inconsistent with the text of the Final CAP – the Final CAP states that "***The CAP is not a part of the General Plan***, but must be maintained consistent with the General Plan." (Final CAP at 1-7, emphasis added.) The County cannot claim that the Final CAP is a "project" covered by the General Plan EIR while also claiming that the Final CAP is not part of the General Plan.

The County needs to prepare an EIR analyzing and explaining how the emission reduction plan purportedly described in the General Plan EIR has changed such that it now will in fact reduce GHG impacts to less than significant levels. Such a change in the project is obviously significant and warrants the preparation of additional environmental review documentation. It is unclear how the County will be able to explain this change in position, given that even the Final CAP frames itself as an optional set of policies that applicants for projects can comply with in order to avoid more extensive CEQA review. (*See* Final Appx. D Checklist at 1 ("Projects requiring discretionary review that cannot demonstrate consistency with the CAP using this Checklist would be required to prepare a separate, more detailed project-level GHG analysis as part of the CEQA document prepared for the project.").)

A. *Sierra Club v. County of San Diego* requires preparation of an EIR.

Courts have required the preparation of an EIR when a county adopts a CAP. In *Sierra Club v. County of San Diego* (2014) 231 Cal.App.4th 1152, the County claimed that it did not have to prepare an EIR for its CAP because the CAP "was the same project as the general plan update." (*Id*. at 1170.) Both the trial court and Court of Appeal rejected this argument. The Court of Appeal held that the County of San Diego had violated CEQA by failing to analyze and make findings regarding the impacts of the CAP project. (*Id*. at 1170-1171.)

At a minimum, the County should prepare a "tiered EIR" which analyzes "the impacts of a later project that is consistent with an EIR prepared for a general plan, policy, or program . . . ." (*See id*. at 1165.) In *Sierra Club*, the Court of Appeal held that an EIR was required because (1) the General Plan Update Program EIR did not include sufficient detail on the CAP; (2) the project (the CAP) was not created at the time of the General Plan Update; and (3) the General

Plan Update Program EIR did not contemplate preparation of the project at the "plan level." (*Sierra Club*, 231 Cal.App.4th at 1171-1175.) Moreover, the General Plan Update Program EIR in *Sierra Club* did not include "baseline GHG emissions inventory; detailed GHG-reduction targets and deadlines; comprehensive and enforceable GHG emissions-reduction measures; and implementation, monitoring, and reporting of progress toward the targets defined in the CAP." (*Id*. at 1174.) Similarly, the environmental impacts of the CAP in *Sierra Club* were not independently or adequately analyzed. (*Id*. at 1172.) The Final CAP here shares all of the same defects as the CAP in *Sierra Club* and therefore violates CEQA.

II. The Final CAP "Mitigation Measures" are even weaker than those in the Draft CAP.

Like the Draft CAP, the Final CAP fails to contain specific and enforceable mitigation measures that will actually reduce the County's GHG impacts to less than significant levels. The March 9th Letter described how the "mitigation measures" in the Draft CAP did not meet the standard of CEQA mitigation measures and how language "encouraging" or "supporting" certain measures were expressly disapproved by the California Attorney General. The Final CAP contains most of the same improper language, and in the Responses to Comments the County merely states that it "respectfully disagrees" with the Center's position that the CAP is not sufficient as a CEQA streamlining document. (Responses to Comments at 10.) Nowhere does that County explain how these measures meet the standard set forth by the California Attorney General. Indeed, the Final CAP actually contains ***more*** such voluntary language – for instance, Measure AG-2 previously stated "Convert all stationary diesel or gas-powered irrigation pumps to electric pumps" but the word "convert" is now replaced with "***support*** the conversion of." (Final CAP at 3-20.)

Sierra Club criticized the County of San Diego for including measures in its CAP that were not backed up by a firm commitment by the County that they would be implemented. More specifically, the Court noted that many of the measures in the CAP "are not currently funded," such that the County of San Diego could not rely upon such unfunded programs to meet GHG reductions. (231 Cal.App.4th at 1168-1169.) *Sierra Club* also questioned whether people would participate in various programs outlined in the CAP, given that the record contained no evidence of such participation. (*Id*. at 1170.) Here, the Final CAP suffers from similar defects – there is no evidence of funding the various programs set forth in the Final CAP or that people or industry will actually participate in the voluntary programs described in the Final CAP.

Notably, even regulated parties have raised concern regarding the lack of clarity regarding which measures in the Final CAP are enforceable and which are voluntary. As you know, the Napa Valley Grapegrowers ("NWG") sent you a letter on June 30, 2017 stating that "considerably more clarification and consideration is needed prior to adopting the proposed CAP" and that more time is needed to understand the Checklist and "the definition of 'voluntary'." NWG also noted the very tight timeline in assessing the Checklist. The County should heed the request from both the environmental and regulated communities to slow down

the process to allow time for meaningful public participation and a comprehensive and adequately drafted CAP.

In any event, the Final CAP appears to have further reduced the amount of measures enforceable against project applicants. For instance, in its Responses to Comments, the County discloses that the Checklist in Appendix D (which was unavailable until after the comment period for the Draft CAP), only lists some of the mitigation measures in the CAP that "can be feasibly applied to projects that are subject to discretionary review…" (Response to Comments at 11.)

In reviewing the Checklist, only a handful of the mitigation measures described in the Draft CAP actually appear on the Checklist. To the extent that any of the mitigation measures described in the Draft or Final CAP are enforceable against individual project applicants, only those in the Checklist would even potentially meet this standard. And as discussed in the March 9th Letter, these measures are not adequate to reduce impacts to less than significant levels. Similarly, the County has failed to analyze or explain in either Final CAP or in CEQA document how each of these measures will adequately reduce GHG impacts.

Similarly, other mitigation measures have been further weakened. For instance, TR-10 – which requires that the County "promote existing ride-matching services for people living and working in the county" now only applies to the "unincorporated county." (Final CAP at 3-16.) This revisions means that the County's efforts to promote such services will be much more limited.

III. The Final CAP inexplicably exempts major types of projects from the CAP and allows County staff to modify the CAP outside of public view.

The Checklist discloses that many types of major projects are exempt from the Checklist, including "roads, pipelines, or other public works projects that are not directly tied to specific development proposals." (Checklist at 3.) The County claims that these types of projects "would not result in changes in land use" such that the Checklist and the CAP may not be applicable. Yet, building highways, roads, or infrastructure projects obviously ***do*** result in changes in land use – they do so by physically altering the land, and often lead to growth inducing impacts or further residential, commercial, or agricultural development. The County does not provide any evidence or analysis for its striking assertion to the contrary.

The Checklist then suggests that such road or infrastructure projects might have to undergo other CEQA review, but that "staff" would make a "final determination" as to whether such review is necessary or whether the Checklist suffices. CEQA requires that such decisions be made in public by the decision-maker (e.g., the County Board of Supervisors), not by staff in a secretive and non-public process.

The Checklist further states that it is an "administrative document" that can be "updated periodically by County staff…" (Checklist at 3.) In other words, the Checklist – which is

essentially the heart of the CAP and the only document setting forth purported "mitigation" measures – ***can be changed in the future at any time by County staff***. Indeed, there is nothing prohibiting County staff from significantly weakening the already feeble mitigation measures in the Checklist – all outside of public view and outside of the CEQA decision-making process. The Checklist and the Final CAP clearly are not sufficient under CEQA to allow for "streamlined" CEQA compliance.

Sierra Club also indicates that the Final CAP's "mitigation" is legally insufficient under CEQA. In *Sierra Club*, the Court held that the CAP is required by CEQA to incorporate mitigation measures and a monitoring program directly into the document. (231 Cal.App.4th at 1173.) *Sierra Club* therefore prohibits "off-loading" these measures into an "administrative document" which is subject to change by County staff at any time.

IV. The Final CAP should require stronger Building Energy Measures.

The generation and consumption of electricity poses many negative impacts to human and environmental health. Therefore, it is necessary to both reduce consumption through conservation and efficiency, and also transition to less damaging forms of generation. Electricity generation accounts for 20% of California's greenhouse gas emissions. (CARB 2016) Without energy efficiency measures, California's combined electricity demand is projected to grow by 1.41 percent from 2010-2020, while efficiency measures could reduce that to a projected .91 percent. (CEC 2011) Electricity generated from fossil fuels contributes to air pollution from carbon dioxide and fine particulate matter, and water pollution from direct spills or impacts to groundwater through drilling, mining and injection activities. (Heberger 2015) The generation of electricity is highly water intensive, which is problematic in persistent drought conditions. (Larson 2007) In order to reduce the negative impacts to water supplies, water and energy utilities should work together to design more efficient systems for both resources. (Tarroja 2016) Wildlife and their habitats are impacted by electricity generation and transmission. (Cameron 2012) The land-use footprint of energy production is significant and will continue to grow with population unless conservation and distributed generation siting measures are put in place. (Trainor 2016)

The concept of energy efficiency as a resource has the potential to decrease energy production requirements and associated costs and negative impacts. Energy efficiency reduces the need for resource consumption and is thereby in itself a consumable resource with positive impacts rather than negative. (Hopper 2009) Shifting from non-renewable fossil fuels to renewable energy sources will reduce greenhouse gas emissions, air and water pollution and impacts to wildlife and habitat provided these renewable sources are sited appropriately in the vicinity of the demand they serve. (McDonald 2009; Hernandez 2015) Distributed solar, often referred to as rooftop or on-site solar, is a good example of appropriately sited renewable energy that maximizes system and cost efficiency and protects open space, wildlife and habitat. (Elkind 2009; Powers 2009) Legislation that supports the appropriate siting of renewable energy, such as the California Green Building Standards Code, which requires solar-ready roofs and solar-ready pre-wiring, is needed to ensure that renewable energy is able to realize its full potential. (LA

Dept. Public Planning 2013) Building codes that support and encourage passive solar design contribute to even greater energy efficiency. (LA DPP 2013) Another building design concept that offers a variety of benefits from greater energy security to cost efficiency and environmental protection is the zero energy building. Such buildings produce enough renewable energy to meet annual needs, and when combined into communities, the zero energy design means that these areas are no longer reliant upon nonrenewable energy grids that harm human and environmental health, contribute to climate change and are vulnerable to outages and natural disasters. (Peterson 2015) The California Public Utilities Commission has committed to the goal of zero net energy for all new residential construction by 2020 and for all new commercial construction by 2030. (CPUC 2008)

While the above-cited science and policies indicate that there are feasible means to significantly reduce energy consumption and GHG impacts, the Final CAP does not require LEED or even minimum amounts of solar generation on residential development. Instead it merely requires compliance with the California Building Code for projects through 2019, and suggests that zero net energy will be required for some residential projects beginning in 2020. As discussed in the March 9th Letter, feasible technologies already exist that go above and beyond California Building Code requirements – such technologies including LEED and/or solar generation should be required of all residential projects. Such standards should apply to commercial projects as well. And while the Center supports the use of zero net energy, the Checklist does not contain sufficient to detail for the County to ascertain whether the applicant is in fact meeting zero net energy. Instead, zero net energy is framed as a "yes" or "no" question on the Checklist with 8 lines of blank space for the applicant to describe how zero net energy is met.

Notably, the County did not respond to the Center's comments regarding LEED certification or minimum solar generation. The County's failure to respond on this topic and other topics runs afoul of *Sierra Club*, which faulted the County of San Diego for not responding to comments from the Sierra Club regarding measures that had been implemented elsewhere. (231 Cal.App.4th at 1173.)

V. The Final CAP does not adequately mitigate the GHG impacts of sprawl development.

As discussed in the March 9th Letter, the Draft CAP contains very little analysis of the impacts of sprawl development on GHG emissions. The Final CAP compounds this lack of analysis by including a Checklist that purports to exempt road and infrastructure projects from the CAP. The County should take this critical opportunity to develop a CAP that address and mitigate the significant GHG impacts arising from the siting of residential projects.

VI. The Final CAP should include stronger Agriculture Measures based upon the best available science.

The March 9th Letter identified specific strategies the County could adopt to help control emissions associated with agriculture. The County did not respond to the Center's suggestions. Instead, the agricultural mitigation measures in the Final CAP have been watered down at the request of regulated parties. The Responses to Comments indicate that the County has modified AG-1 so that it "encourage[s] reductions in open burning where possible, rather than suggesting that it should be banned."[2] (Responses to Comments at 8.) While the County claims that AG-5 will make up for changing AG-1 to a "voluntary measure," AG-5 also "focuses on ***voluntary*** efforts" to reduce N2O emissions. (*Id*., emphasis added.) Because AG-5 also is voluntary by the County's own admission, neither AG-1 nor AG-5 can be used to substantiate any reduction in GHG emissions. Nor can they be used as CEQA streamlining tool.

Scientists and policy-makers have already identified other sustainable management practices that can be used to reduce GHG emissions arising from agriculture. (*See* 2013 Comargo) Some of the policies identified include using organic agricultural practices, cover cropping, better equipment maintenance, optimizing tillage, solar powered pumps, biogas control systems, and reforesting rangelands. (*See* Table 5 of 2013 Haden.) Similarly, improved cropland and grazing land management and restoration of degraded lands are significant means to reduce GHG emissions. (*See* 2008 Smith)

VII. The Final CAP's Land Use Change Measures are insufficient to protect Napa's forests or achieve adequate GHG reductions.

In the March 9th Letter, the Center explained how the Draft CAP did not contain sufficient measures to mitigate the impacts of destroying trees and forests in the County (e.g., LU-1, which claims to require two trees to be planted for everyone one destroyed). Once again, requiring preservation of only 30 percent of trees is an extremely low goal given the significant deforestation which has already occurred in the County. Similarly, the County has not shown how this goal is consistent with Public Resources Code section 9001.5, which sets forth a policy for the protection of "natural and working lands," including "forests, grasslands, [] freshwater and riparian systems . . ." Nor does the record indicate that the County considered this policy in preparing the Final CAP.

Furthermore, the Responses to Comments reveal that LU-1 does not even require that the trees be planted in Napa County. (Responses to Comments at 7.) Once again, the Final CAP does not explain how this tree planting program will adequately mitigate the significant impacts of destroying large numbers of trees in the County. For instance, there is no program to ensure that such tree planting is "additional" in the sense that it would not already occur, nor is there effective monitoring to ensure that trees planted actually survive and grow into large trees (and,

[2] The Final CAP also now states that the County "does not have regulatory control over open burning," (Final CAP at 3-20) but does not cite any regulation or policy prohibiting it from exerting such control.

as discussed above, no environmental review was conducted of this mitigation measure). Furthermore, the Final CAP does not account for the temporal loss of carbon sequestration for the many dozens of years while the newly-planted trees are growing. Given the potentially catastrophic impacts of climate change over the coming decades (including potential tipping points), such half-measures that will provide virtually no carbon sequestration benefits for many years are not sufficient.

The Final CAP similarly does not account for impacts to wetlands or soils. In response to comments citing the Draft CAP's failure to quantify losses in carbon sequestration arising from wetlands and soils, the County states that it would need to conduct a "detailed study," but that such a study "was not readily available." The time to do such studies is concurrent with the adoption of the Project (the CAP) through the environmental review process. The County should take the time to conduct a thorough analysis of the environmental impacts (and potential benefits) of the CAP as required by CEQA, instead of either (1) deferring such analysis to some unspecified future time or (2) refusing to develop meaningful mitigation measures due to a claimed lack of information.

VIII. The Final CAP ignores impacts of climate change on wildlife.

As discussed in the March 9th Letter, the CAP does not address the impacts and risks to wildlife arising from climate change, such as increased temperatures, increased wildfire risk, and increased likelihood of flooding. This omission remains in the Final CAP, and the County did not respond to this concern in its Responses to Comments.

IX. The Final CAP still does not require consistent reporting of progress.

In the March 9th Letter, the Center requested that the County prepare emissions inventory and implementation measure status reports every two years instead of every five years. While the Final CAP appears to now require an evaluation of measures every two years, it still only requires the more detailed reports with emissions inventory every five years. (Final CAP at 6.) The Center is concerned that the two-year reports may not contain necessary information because the Final CAP does not specify what information (if any) must be included in these reports. And by setting forth five categories of information for the five-year reports (estimated annual GHG reductions, participation rates, implementation costs and funding needs, community benefits realized, remaining barriers to implementation, and recommendations for changes to the CAP), the Final CAP suggests that the two-year reports need not include this information. The Center again requests that more consistent monitoring and reporting be required in order to assess the progress of the CAP. Such monitoring and reporting is particularly necessary because – as noted above – the Checklist indicates that County staff may alter the required mitigation measures at any time, which necessarily would alter the effectiveness of the CAP.

X. The Final CAP should include stronger science-based water conservation measures.

Water availability and quality is a critical issue for California, with substantial implications for land use, the economy, and the environment. Since 2011, the state has been experiencing severe drought conditions, prompting a mandatory 25% reduction in municipal water use, cuts to senior agriculture water rights, and the 2014 Sustainable Groundwater Management Act. (Wilson 2016) Even as surface drought conditions are alleviated by recent precipitation, there is still a deficit in groundwater, which is a critical component of the state's water supply system. Not only are the state's human residents vulnerable to impacts of drought, so too are its iconic plants, animals and regions. In the face of climate change, the gap between supply and demand will continue to widen as the existing water deficit is unreconciled with increased pressures from development, population growth and agriculture. (Wilson 2016) California's water supply relies heavily on snow pack in the Sierra Nevada Mountains, which has been at record lows the past few years. (Weiser 2016) As the snow pack continues to diminish, California has become increasingly dependent on groundwater extraction to meet its water needs. Aquifer depletion and land subsidence have become a serious concern as an increasingly warmer climate has resulted in less snowpack, less rain and more evaporation. A business as usual approach cannot and does not address the complex nature of California's water needs in a changing climate. Innovations in science and technology, as well as in legal, political and social structures, are required to adequately manage the state's water security in an uncertain future. (Dept. of Water Resources 2009; Cooley 2016)

The Final CAP should require that new development projects maximize water use efficiency and conservation in their plans. An ideal method for ensuring incorporation of such measures is through a life-cycle assessment of the project accounting for not only the end product but also the whole life of all products, materials and processes being used. (Ghattas 2013) Water efficiency and conservation should be central aspects of not only the final project, but also of all materials and processes used in its construction. A similar concept to this holistic style of project design is known as cradle to cradle design which emphasizes the creation of systems that generate no waste throughout their life span. (Tyrnauer 2008) Technology and legislation now enable and incentives many forms of water conservation. (Cooley 2016; LA Dept. of City Planning 2013) For example, preventing water loss due to run-off can be accomplished by laser-leveling of land during project construction, and installing permeable surfaces in place of traditional paving where applicable allows for groundwater recharging. (Shanesy 2016) Landscaping choices offer a prime opportunity for water conservation. Drought tolerant and native plants and rain gardens which allow for groundwater recharging are a responsible alternative to traditional lawns and plants with high water demands. (Ritzo 2015) Drip and micro-spray irrigation also limit water use and waste by only watering specific areas and avoiding evaporation. Graywater filtration systems can be used to reclaim waste water from sinks showers and laundry for use in irrigation. (Ritzo 2015; LA Dept. of City Planning 2013) High density, attached housing designs such as urban infill projects maximize water use efficiency by concentrating demand and also reducing the total area of landscaping, as compared to detached, single family homes. High density infill projects also assist with maintaining water

quality, and thus reducing costs associated with treatment, by preserving more open space and undeveloped land that is then able to act as a natural filtration system and recharge for groundwater. (Cosgrove 2015)

Energy and water are inextricably linked as energy generation is water-intensive, and water treatment and delivery is energy-intensive; increased integration in a shared systems paradigm would result in greater efficiency for both. (Tarroja 2016; Larson 2007) Part of what makes water use energy-intensive is the distance it must travel to reach users. (Fang 2015) Developments located far from existing water sources require more energy and are thus less efficient. (Cosgrove 2015) Another factor is the energy demand involved in treating waste water. Given that approximately 8% of California's electricity consumption is for treating and transmitting water, water utilities could reduce carbon emissions by investing in renewable sources of energy for treatment and transmission. (Fang 2015) On a residential scale, energy is needed for heating water for washing, and this energy demand could be reduced with more efficient appliances. (Cohen 2004) Therefore, increasing urban water use efficiency will decrease demands for energy generation. Considering that many types of energy generation not only require large amounts of water, but also contribute to water pollution, water and energy production cannot be easily separated. The Final CAP should require that new development projects recognize this linkage water-energy linkage and design plans that are both water and energy efficient, as one cannot be truly effective without the other. (Larson 2007)

XI. The Final CAP should include stronger science-based transportation measures.

Transportation infrastructure is important for the movement of people and goods. Although roads are needed to facilitate movement among other types of transportation infrastructure, such as railroads and ports, they often lead to the most negative impacts on public health and the environment. (Newman; Betancourt and Vallianatos 2012) The ubiquity of highways, freeways and surface streets makes roads the most heavily used form of transportation. (Noland and Cowart 2000) Road construction and maintenance contribute substantially to greenhouse gas emissions. (B.C. Ministry of Transportation and Infrastructure 2011; Santero and Horvath 2009) Road construction facilitates development into remote or isolated areas, many of which may serve as quality habitat for wildlife. The expansion into undeveloped areas is not only problematic for wildlife, but it also exacerbates issues with urban sprawl, such as reduced open space, increased traffic congestion and increased greenhouse gas emissions. (Hansen and Huang 1997)

Since roads are so prevalent and fraught with negative public health and environmental impacts, people and businesses need to be given better transportation options to reduce their reliance on personal vehicles. Improving rail infrastructure and using clean fuel trains can reduce road use and improve air quality. Diesel is highly polluting, and it has become a serious public health issue for areas with high volumes of diesel truck traffic such as ports and warehouse centers. (Betancourt and Vallianatos 2012) Converting truck fleets to cleaner fuels would help alleviate this health problem. (Bailey) Promotion of more efficient public transportation, also using cleaner fuels for buses, can reduce the amount of private vehicles on the roads. (Anderson

2015) Siting housing, shopping and employment centers in a higher density can remove the need for driving. (Welch) Existing roads should be retrofitted, where applicable, to make them safer for activities such as biking and walking, thus expanding their capacity beyond use solely by vehicles. (Anderson 2015; Atherton 2017) Road construction and maintenance projects can implement more effective technology to reduce greenhouse gas emissions and improve fuel efficiency. (B.C. Ministry of Transportation and Infrastructure 2011; Wang 2014) Vehicle fuel efficiency standards should be raised to make driving as efficient as possible with less pollution. (US DOT)

Unfortunately, the Final CAP contains the same problems as the Draft CAP in that it only contains weak and non-binding transportation measures. The County should take advantage of the best available science to adopt the mitigation measures discussed above.

XII. The Center shares the concerns set forth by Napa Vision 2050 and Sierra Club.

The Center joins in the concerns raised by Napa Vision 2050 and the Sierra Club regarding the CAP's inventory analysis, mitigation measures, and black carbon emissions. As with the Center's comments, the comments of these organizations have not been adequately addressed by the County in the Responses to Comments or in the Final CAP.

XIII. Conclusion.

Given the possibility that the Center will be required to pursue appropriate legal remedies in order to ensure enforcement of CEQA, we would like to remind the County of its duty to maintain and preserve all documents and communications that may constitute part of the "administrative record." As you may know, the administrative record encompasses any and all documents and communications which relate to any and all actions taken by the County with respect to the Project, and includes "pretty much everything that ever came near a proposed [project] or [] the agency's compliance with CEQA . . . ." (*County of Orange v. Superior Court* (2003) 113 Cal.App.4th 1, 8.) The administrative record further contains all correspondence, emails, and text messages sent to or received by the County's representatives or employees, which relate to the CAP, including any correspondence, emails, and text messages sent between the County's representatives, employees, or consultants. And given that the County is claiming that the General Plan EIR constitutes the environmental review documentation for the CAP, the administrative record (including all correspondence) for the General Plan is part of the administrative record for the CAP. Maintenance and preservation of the administrative record requires that, *inter alia*, the County (1) suspend all data destruction policies; and (2) preserve all relevant hardware unless an exact replica of each file is made.

Thank you for the opportunity to submit comments on the Final CAP. We look forward to working to assure that the Final CAP sets forth a specific and enforceable plan to reduce the County's GHG emission in accordance with state law. Please do not hesitate to contact the Center with any questions at the number listed below.

Sincerely,

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References

Anderson, G. and Laura Searfoss, *Safer Streets, Stronger Economies*, National Complete Streets Coalition and Smart Growth America (2015)

Atherton, E. et al., *Dangerous by Design 2016,* Smart Growth America and National Complete Streets Coalition (2017)

B.C. Ministry of Transportation and Infrastructure, *Reducing greenhouse gas emissions in the B.C. road building and maintenance industry* (2011).

Bailey, D., et al., *Clean cargo: a guide to reducing diesel air pollution from the freight industry in your community*, NRDC

Betancourt, S. and Mark Vallianatos, *Storing harm: the health and community impacts of goods movement warehousing and logistics*, THE Impact Project (2012).

California Energy Commission, *Preliminary California Energy Demand Forecast 2012-2022*, CEC (2011).

Camargo, G., *Matthew Ryan and Tom Richard, Energy Use and Greenhouse Gas Emissions from Crop Production Using the Farm Energy Analysis Tool*, BioScience 63:4, 263-273 (2013).

Cameron, D.R., Brian S. Cohen and Scott A. Morrison, *An approach to enhance the conservation-compatibility of solar energy development*, PLoS One 7:6 (2012).

Cohen, R., Barry Nelson and Gary Wolff, Energy down the drain: The hidden costs of California's water supply, Natural Resources Defense Council (2004).

Cooley, H. et al., Where We Agree: Building Consensus on Solutions to California's Urban Water Challenges, Pacific Institute (2016).

Cosgrove, J. and Colin Parent, Water Infill – Infill Development: A key strategy for water in San Diego, Circulate San Diego (2015).

CPUC, *California long term energy efficiency strategic plan: Achieving maximum energy savings in California for 2009 and beyond* (2008).

Dept. of Water Resources, California's Drought: water conditions and strategies to reduce impacts, Report to the Governor (2009).

Elkind, E., *In Our Backyard: How to increase renewable energy production on big buildings and other local spaces*, Berkeley School of Law and UCLA School of Law (2009).

Fang, A.J. Joshua P. Newell and Joshua J. Cousins, The energy and emissions footprint of water supply for Southern California, Environ. Res. Lett. 10 (2015).

Ghattas, R. et al., Life Cycle Assessment for Residential Buildings: a literature review and gap analysis, Concrete Sustainability Hub, MIT (2013).

Haden, V. et al., *Use of Local Greenhouse Gas Inventories to Prioritise Opportunities for Climate Action Planning and Voluntary Mitigation by Agriculture Stakeholders in California*, Journal of Environmental Planning and Management 56:4, 553-571 (2013).

Hansen, M. and Yuanlin Huang, *Road supply and traffic in California urban areas*, Transpn. Res. – A, 31:3 205-218 (1997).

Heberger, M. and Kristina Donnelly, *Oil, food and water: Challenges and opportunities for California agriculture*, Pacific Institute (2015).

Hopper, N. et al., *Energy efficiency as a preferred resource: evidence from utility resource plans in the Western US and Canada*, Energy Efficiency 2:1-16 (2009).

Larson, D. et al., California's energy-water nexus: water use in electricity generation, Southwest Hydrology (Sept./Oct. 2007).

Lohan, T., Six New California Law Impacting Water, Water Deeply (2016).

Los Angeles Dept. of City Planning, Opportunities for Conservation in Residential Development, Housing Element 2013-2021 (2013).

Newman, P., *Inland Ports of Southern California – warehouses, distribution centers, intermodal facilities, costs and trends*, Center for Community Action and Environmental Justice

Peterson, K., Paul Torcellini and Roger Grant, *A Common Definition for Zero Energy Buildings*, U.S. Dept. of Energy and The National Institute of Building Sciences (2015).

Powers, B., *CEC cancels gas-fed peaker, suggesting rooftop photovoltaic equally cost-effective*, Natural Gas & Electricity 8-13 (2009).

Ritzo, J. Water Saving Strategies, blog post at http://www.314beachlofts.com/water-saving-strategies/ (2015).

Santero, N. J. and Arpad Horvath, *Global warming potential of pavements*, Environ. Res. Lett. 4 (2009).

Shanesy, L., Six Worthy Projects for World Water Day, Builder (March 21, 2016).

Smith, P. et al., *Greenhouse Gas Mitigation in Agriculture*, Phil. Trans. R. Soc. B 363, 789 – 813 (2007).

Tarroja, B. et al., Capturing the benefits of integrated resource management for water and electricity utilities and the partners, U.S. Dept. of Energy and UC Irvine (May 2016).

Tyrnauer, M., Industrial Revolution, Take Two, Vanity Fair (May 2008).

U.S. Dept. of Transportation, *Freight Land Use and Sustainability*

Wang, T., John Harvey and Alissa Kendall, *Reducing greenhouse gas emissions through strategic management of highway pavement roughness*, Environ. Res. Lett. 9 (2014).

Weiser, M., Drought a Long-Term Battle, Study Says, Water Deeply (2016).

Welch, A., Kaid Benfield and Matt Raimi, *A citizen's guide to LEED for Neighborhood Development: how to tell if development is smart and green,* NRDC, Congress for the New Urbanism and USGBC.

Wilson, T.S., Benjamin M. Sleeter and D. Richard Cameron, Future land-use related water demand in California, Environ. Res. Lett. 11 (2016).

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Sent via email and fedex

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Re: Napa County's Notice of Preparation of Environmental Impact Report & Revised Draft Climate Action Plan

Dear Mr. Hade,

These comments are submitted on behalf of the Center for Biological Diversity (the "Center") regarding Napa County's Notice of Preparation (NOP) of Environmental Impact Report ("EIR") for the County's Climate Action Plan and Revised Draft Climate Action Plan ("CAP"). The Center is pleased to see that County will be preparing an EIR for the CAP rather than relying on the County's previous General Plan EIR. The Center looks forward to closely reviewing the Draft EIR for the CAP when it is released in the coming months.

However, the Center remains concerned the most recent version of the CAP has failed to adequately address the concerns raised by the Center and other groups regarding the substantive inadequacies of the CAP. Those concerns were detailed in letters sent to the County on March 2017 and July 2017 both of which are attached to this comment letter at Exhibits 1 and 2. The CAP continues to fail to meet the requirements of California Environmental Quality Act ("CEQA") because it does not provide specific, mandatory and enforceable policies necessary to adequately fulfill the County's goal to reduce and mitigate greenhouse gas ("GHG") emissions arising from within the County. The Center urges the County to further revise the CAP as it prepares the associated EIR so the CAP can meet the requirements for a GHG compliance mechanism under CEQA.

The Center is a non-profit, public interest environmental organization dedicated to the protection of native species and their habitats through science, policy, and environmental law. The Center has over 1.6 million members and online activists throughout California and the United States. The Center has worked for many years to protect imperiled plants and wildlife, open space, air and water quality, and overall quality of life for people in Napa County.

I. The County Must Prepare A Thorough and Comprehensive EIR Prior to Adopting the CAP

Under CEQA, environmental review of a project must provide decision-making bodies and the public with detailed information about the effect a proposed project is likely to have on the environment, to list ways in which the significant effects of a project might be minimized, and to indicate alternatives to the project. (Pub. Res. Code § 21061.) These requirements help ensure that the public and decision makers that are reviewing and deciding on the project know the full scope of the project and its impacts. (*See* CEQA Guidelines, §§ 15126, 15358(a).) Environmental review that fails to provide these details undermines the fundamental requirement of public disclosure in CEQA.

When preparing the EIR for the CAP, the County must consider all sources of GHG emissions resulting from activities within the County. GHG emissions that must be acknowledged, addressed and mitigated include indirect, long-term and long-range emissions such as national and international wine distribution, wastewater disposal out of county, and tourist travel. These emissions are part of the project the EIR is analyzing and are appropriate for inclusion in the CAP. Under CEQA, a "project" is defined as "the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment . . . ." (*Tuolumne County Citizens for Responsible Growth, Inc. v. City of Sonora* (2007) 155 Cal.App.4th 1214, 1222 (citing CEQA Guidelines § 15378, subd. (a).)

As the NOP makes clear, the objectives of the CAP "are to reduce GHG emissions, streamline project reviews consistent with the California Environmental Quality Act (CEQA) by serving as a 'qualified GHG reduction plan' under CEQA Guidelines Section 15183.5, provide strategies for the community to use in adapting to the effects of climate change, and prioritize measures to comply with California environmental and land use planning laws." (NOP at p.1.) These lofty goals can only be accomplished if the EIR includes a comprehensive analysis of current and potential future GHG emissions; a thorough analysis of the potential impacts of a streamline approach; impacts from a changing climate on the County's environment and adopts specific, effective and enforceable mitigation measures to address those emissions. Both CEQA and relevant case require such an approach. (*Sierra Club v. County of San Diego* (2014) 231 Cal.App.4th 1152.)

II. The Revised Draft CAP Remains Inadequate and Must Undergo Further Revision Before Adoption

The Center laid out in detail numerous concerns with the prior versions CAP in our prior 2017 letters and many of the concerns still apply to the revised draft CAP. For your reference we have attached our prior comment letters to this comment letter as Exhibits 1 and 2. While the Center does not restate each of our prior concerns here, there are several the Center would like to particularly draw to the County's attention.

As an initial matter, the CAP does not put the County on the pathway to compliance to meet the state's 2050 reduction target of a 77 % reduction below 2014 levels of GHG emissions. The CAP admits that it will need to reduce GHG emissions by an additional 156,751 metric tons of GHG emissions to achieve its 2050 goals. (CAP at 3-1.) The County should not adopt a plan

that sets itself for failure in the future. Instead, the County should be evaluating and implementing stronger mitigation measures to put the County on track to reach all of its goals. While it is true that 2050 is still many years away, the land use decisions and policies the County makes now through the CAP will make changes to reduce GHG emissions in the future that much harder, if not impossible.

Troubling the CAP's land use measures still allow for significant conversion of natural lands and loss of trees for expanded vineyards, residential and commercial development. (CAP at 3-29.) The CAP acknowledges 8,000 acres of riparian woodland, oak woodland, coniferous forest will be lost causing a 137% increase in GHG emissions by 2030. (*Id.*) The modest measures included in the CAP will do little to reduce these increases. (*Id.* [Increase with CAP measures will go from 137% to 88% by 2030].) Land Use Measure 1 sets the paltry goal of aiming to preserve "30 % of existing on-site trees," thereby allowing a project developer to cut down 70% of on-site trees as part of their project. (CAP at 3-30.) To make-up for the cutting down trees, developers are permitted to plant trees off-site, including outside of Napa County, and there is no measure to account for the temporal loss of carbon sequestration from the replacement of mature trees with new saplings. (*Id.*) The CAP can and should do more to preserve existing trees within the County.

Most significantly, the "mitigation measures" included in the CAP remain weak and inadequate under CEQA. Several of the mitigation measures are not binding or enforceable but instead only "encourage," "promote" or "support" efforts to reduce emissions. (CAP at p. 3-6 (Table 3-3: Summary of Building Energy Measures); p. 3-12 (Table: 3-4: Summary of On-Road Transportation Measures); p. 3-18 (Table 3-5 Summary of Solid Waste Measures); p. 3-19 (Table 3-6: Summary of Agricultural Measures); p. at 3-23: Summary of Off-Road Measures; p. at 5-5 thru 5-20 (Table 5-1: Napa County Cap Implementation Assumptions for Reduction and Adaptation Measures).) These measures are legally inadequate and cannot be considered mitigation under CEQA and applicable case law. (*Lincoln Place Tenants Assn. v. City of Los Angeles* (2007) 155 Cal.App.4th 425, 445 ["A 'mitigation measure' is a suggestion or change that would reduce or minimize significant adverse impacts on the environment caused by the project as proposed"].); *Preserve Wild Santee v. City of Santee* (2012) 210 CA 4th 260, 281 [mitigation measures that are so undefined that their effectiveness is impossible to determine are legally inadequate].) Mitigation measure TR-15 for example, calls for a 15 % reduction in VMT for new projects but fails to specify what the 15% is *from* and includes no mechanism for monitoring or enforcement. (CAP at p. 3.18.)

Also, troublingly despite the mitigation measures only encouraging or supporting activities and lacking any mandates, the CAP assumes that those mitigation measures will result in tangible reduction in GHG measures. Such assumptions are unfounded and cannot be used as the basis of compliance with CEQA. As the California Attorney General has noted, programmatic plans to reduce GHG emissions pursuant to CEQA Guidelines section 15183.5 must "[i]dentify a set of specific, enforceable measures that, collectively, will achieve the emissions targets…."[1]

[1] California Attorney General's Office, "CEQA and General Planning," available at https://oag.ca.gov/environment/ceqa/planning.

Additionally, the CAP appears to create a significant loophole by allowing some projects to escape compliance with even the meager mitigation measures identified in Table 5-1. (CAP at p. 5-5 thru 5-20.) Projects that seek CEQA GHG streamlining, thereby undergo less environmental review for their GHG emissions, are exempt from several of the mitigation measures required in the CAP. Projects using the streamline process will be exempt for off-road vehicles and equipment, sold waste, water and wastewater and on-road transportation mitigation measures. It is unclear why those projects relying on the CAP process will not need to comply with the key requirements of the CAP. This loophole should be closed in the next iteration of the CAP to ensure that the County's GHG emissions are adequately analyzed and mitigated.

The CAP also relies upon "anticipated legislative reductions" to achieve some GHG emission reductions prior to its 2020 and 2030 targets. (CAP at p. 3-1 thru 3.2.) The CAP goes on to state that "new Federal and State law may further reduce emissions in sector currently addressed primarily by local County measures…the County will be able to apply new reductions toward meeting the long-term 2050 goal in future CAP updates." (CAP at p. 3-2.) However, the CAP does not provide information on new Federal laws and policies targeting GHG emissions and in fact recent steps taken by the Trump Administration suggests that not only with the Federal government be doing less to address climate change in the coming years, it may also prevent states like California to address climate change through reducing emissions from mobile sources. (Davenport, Carol, "Trump Administration Unveils Its Plan to Relax Car Pollution Rules" *New York Times (*August 2, 2018 available at https://www.nytimes.com/2018/08/02/climate/trump-auto-emissions-california.html.) Therefore, the CAP cannot assume GHG emission reductions will occur through any Federal actions in the near term when calculating the County's ability to meet its 2020, 2030 and 2050 emission reduction targets.

Lastly, the CAP continues to miss important opportunities to implement stronger mitigation measures which result in greater emission reductions. For example, the CAP should require higher minimum amounts of on-site solar generation for residential, commercial and industrial development. Compliance with California Building Code does not go far enough and fails to take advantage of the renewable energy technology developments available. Similarly, the CAP should include additional mandatory mitigation measures to reduce GHG emissions arising from agriculture including but not limited to organic agricultural practices, cover cropping, better equipment maintenance, optimizing tillage, solar powered pumps, biogas control systems, and reforesting rangelands.

These significant inadequacies and gaps in the CAP must be fully addressed and resolved prior to approval of a final CAP. If the County fails to fully address these issues, the CAP will not meet CEQA's requirements and will conflict with applicable case law; thereby, leaving the CAP vulnerable to legal challenge and inapplicable as a compliance document for GHG analysis or mitigation.

III. Conclusion

Thank you for the opportunity to submit comments on the revised CAP and the NOP for the draft EIR. The Center remains concerned about the inadequacies in the current version of the CAP and urge the County to revise the CAP so that the CAP in compliance with statutory requirements and case law. The Center also joins in the concerns raised by Napa Vision 2050 and others regarding the CAP's inventory analysis, mitigation measures, and black carbon emissions. As with the Center's comments, the comments of these organizations have not been adequately addressed by the County in the revised CAP and must be addressed in the draft EIR.

We look forward to reviewing the draft EIR once it is released and working with the County to assure that the CAP includes a specific, effective and enforceable plan to reduce the County's GHG emissions in accordance with state law. Please do not hesitate to contact the Center with any questions at the number or email listed below.

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