



January 27, 2020

County of Sacramento Board of Supervisors
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Patrick Kennedy, District 2
Susan Peters, District 3
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Clerk of the Board of Supervisors
Nav Gil, County Executive

Via electronic submittal

Dear Board Members and Mr. Gil,

MATHER SOUTH MP FEIR: COMMENTS

We appreciate the opportunity to comment on the draft *Mather South Community Master Plan Project Final Environmental Impact Report* (draft FEIR). We note that the project is within the County's established Urban Services Boundary.

Our comments focus on draft FEIR Chapter 7, "Climate Change". We present general and project-specific concerns.

I. GENERAL CONCERNS

A. Failure to Fulfill Previous GHG Commitments.

The County has failed to comply with the following greenhouse gas (GHG)-reduction measures, which are presented in the 2011 FEIR prepared for adoption of the County General Plan update (GP) and are also reflected in the GP (2011 FEIR/GP):

- Provide triennial GHG inventory updates
- Adopt a Green Building Program by 2012
- Enact a Climate Change Program that includes:
 - A fee on development to support a Climate Action Plan
 - Reduction targets that apply to new development
 - A discussion of the 2020 reduction target

- Adopt a Phase 2 Communitywide CAP by 2012 that includes:
 - Economic analysis
 - Detailed programs
 - Detailed performance measures
 - Timelines
 - GHG-reductions expected from each measure.

The County's failure to implement its GHG commitments is inconsistent with CEQA's requirement that, "*until mitigation measures have been completed the lead agency remains responsible for ensuring that implementation of the mitigation measures occurs*" (CEQA Guidelines §15097(a))

B. Effect of Above on Mather South Draft FEIR.

As a result of the above failures and related procedural irregularities, the Mather South draft FEIR is burdened by many of the same legal difficulties identified in our October 31, 2019 comments regarding the County's *Jackson Township Specific Plan Draft Environmental Impact Report*.

We hereby include by reference in these present remarks our Jackson Township comments in their entirety, and so will not again detail them here. In summary, the Mather South draft FEIR fails to comply with CEQA because (we include Jackson Township section references to facilitate cross-referencing):

1. The draft FEIR does not discuss inconsistencies between the proposed project and the County's General Plan (I.D).
2. The draft FEIR does not identify areas of controversy known to the County (I.E).
3. The draft FEIR's reliance on a 2005 GHG Inventory is inconsistent with the 2011 General Plan and associated FEIR (II.A).
4. The County's baseline 2005 GHG Inventory has been superseded (II.B).
5. The County applies thresholds of general use not properly adopted; and the draft FEIR's thresholds for 2020 are improper because not adopted as required (III.A-B).
6. The draft FEIR's 2020 thresholds are also improper because inconsistent with the 2011 FEIR (III.B).
7. The draft FEIR's 2030 thresholds are improper because not adopted (III.C).
8. The draft FEIR does not include a 2050 target, contravening legal requirements and the 2011 FEIR (III.D).
9. The draft FEIR's GHG thresholds are piecemealed, because inconsistent with 2011 FEIR/GP commitments (III.E).
10. The County has not justified project-level use of state-wide targets (III.F).
11. The County did not fully or accurately include 2011 FEIR measures in the GP and Phase 1 CAP as specified; the County's modifications substantially weaken the 2011 FEIR's measures; the County's modifications were not justified, reported, or subject to public process; the adopted 2011 FEIR's conditions are therefore governing (IV.A-F).

12. The draft FEIR thresholds and mitigation measures are inconsistent with the Phase 1 CAP and 2011 GP/FEIR commitment (IV.G).

II. PROJECT-SPECIFIC CONCERNS

A. Rebuttable Assertions in the Draft FEIR

Several revisions in the draft FEIR relate to our previous Jackson Township comments as well as to the current draft FEIR. We note them below:

1. **Project-specific Greenhouse Gas Reduction Plan.** The draft FEIR states (p. 7-10),
“analysis contained in this EIR is based on the project-specific Greenhouse Gas Reduction Plan prepared for the project consistent with CEQA Guidelines Sections 15183.5(b)....”

This statement erroneously conflates programmatic and project-specific CEQA GHG analyses. *Guidelines* §15183.5 relates to “programmatic-level” GHG analysis and mitigation; §15183.5(b) provides that project-level analysis may be streamlined if the project conforms to a previous, properly adopted “plan for the reduction of greenhouse gas emissions”. Since Sacramento County has not adopted such a programmatic plan, neither of the cited sections is relevant to the Mather South draft FEIR.

The phrase “project-specific greenhouse gas reduction plan” is, in a CEQA context such as this and the Jackson Township EIR, confusingly self-contradictory and perhaps best avoided. We also question the existence of such a plan since it is not elsewhere referred to in draft FEIR Chapter 7.

2. **Sacramento County Climate Action Planning.** The draft FEIR states (p. 7-11)

“The Communitywide CAP has been in progress for some time but is currently on hold pending in-depth review of CAP-related litigation in other jurisdictions”.

The County’s commitment to adopt a Phase 2 CAP before the end of 2012 is now more than seven years overdue. To our knowledge this is the first formal explanation for the delay the County has offered the public. It is difficult to evaluate this statement absent identification of which cases are causing the hold, the nexus between such cases and the County’s long-delayed CAP, whether the cases are still in litigation or have been adjudicated, and when the County expects to complete its in-depth review.¹

Since the County committed to adopting a CAP in November 2011, four other jurisdictions in the SACOG region have adopted CAPs which they consider “qualified”,² and three more are currently in active draft,³ notwithstanding the above-cited CAP-related litigation occurring in other jurisdictions. CEQA challenges implicating GHG emissions are common, so a disposition to await final settlement of all such issues might be permanent.

¹ In one pending case, a jurisdiction has disbursed substantial public funds defending what trial and appellate courts have deemed bad-faith efforts to circumvent GHG mitigation responsibilities. A remaining question in the case is the acceptability of off-shore in-lieu mitigation. This should not be an issue in Sacramento, given the many opportunities within the region for GHG-mitigation investment.

² I.e., a fully CEQA-compliant programmatic plan, from which subsequent project-level GHG analysis may be tiered.

³ Cities of Elk Grove, Sacramento, Wheatland, and Woodland; Cities of Davis, Galt, and Winters.

We also note that the draft FEIR's assertion that the CAP has been "in progress for some time" could be understood as denoting the County has worked on the CAP on a somewhat continuous basis, and that there is some degree of discernable progress; neither of which are correct. From 2011 to 2017 there was no public indication of CAP-related promised work. In 2017, County staff made an abortive attempt to initiate a CAP development, developing a base-year 2015 inventory, meeting with stakeholders, and presenting the CAP concept at a Board of Supervisor's workshop. Subsequently, there has been no publically available evidence of any other work accomplished on the CAP, or on any other of the County's 2011 FEIR/GP GHG commitments.

3. **Significance Criteria.** The draft FEIR states (p. 7-12),

"the 2020 significance thresholds were adopted for general use through certification of the General Plan Update FEIR".

We do not subscribe to this analysis because it does not discuss the 2011 FEIR's explicit direction to adopt reduction targets as part of a separate planning process – enactment of a County Climate Change Program, which was never initiated.

4. **2030 Significance Thresholds.** The draft FEIR states (p. 7-13),

"... the 2020 thresholds require periodic updating to reflect changes to GHG inventory and any changes in the regulatory environment ... The 2030 significance thresholds ... reflect an update to the 2020 thresholds".

We agree that thresholds/targets may need periodic updating. If the targets are thresholds of general application, as the County's are, they must be adopted through a public process (*Guidelines* §15064.7); but they were not.

5. **Use of 2005 Inventory Data.** The draft FEIR states (p. 7-13),

*"The County's 2005 GHG emissions inventory was updated in 2015 ... Differences between the 2005 and 2015 emissions inventories include the following...."
[methodological differences and other possible reasons the 2015 inventory showed increased emissions over 2005].*

This draft FEIR discussion implies that the reported 2005-2015 increase in emissions is not significant. This is not our primary concern. We are concerned that the County is out of compliance with its 2011 FEIR and GP commitment to provide regular GHG inventory updates, specifically for baseline years 2011, 2014, and 2017. Also there no explanation for using the 2005 Inventory rather than the more recent and relevant 2015 update which, as reported above, was presented in 2017 to support initiating the CAP.

B. Proposed Mitigation

1. **Mitigation Measure CC-2 is Not Enforceable and Improperly Defers Key Regulatory Determinations**

CEQA requires that mitigation measures be enforceable (*Guidelines* §15126.4(a)(2)). They must therefore be declarative, non-ambiguous, and specific. With few exceptions, this measure fails these requirements; ambiguous language repeatedly implies much but guarantees little. The dubious enforceability of Measure CC-2 in its entirety makes it impossible to rely on the GHG-reductions the County claims for it. The draft FEIR's

proposed “Mitigation and Monitoring Reporting Program” confers no more assurance, as it simply re-iterates the draft FEIR’s non-enforceable language.

- a. Mitigation Measure CC-2, Introduction. The introductory paragraph states,

“The project applicant shall incorporate the following mitigation measures into the project to reduce operational emissions of GHGs to the extent feasible”.

The phrase, “to the extent feasible”, is inappropriate. The lead agency must confirm the feasibility of the mitigation measures before committing in the EIR to impose and enforce them (*Guidelines* §15126.4). Additionally, the “to the extent” formulation contravenes the requirements of *Guidelines* §15126.4(a)(1)(B) by without justification deferring the determination of which - or whether - elements of Measure CC-2 will be implemented, to an unspecified, non-public process uninformed by noticed criteria. It thus calls into question the enforcement of the entire measure. Measure CC-2 sub-measures are likewise insufficient in their commitment to enforcement:

- b. CC-2, Transportation. The measure begins:

“Although the project has not committed to implementing Tier 1 or 2 of the California Green Building Standards, it is considered feasible mitigation and would involve...”

The statement, “the project has not committed to implementing....” is concerning. An EIR is meant to inform decision-makers and the public of the measures the lead agency intends to require and enforce, in order to mitigate environmental impacts. Invoking the project proponent’s non-concurrence at this final step in the environmental review process suggests the need for future negotiation of critical mitigation features out of the public’s eye. This reinforces our concern with the cited preceding language, and is enforced by subsequent wording, e.g.:

- The reference to “Tier 1 or 2”, is ambiguous, compounding previous uncertainty.
- The phrase “it is considered feasible”, used here and in the CC-2, Building Energy sub-measure, is unexpected because as discussed above, any mitigation measure in the draft FEIR must have *a priori* been positively determined by the County to be feasible. The draft FEIR’s indefinite phrasing calls into doubt whether or not the County will stand by a finding of feasibility pursuant to *Guidelines* §15364, exacerbating our above concerns re deferring decisions which are properly made within the CEQA process.
- The word “would”, used as an auxiliary verb as here and below in Measure CC-2, Building Energy, is the grammatical conditional mood, denoting contingency, uncertainty, and doubt. Its use is inappropriate in an enforceable mitigation requirement.

c. CC-2, Waste Generation. This measure states in its entirety,

“Create a local composting program for residents to achieve the statewide 75-percent waste diversion target.

This statement fails to identify how the proposed program would be created, maintained, and funded for the lifetime of the development; by what means the waste diversion target would be met; a schedule of implementation; without justification for not providing a fully developed proposal at this time. It therefore constitutes impermissible deferral of mitigation, renders enforcement impossible.

Similar analyses can be applied to other elements of the proposed mitigation. The exceptions, e.g., CC-2, Building Energy, bulleted measures 1-3, indicate the County can write enforceable measures .

2. Measure CC-3 [Purchase Carbon Offsets] Does Not Reasonably Ensure In-County Mitigation

The County acknowledges the above-proposed mitigation measures, even if fully implemented, would not entirely offset the project’s projected GHG emissions:

CC-3 requires the project developer to implement an off-site GHG emissions reduction program ... Where development of a local offset is not feasible, the County shall allow project proponents to mitigate GHG emissions through the purchase of local or California-only carbon credits....”

Paralleling the previous measure, CC-3, without justification as to need, improperly defers to a later, unspecified, non-public process, un-informed by noticed criteria, a determination of whether local offset is “feasible”.

The draft FEIR notes that consistent with State guidelines, and in the interest of local residents, off-site mitigation should be as near as possible to the project site. However, Sacramento County has no process for identifying, prioritizing, and funding local GHG-reduction projects. Absent such a process, it will likely be easiest – i.e., more feasible – for the developer to purchase credits through a mitigation registry. As above, determination of feasibility would be deferred inconsistent with *Guidelines* §15126.4(a)(1)(B), and could deprive County residents of the benefits of in-County investment.

If the County wants to approve off-site mitigation to help meet its GHG-reduction obligations, it should ensure such mitigation is located in the County. Given the need for investment in local climate change prevention, there should be no problem identifying such projects, and a well-planned, County-supported program would be welcome.

We thank the members of the Board for their consideration of our comments. As always, we stand ready to discuss them and to support all County efforts to meaningfully address the catastrophic threat of climate change.

Sincerely,



Laurie Litman, President
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Ralph Propper, President
Environmental Council of Sacramento



Barbara Leary, Chairperson
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cc:

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