COAST LAW GROUP LLP

1140 South Coast Hwy. 101
Encinitas, CA 92024

Tel 760-942-8505
Fax 760-942-8515
www.coastlawgroup.com

April 29, 2024

City of Irvine Community Development Department
Attn: General Plan Update
PO Box 19575
Irvine, CA 92623-9575

Via Electronic Mail
gpupdate2045@cityofirvine.org

Re: *Draft General Plan Update and Environmental Impact Report*
Comments on behalf of Climate Action Campaign

To Whom It May Concern:

Please accept these comments on behalf of our client, Climate Action Campaign ("CAC"), regarding the City of Irvine's ("City") General Plan Update ("Project") and associated California Environmental Quality Act ("CEQA") documents. While the City's goal of achieving greenhouse gas ("GHG") emission reductions through a Climate Action and Adaption Plan ("CAAP") is laudable, the piecemeal approach to the City's approval process (including the premature, de facto approval of significance thresholds) raises serious concerns about the City's commitment to early, concrete action in the race to zero. As proposed, the Project does not comply with CEQA and will result in significant avoidable GHG impacts.

A. The City's CAAP Should Be Developed Contemporaneously with the General Plan and Is a Feasible Mitigation Measure

Though the Project's draft Environmental Impact Report ("DEIR") acknowledges a CAAP is forthcoming, it fails to capitalize on the GHG reductions available therefrom. The CAAP reduction targets will be "informed by the state targets of 40 percent below 1990 levels by 2030 (per the 2022 California Air Resource Board Scoping Plan and SB 32) and 85 percent below 1990 levels by 2045 (per AB 1279)."[1] Thus, the CAAP provides an opportunity for the City to address and mitigate its GHG emissions – including the Project's emissions. The DEIR nonetheless fails to analyze the CAAP as a feasible, practical, and effective mitigation measure.[2]

The City has instead opted to delay development of the CAAP, finding the Project will result in significant and unavoidable GHG emissions.[3] "A gloomy forecast of environmental degradation is of little or no value without pragmatic, concrete means to minimize the impacts and restore ecological equilibrium."[4]

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[1] DEIR, p. 4.6-10.
[2] *Napa Citizens for Honest Gov't v Napa County Bd. of Supervisors* (2001) 91 Cal. App. 4th 342, 365; *Concerned Citizens of S. Cent. L.A. v Los Angeles Unified Sch. Dist.* (1994) 24 Cal. App. 4th 826, 841.
[3] DEIR, p. 4.6-30.
[4] *Environmental Council of Sacramento v City of Sacramento* (2006) 142 CA4th 1018, 1039.

The City can and should commit to an enforceable CAAP which will result in the necessary reductions to align with state targets *now*. Such a feasible mitigation measure is not only in the City's interest (to streamline future individual project approvals) but also comports with the Office of Planning and Research ("OPR's") General Plan guidance:

> [R]egardless of approach, it is preferable to create the plan to reduce GHG emissions concurrently with or closely following a general plan update. There are a number of benefits of aligning a GHG reduction strategy, such as a CAP, with a general plan update including:
>
> 1. Allowing local governments to include a wider range of mitigation measures in the GHG reduction strategy, especially those that are related to land use and transportation;
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> 2. Allowing projects to take advantage of a wider range of CEQA streamlining measures;
>
> 3. Streamlining environmental review for the GHG reduction strategy itself; and
>
> 4. Ensuring that the CAP and general plan use a consistent set of baseline conditions and growth assumptions, which can save effort for planners.[5]

Notably, the CAAP 2019 GHG inventory found the "three following categories were responsible for the majority of the City's GHG emissions: on-road transportation, building energy, and solid waste sectors."[6] The General Plan impacts all three of these categories of emissions, including on-road transportation, which is the City's largest source of emissions (over half).[7] The City's failure to draft the CAAP contemporaneously with the Project will frustrate the City's ability to make land use decisions that further the City's GHG-reduction strategies, especially those aimed at reducing VMT and on-road transportation impacts.

Because the CAAP is essential to reducing the City's GHG emissions to an insignificant level and meeting the 2030 and 2045 reduction targets, it must be prepared now and incorporate enforceable, mandatory GHG reduction measures.

B. The Project Improperly Incorporates SCAQMD De facto Significance Thresholds

Instead of meaningfully addressing GHG emissions, the DEIR relies wholesale on one purported mitigation measure: future development would be evaluated using the SCAQMD thresholds.[8] By incorporating mitigation measure GHG-1 into the Project, the DEIR improperly establishes a significance level for future projects.

[5] OPR General Plan Guidance, Chapter 8, Climate Change, p. 224.
[6] DEIR, p. 4.6-10.
[7] DEIR, p. 4.6-3.
[8] DEIR, p. 4.6-20.

> Impacts related to conflicts with an applicable plan, policy, or regulation adopted for the purpose of reducing the emission of GHGs **would be considered significant and would require mitigation to identify potential measures that would reduce GHG emissions below the applicable SCAQMD thresholds**.[9]

Though most lead agencies rely on the CAPCOA suggested screening threshold of 900 metric tons of carbon dioxide equivalent, the Project does not, likely because its "hypothetical" project #1 will result in 2,938 $MTCO_2e$ per year.[10] The DEIR relies instead on the SCAQMD (interim) threshold, which only applies where SCAQMD is the lead agency and where "stationary source equipment associated with these projects are either at BACT or must comply with source-specific rules that reduce criteria pollutants and/or air toxics."[11] Moreover, the SCAQMD screening threshold captures 90 percent of reported annual *natural gas consumption of stationary sources from 2006 to 2007*.[12] This outdated metric accounts for 90 percent of projects over which SCAQMD had jurisdiction as the lead agency. The City's land use jurisdiction covers a greater diversity of projects with a different emissions profile. Thus, the CAPCOA threshold is more appropriate for municipal lead agencies and is employed throughout the state.

The latest CARB Scoping Plan confirms a more aggressive approach to GHG reductions is necessary.[13] "Despite much progress, California still has some of the worst air pollution in the nation, especially in the San Joaquin Valley and the Los Angeles Basin, which is driven by the continued use of fossil fuel-powered trucks and cars."[14]

In addition, use of the SCAQMD thresholds is inconsistent with the City's proposed Environmental Protection and Climate Action ("EPCA") Element. EPCA Goal 2 is to ensure application of policies and measures that support environmental justice.[15] To implement this goal, and the related objective of mitigation environmental health risks in EJ communities, the City will require developers to analyze potential pollution risks and mitigation strategies.[16] EPCA Goal 3 is to reduce GHG emissions in Irvine to create a more sustainable and resilient community.[17] To implement this goal, the EPCA Element suggest policies to incentivize low-emission and alternative transportation modes.[18] Goal 8 is to mitigate the impacts of climate change.[19] The EPCA is replete with additional goals, policies, objectives, and implementation

[9] DEIR, p.4.6-29, emphasis added.
[10] DEIR, p. 4.6-19; https://www.ourair.org/wp-content/uploads/CAPCOA-CEQA-and-Climate-Change.pdf
[11] SCAQMD, Interim GHG CEQA Thresholds, p. 5, available at http://www.aqmd.gov/docs/default-source/ceqa/handbook/greenhouse-gases-(ghg)-ceqa-significance-thresholds/ghgboardsynopsis.pdf?sfvrsn=2
[12] Id. at p. 6.
[13] 2022 CARB Scoping Plan, p. 1, available at https://ww2.arb.ca.gov/sites/default/files/2023-04/2022-sp.pdf
[14] Id., p. 11.
[15] EPCA, p. 23.
[16] EPCA, p. 24.
[17] EPCA, p. 25.
[18] *Id.*
[19] *Id.*, p. 31.

measures that rely on GHG emission reductions. However, by adopting an improper threshold through the General Plan Update process, the City will miss a critical opportunity to reduce GHG emissions and mitigate impacts – especially impacts to the most vulnerable populations in disadvantaged communities. A more appropriate set of thresholds, especially formulated for lead agencies that are not air districts, was recently developed by the Bay Area Air Quality Management District ("BAAQMD"). The BAAQMD's CEQA significance thresholds require that the "project will not include natural gas appliances or natural gas plumbing (in both residential and nonresidential development)" to support a determination that climate impacts will be less than significant.[20] The BAAQMD's reasoning for this threshold is equally applicable here:

> For the building sector to achieve carbon neutrality, natural gas usage will need to be phased out and replaced with electricity usage, and electrical generation will need to shift to 100-percent carbon-free sources….**Retrofitting an existing building to replace natural gas infrastructure with electrical service is far more difficult and expensive than simply building a new all-electric building** (CEC 2021; E3 2019). For California to successfully eliminate natural gas usage by 2045, it will need to focus available resources on retrofitting existing natural gas infrastructure. **This task will become virtually impossible if we continue to build more natural gas infrastructure that will also need to be retrofit within the next few years**.
>
> The "no natural gas" design element applies to all building types (i.e., residential and nonresidential). **If the project includes appliances or equipment on-site that combust natural gas supplied by natural gas infrastructure, then the GHG emissions from the project would cause a significant and unavoidable impact.** This design element is specific to natural gas being supplied by piped infrastructure, as **extending the natural gas infrastructure for such projects "locks in" GHG emissions for decades to come and is therefore inconsistent with achieving carbon neutrality**…[21]

Two of the City's top three GHG emission contributors are nonresidential and residential building energy.[22] Clearly a transition to renewables and away from natural gas will have a measurable impact on the City's emissions. Therefore, the City's reliance on inapplicable, outdated, and unsupported thresholds as a mitigation measure here will only exacerbate the Project's GHG impacts and frustrate the City's ability to achieve its stated EPCA and CAAP goals.

[20] Bay Area Air Quality Management District 2022 CEQA Guidelines, Chapter 6, p.6-3. Available at: https://www.baaqmd.gov/plans-and-climate/california-environmental-quality-act-ceqa/updated-ceqa-guidelines
[21] *Id*. at p. 6-4, emphasis added.
[22] EPCA, p. 14.

1. Thresholds of Significance Must be Supported by Substantial Evidence and Be Adopted in a Public Process

A CEQA threshold of significance draws a line between environmental impacts that are significant and those that are not. A threshold of significance must be supported by substantial evidence.[23] Substantial evidence is "enough relevant information…to support a conclusion."[24]

Determining whether an environmental impact is "significant" is critical to CEQA's purpose and structure.[25] Significance determinations govern the level of environmental review required before project approval. If there is substantial evidence to support a fair argument that a project will have one or more significant impacts, the lead agency must prepare an environmental impact report; if not, the agency may prepare a negative declaration.[26] Most importantly here, significance determinations also dictate ***whether mitigation is required***; agencies must incorporate feasible mitigation measures or adopt alternatives only for impacts deemed significant.[27]

The determination of whether an impact is significant "calls for careful judgment…based to the extent possible on **scientific and factual data**."[28] Agencies may adopt a "threshold of significance," which is an "identifiable quantitative, qualitative, or performance level of a particular environmental effect, non-compliance with which means the effect will normally be determined to be significant" and compliance with which means the effect normally will be less than significant.[29]

Here, adoption of the new threshold of significance by way of a mitigation measure is improper.[30] Notably, the City's existing CEQA guidance notes:

> Currently, there is no statewide GHG emissions threshold that has been used to determine potential GHG emissions impacts of a project. Threshold methodology and thresholds are still being developed and revised by air districts in the state. Therefore this environmental issue remains unsettled and should be evaluated on a case-by-case basis.[31]

Thereafter, the CEQA Manual "identifies" the South Coast AQMD Working Group GHG emission threshold screening criteria (identical to those proposed as mitigation measure GHG-1

[23] CEQA Guidelines § 15064.7(b).
[24] CEQA Guidelines § 15384(a); see, *Center for Biological Diversity v. California Department of Fish & Wildlife* (2015) 62 Cal.4th 204, 227-28.
[25] CEQA Guidelines § 15064(a).
[26] See Pub. Res. Code § 21100; Guidelines §§ 15063(b), 15064(a)(1).
[27] Pub. Res. Code §§ 21002, 21002.1(b), 21081; CEQA Guidelines §§ 15064(a)(2), 15091, 15126.4, 15126.6.
[28] Guidelines § 15064(b)(1), emphasis added.
[29] CEQA Guidelines § 15064.7(a).
[30] CEQA Guidelines § 15064.7(b).
[31] CEQA Manual of Irvine, Volume II, p. 3.8-4

in the DEIR).[32] Thus, the SCAQMD thresholds have not been adopted for general use in the City's current CEQA Manual and their adoption via a General Plan mitigation measure (without public disclosure and comment) is improper.[33]

C. The General Plan Update is Inconsistent with the 2022 CARB Scoping Plan

The latest California Air Resources Board ("CARB") Scoping Plan emphasizes the need to reduce GHG emissions from the transportation sector:

> Since the transportation sector is the largest source of GHG emissions and harmful local air pollution, we must continue to research and invest in efforts to deploy zero emissions technologies and clean fuels, and to reduce VMT.[34]

However, the state is not on track to achieve the VMT reduction called for in the 2017 Scoping Plan and we will need to double down to achieve the even more ambitious target called for in the Scoping Plan Scenario.[35]

> Even under full implementation of Executive Order N-79-20 and CARB's Advanced Clean Cars II Regulations, with 100 percent ZEV sales in the light-duty vehicle sector by 2035, a significant portion of passenger vehicles will still rely on ICE technology…. Accordingly, VMT reductions will play an indispensable role in reducing overall transportation energy demand and achieving the state's climate, air quality, and equity goals.[36]

To that end, the 2022 Scoping Plan calls for a 25 percent VMT reduction below 2019 levels by 2030 and 30 percent VMT reduction below 2019 levels by 2045.[37] According to the DEIR, the City VMT is projected to *increase* by 3.2 percent from 2019 to 2045.[38] As reflected in the Transportation analysis, VMT per service population (though decreasing with the Project), is far short of the 30 percent VMT reduction necessary to achieve the state's GHG reduction goals.[39]

Further, as noted above, the General Plan and CAAP provide an invaluable opportunity to mitigate GHG impacts and ensure the City can meet its reduction goals. This is reflected in the 2022 Scoping Plan as well:

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[32] *Id.*
[33] The City's CEQA Manual is perhaps intentionally vague. In the event the City takes the position that the CEQA Manual already requires application of the SCAQMD thresholds, the City's reliance on these thresholds as a mitigation measure is also improper – as the mitigation measure would not be accomplishing anything new.
[34] 2022 CARB Scoping Plan, p. 100.
[35] 2022 CARB Scoping Plan, p. 117.
[36] *Id.*, p. 192.
[37] *Id.*, p. 72, 175, 194.
[38] DEIR, p. 4.6-15.
[39] DEIR, p. 4.13-25.

> [A]n important CEQA-related tool is mitigation—which can be used to further drive local action consistent with state climate goals. When a lead agency determines that a proposed project would result in potentially significant GHG impacts due to its GHG emissions or a conflict with state climate goals, the lead agency must impose feasible mitigation measures to minimize the impact.[40]

Because transportation is the largest source of City GHG emissions, the City's failure to include policies and mitigation measures that significantly decrease VMT in a concurrent CAAP represents another missed opportunity to feasibly mitigate both climate and transportation impacts. Further, in light of the above, the DEIR's conclusion that the Project is consistent with the 2022 Scoping Plan is not supported by the evidence in the record.

D. Missing Emissions Will Likely Lead to Increased GHG Impacts

The DEIR includes quantified emission from 2019, which likely do not reflect a newly identified, significant source of GHG emissions. As much as 60-85 percent of national sulfuryl fluoride emissions come from California, primarily in Los Angeles, Orange, and San Diego Counties.[41] Once emitted, the gas spreads and stays for more than 40 years in the atmosphere, where it contributes to global warming.[42] "Rising emissions are a concern since [sulfuryl fluoride] has a relatively long atmospheric lifetime and a high global warming potential."[43] Because the City's CAAP modelling likely did not take sulfuryl fluoride into account, predicted Citywide GHG emissions are likely greater than anticipated. The DEIR fails to consider the Project's contribution to such emissions. Because the City's first reduction target (2030) is less than six years away, any failure to account for a significant source of emissions puts the City's ability to achieve its CAAP goals in jeopardy.

To ensure the City and DEIR appropriately account for, disclose, and mitigate the Project's GHG emissions, it must update its inventory and adopt mitigation measures and policies in the CAAP as soon as possible.

E. Conclusion

The DEIR fails to include all feasible mitigation measures, namely, the forthcoming CAAP. The lack of enforceable GHG reduction measures to be implemented at the Project, Citywide, and future development level is a fatal missed opportunity, compounded by the City's reliance on mitigation measure GHG-1. The City's adoption of unsupported and inapplicable thresholds of significance will frustrate its ability to obtain project-level contributions (and

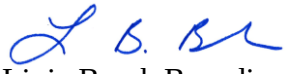
[40] *Id.*, p. 270.
[41] https://scripps.ucsd.edu/news/california-leads-us-emissions-little-known-greenhouse-gas#:~:text=California%2C%20a%20state%20known%20for,stem%20from%20the%20United%20States.
[42] Gaeta, D.C., Mühle, J., Vimont, I.J. et al. California dominates U.S. emissions of the pesticide and potent greenhouse gas sulfuryl fluoride. Commun Earth Environ 5, 161 (2024). https://doi.org/10.1038/s43247-024-01294-x
[43] DEIR, Appendix N, p. 1, emphasis added.

funding) toward its GHG reduction policies. Therefore, CAC urges the City to immediately develop a contemporaneous CAAP to ensure the City can meet its VMT, GHG reduction, and EPCA goals.

Thank you in advance for your consideration.

Sincerely,

COAST LAW GROUP LLP



Livia Borak Beaudin
Attorneys for CAC

Enclosures: OPR General Plan Guidance, Chapter 8