



ALAMEDA COUNTY COMMUNITY DEVELOPMENT AGENCY  
PLANNING DEPARTMENT

Chris Bazar  
Agency Director

MEMORANDUM

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TO: Board of Supervisors  
FROM: Chris Bazar, Community Development Agency Director  
DATE: April 21, 2011  
SUBJECT: Draft Community Climate Action Plan

Attached is a draft of the Board letter for your consideration of the Community Climate Action Plan at the May 17<sup>th</sup> Board Planning Meeting. Given the interest in this project, I wanted to provide you with the opportunity to review the letter at your earliest convenience. If you would like to discuss the alternatives presented, please feel free to contact me or Albert Lopez.

We plan to release the letter to the public on Monday, April 25<sup>th</sup> so that interested parties will have time to consider its contents before the May 17<sup>th</sup> meeting. My staff and I are available to meet with you, your staff, and/or any interested parties prior to the meeting.



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April 21, 2011

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Agenda Item #  
May 17, 2011

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Honorable Board of Supervisors  
Administration Building  
1221 Oak Street  
Oakland, CA 94612

Dear Board Members:

**SUBJECT: PROPOSED COMMUNITY CLIMATE ACTION PLAN (CCAP) FOR UNINCORPORATED AREAS OF ALAMEDA COUNTY**

**RECOMMENDATION:**

It is recommended that the Board:

- (1) Hear a brief staff presentation and take public testimony;
- (2) Consider the GHG reduction alternatives presented below for inclusion in the CCAP, with the objective of choosing a combination of measures that will allow the County to reach its goal of 15% GHG reduction by the year 2020;
- (3) Choose one of the alternatives; and
- (4) Direct staff to conduct environmental review for the chosen CCAP alternative in anticipation of formal inclusion of the CCAP in the County's General Plan.

**BACKGROUND DISCUSSION/SUMMARY:**

The Alameda County Community Climate Action Plan (CCAP) is part of the County's response to the federal, state and county actions designed to reduce greenhouse gas emissions (GHG) and the resulting effects on global climate change. The CCAP aims to encourage residents and businesses to participate in community efforts to reduce GHG emissions; codify Alameda County's commitment to comply with State GHG reduction efforts; and provide clear guidance to County staff regarding when and how to implement the Plan's key provisions. The CCAP is comprised of policy measures designed to help Alameda County reduce its emissions of GHGs back to the Year 1990 levels, as required by State Law AB 32. This is roughly a 15% decrease from 2005 levels, the base year for GHG emissions used in the CCAP. Using a wide range of probable policy tools in seven major categories – Land Use, Transportation, Energy Conservation, Green Infrastructure, Water Conservation, Waste Reduction and applicable Statewide GHG Emission Reduction Initiatives – staff believes that this reduction is achievable.

*Extensive additional background on the CCAP is provided in the December 21, 2010 Board Letter and attachments thereto, attached to this Board letter.*

**The Process to Date:** The process of developing the CCAP has included extensive public participation at workshops, roundtable meetings with stakeholders and numerous public hearings over a two-year period, along with redrafting of the document. The process involved many conversations at the community level, and the merits of most of the measures were debated at length. As a result, many potentially useful measures for reducing GHG emissions were eliminated because various business and community members expressed the concern that they would be costly or difficult to implement. The process through December 2010 is described in the December 21, 2010 Board Letter.

### Planning Commission

On November 1 and November 15, 2010, the Planning Commission heard this matter. At each meeting, the Commission received the staff analysis and heard testimony from interested parties. The basis for the discussion was the September 21, 2010 Revised Draft CCAP, which Staff had recommended for adoption along with some revisions as outlined in the November 1 staff analysis and a resolution adopted by the Castro Valley MAC (CVMAC) (both attached). The Planning Commission allocated the bulk of the public hearing to discussing the two recommendations to achieve what they believed to be an effective balance. For some measures, the Commissioners selected the Staff recommendation, sometimes with minor revisions; in other cases the Commissioners chose the CVMAC recommendations, at times with minor revisions. For several measures, the Commissioners crafted either a different approach or a compromise measure.

Table 1 contains a complete summary list of all of the changes recommended by the Planning Commission, and a brief description of the relative effect on the effectiveness of the measure. This table provides a complete current set of revisions to the September 21, 2010 draft of the CCAP.

Planning Staff believes that the Planning Commission's revised measures, if implemented diligently, would allow the County to achieve its target 15% GHG reduction goal. However, the PC recommendation includes Measure L-1 which (among other things) would require development and implementation of a one-time fee on new homes, valued according to the impact on GHG emissions each home would contribute as a result of vehicle miles travelled by the new residents. Homes near transit, employment centers and services may have small or no fees; homes far from transit and employment would see higher fees. The fees would be collected and used for energy and transportation efficiency measures in the County where they could have the best effect on GHG emissions. Throughout the community process, this measure was often cited as a concern due to its impact on the development community, and its inclusion elicited a very late response from the Building Industry Association.

### Building Industry Association (BIA) Response

On the evening before the Board hearing, the local chapter of the BIA submitted a brief e-mail threatening to litigate if the CCAP as proposed was approved in concept as a project description, for subsequent CEQA environmental review. The e-mail (attached) contained little detail, but raised sufficient concerns from a legal standpoint to prompt a continuance of the item.

A few weeks later, County Planning Staff met with BIA representatives and came to a tentative understanding of what BIA sought. BIA concerns centered upon the idea that the building industry is already severely impacted by the economic downturn, they are being asked to address GHG on various other fronts, and that they would be economically harmed by certain measures in the CCAP, especially

L-1. BIA also expressed its concern that the GHG reduction targets do not match those found in State Law (SB 375) and new Air Resources Board regulations, and are thus pre-empted by these state regulatory schemes. Finally, BIA implied that some of the measures eliminated through the previous two year process should be reconsidered and possibly reinserted into the CCAP (presumably in-lieu of Measure L-1 which they oppose).

To reach a better understanding, Staff encouraged BIA to submit a letter outlining their recommended changes to the CCAP. On March 9, 2011, the BIA submitted a letter to the Director of Community Development with comments.

The BIA proposed four basic changes, *followed with staff response in italics*:

1. The following sentence appears in the introductory paragraph to the Land Use Section for the CCAP and refers to Measure L-1: “The County will develop a per capita VMT target for new development and establish an impact fee (or feebate) program in order to encourage low-GHG development.” BIA recommends that the County eliminate the sentence from the CCAP because it would be detrimental to the construction industry and job creation / tax revenue. *This comment is in reference to recommended Measure L-1, discussed below.*
2. BIA recommends that the County eliminate the sentence from Measure L-1, “The County will develop and implement a Low-Carbon Development Program that will require residential projects developed following institution of this program to achieve an annual per-household vehicle emissions target or pay a development impact fee if they exceed the target.” *This would eliminate one of the last mandatory requirements for GHG reduction placed on any private sector activity, and would greatly affect the County’s ability to guarantee that the 15% GHG reduction goal would be met.*
3. Change the per household GHG reduction target from the current Measure L-1 value to achieve the stated 10,400 metric ton CO<sub>2</sub>e per annum reduction, to a value that reflects the California Air Resources Board (CARB) GHG reduction target for the Bay Area region. The BIA claims that the CCAP target is inconsistent with the CARB target, is not based on State Law SB 375 as part of the implementation of AB 32, and thus would result in an “irreconcilable” and “impermissible” conflict. *Staff believes our target is not required to be consistent with SB375 as that pertains to specific regional targets for light cars and trucks. Also:*
  - a. *The CCAP overall is based strongly on both SB 375 and AB 32 requirements, and was designed “from the ground up” to reflect these statutes. The CCAP goal to achieve a minimum 15% GHG reduction is solidly founded in these documents and in the CARB AB 32 Scoping Plan of 2008.*
  - b. *No one measure or GHG reduction value in the CCAP is designed to meet the requirements of state law or state and local GHG reduction goals by itself – the measures are to be taken comprehensively and work together to achieve the necessary reductions.*
  - c. *Changing this one value in the CCAP to some other value that would by itself reflect CARB could potentially increase that number rather than reduce it, and could considerably alter the balance of measures in the CCAP right now.*
  - d. *County staff has found no evidence at this point that there is any legal or rational requirement for one-to-one consistency between the CCAP measures and the recently*

*adopted CARB reduction target alluded to in the BIA letter. The two documents are neither designed nor intended by law to precisely reflect each other.*

4. The BIA maintains that all provisions of the CAP that contain language regarding future County actions (i.e. conduct audits, consider policies, or revise standards) must be developed in advanced of considering any new requirements. It then goes on to list specific CCAP recommendations to which this standard should apply. *Staff believes that the BIA misunderstands the process by which a general plan is adopted and implemented; that is, the general policies of the plan are adopted first, and then specific programs and codes are adopted to put the policies into effect. Of course, before each program or code is adopted, it would receive additional review by the Planning Commission and the Board, where required.*
5. Finally, the BIA letter suggests that opportunities to reduce GHG emissions that were earlier “scaled back or eliminated” be reexamined again, and that “barriers to GHG reduction” be removed from the CCAP. *Staff believes the BIA is referring to significant measures that were removed from the draft version being submitted to the Board by an action of the Planning Commission, after reviewing testimony from the Castro Valley Municipal Advisory Council, the Sunol Citizens’ Advisory Committee and numerous concerned citizens involved in the public hearing and roundtable process. Staff does not object to reconsideration of these measures that were removed or reduced by earlier actions. We provide summary information on these measures below.*

## **DISCUSSION:**

### Alternative A: Planning Commission Recommendation

After conducting an extensive and rigorous community process, and working with the consultant on the GHG reduction values to obtain the maximum possible effectiveness from each remaining measure, staff believes the CCAP as recommended by the Planning Commission (including Measure L-1) strikes an effective balance between protecting the environment and economic growth. It includes a built-in review process to assess the progress of the CCAP over time so that the County has the ability to fine tune the approach to GHG reduction in an informed and inclusive process.

*As such, staff can recommend approval of the CCAP in its current form, with direction to staff to begin the environmental review and implementation process. However, the balance is now very finely tuned, and removal or reduction of a measure with a numerical GHG reduction value assigned to it, such as L-1, without some replacement of that value, would likely leave the CCAP short of its intended 15% reduction goal. Thus, staff cannot recommend approval of this approach if L-1 is simply removed absent a suitable replacement.*

### **Other Options to the Planning Commission Recommendation**

Given concerns expressed regarding Measure L-1, a look at some alternatives is a prudent next step to inform the Board of other viable options. There are alternatives that may modify L-1 and allow the CCAP to remain viable. The strength of L-1 as applied by the County could be modified – it could be applied only to new subdivisions, for example, leaving existing parcels alone whether they are developed or not – or a cap could be set at the outset that would guarantee a reasonable level of fee at the time of development. Such an approach is likely to remain an issue with the development community, given that this option was discussed during the community process and was still found objectionable.

Other alternatives that follow below assume any mandatory elements and fees of Measure L-1 are eliminated, yet the basic idea is preserved. At its core, the concept in L-1 (actively discouraging the generation of additional VMT and directing development toward transit and employment hubs) is one of the most effective possible strategies for reducing GHG, since more than half of all GHG comes from vehicular use. This sort of approach suggests that the County should support any regional or state-wide VMT reduction programs which may include disincentives to sprawl development, including fees.

Each alternative to the Planning Commission recommendation described below removes any mandatory fee component of L-1, and involves the reinstatement of one or more measures that were previously either removed or reduced in effectiveness.

#### Alternative B: Reinstate the RECO and CECO Ordinances in Their Stronger Formulation

The original draft CCAP from Spring 2010 included Residential and Commercial Energy Conservation Ordinance measures (RECO and CECO respectively). Briefly, these measures would require a home or business, at point of sale, to meet baseline energy efficiency standards, or else install specified energy efficiency improvements to improve the home's energy efficiency. For homes, measures such as attic insulation, window caulking, air duct sealing, weather stripping and similar measures would be required, *up to a value* of 3% of the sale price, with a maximum cap of \$30,000 for the most expensive homes. Commercial properties would be limited to a 2% or \$100,000 cap. No retrofits, such as windows or doors, would be included in this program. Homes / businesses with some or all of these measures installed, or with other efficiencies in place (such as retrofitted double-paned windows), would get partial or full credit for this measure. The CCAP estimated the average price of this measure for an Alameda County home would be about \$9,000. The measures would quantitatively be very effective, and would improve virtually the entire housing and commercial stock in several decades.

As presented in the Spring 2010 draft CCAP, the RECO and CECO—provided, in combination, a net reduction of approximately 27,000 Metric tons (MT) GHG reduction annually by the year 2020. These two programs would be able to compensate for loss of the VMT fee found in L-1. Moreover, these measures would significantly improve the quality of existing housing and commercial stock and reduce energy costs for the building owners. These two measures (described in the December 2010 Board letter) were strongly opposed by members of the Real Estate community for various reasons including their application at Point-of-Sale; however, in terms of effectiveness, they would be very effective at improving building energy efficiency while only arising at times of building sales, when the cost of the improvements could be spread over a very long time period and could be largely, if not completely, made up for by energy savings realized on a monthly basis.

If the RECO and CECO are adopted, they would still require additional detailed analysis prior to codification. *Staff can recommend this approach with the understanding that the RECO and CECO would need to remain as originally written in the Spring 2010 Draft CCAP.*

#### Alternative C: Reinstate a Weaker RECO/CECO and Reinstate Other Measures.

The RECO and CECO need not be as strong as the original formulation to have a positive effect. They could be phased in over time, for example, or implemented from the beginning at a rate reduced from the original proposal. The cap on the maximum value for the improvements could be set at a level lower than the original 3% of appraised value. This would reduce the applied costs at the time of sale, and still allow a benefit of up to several thousand MT per year of GHG reduction as well as reduced ongoing energy costs for the building owners. If the RECO/CECO were reduced in effectiveness by half (for example) in order to fully make up for the loss of the L-1 benefit, certain other measures that were

removed/reduced should be brought back in some combination to stronger status. These include, but are not limited to:

- a. Measure T-3 – Improve end of trip bicycle facilities (showers and parking) for new development that supports businesses with 50 or more employees (this limit was lifted to approximately 275 new employees and limited to only office buildings, which rendered the measure inapplicable to almost all new business that could reasonably be expected in the County).
- b. Measure E-8 – require all new construction to achieve California Building Code Tier I or II Energy Efficiency Standards (this was amended to just reflect normal updates of the County’s existing Green Building Code, a loss of 1,000 to 6,000 MT of CO<sub>2</sub>e reductions per year).
- c. Measure E-11 - Shade/Solar Panels/High Albedo (Reflectivity) Materials and Coatings on New Large Parking Lots – Require new parking lots with 20 or more spaces (about 5,000 square feet) to require one or more methods of heat reduction including shading by trees, shading and energy generation by solar panels or high-albedo pavement coatings (Planning Commission recommended that the CCAP raise the new parking lot area threshold to 50,000 square feet (about 200 new parking spaces) which would have effectively eliminated almost all applicability to new County parking lots).
- d. (Initial) Measure T-14 - Establish parking fees for commercial areas. This measure, which had an initial aspirational value assigned of up to 14,650 MT per year GHG reduction, was quickly criticized as it was felt that it would drive business to other areas and hurt local companies. The idea that it could be coordinated with other jurisdictions did not persuade the public, and so it was discarded.

*While recognizing that the precise blend of these measures necessary to achieve a 15% GHG reduction would depend on the Board's direction, Staff could recommend moving forward with such an alternative, assuming a quantifiable combination of these measures that will allow the prescribed goal of 15% annual GHG reduction to be attained by 2020. If any of these measures are not needed to achieve the 15% target, they would not need to be implemented.*

Some further considerations:

- The implementation of the CCAP requires that a new inventory be done in 2014 as a "check-in" to measure our progress. At that point Staff will reassess the need for certain measures, with a new community process to be undertaken at that time. Owing to delays in the overall approval process, it may be wise to push this date ahead to 2015.
- Important side benefits of CCAP policies would be making communities more livable and comfortable, more pedestrian- and bicycle-friendly, more water and energy efficient and more resilient to price spikes in natural resources (water/gas). It would also result in more stable neighborhoods, cleaner air, healthier environs, and creation of green jobs.
- The County is currently in an update phase for the Eden and Castro Valley General Plans; it is now necessary to include GHG reduction strategies in these Plans. The preparation of the

CCAP is a mitigation measure for Eden Plan EIR and maybe for the Castro Valley Plan as well; the success of the plans at reducing GHG will hinge on the effectiveness of the CCAP.

- The implementation of these measures as part of an approved CCAP, when accepted by the BAAQMD and incorporated as part of the Alameda County General Plan, would provide CEQA streamlining for GHG emission impacts and relief and certainty for the development community.
- Legal considerations are real and potentially significant. The County could face legal challenges on approvals of new development for not having a GHG reduction strategy that fully conforms to AB32.

## CONCLUSION

After conducting an extensive and rigorous community process, staff believes the CCAP in the form recommended by the Planning Commission strikes an effective balance between protecting the environment and economic growth. However, the draft Plan still contains some controversial elements, and many beneficial elements have been set aside due to various pressures, many of which could provide viable alternatives to the Planning Commission recommendation. In this setting, staff recommends that the Board direct staff to use the CCAP as a project description for CEQA analysis, either in the form recommended by the Planning Commission, or in a alternate form as recommended above by Staff that would also allow the County to achieve its 15% GHG reduction goal; and give direction to staff to begin the environmental review, plan approval and subsequent implementation process.

Sincerely,

Chris Bazar  
Director, Community Development Agency

Attachments  
Climate Action Plan available at:

[http://www.acgov.org/cda/planning/documents/100921\\_Alameda\\_CAP\\_Public\\_Review\\_FinalV2\\_hires.pdf](http://www.acgov.org/cda/planning/documents/100921_Alameda_CAP_Public_Review_FinalV2_hires.pdf)