

Leon Freeman

From: Leon Freeman
Sent: Monday, March 10, 2014 10:30 AM
To: DRP Community Climate Action Plan
Subject: FW: BIA Climate Action Plan Comments
Attachments: CAP Final Comments 3-3-14.pdf

From: Marta Golding Brown [mailto:mgbrown@bialav.org]
Sent: Monday, March 03, 2014 4:20 PM
To: Leon Freeman
Subject: FW: BIA Climate Action Plan Comments

Dear Leon:

Attached please find comments on the Los Angeles County Climate Action Plan (CAP) ordinance released in January, from the Building Industry Association Los Angeles / Ventura Counties Chapter. As stated in the letter, the BIA welcomes the establishment of a climate action plan by Los Angeles County, as we understand establishing such a plan can assist those seeking project approvals to obtain streamlining benefits under CEQA. We do, however, have concerns about the details of the plan and possible unintended consequences. We have delineated many of our concerns in the attached letter and look forward to meeting with you to work toward a reasonable and productive CAP.

Sincerely,
Marta

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March 3, 2014

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Re: Comments of Building Industry Association of Southern California, Inc., Los Angeles/Ventura Counties Chapter Concerning the Public Draft Unincorporated Los Angeles County Climate Action Plan 2020 (DCCAP) Released in January 2014.

Dear Mr. Freeman,

The Building Industry Association of Southern California, Inc., Los Angeles/Ventura Counties Chapter (BIA) is a regional trade association that represents more than 1,000 member companies. Together, our members employ more than 100,000 workers and professionals building new homes and communities throughout Southern California. On behalf of our membership, we are submitting these comments concerning the draft *Unincorporated Los Angeles County Community Climate Action Plan 2020* ("DCCAP"), which was released in January 2014.

BIA serves as the collective voice of the home building industry in Los Angeles and Ventura Counties. Our members and staff have worked hard to assure that the comments contained herein reflect the considered views of the industry leaders who have genuine concern for the future of homebuilding in Los Angeles County. This group of industry leaders, which includes the members of the BIA's Los Angeles/Ventura Counties governmental affairs committee, is extremely knowledgeable when it comes to thoughtful and responsible development and use of land within the County's planning jurisdiction.

First and foremost, *BIA welcomes the establishment of a climate action plan by Los Angeles County* (the "County"). Even though we have concerns about the details of such a plan and their potential unintended consequences, BIA generally welcomes the prospect of having a CCAP. We desire the thoughtful establishment of a plan because it can, when coupled with project-level compliance with such a plan, provide meaningful benefits to all concerned. In particular, we recognize that establishing such a plan, and compliance with it, can help those who are

seeking project approvals to obtain streamlining benefits under the California Environmental Quality Act ("CEQA").

That said: BIA has many concerns about the DCCAP in its current form. They are as follows:

- 1) The County should carefully consider the latitude that it has under the applicable law to both (i) choose a moderate overall CCAP goal, and (ii) allocate the resulting burdens among the different sectors of the economy in ways that do not inequitably over-burden new development and redevelopment.

BIA respectfully asks the County to reconsider its choice to aim for a 11% decrease in overall GHG emissions within its territory between 2010 and 2020. The goal is not required by any law; and it may be excessive and burdensome in light of special consideration applicable to the unincorporated County. In particular, aiming for and committing to a fixed, overall decrease in area-wide greenhouse gases (GHG) can be over-burdensome when it is applied to an area in which there is projected sizable population growth. The County's own data show that the unincorporated area of the County is projected to grow at a *faster* rate -- in terms of population -- than is the Southern California Association of Governments (SCAG) region as a whole.¹ Consequently, the County should consider alternative goals related to climate action planning.

Even if the County adheres to AB 32 Scoping Plan targets that were intended to measure statewide achievements, the County should consider seeking outcomes that are 29% better than "business as usual" ("BAU"), rather than the fixed, aggregate emissions reduction (irrespective of population growth) approach reflected in the DCCAP. Great strides are being made in many sectors toward lower GHG emissions (especially those related to building efficiency, fleet fuel change and fleet efficiency improvement). Therefore, *a metric based on achieving substantial improvements in relation to "business as usual" can – in many circumstances -- be less burdensome than is a fixed, jurisdiction-wide percentage decrease in aggregate GHGs notwithstanding population growth.*

In fact, the cities in San Bernardino County recently combined their efforts to study and shape their climate action plans; and many of those cities chose the BAU approach over the approach reflected in the DCCAP (i.e., the fixed, jurisdiction-wide aggregate GHG percentage reduction irrespective of population growth). Accordingly, BIA urges the County to prepare and present an alternative analysis showing what the burden would be if the County were to chose the alternative BAU approach, which –

¹ The DCCAP indicates that the population in unincorporated Los Angeles County is projected to grow 30% between 2010 and 2035. DCCAP, Appendix B, Inventory and Forecast Details, Table 1-1. SCAG's 2012 RTP/SCS and its accompanying data project that the population in the entire SCAG region is projected to grow only 25% between 2010 and 2035 (0.9% per year, compounded). See SCAG's 2012 RTP/SCS Draft Growth Forecast, p. 11, December 2011 ("Between 2010 and 2035, the annual population growth rate will be only 0.9%, which is lower than the growth rate for the past 20 years.") The 0.9% population growth compounded for 25 years (2010-2035) equates to a 25% cumulative growth in the SCAG region between 2010 and 2035.

like the DCCAP approach – is based squarely on the AB 32 Scoping Plan goals; and then choose the less burdensome of the two approaches.

Another alternative – and one that BIA believes is the most equitable – is for the County to establish a climate action plan that imposes specifically upon new development and redevelopment in the unincorporated county, in relation to land use and transportation considerations, no more than the Senate Bill 375 GHG emissions reduction goals established by the California Air Resources Board (“CARB”) would impose on the SCAG region as a whole. In 2010, the SB 375 goals were expressed in terms of per capita emission reductions related to land use and transportation; and they called for both an 8% reduction between 2008-2020 and a 13% reduction between 2008-2035. SCAG’s 2012 Regional Transportation Plan and Sustainability Communities Strategy (“RTP/SCS”) later bettered those goals.

The County can conclude that compliance with the SB 375 per capita emissions reductions targets related to land use and transportation issued (or the greater per capita achievements projected by SCAG in its 2012 RTP/SCS) will satisfy the County’s climate action plan requirements concerning such impacts from new development and redevelopment projects. Importantly, CEQA permits the County to establish its climate action goals – in toto and by sector – at any level it chooses, based on reasonable policy considerations (including the need to foster healthy new development and redevelopment). The County is not legally bound to adhere to AB 32 Scoping Plan targets established for statewide measurement; and – just as importantly – the County may decide how to allocation relative burdens among different sectors of the economy, as long as its decisions are based on reason.

If the County were to impose a more equitable goal within its pending climate action plan specifically as relates to new development and redevelopment within its jurisdiction, the County would be putting these activities (and the citizens who benefit from them) on a more equal footing with all other citizens of the SCAG region as a whole. This would help to spread the burden of GHG reductions evenly throughout the SCAG region’s citizenry – as it should be. It would also allow growth, development and redevelopment to take place at a relatively natural and organic pace, without undue market distortions owing to the over-burdening of such development and redevelopment activities in relation to (for example) coerced inertia or advantaging the secondary housing market (i.e., the resale of existing homes or the rental of existing apartments).

The only alternative to such an approach is to impose disproportionately upon those who provide, acquire or benefit from new development and redevelopment, presumably on the theory that the beneficiaries of these activities can and should pay for the sins of all other citizens. Such an approach is problematic for several reasons. First, it places an undue burden on construction and related industries, which have still hardly recovering from the crushing downturn that began in 2007. Second, without any doubt, new homes and redevelopment are far more GHG-reductive when compared to existing houses stocks generally. Therefore, the County should be promoting new development and redevelopment, rather than hindering these activities by imposing any additional undue and inequitable burdens. Third, such impositions on land uses could even have legal implications in terms of the need for “rough proportionality” between development exactions and development impacts, as well as other potential “takings” implications where applied.

The County should not impose too heavily upon new development and redevelopment when fashioning the necessarily implementing details and guidance vis-à-vis its climate action planning. In light of the present lack of details – especially concerning land use – about how the County will meet the ambitious policy goals set forth in the DCCAP, the County should make plain its intention to not over-burden development and redevelopment in relation to also burdening the existing built community.

- 2) Both good and bad, the DCCAP lacks specificity about how the County intends to regulate new development and redevelopment in ways that will demonstrate compliance with the policy goal.

BIA recognizes that the DCCAP is intended to establish broad policy of the type that can be fine-tuned through implementing actions, such that the latter can be adjusted from time to time. In fact, BIA mostly encourages such an approach, which has been used to good effect in other jurisdictions – particularly concerning different jurisdictions in San Bernardino County, where climate action planning is relatively highly evolved. Regrettably, however, the DCCAP provides so little information concerning land use that even the broad outline is obscured.

Therefore, BIA looks forward to the day when the land use components of the DCCAP will come into better view. Nonetheless, BIA now urges the County to put in place CCAP policies that will allow project applicants to enjoy the greatest possible flexibility to respond to local market forces, site-specific conditions, and project-specific attributes. The CCAP should allow individual project applicants to demonstrate objectively that project design features or mitigation measures of the applicant's choosing can achieve the GHG reductions that which the CCAP requires. This type of flexibility will give project applicants the ability to incorporate cost-effective GHG reduction strategies while providing the County with the assurance that the necessary GHG emission reductions are occurring, such that the CCAP's reduction targets will be met.

We urge the County to look toward the relatively highly evolved climate action plans that are in place and being refined for San Bernardino County and the municipalities therein. There, the agencies have developed so-called "screening menus" that permit project applicants to choose among a variety of measures that quantifiably lead to GHG reductions. Particularly important is the need to permit applicants to demonstrate GHG-reduction equivalency for new approaches that are not specifically listed and quantified on a pre-approved screening menu. Such an approach can be very effective in terms of encouraging innovation and spurring new ideas that are most suitable to the locale and market; while allowing project proponents to undertake measures that make the most sense in a given context.

BIA looks forward to working with the County staff as these implementing details are brought forward. In the meanwhile, BIA has concerns about some of the specific measures that are foreshadowed by the DCCAP, discussed below.

- 4) The County should take great care to do no harm when fashioning the land use and transportation measures that are foreshadowed in the DCCAP.

The DCCAP is a policy-level document. Therefore, it leaves for another day details concerning how the policy, which is set forth broadly, will be implemented. As we noted above, such an approach – which allows for implementing measures to be fashioned and revisited from time to time as experience and knowledge gained – can be beneficial and wise. However, there is presently too little substance in the DCCAP to determine its implications for land use specifically. BIA is keenly interested in the land use implications of the County's ultimate climate action planning.

What little suggestion in the DCCAP there is about land use is not encouraging. Most importantly, the DCCAP focuses heavily on reducing vehicle miles traveled – or VMT reduction. The County should recognize instead that VMT is only one variable in the complex equation that should ultimately be used to calculate emissions from vehicle use. For example, the latter metric (i.e., emissions from vehicle use) takes into account emissions from idling cars stuck in overly-congested urban traffic, which is why so-called “vehicle hours of delay” is another important metric that has GHG implications.

Moreover, emissions from vehicle use also takes into account other key factors such as fleet fuel change (i.e., changing fuel type, such as from gasoline to electric or natural gas) and fleet efficiency improvements (e.g., improved, high-mileage gasoline-powered hybrids). Rapid improvements concerning these factors have a greater and faster impact on GHG emissions from vehicular use than top-down planning efforts aimed at aggregate VMT.

The County should not overlook the fact that vehicle fleets (personal and commercial) are changing rapidly. For example, one maker of electric cars, Tesla Motors, Inc. has seen its stock increase dramatically (eight-fold) in the past twelve months and by one-third (from \$21 billion to \$31 billion) in the month of February 2014 alone. Certainly, Wall Street now recognizes that fleet fuel change is imminent; and the County should as well.

Therefore, BIA urges the County to focus on reducing overall emissions from vehicle use rather than VMT for several key reasons. First, that is what the California Legislature intended. Senate Bill 375, which was enacted in 2008, was amended a number of times before its eventual passage. The earlier versions called specifically for VMT reductions; but the ultimate bill did not. Instead, the final SB 375 bill, as codified, focuses squarely on emissions reductions, not VMT reductions.

Second, an undue focus on VMT can undervalue the need to focus on mobility. It hardly matters that everyone commutes no farther than ten miles each way if no one can drive any faster than ten miles per hour. A proper focus on overall mobility as a part of and also apart from emissions from vehicle use should lead land planners to be appropriately receptive toward planning new towns along distant highways and especially the well-balanced growth of peripheral job centers and communities.

Third, a proper focus on emissions from vehicle use allows all concerned to focus on steps that should benefit the environment more immediately and – importantly – directly in relation to the more than 99% of our citizens who will not move into newly-built residences this year. In other words, fleet

- 3) The County should not add to the building efficiency requirement established by the California Energy Commission and pursuant to CALGREEN.

The DCCAP discusses the prospect that the County will add burdens affecting new development and redevelopment concerning the energy efficiency of buildings, and that these burdens will be on top of the ever-increasing burdens that are regularly imposed by the California Energy Commission (the "CEC"). BIA urges caution here. The CEC – on its own – is aggressively marching builders double-time toward so-called "net zero" buildings. That pace of progress toward that goal is the subject of triennial reviews that typically leave Title 24 and similar regulations at or beyond the edge of economic reasonableness. For the County to insist upon still faster progress therefore assures the imposition of economically unreasonable energy efficiency requirements, which will have the tendency to slow down and, in some places and at some price levels, simply halt new development and redevelopment. Such consequences would be ironic, because new development and redevelopment are activities that actually reduce per capita energy consumption.

Specifically, among the proposed community actions set forth in the DCCAP is one labeled BE-1. (See DCCAP, pp. C-1 to C-2.) BIA urges the County to conform this measure to the Tier-1 voluntary standards set forth pursuant to the CALGREEN program, which was established in cooperation with the California Department of Housing and Community Development. There is no reason for the County to arbitrarily bolt out ahead of both CALGREEN and the CEC, given that their programs are the result of careful exercises of "pushing the envelope" in their own right.

BIA also has serious concerns about the community action labeled BE-3. (See DCCAP, pp. C-4 to C-6.) Requiring solar power systems on residential units and small commercial buildings can be counter-productive and very expensive – so much so that otherwise meritorious and affordable development could be forgone. Accordingly, solar roofs should not be mandated; but they should be made eligible for robust incentives – where they make sense.

The DCCAP is objectionably vague when it discusses "requiring" solar panels on "eligible" residential or commercial development, or on an "eligible" roof, ground space, parking area or warehouse – without any definition of the word "eligible." Naturally, determining which projects are most appropriate or "eligible" for the application of on-site solar systems requires anecdotal understanding of contexts (e.g., topography, slope, etc.) and economics (e.g., density considerations, affordability, etc.).

Concerning not only solar power systems, but also any other similar undertaking that might be mandated in a CCAP, BIA urges the County instead to establish overall GHG emissions and energy consumption performance goals, while allowing developers and redevelopers to select from any and all available means by which to achieve such performance goals. This will allow builders, developers and re-developers to ascertain what will work best in the context of each particular project, viewed in its particular market, and utilizing the most affordable technologies as they become available.

fuel changes and fleet efficiency improvements can be quickly adopted by the citizenry at large, whereas efforts to impact aggregate VMT through slow moving, top-down land use approvals cannot. Indeed, the latter (VMT reduction targeting sought through top-down land use imperatives) has derivative effects that are mostly negative, are contrary to organic community demand, and, to the extent that they are at all positive, are glacially slow.

- 5) The DCCAP in the context of other County ongoing county planning initiatives.

The DCCAP is presented against a backdrop of proposed amendments to the County general plan, the proposed expansion of so-called significant ecological areas, the proposed new hillside development regulations, and the like. Taken together, all of these County initiatives – as they are being proposed – spell great harm to property owners, businesses, markets, and employers and employees. Therefore, BIA asks the County for good sense and moderation in its climate action planning.

The County must provide for future housing and economic development. Land in the unincorporated County is – in comparison to the nearby urbanized land – relatively useable, affordable to purchase, and affordable to develop and build upon (but for regulatory burdens). Taken together, the many sweeping land-use proposals currently being contemplated by the County's staff have the potential to constitute a functional building prohibition in many areas of the unincorporated County.

Development and building in the undeveloped County, when it is undertaken sensibly, provides a necessary means to supply a proper mix of housing and community types, including new single-family, detached housing, which remains the preferred, consumer-demanded form of homeownership. We welcome a dialog to further the discussion on this very important issue; and we hope to have further opportunities to meet with County planning staff for that purpose.

Sincerely,



Tim Piasky
Chief Executive Officer

C: Richard Bruckner, Director of Regional Planning