

Karen Bodner
Michael Olecki
42480 Kaweah Drive
(PO Box 445)
Three Rivers, CA 93271

May 27, 2010

Tulare County Resource Management Agency
ATTN: David Bryant, Project Planner
Government Plaza
5961 South Mooney Boulevard
Visalia, CA 93277

RE: General Plan 2030 Update and Draft Environmental Impact Report (SCH No. 2006041162)

Dear Mr. Bryant:

Enclosed are comments on the Recirculated Draft EIR ("the RDEIR") and the Recirculated General Plan 2030 Update ("the GPU"). Because of the extraordinary size of the documents comprising the RDEIR and the revised/recirculated GPU, our comments focus primarily on the Foothill Growth Management Plan as it influences and is affected by the proposed drafts.

We recognize the tremendous effort the County put into the process of creating the documents and appreciate the opportunity to comment on them. We also appreciate the County's decision to respond to the comments it received in response to the 2008 draft by revising and recirculating the revisions.

Unfortunately, while some previously missing sections have been added, and some provisions have been improved, it is extremely disheartening to have discovered that despite hundreds of pages of comments submitted in response to the 2008 EIR and Draft General Plan Update – including from the Office of the Attorney General -- very little of substance has changed in the recirculated documents. There is still no real *plan* – development is still open-ended as to location, size (other than minimums), and standards. Much of what has been changed has been changed in the wrong direction – weakening existing measures that are intended to protect the environment and which contribute to Tulare County's attractiveness as a tourist destination.

The failure of the County to respond to the input of the public indicating our strong desire that the General Plan provide clear guidelines that will unambiguously protect the rural and agricultural lifestyle we cherish, the current GPU still leaves too much up to chance and "market forces." The vagueness of the GPU, no doubt designed to give the County maximum flexibility in future planning decisions, also denies the County knowable, reliable guidelines. The RDEIR, in attempting to evaluate the potential impacts that could result from implementation of the GPU, has been stymied – it is impossible to evaluate the impact of an invisible moving target.

The RDEIR has also again provided an inadequate baseline from which it could reasonably forecast potential impacts of adopting and implementing the GPU, and against which progress could be measured. As a result, again the RDEIR doesn't adequately disclose or evaluate potential significant adverse environmental impacts and measures to avoid or mitigate them. And, once again, the RDEIR doesn't present a reasonable range of alternatives to the GPU, including one that is designed to achieve what the people want: focused growth in existing communities and their already-designated urban development zones. The Alternatives presented are virtually identical to the Alternatives presented in 2008. By continuing to incorporate all the proposed GPU's goals and policies into each "alternative" the RDEIR not only skewed the analyses but failed to comply with the requirements of the California Environmental Quality Act, which requires consideration of alternatives with their own set of policies, objectives and implementation measures.

An EIR is an informational document. Its purpose is to "consider a reasonable range of potentially feasible alternatives that will foster informed decision making and public participation." CEQA §15126.6(a). "The EIR shall include sufficient information about each alternative to allow *meaningful* evaluation, analysis and comparison with the proposed project." CEQA §15126.6(d) (emphasis added). This point is so important, the statute repeats it: "The range of feasible alternatives shall be selected *and discussed in a manner to foster meaningful public participation and informed decision making*." CEQA §15126.6(f). The discussion/analysis of the various "Alternatives" in the RDEIR is superficial, conclusory and speculative. It is also stunning in its repeated conclusions that the overall impacts of both the City Centered and "Confined" Growth alternatives would be "similar" to those of the proposed plan, even after acknowledging that the individual impacts would be less than the proposed plan's.¹

1 It appears that instead of creating a real range of alternatives from which the County could choose an appropriate plan to guide development over the next twenty years, the County may instead have chosen a plan and then created slight variations on that plan solely to meet the statutory requirement of having considered a range of alternatives. On May 5, 2010, I requested access to and copies (to be identified after review) of the documents the County used in preparing the "City-Centered Growth" and "Confined Growth" Alternatives to the project; in evaluating and assessing the environmental impacts of the "City-Centered Growth" and "Confined Growth" Alternatives; to discuss and/or compare the environmental impacts of these Alternatives relative to each other or to those of the proposed project; and to recommend the adoption or non-adoption of any Alternative. While the Public Records Act require access to public documents to be prompt, on May 14, I received a letter from the County telling me that I would be contacted on May 21 regarding the County's "progress in gathering the information." On May 21, I received another letter, directing me only to the documents that had been posted on the County website (i.e., to copies of the very documents which had led to the request for background documents and publicity releases) and telling me that I would be contacted again on June 3, 2010 – a week after the close of the public comment period and almost a month after the County received the request -- for an update on the County's progress in gathering "any additional information." The County's delaying tactics suggest that there are no documents containing substantive evaluation or discussion of the various alternatives.

Karen Bodner
Michael Olecki
Comments on Recirculated DEIR & GPU
May 27, 2010

It will not be easy to fix the continuing weaknesses in the recirculated GPU documents.
But perhaps the third time will be the charm.

Sincerely,

Karen Bodner
Michael Olecki
KBodner@att.net
MJOlecki@att.net

Attachments: Bodner/Olecki Comments re: General Plan 2030 Update and Draft
Environmental Impact Report (SCH No. 2006041162)
Copy of 2008 Comment letter, California Attorney General
Copy of 2008 TCCRG Comment letter
Bodner/Olecki Supplemental Comment Letter

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RE: General Plan 2030 Update and Draft Environmental Impact Report (SCH No. 2006041162)

Dear Mr. Bryant:

This letter supplements our separately-submitted comments on the Recirculated Draft EIR ("the RDEIR") and the Recirculated General Plan 2030 Update ("the GPU").

In our review of the GPU and the RDEIR we identified a number of policies that cannot be implemented because they lack any Implementation Measures. In addition to those identified in the body of our more detailed comment letter, please be advised that there are no Implementation Measures for the following policies:

LU 3.1	LU 3.7	LU 7.1 – 7.4
LU 3.3	LU 4.2 – 4.6	LU 7.6 – LU 7.11
LU 3.4	LU 5.3	LU 7.14
LU 3.5	LU 5.5 – 5.7	LU 7.17
LU 3.6	LU 6.1 & LU 6.2	

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Michael Olecki

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MJOlecki@att.net

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RE: General Plan 2030 Update and Draft Environmental Impact Report (SCH No. 2006041162)

Dear Mr. Bryant:

The following comments expand on and supplement those in the accompanying cover letter, regarding the Recirculated Tulare County General Plan 2030 Update and Recirculated Draft Environmental Impact Report¹. Because the documents comprising the General Plan Update and the Revised Draft EIR are inseparable, these comments address all the related documents. Please consider the comments in the cover letter and this document together, and in response to both the RDEIR and the Recirculated GPU.

INTRODUCTION

General Comments

An environmental impact report (“EIR”) is an informational document, whose purpose is to provide public agencies and the public in general with detailed information on the effect which a proposed project is likely to have on the environment; to identify, and list, ways in which significant effects on the environment of such a project might be avoided or minimized; and to indicate alternatives to such a project. CEQA §§ 21061 and 21002.1² Its analysis should help local legislators select the most appropriate general plan alternative to adopt. To facilitate use of the EIR by the public and the reviewing agency, it should be organized and written in a manner that will be meaningful and useful to both decision makers and to the public. CEQA §21003. Each EIR is also required to include a summary of the proposed action and its consequences. CEQA§15123.

¹ The documents are referred to hereafter as “GPU” or “General Plan” and “RDEIR”, respectively. In addition, references to the GPU refer to the Goals and Policy Report.

² All citations to CEQA are to California Environmental Quality Act, Public Resources Code §§21000 - 21177; references or citations to the CEQA Guidelines are to California Code of Regulations, Title 14, Division 6, Chapter 3, Sections 15000-15387.

Most importantly, the EIR review process establishes an element of trust: as a result of a fair and accurate evaluation of the possible environmental impacts identified by the EIR, especially in the context of adoption of a foundational document such as a General Plan, the public may have confidence that they may rely on the goals and policies adopted actually being carried out. See *e.g.*, *County of Inyo v. Yorty*, 32 Cal. App. 3d 795 (The EIR serves not only to protect the environment but also to demonstrate to the public that it is being protected.) Sadly, after an auspicious start, the manner in which the County subsequently carried out the Update process has severely undermined that trust.

The Recirculated General Plan and associated RDEIR have adopted language consistent with “smart growth and neo-urban” approaches to planning, but it has not actually adopted those approaches substantively. Far too many of the policies and implementation measures are discretionary, with the result that future decisions may well not comport with the presumed intent of the goals and policies. Importantly, the GPU still does not reflect the frequently expressed desires of Tulare County residents regarding how they want development to proceed over the next 20 years - i.e., growth centered in or restricted to existing communities (whether incorporated cities or communities). In particular, Tulare residents consistently rejected the need for any new towns, whether planned or not. (To the extent the County wants to promote the standards associated with the proposed Planned Community Area, an appropriate means of accomplishing this would be to incorporate them into the overall building standards for new development. The GPU recognizes the LEED and LEED-ND standards at Part I, page 4-2, but has not required compliance with the standards. LU-7.15 and LU-7.16 are “implemented” by an implementation measure that merely requires the County to review and implement an implementation measure. Page 4-36.)

The RDEIR – and the proposed draft General Plan Update – also contain a number of inconsistencies, omissions, inadequacies and misrepresentations. For instance, the Introduction “Updated Topics” section states that the County has developed “a land use/circulation diagram showing the location of all future growth areas proposed as part of the General Plan Update. Refer to Figure 2-2 in Chapter 2, Project Description.... This figure also identifies the Urban Development Boundaries within which future urban growth is expected to occur.” However, while Figure 2-2 (actually labeled “Land Use Diagram”) does generally depict areas designated as “development corridors,” it does not provide enough detail to determine the precise boundaries of those corridors. As a result, the environmental impact of development within those corridors – and especially the impact of developing the corridors to complete build-out – cannot be evaluated.

Throughout the RDEIR and GPU, the terms “regional corridor,” “urban corridor,” “development corridor” and “Corridor” are used, in some cases apparently interchangeably. Please establish a clear and consistent usage so that the public will know exactly where the proposed corridor may be located.

The RDEIR and GPU also use the terms “important agriculture” or “important agricultural” in connection with various land use contexts. It is unclear whether the term

is being used in a general, English-language way, or whether the specific “Important Farmlands” is intended. Cattle ranching is an important component of the County’s agricultural economy; to the extent that grazing lands may not be considered “important” as the result of the County’s use of the undefined terms, this must be corrected to clarify that grazing lands are within the scope of “important agriculture” or “important agricultural” lands and uses.

Population data included in the Existing Conditions section of the 2008 Background Report used data from a number of sources. Because “[p]rojected populations by both the DOF and the U.S. Census do not provide long term forecasts to 2025 ... [the DEIR remedied this] by using a straight line projection and continuing the compound growth rates from the previous five years (i.e., 2010 through 2015)”. 2008 Background Report at page 2-29. The Background Report circulated with the Recirculated RDEIR and GPU (which is not entitled as a revised report) says only that “Compound average growth rates for historic and projected growth rates were based on population data provided by DOF.” At page 2-29.

Are these population projections based on the same data?

Executive Summary

CEQA requires each EIR to include a summary. “The summary shall identify (1) Each significant effect with proposed mitigation measures and alternatives that would reduce or avoid that effect; (2) areas of controversy known to the Lead Agency including issues raised by agencies and the public; and (3) issues to be resolved including the choice among alternatives and whether or how to mitigate the significant effects.” CEQA§15123.

The RDEIR’s Executive Summary fails to include a discussion of any of the alternatives that would reduce or avoid the environmental effects of the proposed project, either in the section identifying the effects or in the issues to be resolved. Nor does it identify areas of controversy, although the scope of comments submitted in response to the prior iteration of the RDEIR and Draft General Plan Update clearly indicate that there are several controversial aspects of the proposed project. Because the ultimate decision maker, in this case the Board of Supervisors, is likely to rely on the Executive Summary, the RDEIR’s failure to include even a mention of the various alternatives or areas of controversy is more than disturbing: **it suggests that the outcome of the Update process has been predetermined, that the County is simply going through the motions, and that public input will not be considered.**

Table ES-4 sets out impacts and mitigation measures, beginning with Impact 3.1-1. Table 4-3 in Alternatives comparing Impacts begins with Impact 3.1-3. Why were Impacts 3/1-1 and 3.1-2 omitted from the Alternatives table?

Tables ES-4 and 3.4-4 identify Impact 3.4-2 as “The proposed project would not result in the wasteful, inefficient or unnecessary consumption of energy in the construction

and operation of new buildings.” The text at page 3.4-29 in the RDEIR, which identifies the Impact itself, says “The proposed project could result in....” etc. Please correct this inconsistency.

Project Description

On page 2-5, the RDEIR identifies one of the objectives of the General Plan Update as “Allow existing and outdated agricultural facilities in rural areas to be retrofitted and used for new agricultural related businesses (including value added processing facilities) subject to specified criteria.” **Please identify where these criteria are set out.**

The General Plan identifies this same Guiding Principle as “Allow existing and outdated agricultural facilities in rural areas to be retrofitted and used for new agricultural related businesses (*including non-agricultural uses*) if they provide employment. (emphasis added) As contained in the GPU, this principle is both internally inconsistent – non-agricultural uses are not new agriculture-related businesses – and inconsistent with the objective set out on page 2-5 of the RDEIR. Troublingly, the language used in the GPU would permit the transformation of existing – but not necessarily outdated – ag facilities to be converted into commercial uses that are incompatible with agriculture – such as party barns. **Please make the GPU language consistent with the language used in the RDEIR.**

The RDEIR identifies as a Key Policy Change (or possibly just as Project Information) the following:

Provide clear criteria for when and how unincorporated communities and hamlets can grow. Communities would have to fulfill specific conditions for expansion as defined by the General Plan. The County would require that infrastructure exists before or be provided concurrent with the new development.

RDEIR at 2-14.

But of the policies in the Planning Framework that would carry out this key change, PF 1.3 merely requires the County to “encourage” land uses that benefit from urban services to locate within UDBs and HDBs – it does not require or limit the location of urban land uses. This policy is cross-referenced to PF 2.8. **Neither PF 1.3 nor PF 2.8 have an implementation measure. Neither one is therefore enforceable and thus they have no effect.** PF 1.3 also suggests that if the “encouragement” does not work, development outside the UDB/HDB will be permitted if infrastructure can be provided. The policy, as a result, is inconsistent with Policy PF 2.1 (County “shall limit” urban development to area within UDB) and does not ensure that growth only takes place in designated development areas. **To protect agricultural and open space lands, and to prevent urban sprawl, growth should be strictly limited to infill and development within strong development boundaries. Please provide clear, enforceable criteria to implement the policy.**

PF-1.4 again only “encourages” location within UDBs and HDBs – and it also **has no implementation measure**. PF 1.6, which instructs the County to designate land uses consistent with the Land Use element and the various local plans has **no implementation measure**.

PF-2.2 permits the County to modify a community UDB on request of a special district, the community, or apparently anyone else as part of a requested General Plan Amendment. This policy is inconsistent with and undermines PF-2.1. A UDB may also be expanded when 80% of the non-Williamson Act land within the UDB is developed. Stated another way, a community UDB may be expanded when 20% of the non-Williamson land is still available for development. The percentage should be increased to 90% or more. **See also comment above -- To protect agricultural and open space lands, to promote infill and to prevent sprawling urbanization, growth should be strictly limited to infill and development within strong development boundaries.**

PF-2.7 requires development within UDBs without exception to meet an urban standard for development, including curbs, gutters, sidewalks, and community water and sewer systems. With respect, we suggest that imposing mandatory urban standards is inappropriate for some communities, and should be a decision left up to the community plan. Especially as concerns development in the foothills, imposition of urban-style development styles in all cases would be in many cases inconsistent with the character of the community (which would violate FGMP policy) and unwanted.

PF-2.5 confuses the intent the GPU further by providing that if “one or more applicants” is willing to fund a community plan update, the County will work with the applicant to create a new plan. **Does this give a developer with deep pockets control over a community’s plan? What about collaborative partnerships with community members willing to participate/take on tasks without the funding component?** This policy also says “Requirements for new town development shall be utilized to guide such private/public joint planning efforts.” **What does this mean?**

PF-3.2 corresponds to PF-2.2, as applied to hamlets. However, it also permits expansion of the HDB as part of a subdivision or specific plan proposal. **This extra flexibility is likely to make the HDB so flexible as to have no real effect, and should be removed.** The comments to PF-2.2 also apply here.

Another Key Change identified at page 2-14 of the RDEIR is: Expand upon the existing new town policy. New criteria for evaluating proposals “would” include a fiscally neutral or positive impact on the County, an infrastructure Master Plan must be prepared, demonstrated access to water (**but not impact on supply?**) and the project “must strive” to have balanced mix of land uses. **What does this mean? Does this encompass requiring sufficient employment opportunities to prevent creation of bedroom communities?**

CEQA requires that the project definition include the whole of an action that has the

potential to harm the environment. The proposed location of an action is a key aspect of this definition, because it is frequently the site of the project which dictates the harm it may cause. See CEQA Guidelines §15378. The “Urban Development Boundaries” section of the Project Description “assumes that a majority of future growth will occur within the CACUDBs for the County’s cities and communities.” The assumption is unsupported by – and is in fact contradicted by -- the policies of the GPU, which establish large new UDBs for 11 hamlets, which will be exempt from the provisions of the Rural Valley Lands Plan and the Foothill Growth Management Plan and their related building standards; propose an entirely new “regional growth corridor” concept to direct development along highways 65 and 99; and which greatly expand upon the existing “new town” policy by adding an entirely new “Planned Community Area” component.

The locations of the regional growth corridors have not been established, but are simply expected to be adopted through “future amendments to the General Plan Land Use Designation Map.” RDEIR at 2-13. As a result, the impact of this entire planning framework is unknown and unknowable. Significantly, “lands within these corridors will also be exempt from the Rural Valley Lands Plan” to allow the County to “maximize the economic development potential of areas located along major transportation routes for uses such as industrial, regional retail, office parks, and highway commercial.” Id. **How does this significant new provision further the objective of protecting important agricultural resources and scenic natural lands? Limit rural urban sprawl? What will be permitted, and what impact will this “maximization” have on the County’s air quality, water needs and supply, etc?** The GPU also indicates that “interim policies would be established until regional growth corridor plans are adopted.” Why haven’t those interim policies been established in connection with the proposal to establish the corridors? Again, it is impossible to analyze even the preliminary impacts of the proposed corridors on the level of detail provided in this RDEIR.

Under the GPU, the County “may adopt corridor plans as: Urban Corridor Plans, located within urban boundaries such as Mooney Boulevard; Regional Growth Corridor Plans, located along major transportation routes outside urban boundaries; and Scenic Highway Corridor Plans, located along routes established or eligible as State Scenic Highways.” GPU Part I, page 2-1. **Developed Urban Corridor Plans are likely to conflict or with or interfere with orderly growth of the adjacent city or community. How will these Plans be coordinated with City or community plans? Why would the County even contemplate adopting a growth corridor to maximize the development potential for industrial, regional retail, office parks, and highway commercial uses along a scenic highway??** This is untenable. If the intent of the County is not to permit such uses along scenic highways and routes, it should include an appropriate restriction in the GPU. Without specific standards, any development may ultimately be permitted as compatible with the General Plan.

The County has also “not yet” adopted any proposed boundaries for the large Planned Community Areas; there are no Planned Community Areas indicated at all either on the Land Use Map or in the text of the GPU and RDEIR. Where the new town policies, including the new planned community area policies, do not identify specific sites where

new towns can be built, or the projected size and scope of these new towns, but rather create guidelines that permit them to be built virtually anywhere in the county, those policies are insufficient to identify and analyze the impacts of adopting the draft General Plan.

The RDIER asserts that

Future development subsequent to the general Plan 2030 Update would primarily occur in or adjacent to existing developed urban areas, within the County Adopted City Urban Development Boundaries, County Adopted City Urban Area Boundaries, Hamlet Development Boundaries (HDBs), Planned Community Areas (PCAs), Mountain Service Centers (MSCs), and Development Corridors in the Foothill Growth Management Plan (FGMP). These land use patterns allow for the logical extension and utilization of exiting utilities, public services, and other amenities such as proximity to employment centers, commercial uses, and public transit. Such land use patterns reduce dependence on motor vehicles and allows [sic] for stronger public transportation systems and development of pedestrian and bicycle paths.”

RDEIR at 3.4-26 and 3.4-27.

We agree that development in or adjacent to existing developed urban areas is the way to go, for all the cited reasons. **But the proposed regional development corridors and PCAs that will facilitate the creation of entire new towns anywhere in the County are entirely contrary to the concept; they should be completely eliminated as possibilities.** Tulare County’s own consultants have calculated that there is absolutely no need for new towns, and the people of the County don’t want them. Please listen.

Figure 2-2, Land Use Diagram, does not adequately disclose the County circulation system, as the only roadways shown are the state highways, none of which service the designated Development Corridors.

Figure 2-3, the RVLDP portion of the LU Diagram, which is intended to show the Regional Planning Framework Land Use Designations & Boundaries, shows only gross outlines of UDBs, UABs & HDBs - not enough detail to discern where the boundaries actually lie. While parcel-level detail is not required, the map must present a well-defined geographic area to assist in planning. This map also shows no Regional Corridors, and no Planned Community Zones are shown, which makes analysis of the impact those developments are likely to cause impossible. **The GPU should specify the areas in which regional corridors, new towns and Planned Community Areas may be considered to facilitate analysis of their impacts.** Or, preferably, new towns and PCAs should simply be removed from the GPU as inconsistent with the wishes and values of Tulare County’s citizens and other policies of the GPU.

Environmental Analysis
General comments

The text at page 3.1-5 indicates that designated candidate scenic highways and County scenic roads are shown on Figure 3.1-2, entitled Scenic Resources. Figure 3.1-2, however, does not identify any of the county-designated scenic roads or routes. (As scenic resources, the map shows only State Highways 190 and 198, and the Kern River (two branches). The majority of designated points on the map are historic markers – which is a good thing to have mapped, but they are not scenic resources.) **Please provide a map that fully documents the scenic resources of the County.**

The text at page 3.1-5 also apparently intended to list designated candidate scenic highways and County scenic roads. **This information is missing.**

The preservation of views of the night sky has been identified as valuable to the community. RDEIR at 3.1-16. Yet the provisions adopted by the GPU do very little to recognize or implement protection of the night skies throughout the County. ERM 5.18, entitled “Night Sky Protection” only requires the County to “determine the best means by which to protect the visibility of the night sky” upon “demonstrated interest by a community, mountain service center, or hamlet.” And the sole Implementation Measure (ERM IM 40) for this policy says only “The County shall encourage and assist community service districts (CSD), or similar local entities to assume parkland acquisition, development, operations, and maintenance functions in established areas.” Which does not really implement the policy of protecting the night sky. **Please see the International Dark-Sky website, www.darksky.org, for invaluable information on the effects of light pollution, ordinances adopted by other communities (of all sizes), lighting standards, and more. Tulare County should adopt and implement similar provisions to protect our night vistas.** (As more and more areas elsewhere become light-polluted, the clear, starry skies of Tulare County could become a tourist draw in their own right. Astronomers have conferences and conventions too....)

The impact analysis in Chapter 3 is confusing. On page 3.1-26 the RDEIR assumes that some new development will result in changes to views in all portions of the County, but that a majority of anticipated development-related changes will take place in the unincorporated communities in the Valley. This is **inconsistent** with the County’s expectation that most new growth will take place within the incorporated cities. The Chapter goes on to observe that new development would alter the existing open space views from the unincorporated communities, and that even with the proposed GPU policies, the impact is considered potentially significant. On page 3.1-28, this same development is identified as significant. And then it concludes that after implantation of mitigation measures, the impact is now significant and unavoidable. **Please explain.**³

3 Note: the RDEIR does not set out the threshold standards adopted by the County by which to measure the impact of the development discussed. As a result, it appears that the analysis has considered *any* development to have “significant and unavoidable” environmental

On page 3.1-31 the RDEIR notes that buildout of the project would create substantial new sources of light or glare and references policies LU-7.18 and LU-7.19 as designed to mitigate the impact. The GPU does not, however, take the proactive step of requiring specific shielding of light sources or any other specific steps to prevent light pollution. **Please see, again, the resources available at [www. Darksky.org](http://www.Darksky.org).** (See also comment re: LU-7.18 above.)

Analysis Comments

The RDEIR applies only token analyses to identify the possible environmental effects that could result from adoption of the proposed GPU, looking only to those policies consistent with the County's proposed plan (unless forced to do so by State or Federal law), and doing very little to identify (or rejecting without real analysis) new or innovative ways to avoid or mitigate the identified possible effects.

For instance, the RDEIR concludes that the possibility that "proposed project could conflict with other applicable adopted land use plans" (Impact 3.1-2) is "less than significant," and maintains that no mitigation measures "beyond currently proposed general plan policies and implementation measures" are required. This is tantamount to saying that the County does not need to hold elections because it plans to adopt a plan that eliminates elections. The RDEIR can only conclude that the proposed plan does not conflict with long-standing policies of the Foothill Growth Management Plan and the Rural Valley Lands Plan because the proposed plan makes major changes to land uses, and how land use decisions may be made, under those plans. (Notably, the proposed plan seeks to exempt from each of those existing plans any developments within urban area boundaries).

The FGMP is cited in support of mitigation of environmental impacts throughout the RDEIR. In most cases, the cited provisions do not support the analysis.

For example:

- **Impact 3.1-3 The proposed project would substantially degrade the existing visual character or quality of scenic resources or vistas.**

consequences. While some might agree with that assessment, it does not allow for realistic comparative evaluations of the various Alternatives required under CEQA: any development at all, in any location results in a finding of "significant and unavoidable." And as a further result, the RDEIR was able to justify not recommending or adopting either of the admittedly environmentally superior alternatives to the proposed project -- the City Centered and "Confined" Growth alternatives -- because the impacts in a few areas were considered "similar" to those of the proposed GPU. This even though the same analysis acknowledged that the impacts in virtually all other areas were less than those of the GPU.

The RDEIR concludes that adopting the proposed General Plan Update will result in Impact 3.1-3 having a **Substantial and Unavoidable** effect under CEQA. The RDEIR then cites **FGMP Policies 1.7, 6.1 – 6.4 and Implementation Measure 13** as measures that will reduce or mitigate the anticipated Significant and Unavoidable impacts. However, FGMP Policy 1.7 *encourages* commercial recreation uses (and thus additional development, traffic, air pollution, etc.) near natural features; Policy 6.1 purports to protect the visual qualities of State Highways 190 and 198 but doesn't apply to any other roads within the FGMP area, and Policy 6.2 requires the county to identify scenic roads but nothing more. Moreover Policy 6.2 **has no Implementation Measure** so the policy is not only unenforceable but will do nothing to mitigate the anticipated significant impact.

Policy 6.3 does require the county to require compliance with FGMP development standards BUT if, as the County states elsewhere, development will be directed to PCAs within the foothills, that development will be exempt from the critical resource- based Level III and Level IV review, which assesses the suitability of the proposed development for that particular site. **This undermines the foundation of the FGMP.**

Policy 6.4 applies only to development corridors, while the goal to which it is linked applies throughout the foothills. Under this Policy and its defective IM-14, only vistas within development corridors would be protected; the rest of the FGMP area is left uncovered.

IM 13 deals only with development of new subdivisions (and then only requires that impairments be minimal), thus leaving open expansions or improvements to existing structures, and development other than subdivisions, which will also impact the scenic visual character of the foothills. IM 13 also simply requires subdivision plans to be "reviewed" by Site Plan Review – there are no guidelines, and no provision that directs the County to create and adopt measurable guidelines or any other means of evaluating visual impact of development (and experience is that the environment of development other than slope is not even asked about - most planners appear unfamiliar with the foothills). To make the IM even less reliable, the entire section in the current FGMP that establishes the FGMP Site Plan Review process has been eliminated from the revised FGMP.

The EIR discussion of Impact 3.1-3 also cites **FGMP Policy 8.18** as a mitigation measure that will "ensure that hilltop development is designed to preserve the existing skyline and scenic panorama of the foothills," and Policy 8.19 as encouraging preservation of unique scenic resources in the foothills. However, Policy 8.18 is itself inherently inconsistent -- any "hilltop" development will by definition change the skyline; it therefore cannot be considered a measure that will "preserve" it. To be effective, the policy should prohibit hilltop development.

Cited Policy 8.19 is also weak as a mitigation measure – it "encourages"

maintenance and protection of unique open spaces, riparian woodlands, oak groves, rock formations and vistas but then relies on an even weaker IM that simply requires the general level of site plan review (again with no language that establishes or revises site plan review guidelines, methods or standards which could ensure identification and protection of the open spaces etc.). Moreover, the site plan review committee is not the final decision-maker – its recommendation simply gets "reported" to the unidentified "appropriate" decision maker.

Although not cited or discussed in the text of Impact 3.1-3, the chart of Mitigation Policies and Implementation Measures on page 3.1-27 also cites **FGMP Policy 1.5**. This Policy "encourages" the use of curvilinear streets, vegetation reestablishment on cuts and fills, cluster development, and housing site locations that blend into the landscape rather than becoming a focal point, but again relies only on the unchanged site plan review process. More disturbingly, as newly revised in connection with the General Plan Update, the language of the existing FGMP policy (which is or was Goal 3 Policy 3), the mandatory language ("new development SHALL be designed") has been replaced with the ineffective admonition to "encourage" new development to employ the cited design criteria. This does nothing to mitigate the impact of the proposed project and in fact makes the impact on scenic resources more likely than it would have been without the revision.

The RDEIR fatalistically then concludes that "No additional technologically or economically feasible mitigation measures are currently available to reduce this impact to less than a significant level."

- These same (above) policies and implementation measure are cited in the RDEIR in mitigation of **Impact 3.1-4 (The proposed project would substantially degrade the quality of scenic corridors or views from scenic roadways.) SU** and
- **Impact 3.1-5 (The proposed project would create a new source of substantial light or glare which would adversely affect day or nighttime views in the County.) SU**

As pointed out above, the policies and IM are ineffective or counterproductive. Impacts 3.1-4 and 3.1-5 also cite **FGMP IM 14** as a mitigating measure. IM 14 requires the County to promote the use of cluster development, greater setback distances, landscaping, and innovative lot design to protect scenic corridors within the County, and to incorporate provisions for the use of these tools into the County's land development ordinances. The language of IM 14 would make a good policy, but it does not provide a measurable means of implementing the policies. In particular, insofar as Impact 3.1-5 is concerned none of the cited policies or Implementation Measures address light pollution or glare, nor do they address means of reducing light pollution or glare. The International Dark-Sky Association's website (www.darksky.org) contains a wealth of resources,

including ordinances adopted by other jurisdictions, that would aid the County in preparing, and implementing real measures to avoid these impacts. But since none of the policies cited in mitigation actually mitigate the identified impacts, the RDEIR could not conclude other than that the impact was significant and unavoidable.

On the basis of limited and conclusory analysis, the RDEIR concludes that as to Impacts 3.1-3 and 3.1-4, “No additional technologically feasible mitigation measures are currently available to reduce this impact to a less than significant level.”

This conclusion is patently false. What if the County adopted an alternative General Plan, under which development was directed only to existing communities (cities, communities, hamlets) without exceptions and loopholes, and further directed only to within existing development boundaries? *The RDEIR identifies both the City-Centered Growth Alternative and the “Confined” Growth Alternative as superior to the proposed Plan, reducing the environmental impacts identified in Impacts 3.1-3, 4 and 5 – even with application of the same flawed policies and implementation measures used in the GPU.* Had either or both of these Alternatives been properly evaluated with alternative sets of principles, policies, standards and plans, and implementation measures as directed under the State Guidelines, an accurate assessment of the environmental impacts would have been attained – and would more than likely have shown the impacts reduced even further. If the County had considered a truly smart growth alternative, such as the one suggested by the Tulare County Citizens for Responsible Growth in its 2008 Comments, these Impacts would likely have been reduced even further -- perhaps even to Less Than Significant, which should be the goal of the Update process. Why did the County fail to consider a properly constituted range of alternatives?

- **Impact 3.1-5 The proposed project would create a new source of substantial light or glare which would adversely affect day or nighttime views in the County. SU**

The RDEIR rightly concludes that adopting the proposed plan will create a significant new source of substantial light pollution – there’s no way that plopping entire new towns – with their accompanying houses, stores, traffic, street lights, electric signage, billboards, etc. -- in currently undeveloped, agricultural lands can fail to introduce light and glare to what are now dark sky areas. The “mitigation” measures identified by the RDEIR, however, are inadequate to realistically do any real mitigation. As cited in the RDEIR, LU-7.18 requires the County to “improve and maintain lighting only *in park and recreation facilities* to prevent light spillage on adjoining residential areas. **THERE IS NO POLICY LU-**

7.18 IN THE GOALS & POLICY REPORT.

Assuming that the County can correct this deficiency, **what percentage of new light pollution is anticipated to come from park and recreation facilities, and how will this have any real, measurable effect on the overall increase in light levels created by new development?**

The RDEIR also cites LU-7.19 as requiring the County to “ensure” that lighting in residential areas and along County roadways “shall be designed to prevent artificial lighting from reflecting into adjacent natural or open space areas unless required for public safety.” While this policy is much better, once again **THERE IS NO POLICY LU-7.19 IN THE GOALS & POLICY REPORT.**

How can either of these nonexistent policies contribute to mitigation of a substantial environmental impact from lighting?

Impact 3.2-1 (The proposed project would result in a substantial increase in vehicular traffic.) is identified as also **Significant and Unavoidable**. The RDEIR once again concludes that **“No additional technologically feasible mitigation measures are currently available to reduce this impact to a less than significant level.”** And once again – what if the County adopted one of the reasonable and more effective Alternatives? **Both the City Centered and “Confined Growth” Alternatives are identified by the RDEIR as being environmentally superior, having lesser impacts. A truly smart/healthy growth policy – one without the loopholes and inconsistent elements built in to the Confined Growth alternative – is one stunningly evident mitigation measure the County could have adopted.**

- **Impact 3.2-4 The proposed project could result in a substantial increase in public transit usage.**

The RDEIR concedes that adoption of the proposed plan renders this effect **Less Than Significant. However, substantially increasing public transit usage is, in the context of this GPU, a good thing** – increased public transit usage will reduce VMT, decrease GHGs by reducing dependence on individual private vehicles, and improve our air quality. The fact that the proposed GPU will NOT have a significant impact on public transit usage is a result of the County’s refusal to adopt a healthy-growth alternative to the proposed GPU (even though two such proposals were submitted in response to the 2008 draft, and even though the County maintains that it did consider both a city-centered growth and what it labeled a “confined” growth alternative. As discussed elsewhere, because the County inappropriately assumed that the policies and implementation measures from its preferred plan would also be incorporated into any Alternative, its analyses of the Alternatives was skewed – and predictably, every plan gave the same result.

Had the County followed the State Guidelines, which direct the development of alternative sets of principles, policies, standards and plans, and even alternative implementation measures for each Alternative (see Guidelines at 43), more accurate measures of environmental impact would have been obtained. How could a plan that directed growth to existing cities and communities, where infrastructure including public transit already exists, and which promoted infill development and reduced distances between homes and destinations instead of encouraging the development of entirely new towns in currently undeveloped areas and “transportation corridors” – i.e., along highways -- *not* significantly increase public transit use??

Impact 3.2-4 cites **FGMP Policy 8.16** (which “encourages” the concentration of development along major travel routes to allow for future public transportation services and minimize travel distances to frequently used facilities) as a mitigating policy that contributes to the County’s conclusion that the impact of the proposed GPU will be Less Than Significant. Because **Policy 8.16 has no Implementation Measure** it cannot be enforced. Its mitigation ability is therefore nil. Please also see comments on Policy 8.16, above.

Impact 3.3-1 (The proposed project could expose a variety of sensitive land uses to construction-related air quality emissions).

The RDEIR concludes that buildout of the GPU will have a **Less Than Significant** effect resulting from air quality emissions connected to construction. The RDEIR’s analysis, however, is significantly flawed. Equally flawed is the RDEIR’s conclusion that no mitigation measures “beyond currently proposed General Plan policies and Implementation Measures” are required.

Because buildout would occur in both incorporated cities and in unincorporated parts of the county, the RDEIR took the perplexing view that the incorporated cities are not part of the County; it considered *only* unincorporated County lands as the organizational boundary for the assessment. The RDEIR’s assessment therefore *did not include* emissions “associated with incorporated cities within Tulare County, even though emissions generated by that part of growth that is ultimately directed to the cities will inevitably impact the rest of the county (and the region as well.) RDEIR at 3.3-16. The RDEIR analysis completely fails to take any emissions from that development into account. **How can an analysis that excludes 80% of anticipated development cannot have realistically considered cumulative or indirect impacts?** Moreover, because under the proposed GPU, development may be permitted to create additional new towns, Planned Community Areas, Development Corridors in entirely unspecified areas, **how did the RDEIR assess the impact of those developments? How did it determine whether the new development would be located near sensitive land uses or not?** The only limitation on this growth in the unincorporated areas of the County are the minimum 200-acre size for PCAs!

On an even more basic level, no real analysis of the anticipated impact of construction is possible because the GPU establishes no limits on construction, and does not delineate the locations where construction may occur. How do you know if sensitive land uses will be impacted when you don't know where the impacts will emanate from?

The RDEIR claims that it has taken development projects/ General Plan Amendments and Initiatives approved for unincorporated areas of the County into consideration in evaluating the cumulative environmental impacts. But the analysis then concludes that "Construction activity that would occur over the next several years in accordance with the proposed project would cause *temporary, short-term* emissions of various air pollutants within all of the County's individual planning areas." RDEIR at 3.3-18. However, construction under the GPU is not limited to "the next several years" – the planning period extends over twenty years. Construction of just one project, the proposed new Yokohl Valley town of 10,000 houses, several golf courses, a ranch resort lodge enclave, and commercial center – along with the associated roads and infrastructure is expected to be completed over the course of 20 – 30 years.⁴ This is not short term, and the emissions caused by construction in this otherwise dry valley over the course of 30 years cannot be considered "temporary".

In apparent contradiction with the RDEIR's ultimate conclusion regarding this Impact, the analysis comments that "given the amount of development associated with implementation of the proposed project, **it is reasonable to assume that some large-scale construction activity would exceed SJVAPCD adopted thresholds over the next 21 years** and would potentially **increase health risks associated with criteria pollutant exposure, such as lung irritation from ozone and mortality and morbidity from respirable particulate matter, during the temporary duration of construction.**" RDEIR at 3.3-18.⁵

How then, does the RDEIR reach the conclusion that the overall Impact is "less than significant"? How does a 21-year timespan amount to "temporary, short term" exposure?

4 See February 7, 2006 Staff Report GPI 05-011 – Request by the J.G. Boswell Company and the Eastlake Company to Allow the Filing of a General Plan Amendment to the Tulare County General Plan, Including the Foothill Growth Management Plan, at 4.

5 The RDEIR also confusingly discloses that "Impact statements provided in this section address the intent of the CEQA Guideline questions specific to the topic of air quality, yet are not taken verbatim from the Guidelines. Instead, impact statements have been tailored to fit the General Plan 2030 Update." **What does this mean?**

- **Impact 3.3.-2: The proposed project would result in a cumulatively considerable net increase of criteria air pollutants that result in a violation of an air quality standard.**

For all the reasons set out in comments on 3.3-1 above, the RDEIR appropriately concludes that the likely impact of the proposed GPU on air quality is **Significant and Unavoidable**. As shown in Table 3.3-5 and explained at page 3.3-20, “future growth in accordance with the proposed project would exceed the SJVAPCD thresholds for ROG and PM10. These operational emissions would increase the potential to expose people to pollutant concentrations that exceed the health-based standards . . . that have been determined to result in health impacts, such as lung irritation from ozone and mortality and morbidity from respirable particulate matter.”

The RDEIR’s conclusion that “No additional technologically or economically feasible mitigation measures are currently available to reduce this impact to less than significant level” is questionable at best. The RDEIR indicates that the County recognizes that it must take some action to comply with Federal air quality regulations applicable to the entire San Joaquin Valley. But The RDEIR also recognizes that a significant source of air pollution in the County comes from dairy and feed lot operations. **Both of these activities may be regulated to significantly reduce the overall levels of pollutants.**

- **Impact 3.4-1 (The proposed project could result in the wasteful, inefficient, or unnecessary consumption of energy by residential, commercial, industrial, or public uses associated with increased demand due to anticipated population growth in the County), is considered “Less than Significant.”** Accordingly, the RDEIR also concludes that no mitigation is needed “beyond currently proposed General Plan policies and implementation measures.”

One of the General Plan policies and implementation measures cited as leading to those conclusions is **FGMP Policy 8.16**. But because **Policy 8.16 has no Implementation Measure** it cannot be enforced and its mitigation ability is therefore nil.

The RDEIR’s conclusion that the environmental buildout impact of the proposed GPU is “less than significant” and that no mitigation measures “beyond currently proposed General Plan policies and implementation measures” is astounding. The proposed GPU encourages extraordinary growth along highways, in Development Corridors, and in new “Planned Community Areas” which are subject to no existing land use or zoning restrictions. The County “has not yet” designated where these new minimum 200-acre developments will be located – so they may be located anywhere. **Without knowing where these new urban centers will be built, how many housing units will be included, whether there will be jobs in the new centers sufficient to employ the majority of the**

new residents so that the new town doesn't become a bedroom community whose residents will have to commute to the employment centers that already exist, whether there is a sufficient water source at the location so that energy isn't required to transport water from elsewhere, whether the new town will be able to provide all the services (health, fire, police, schools, libraries, sanitation, etc.) necessary to support urban living – without that kind of information, it is impossible for the County to have realistically assessed any environmental impact sufficient to conclude that the impact is negligible, as it has done here.

While the County has taken pains in this Revised GPU to disguise its preference to let “the market” direct development decisions, it has not abandoned it.⁶ The County has already demonstrated its intentions to approve at least one huge, controversial, 36,000 acre PCA in the Foothill region that is (a) not within any designated development corridor, (b) will “overlap” the boundaries of both the Kaweah development corridor and the Round Valley development corridor, thus creating continuous development in one of the most scenic portions of the county, and (c) already inducing additional growth: RMA staff has already spoken with adjacent landowners to discuss development on those currently-agricultural properties.⁷ There is no existing infrastructure in this area, nor is there public transportation that serves the area. Water will admittedly have to be brought in from elsewhere⁸, and the proposed housing will be part of an “active adult village” aimed at the affluent second- or vacation-home buyer (who will travel from and to their primary residences elsewhere in the state, thus adding to GHG emissions.) The proposal was given the green light despite substantial public input opposing the creation of any new towns in Tulare County at numerous visioning workshops held across the County early in the GPU process⁹, and despite the testimony of over 100 residents at a hearing on the proposal before the Board of Supervisors (including testimony asking the County to at least defer making a decision until after the General Plan Update had been completed).

6 On page 3.3-16 of the RDEIR, the County acknowledges that “While buildout will ultimately be market driven, for modeling purposes this analysis is based on the assumption that most uses will be developed by the year 2030”

7 See February 7, 2006 Staff Report GPI 05-011 – Request by the J.G. Boswell Company and the Eastlake Company to Allow the Filing of a General Plan Amendment to the Tulare County General Plan, Including the Foothill Growth Management Plan.

8 Water to support this massive development is expected to be taken from Lake Kaweah, the primary source of irrigation water used in the Valley. The RDEIR's conclusion that the volume of water needed urban uses will actually be less than that used for agriculture is incomprehensible. How has the County accounted for year-round lawns and landscaping for the proposed houses, resort and golf courses, in addition to domestic uses? Is it realistic to conclude these uses will consume less water than the currently –un-irrigated grazing land??

9 See Policy Alternatives Newsletter, August 2005 at 4,5 (restrict development outside of UABs; direct more population growth to urban centers); visioning workshops, comments to 2008 Draft GPU, etc.

Because the County's actions speak more loudly than its words, it is entirely likely that more such new growth outside established UDBs and HDBs will be approved, which will indeed **“result in the wasteful, inefficient, or unnecessary consumption of energy by residential, commercial, industrial, or public uses associated with increased demand due to anticipated population growth in the County.”** It simply is not credible to conclude that the growth-inducing Corridor and PCA policies of the GPU will result in a “less than substantial” environmental impact.¹⁰

See also previous comments on Policy 8.16, above.

The RDEIR also cites **FGMP Policy 8.17** in support of its conclusion that the project's likely impact from Impact 3.4-1, wasteful, inefficient or unnecessary consumption of energy, is “less than significant.” FGMP Policy 8.17 requires the County to “discourage” (**how**, exactly?) the scattering of development throughout the foothills to reduce vehicular emissions by decreasing home to destination distances. To implement this policy, the County is required to “concentrate rural and urban development in the development corridors delineated on a Master Development Plan.” However, because Master Development Plans apply only in Planned Community Areas, and because the County has not delineated or identified the locations of any proposed Planned Community Areas, Planned Community Areas under this General Plan Update could be approved anywhere in the County. Under the proposed GPU, PCAs are not restricted to areas along public transit routes or even along major traffic thoroughfares (and in fact the one “planned community” that the County currently has pending is proposed for an area accessed via a minor, two-lane scenic road without regular public transportation routes). Further, because no Planned Community Areas have been designated, there are also no existing Master Development Plans and no designated development corridors. Neither this Policy nor the Implementation Measure can realistically be expected either to reduce vehicular emissions by decreasing home to destination distances or to mitigate wasteful energy usage. The conclusion that the anticipated impact of the GPU on inefficient or unnecessary consumption of energy is “less than significant” is unsupportable. Finally, **Impact 3.4-1** cites also **FGMP 3.1** (which “encourages” innovative design to preserve foothill open space) as mitigating the potential for wasteful energy use as the result of vehicle miles traveled. Because the IM associated with this Policy (IM – 7) does not implement the policy, **the policy itself is ineffective to mitigate Impact 3.4-1.** Moreover, while encouraging (or better, mandating) higher-density development is a step in the right direction, merely condensing the footprint of development will not necessarily reduce VMT – to effectively reduce VMT, development must be located near existing infrastructure and destinations

¹⁰ Another action undermining public faith in the reliability of planning documents: to find this proposed new town “consistent” with the FGMP, the staff report misrepresented the stated objectives of the FGMP and presented incomplete and/or inaccurate representations of FGMP provisions to support the developer's request.

– jobs, shopping, etc. – as well as increasing density.
Please also see comments on each of these FGMP policies, below.

- The EIR identifies **Impact 3.4-3 (The proposed project would potentially conflict with the State goal of reducing greenhouse gas emissions in California to 1990 levels by 2020, as set forth by the timetable established in AB32 California Global Warming Solutions Act of 2006.) as Significant and Unavoidable.** It maintains, however, that the draft GPU includes a number of policies, identified in Table 3.4-5) which would implement or support the measures recommended by the Attorney General (“AG”) to address global warming. Among the FGMP policies cited in Table 3.4-5 are:

FGMP Policy 3.1 (cited in support of AG recommended measure “preserve existing conservation areas (e.g., forested areas, agricultural lands, wildlife habitat and corridors, wetlands, watersheds, and groundwater recharge areas) that provide carbon sequestration benefits”)

Policy 3.1 is unlikely to have the mitigating effect claimed, as the associated Implementation Measure applies only to those projects that require “only Site Plan Review” and even then, the Site Plan Review Committee only has the authority to “review” the proposed project. The Committee is not empowered to approve or disapprove the development. See comments regarding Policy 3.1 in chart below. Moreover, the section establishing the Site Plan Review process for the FGMP area has been deleted from this revised FGMP.

FGMP 8.16 (cited in support of AG recommended measure “**Create an interconnected transportation system that allows a shift in travel from private passenger vehicles to alternative modes, including public transit ride sharing car sharing, bicycling and walking. Before funding transportation improvements that increase vehicle miles traveled, consider alternatives such as increasing public transit or improving bicycle or pedestrian travel routes.**”)

Policy 8.16 is also cited in support of AG recommended measure “**provide adequate and affordable public transportation choices including expanded bus routes and service and other transit choices such as shuttles, light rail, and rail where feasible.**”

Policy 8.16 satisfies neither of these AG recommendations: it provides only that “The County shall encourage the concentration of development along major travel routes” – and then only “*to allow for future* public transportation services and minimize travel distances to frequently used facilities.” (emphasis provided) It in no way creates an interconnected transportation system or promotes a shift from private passenger vehicles to any form of alternative transportation. In addition the policy’s weak direction to “encourage” development along major travel routes to “allow for future” transportation services does not provide adequate and affordable transportation choices – it merely hopes that such transit services and choices will somehow happen sometime in the future and in

the meantime makes the development attractive as a commuter community. (And as noted in chart below, **Policy 8.16 has no Implementation Measure** and thus cannot be enforced or expected to have any impact at all. A policy that truly addressed the concerns raised by the Attorney General would specifically provide for expanded public transportation options and routes. The GPU's emphasis on development in the unincorporated areas of the County, especially in the foothills, is also inherently incompatible with the goal of shifting transportation from vehicles to bicycles – the foothills of the Sierras are.... *hills*. Residents of these new developments are not likely to commute the long distances from the remote new development to the cities where most non-agricultural employment is and will be located by bicycle. By comparison, under the City Centered or "Confined" Growth Alternatives, the preferred infill development would take place primarily on nice, flat ground, and within a reasonable bicycle ride of employment and shopping.

FGMP Policy 8.16 and 8.17 (cited in support of AG recommended measure "**Concentrate mixed use, and medium to higher density residential development in areas near jobs, transit routes, schools shopping areas and recreation.**")

Policy 8.16 encourages concentration of development along major travel routes, but is silent as to requiring that development be located near jobs, transit routes (other than roadways), schools, shopping areas or recreation. And as noted in chart, above, since there is **no Implementation Measure for Policy 8.16**, there can be no expectation that the policy will be enforced or have any effect. FGMP Policy 8.17 requires the County to "discourage" (**how, exactly?**) the scattering of development throughout the foothills to reduce vehicular emissions by decreasing home to destination distances. To implement this policy, the County is required to "concentrate rural and urban development in the development corridors delineated on a Master Development Plan." While Policy 8.17 expresses the hope that emissions will be reduced by decreasing home to destination distances, because it is limited in application to Master Development Plans (and thus to Planned Community Areas) and because Planned Community Areas may be located anywhere in the County under the Draft GPU, it is impossible to conclude that this policy will locate higher density development near jobs, transit routes, etc. (It is also impossible to conclude that every resident of a Planned Community Area will be employed within that same Area, so the fact that a Planned Community will include some designated commercial or retail space does not respond to the AG's recommendation. In light of the location of the first, all-but-officially-approved PCA in the Foothills, well away from any infrastructure at all, it is hard to imagine how Policy 8.17 supports the AG's recommendation.) Please also see comments re: Policy 8.16, above.

FGMP Policy 8.9 is cited in support of AG recommended measure "**Preserve forested areas, agricultural lands, wildlife habitat and corridors, wetlands, watersheds, groundwater recharge areas and other open space that provide carbon sequestration benefits.**"

FGMP Policy 8.9 restricts the removal of natural vegetation, except for wildland fire prevention purposes. However, **Policy 8.9 has no Implementation Measure** and thus is mere wishful thinking. It cannot be enforced and can have no expected mitigating impact. Please see further comments on Policy 8.9 in chart, below. Once again, the devil is in the details -- the analysis done to assess the environmental impact adoption of the proposed GPU will have is unreliable.

FGMP 8.12 (cited in support of AG recommended measure “**Protect existing trees and encourage the planting of new trees. Adopt a tree protection and replacement ordinance, e.g., requiring that trees larger than a specified diameter that area removed to accommodate development must be replaced at a set ratio.**”)

FGMP 8.12 prohibits “unnecessary removal of native trees on development sites prior to approval of development” but depends only on the Site Plan Review Committee – which has no direction to even inquire about tree locations or removals and which does not have the authority to approve or deny a development proposal -- for implementation. The policy does not meet the standard recommended by the Attorney General, because (1) it is unnecessarily limited to removal of trees “prior to approval of development plans” and thus does not really protect native trees at all. Trees are routinely removed before permits are applied for even though this policy has been in effect since 1981. (2) Since there is also no requirement that development plans not be approved if they require removal of native trees, or to require mitigation if trees must be removed, the policy is ineffective to protect trees as part of Site Plan Review. (3) Who determines what is “unnecessary” and how? Moreover, the section establishing the Site Plan Review process for the FGMP area has been deleted from this revised FGMP – it simply doesn’t exist.

The County has been urged to adopt an ordinance to protect native trees for several years, without success. Numerous examples of ordinances have been provided to the County and various organizations have volunteered to assist the County in drafting an appropriate ordinance. The Planning Commission directed RMA to re-open its files on a tree ordinance over a year and a half ago. **Why doesn’t the Draft GPU include a real, viable, enforceable tree ordinance ??** Please also see comments on Policy 8.12 in chart, below.

FGMP 8.3 & 8.15 (cited in support of AG recommended measure “**Address expected effects of climate change that may impact public safety, including increased risk of wildfires, flooding and sea level rise, salt water intrusion; and health effects of increased heat and ozone, through appropriate policies and programs.**”)

FGMP 8.3 requires the County to prohibit development of residences or permanent structures within the 100-year floodway; FGMP 8.15 restricts development in chaparral areas. However, **neither FGMP 8.3 nor 8.15 have any Implementation Measures** at all. These policies are inadequate under the State Guidelines, which require every policy to have at least one Implementation

Measure – and neither therefore effectively addresses the concerns raised by the Attorney General.

- **Impact 3.6-1 (The proposed project could violate water quality standards or waste discharge requirements, or otherwise degrade water quality)** cites FGMP 8.6 in support of the EIR’s conclusion that policies implemented under the draft GPU render the potential impact **less than significant**. The policy is described as identifying a water source that should be protected from water quality impacts.

FGMP 8.6 and its implementation measure (see chart, below) require drainage plans for development in the Frazier Valley watershed to avoid aggravating downstream flooding – thus, this policy does nothing to protect water quality in the rest of the Foothill area.

This Impact is supposedly also mitigated by the policies implementing new towns and PCAs, PF-.2. **There is no Implementation Measure for PF-5.2! Thus all the supposed “criteria” to be used in evaluating new town proposals are meaningless.**

- **Impact 3.6-2 (The proposed project would result in impacts to the groundwater supply, recharge and secondary impacts to groundwater resources)** is deemed **Significant and Unavoidable**; The RDEIR concludes that **no additional technologically or economically feasible mitigation measures are currently available to reduce this impact to a less than significant level.**

The primary recharge area in the County is the foothill agricultural land, which the County consistently devalues as “of lesser value” than the intensely cultivated agricultural lands in the Valley, and into which the GPU directs extended development. Expanding the lands open to urban development in the foothill areas, as promoted by the proposed GPU¹¹, will inevitably impact the groundwater supply on which most of the County, including the Valley agriculture and cities, depend upon. **How can this level of conversion be less than significant? Why does the RDEIR not recognize that at least two of the Alternatives to the proposed plan are indeed technologically and economically feasible measures that will reduce the impact of urban development in unincorporated areas of the County, and that an even more effective alternative was proposed to the County in Comments submitted in 2008?**

FGMP Implementation Measure 33 is cited in **Impact 3.6-4** as one of the supporting “policies designed to minimize water quality impacts associated with

11 Once again, the green-lighted proposal to develop in Yokohl Valley is the poster child for “market-driven” development that will have significant environmental impacts that could be avoided through the adoption of a responsible growth plan.

stormwater, water and wastewater utility infrastructure needed to serve existing and planned urban areas”. FGMP IM-33 reads “The Planning Commission and the Board of Supervisors shall consider the financing plan during their review and consideration of the specific plan, Master Development Plan, or Area Development Plan. **The financing plan** shall be used as a basis for establishing programs and standards within the specific plan, Master Development Plan, or Area Development Plan which mitigate or avoid the adverse **fiscal** impact of development upon local public service agencies and County agencies.”

(emphasis added)

FGMP IM-33 minimizes the economic effect of development on the County, but does not minimize water quality impacts.

- **Impact 3.6-3 (The proposed project could substantially alter the existing drainage pattern of the area, including through the alteration of the course of a stream or river in a manner which would result in substantial erosion or siltation on- or off-site or substantially increase the rate or amount of surface runoff in a manner which would result in on- or off-site flooding.)**

The RDEIR has assessed this likely impact as “**less than significant**” and concludes that **no additional mitigation measures are required beyond the policies in the proposed GPU**. Given the substantial amount of development in areas that are now completely undeveloped under the proposed GPU, and the County’s demonstrated willingness to permit developments in which the courses of at least one stream is contemplated, the RDEIR’s conclusion that the impact is “less than significant” is suspect. In addition, many of the policies and implementation measures cited as mitigating the potential impact are ineffective.

Among the policies cited as supporting the RDEIR’s conclusions are FGMP Policies 8.2; 8.7; 8.8; and 8.12. Policy 8.7 encourages cluster development, narrower road widths, minimized cut and fill projects to minimize soil disturbances, and new roads in the foothills that should, whenever possible, conform to the natural contours of the existing foothill landscape. The Implementation Measures associated with Policy 8.7 do not, however, implement the policy: IM-3 deals only with grading and stabilization of slopes greater than 15 percent; IM-14 requires the County to promote the use of cluster development, greater setback distances, landscaping, and innovative lot design to protect scenic corridors; and IM-25 requires developers to phase road construction to correspond with the phases of the development proposal. None of these policies address alteration of drainage patterns. **They do not, therefore properly contribute to mitigation of the identified impact, or to a finding that the potential impact is less than significant and that no additional mitigation measures are required.**

Policy 8.8 does require erosion mitigation in new development projects, but the Implementation Measure associated with the policy is limited to development on slopes greater than 15%. Policy 8.8 itself is therefore inadequate, and cannot

have contributed to a finding of “less than significant.”

Policy 8.12 prohibits the unnecessary removal of trees from a site prior to approval of development plans but does not prohibit removal of trees during site plan review or after plans have been approved, nor does it require mitigation. Even if preservation of trees (which could indeed minimize soil erosion thereby reducing surface runoff) were an enforceable policy under the FGMP (or any other County policy), merely prohibiting removal of trees prior to plan approval will not do so. Please see also the comments on the FGMP policies and IMs themselves in the chart, below.

- Impact 3.7-1 (**The proposed project could result in substantial soil erosion or the loss of topsoil**) is identified as “**less than significant**”. Policies contributing to this finding include FGMP Policies 1.11; 4.1; 8.2; 8.7; 8.8, 8.10; 8.11; 8.12 and 9.4, which the EIR says were “developed to address a variety of environmental issues (including soil erosion). . . . With implementation of [these policies] and implementation measures, this impact is considered **less than significant**.” (emphasis in original).

FGMP 1.11 deals with the visual impact to the skyline from hilltop development, policies 4.1 and 8.10 have no Implementation Measures; 8.7, 8.8 and 8.12 are discussed above; 8.11 prohibits development on slopes of 30% or greater *unless* the developer can mitigate the problems inherent in building on slopes. None of these measures would mitigate the impact on soil erosion or loss of topsoil resulting from implementation of the draft General Plan Update. Similarly, the Implementation Measures cited in the analysis of Impact 3.7-1 -- IMs 7, 14 and 33 – do not mitigate. IM 7 simply requires site plan review for projects “that only require site plan review”; IM 14 promotes cluster development and other design tools to preserve scenic quality, and IM 33 protects the County from fiscal consequences resulting from development projects that require additional infrastructure. They do not mitigate the potential for substantial soil erosion or the loss of topsoil should the draft GPU be implemented. **The RDEIR’S conclusion that no mitigation measures beyond those policies included in the proposed GPU are required is inaccurate and insufficient.**

- In discussing **Impact 3.8-6 (The proposed project could expose people or structures to a significant risk of loss, injury, or death involving wildland fires.)**, the RDEIR states at page 3.8-34 that FGMP Policies 10.2 and 10.3 “provide requirements regarding fire safety and building standards for new development.” **Neither of these policies has an Implementation Measure.** Without Implementation Measures, these policies cannot be considered to have any effect. The RDEIR’s conclusion that the impact would be **Less than Significant** or that **no mitigation** is required beyond that cited in the policies of the proposed GPU.

- Table ES-4 indicates that the likelihood of **Impact 3.9-1 (The proposed project would require new or expanded water supplies, facilities and entitlements)** is **Significant and Unavoidable**, and that “**no additional technologically or economically feasible mitigation measures are currently available to reduce this impact to less than significant level.**”

Inconsistently, the RDIER concludes its discussion of **Impact 3.9-1** by noting that “even with implementation of the below mentioned policies, this impact is considered potentially significant.” At page 3.9-49. Among the “below mentioned policies” in the discussion section is FGMP Policy 9.2, which requires the County to “require evidence, prior to project approval, which (1) describes a safe and reliable method of wastewater treatment and disposal; and (2) substantiates an adequate water supply for domestic and fire protection purposes.” Unfortunately, this policy **has no Implementation Measure**, meaning it cannot be implemented or enforced, and cannot have been reasonably relied on in determining either the overall impact of the proposed project or that there are no feasible mitigation measures.

One obvious mitigation measure available to the County is the adoption of a reasonable, smart or healthy growth alternative to the proposed “market driven” plan that actually requires enforceable policies and implementation measures designed to reduce water consumption, promotes recycling and use of grey water for irrigation purposes, and incorporates at the least LEED-ND standards for new development or improvements, with specific, quantifiable and measurable implementation measures. And then to actually enforce the policies.

- The RDEIR cites FGMP Policies 11.2 and 11.3 in support of its conclusion that the likelihood that **The proposed project would increase the need or use of fire protection services in the County (Impact 3.9-5)** is “less than significant.” These same two policies – 11.2 and 11.3 are also cited in connection with **Impact 3.9-6 (The proposed project would increase the need or use of law enforcement services in the County.)**, which is also considered “less than significant.” **There is no Policy 11.2 or Policy 11.3 (or any Policy 11 at all) in the revised FGMP.** (FGMP Policies 10.2 and 10.3 do deal with fire protection and law enforcement, but **neither of these policies have an Implementation Measure** and as such they are of no effect.
- **Impact 3.10-1 The proposed project would result in the substantial conversion of important farmlands to non-agricultural uses. Significant and Unavoidable.**

The County maintains that preservation of agricultural resources is a key goal of

the draft General Plan 2030 Update, that the policies of the draft GPU call for the continued recognition of agriculture as the primary land use in the Valley and Foothill regions of the County, and cites among those policies FGMP1.10 and 5.1. But as revised, the protections for agricultural uses in the current Foothill Growth Management Plan have been decimated. Important existing policies have been completely eliminated, without either explanation or disclosure. (See comments to revised Goal 5 in chart below.)

FGMP Policy 1.10 limits residential densities only within the development corridor areas of Success Valley, and then, only in order to avoid conflicts with intensive agricultural uses in the *Valley – it does nothing to protect agriculture in the Foothill region*.

FGMP 5.1 merely duplicates the language of Goal 5, and then weakens its impact by the discretionary “wherever possible”. More tellingly, the supposed Implementation Measures for Policy 5.1 have also been weakened: IM-17 and IM-18 are loosely based on current policy 5-1 and 5-2, which protect extensive and intensive agricultural areas in the foothills from encroachment by non-agricultural uses through the use of large lot exclusive agricultural zoning. Under the current FGMP, these policies are specifically implemented via the Level I and Level III analyses required as part of the plan. (The implementation measure for current policy 5-1 further notes that agricultural lands within a development corridor may be *required* to remain as extensive agriculture if site plan review determines the water supply to be inadequate to support urban use or if the soil is inappropriate for adequate waste water disposal.) As reformatted, the Implementation Measures no longer provide clear statements directing that ag lands in the foothills be protected. See more detailed comments in chart below.

Given the weakening of these FGMP policies, it is no wonder the EIR considers the impact to important farmland within the FGMP area to be “**significant and unavoidable**”!

The cited policies of the Agriculture Element of the Goals & Policies Report are also weak: AG-1.6 and AG-1.18 are discretionary (“The County *may* develop an Agricultural Conservation Easement Program...” and “in-lieu fees collected by the County *may* be transferred to the Central Valley Farmland Trust...”). Anything that “may” be done, also “may not” be done; this policy is altogether too equivocal. More to the point, the Central Valley Farmland Trust covers lands only in the northern counties of San Joaquin, Stanislaus, Sacramento and Merced – not Tulare County. **Does the County intend to mitigate loss of County ag land through easements obtained on lands outside the County??**

- **Impact 3.10-2 The proposed project could conflict with the provisions of the Williamson Act contracts through early termination of active Williamson Act Contracts.**

The RDEIR rates this potential Impact as “**less than significant**” and as requiring no **mitigation measures beyond what is proposed in the policies of the proposed GPU**. However, FGMP Policy 10.1, Implementation Measure 16, specifically instructs the County to “explore the options for voluntary **Williamson Contract cancellation** on lands that are within a development corridor and under a Planned Development-Foothill Zone.” **This evaluation is completely inconsistent with the County’s mantra of protecting agricultural lands in the County in general, with its Right to Farm policy, and with Goal 5 of the FGMP, which specifically directs the County to protect ag lands in the Foothills.**

Among the mitigation policies cited in the RDEIR for this Impact is AG In addition, the proposed GPU’s creation of new “Planned Community Areas” which may be permitted anywhere in the County as long as the property has a minimum of 200 acres actively **encourages conversion** of lands likely to be in the Williamson Act. (See, e.g., comment above noting discussions between RMA and owners of agricultural land adjacent to the proposed Yokohl Ranch development.)

In assessing whether implementation of the draft GPU

- **would have a substantial adverse effect, either directly or through habitat modification, on a variety of special status species (Impact 3.11-1), or**
- **on riparian habitats or other sensitive natural communities, (Impact 3.11-2), and**
- **on “federally protected” wetlands and other waters (Impact 3.11-3)**

the RDEIR notes that the FGMP contains a number of policies developed to address sensitive habitats and species specific to the unique Foothill area. While the policies cited – FGMP Policies 5.1, 8.1, 8.5, 8.12, 8.13, 8.14 and 8.19 – are steps in the right direction, they are inadequate to accomplish their intended purposes as mitigation measures as the result of limitations on scope or strength inherent in the language of the individual policies, and of ineffective or entirely absent Implementation Measures.

For example, the policy expressed in 8.1 is merely to “discourage” rather than to prohibit development in close proximity to watercourses and riparian areas; 8.12 prohibits “unnecessary” removal of trees *only* prior to approval of development plans; 8.13 requires developers to use landscape materials that are “compatible” with native vegetation, but not native vegetation that would sustain wildlife adapted to and dependent on the native vegetation itself; 8.14 applies only where special status species “have been identified” – and it has no Implementation Measure to ensure that the policy is actually carried out. (The California Endangered Species

Act also protects threatened and candidate-species to the same extent as those named as rare or endangered.) And Policy 8.19 again only “encourages” protection of unique open spaces. Policy 5.1 is discussed above – while it purports to protect agricultural uses, it says nothing about protecting special status species or habitats. While protected species may benefit indirectly from protection of agricultural lands, they are also stripped of the protection otherwise provided under the Federal Endangered Species Act as a result of the exclusion for accidental “takings” of protected species that may occur in connection with normal agricultural practices. Policy 5.1 cannot therefore really be considered a policy developed to address protection of sensitive habitats, species, and natural communities.

In addition, Policies 5.1, 8.1, 8.12 and 8.19 all depend on Implementation Measure 7, which does no more than require site plan review “for projects that only require Site Plan Review”. There is no explanation of which types of projects “only require Site Plan Review” and which may require more... or what more. Policy 8.1 is apparently also supposed to be implemented by having environmentally sensitive areas (if they are within development corridors) identified on a map – but there is no further requirement that development be prohibited in such identified areas, and no protection is afforded sensitive areas outside development corridors. Policy 8.13 depends for implementation on a measure that simply repeats that site plan review should assess the compatibility of selected landscape materials with “surrounding” native vegetation. And 8.14 has no Implementation Measure at all.

These policies **can't mitigate** the potential for substantial adverse impact on habitat or species, but the impact could be less than substantial with properly drawn, strong, and implementable and enforceable policies.

The two ERM policies cited in Table ES-4 also do little to avoid substantial adverse direct or indirect effects on wildlife through habitation modification. ERM-1.15 has the County ensuring that street lighting in new development doesn't illuminate adjacent natural areas more than 1 footcandle above ambient levels; ERM-1.9 has the County working with other agencies to preserve biological resources while retaining the ability to utilize the same resources. Neither of the cited policies deals with the real and substantial impacts caused by disturbance or elimination of habitat, territory necessary to support wildlife species, etc. For example, several varieties of eagles and the endangered California Condor hunt and nest in the Yokohl Valley. Figure 3.11-1 in the RDEIR shows the entire Yokohl Valley area as designated critical habitat for the Condor. At page 3.11-14, the RDEIR acknowledges the findings of the US Fish and Wildlife Service: *The California condor requires substantial areas of open range, with adequate food, and limited development and disturbance to survive. Critical habitat for this species in Tulare County is generally located between Highway 65, Highway 198, and the western boundary of the Sequoia National Forest* (emphasis added). The designated critical habitat is precisely where the County is proceeding with plans to develop a massive Planned Community Area, and has proposed additional development on adjoining properties.

Conversion of this currently – agricultural area to urban uses will significantly affect the ability of these species to survive. (Not to mention the problems caused when one of these predatory birds carries off Fluffy) ERM 1.16 and ERM 1.17 both require only that the County cooperate or coordinate with other agencies which may be taking actual, proactive and positive steps to protect and preserve habitat and species.

The charts of Mitigating Policies on RDEIR pages 3.11-34 and 3.11-37 identify FGMP Policies 4.1 and 8.9 in connection with **Impact 3.11-1** in addition to the policies identified in the text of the section. FGMP Policy 4.1, requires the County to identify environmentally sensitive areas, but only within development corridors. Since the County may permit Planned Community Areas anywhere within the Foothill area, this Policy does not adequately protect sensitive habitat or species at risk of development but currently not designated as a development corridor. More importantly, Policy 4.1 **has no Implementation Measure** and thus cannot be enforced. Policy 8.9 restricts the removal of native vegetation. However, it also **has no Implementation Measure** and is without effect.

[NOTE – the RDEIR cites IMs 15, 23 and 26 in connection with these policies, but they do not so appear in the FGMP as included in the Goals and Policies Report. In any event, IM 23 applies only to designate areas within development corridors on reference maps. Implementation Measure 26 focuses on site plan review of landscape plans to ensure compatibility with surrounding vegetation.]

- Identified **Impacts 3.11-4 (The proposed project would have a substantial adverse effect on wildlife movement opportunities, migratory corridors, or native wildlife nursery sites)**;
- **3.11-5 (The proposed project could conflict with local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance.)** and
- **3.11-6 (The proposed project could conflict with the provisions of an adopted habitat conservation plan, natural community conservation plan, or other approved local regional or state habitat conservation plan.)**

all also cite either the ERM policies directed to lighting and coordination with other agencies, or assert that no additional mitigation measures are needed (Impact 3.11-5). The impact of 3.11-4 is considered **Significant and Unavoidable** ; the impacts of 3.11-5 and -6 are deemed **“Less than Significant”**.

FGMP Policies 4.1, 8.1, 8.5, 8.12, 8.14, 8.19 and Implementation Measure 23 are identified as policies mitigating the expected impact of adopting the proposed GPU. For all the reasons set out above, these policies do not mitigate the “significant and unavoidable” adverse effects of implementing the GPU 2030 as drafted on wildlife, and cannot contribute to the EIR’s conclusion that there will be a “less than significant” impact on or conflict with local policies protecting biological resources. Stronger and

more focused policies and Implementation Measures could reduce the anticipated impacts. More to the point, a General Plan that adopted a truly city and existing-community-focused, smart growth alternative which prohibited the creation of entirely new towns and expanded development corridors, and which permitted Planned Community Areas only within UABs if at all, would go a long way to realizing a “less than significant” impact on wildlife and other biological resources.

- In connection with **Impact 3.12-1 (The proposed project could cause a substantial adverse change to a historical resource)**, the EIR cites FGMP Policies 7.1 and 7.3 as having been designed to address the important cultural resource issues of the FGMP area. Policy 7.1 (“The County may require the developer to provide information at time of application submittal regarding any historical site and/or building that occupies the project area that is worthy of historical preservation.”) is purely discretionary by virtue of the permissive word “may”. The Implementation Measure (IM-22) for this policy also inappropriately places the determination of whether a historical site or building is “worthy of historical preservation” on the developer, whose interests will by definition be in conflict with a finding of historical worthiness. The policy, as written, will not advance the goal of protecting historical or archeological sites. While IM -22 is good start for protection of archeological sites, insofar as it defers evaluation of the site to a professional organization with appropriate expertise, FGMP-7.1 deals with all historic sites, not just archaeological sites. IM 22 therefore doesn’t further the policy for other historic sites. In addition, IM.22 only applies to areas “located in proximity to hilltops, buttes, watercourses, etc.” To be truly effective in protecting historic and archeological sites this limitation should be eliminated so that a proper evaluation is made no matter where the site is located.

FGMP 7.3 (“The County shall protect significant historical or archeological sites, such as the one located on Rocky Hill, from development through maintenance of the site in open space. This policy shall not preclude development on adjacent property even though such property may be under the same ownership as the site to be protected.”) does require protection of significant historical or archeological sites, but it too is ineffective because it **has no Implementation Measure**.

The EIR also cites FGMP Policies 7.2 and 7.3 in connection with **Impact 3.12-2 (The proposed project could cause a substantial adverse change to archaeological resources, paleontological resources, and/or disturb human remains)** as “calling for protection” of important sites. But again, 7.3 has no Implementation Measure so it can’t protect any identified important sites. Policy 7.2 (“The County may require the developer to provide information at time of application submittal regarding possible archeological sites if a project is located in proximity to archeological sensitive areas such as hilltops, buttes,

watercourses, etc.”) is also purely discretionary – and ill advised. **What expertise does the average developer have that would permit it to accurately identify possible archeological sites? And why should such sites be limited to hilltops, buttes, etc.? Does the RDEIR factor in the likelihood of damage to or elimination of important archaeological or other historic sites resulting from this ill-advised delegation of this function to developers in its assessment of environmental impact significance?**

Finally, the Impact Analysis for **Impact 3.12-2** states that “Policies within the FGMP ... establish protocols to address archeological resources” and “include a number of policies . . . designed to address the important cultural resource issues of the FGMP area including development of a historical sites inventory, information on archeologically sensitive areas and the protection of significant cultural resource sites (i.e., Rocky Hill). . . . The only policies cited – 7.2 and 7.3 do not establish any protocols, do not require development of an inventory, and as noted, do not truly protect historical sites. (Query: is Rocky Hill the only site deemed worthy of protection? Only Rocky Hill appears as an example of a historical site. In the FGMP area, the 100-year old Kaweah Post Office – surely a historical site, since it is listed and marked with a State Historical Marker – is absent from the list of Known Historical Properties on page 3.12-17....)

Hydrology, Water Quality and Drainage

WR-1.1 and WR-1.3 are addressed on page 3.6-45 of the RDEIR. Policy WR-1.1 is found on Part I, page 11.6 of the GPU – that policy says “These actions shall be intended to help the County **migrate** the potential impact on ground water resources identified during planning and approval processes.” We believe the word “migrate” should be “mitigate.” Please correct.

WR-1.3, page 11.7 of the GPU, requires the County to “regulate the permanent export of groundwater and surface water resources allocated to users within the County to cities and service providers outside the County to the extent necessary to protect the public health, safety and welfare. The County shall strive for a “no net loss” where there may be water exchanges serving a public purpose.”

Given the vital role water plays in sustaining the extensive agricultural economy of the County, the dependence of most non-city dwellers on ground water and wells, and the documented drastic overdraft situation of water supplies in Tulare County, permanent export of water to users outside of Tulare County should be prohibited outright. Water is not really a renewable resource – while the supply can be recharged over time if we continue to experience the levels of rain and snowpack considered “normal” in non-drought years, given the facts that California has recently experienced many years of drought conditions and water shortages, and given the climate change and global warming predictions, it is short-sighted to permit any permanent claim on a resource the County and its residents may well need in the future.

Since the RDEIR also has concluded that “Due to the uncertainty of future groundwater management efforts ... insufficient future groundwater supplies may be experienced in portions of the County” and that the environmental impact that adoption of the GPU will have on water supplies is Significant and Unavoidable, this policy should be revised to prohibit the permanent transfer of water rights outside the County.

WR-1.4, provides that:

“For new urban development, the County shall discourage the transfer of water used for agricultural purposes (within the prior ten years) for domestic consumption including but not limited to the following:

- The water remaining for the agricultural operation is sufficient to maintain the land as an economically viable agricultural use,
- The reduction in infiltration from agricultural activities as a source of groundwater recharge will not significantly impact the groundwater basin [*New Policy*].

There appears to have been a transcription error in setting out this policy, as the bullet points don't relate to the preceding paragraph. Please correct so the policy can be appropriately evaluated.

Biological Resources

Pages 3.11-11 through 3.11-15 list Sensitive Natural Communities. The Kaweah Brodiaea, *brodiaea insignis* has been listed as “endangered” by the State of California since 1979, and as a Species of Concern by the U.S. Fish and Wildlife Service. It is native to the Sierra foothills- **Why is the endangered Kaweah Brodiaea not listed?**

Cultural Resources

Figure 3.12-1 (RDEIR page 3.12-7) contains a photograph of the historic Kaweah Post Office, which was built in 1886, and has been serving the Kaweah and Three Rivers communities for 100 years. The Post Office has been identified as a structure of statewide historic significance and received California State Historical Marker # 389, yet this building is not listed in any of the lists of historic properties in the RDEIR. Please add the Post Office to the list of buildings to be protected and preserved as historic.

Alternatives

The RDEIR lists **28** significant and unavoidable impacts that will result from adopting and implementing the revised GPU. Such extensive negative impacts clearly should be considered unacceptable in a plan that cites as its first value statement, “The beauty of the County and the health and safety of its residents will be protected and enhanced.”

How the County should respond to those 28 significant and unavoidable impacts is

clearly set out in the CEQA statute: “public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental effects of such projects.” CEQA §21002. Each public agency shall mitigate or avoid the significant effects on the environment of projects that it carries out or approves whenever it is feasible to do so. CEQA §21002.1 (b).

Here, the County has identified four alternatives (in addition to the “No Project alternative) the RDEIR describes as a reasonable range of alternatives having been selected based on their potential ability to meet project objectives while also avoiding or lessening the significant environmental impacts identified as likely to result from adoption of the proposed GPU. Unfortunately, we must disagree with the RDEIR’s conclusion that it has presented a reasonable range of feasible alternatives. The County improperly incorporated all of the proposed GPU’s policies and implementation measures into each alternative¹² rather than preparing sets of policies and implementation measures specific to each alternative.¹³ As a result, the environmental impacts of each alternative have been predetermined, and the analysis skewed. You can’t get to Boston using a map to Miami; you can’t get to compact, smart growth using policies and implementation measures that take you to Regional Growth Corridors and new towns.

When examined, the RDEIR itself discloses that the range of alternatives is actually very narrow. Table 4-1, for example, which outlines how the assumed population growth would be allocated under each of the alternatives shows only a difference of about 6% between them: growth in the incorporated cities ranges from 68% (Rural Communities & Transportation Corridors) to 74% (No Project and Confined Growth). The range for population growth allocated to the unincorporated County ranges from 26% (No Project and Confined Growth) to 32%. (Rural Communities and Transportation Corridors). RDEIR at 4-4 -- 4-5.

Analysis and comparison of the various alternatives is also problematic and confusing. For instance:

- Table 4-1 is identified as a “Summary of Key Components for Each Alternative.” Yet the only data included in the table is a population distribution projection based on a 2007 baseline year. Because the table does not include any other “key components” of the various alternatives, it does not facilitate comparison of the alternatives. To be useful, the table should mirror the discussion points addressed in the text of each alternative.

12 The “No Project” alternative is also the only alternative in which the RDEIR does not assume that all the policies and implementation measures of the proposed GPU are also adopted by the alternative. It is therefore impossible to accurately assess the No Project alternative relative to the others.

13 As noted elsewhere in these comments, CEQA requires the range of alternatives to have their own sets of policies and implementation measures. Incorporating the proposed project’s policies and implementation measures into each alternative not only skews the results, but predetermines the outcome of the analysis.

- On page 4-4 the RDEIR states that that the “No Project” alternative assumes that development will continue under current patterns, but then also assumes that population patterns would be similar to those under the proposed GPU. **How does the proposed GPU differ, then, from the No Project alternative in its environmental impacts? Will it have no influence or effect? If so, how do each of them differ from the Existing Trends alternative that was rejected?**
- The RDEIR’s reasoning in the “Ability to Meet Project Objectives” text on page 4-13 is completely circular: failure to adopt a plan (the result in the No Project alternative) fails to meet the project objectives because it fails to adopt a plan – one of the project’s objectives.
- Table 4-2 compares the ability of each alternative to meet the project’s proposed objectives. The “No Project” alternative is identified as achieving none of them. **Does this mean that the current General Plan provides no opportunities for small unincorporated communities to grow and improve their quality of life and economic viability? Does not promote reinvestment in existing communities? Or protect the County’s agricultural and scenic assets by limiting rural residential development?** It seems that despite the acknowledgment to the contrary on page 4-13, the RDEIR has assumed that the “No Project” alternative leaves a complete vacuum as to planning guidance rather than resulting in continuation of the current General Plan.
- In discussing the alternatives eliminated from consideration, the RDEIR lists a Proportional Growth alternative, which is described as directing growth at a rate proportional to current conditions, and an Existing Trends alternative which would allow future growth to grow at the rate that occurred from 1990 to 2000. **How do these two alternatives differ?** The RDEIR explains that the Proportional Growth option was rejected because the growth trend (30% of future growth in the unincorporated County) was considered infeasible. Yet the Transportation Corridors alternative (which seems to be the same as the Corridor Plan concept incorporated into the draft GPU) also allocates 30% of future growth to the unincorporated County. **How does the Corridor Plan concept in the GPU differ in projected growth trend, and in general, from the Transportation Corridors alternative?**
- On page 4-1, the RDEIR cites to CEQA Guidelines §15901 – this section does not exist. We believe the RDEIR intended to reference §15091; please correct if this is what was intended. If the RDERI intended to reference another section, please so indicate so the authority may be identified and assessed.
- Table 4-3 provides a Summary of Alternatives (Comparison of Impacts With General Plan 2030 Update Level of Significance), but although it provides the County’s conclusions as to the significance of the various effects it does not provide sufficient detail in the discussion of the various alternatives to assess

how those conclusions were reached¹⁴. For instance, the RDEIR concludes – without substantiation -- that both the City Centered and the Confined Growth alternatives would have greater adverse impacts than the proposed GPU on cultural resources (historic & archaeological). RDEIR at page 4-8. The basis for these conclusions is that new growth, centered within existing City areas, “could result in similar or greater impacts to historic resources located within existing urbanized areas. The intensification of land uses within the existing City limits may result in greater impacts to the design qualities of individual City neighborhoods and historic districts to those anticipated under the proposed project” (RDEIR at 4-20 - 4-22 and 4- 43). There is no evidence or even discussion in the RDEIR to establish that urban infill or growth within city limits is any more likely to impact historic or archaeological resources than development in the unincorporated areas of the County.

Although not truly “smart growth” plans, two of the four proposed alternatives do lessen the anticipated environmental impacts of attaining the GPU’s identified objectives and therefore are superior to the proposed GPU.

The City Centered alternative is one of the alternatives that would yield an environmentally superior result, as it lessens 14 of the environmental impacts identified as Significant and Unavoidable (“SU”) in connection with the proposed project. But the RDEIR concludes that it fails to meet the project’s objectives of providing opportunities for small communities and to promote reinvestment in Table 4-3. However, in setting out the alternative itself, on page 4-17, the RDEIR says “This approach *would not ignore the needs of unincorporated communities* [emphasis provided], and would look at policy solutions to address housing services and infrastructure needs to meet future growth.” On page 4-18, the RDEIR notes that this alternative would achieve the objectives by integrating additional policies into the General Plan, including a policy that the “County continues to improve quality of life and services in unincorporated communities but does not make growth inducing infrastructure improvements.” It is possible to improve quality of life and improve infrastructure without also inducing growth.

How then does the RDEIR conclude that City Centered alternative does not meet the identified objectives – unless the County ensures its failure by taking no actions to improve services that do not also induce growth? (The RDEIR

14 While CEQA does permit use of a matrix to summarize the results of a comparison between alternatives and the proposed project, the EIR must first include sufficient information about each alternative to allow meaningful evaluation, analysis, and comparison with the proposed project. CEQA §15126.6(d). Similarly, the EIR must examine in detail those alternatives the lead agency has determined could feasibly attain most of the basic objectives of the project. The range of feasible alternatives shall be selected and discussed in a manner to foster meaningful public participation and informed decision making. Id. §6(f). Meaningful participation cannot take place where only the agency’s conclusions are shared.

apparently bases its conclusion on its speculation at page 4-19 that “Lower levels of anticipated growth and development *may* make it more difficult to achieve the desired level of reinvestment within existing communities and hamlets. Consequently, Alternative 2 would not meet this objective and *may* not fully meet project objectives that encourage additional opportunities for small unincorporated communities to grow, address public health and safety concerns, and improve quality of life.” (emphasis added). Inherent in any prediction that X *may* result in Y is the possibility that X will *not* cause Y. Since without more, the probability of each is equal to that of the other, the RDEIR’s conclusion that this alternative is *not* able to meet the reinvestment and quality of life objectives is unsupported.)

With respect to Air Quality impacts, the RDEIR concludes that environmental impact of both the City Centered and Confined Growth alternatives is equal to that of the proposed GPU (SU), see Table 4-3, page 4-7, because even though the overall number of miles driven may be reduced, “city focused dwelling units and other types of development would still result in similar overall emission levels of both mobile and stationary sources.” **What percentage of GHGs and other emissions in the County result from vehicles and what percentage from stationary sources? On what basis has the County concluded that emissions from stationary sources outweigh vehicle emissions?**

In virtually every aspect, the RDEIR finds the Confined Growth alternative the only alternative other than the No Project alternative “that would reduce the severity of most environmental impacts associated with the proposed project.” RDEIR at 4-36. It is also identified as the Environmentally Superior alternative. Nevertheless, the RDEIR concludes that the Confined Growth alternative “would still result in significant and unavoidable impacts to biological, agricultural, air quality, greenhouse gas emissions, and traffic resources.” *Id.*

How does it get to this conclusion?

Agriculture – after recognizing that fewer acres would be converted to urban uses, the RDEIR simply says “similar to the proposed project, Alternative 5 would also result in a significant and unavoidable impact, since there would be some conversion of important farmland to urbanized uses under this alternative.” **How many acres? Where? Within already-designated urban boundaries? What threshold of significance is applied?**

Air Quality – see above.

GHGs – after recognizing that confined growth “may reduce the overall number of vehicle miles driven” the RDEIR concludes that “City focused dwelling units and other types of development would result in similar energy consumption and greenhouse gas emission levels for buildings and mobile and stationary sources.” **No documentation, no discussion. Inadequate!**

Traffic – Without discussion, the RDEIR just concludes “Overall total daily vehicle trips generated under this alternative would be similar to those anticipated with the proposed project.” And then also notes that service levels on roads within urban levels could be reduced. **Where is the calculation of trips not taken – and emissions not emitted -- by individual vehicles because of the availability of convenient public transportation ? The calculation of fewer emissions as a result of fewer vehicle miles traveled, as compared to simply the number of daily trips?**

The RDEIR comes to similar unsubstantiated and disconnected conclusions in other areas of “discussion” as well: light and glare impacts would be lessened but the resultant impact would be similar to that of the proposed project (page 4-33); fewer acres of open space lands would be converted but the impacts to biological resources would be similar to those under the proposed project (page 4-34); fewer impervious surfaces would be developed... but overall, hydrologic and water quality impacts are considered to be similar to those of the proposed project (page 4-35).

NOTE: While presented as a “confined” growth alternative, as framed in the RDEIR, the exceptions make those borders very porous. Thus, growth boundaries could be expanded for a number of reasons which appear to reflect the ongoing effort to avoid restricting the County’s ability to follow the market.

“Criteria for expansion might be:

- Mandatory agriculture impact fees for important farmlands added to Urban Development Boundaries [**This is not a criteria - what does it mean? That if someone pays a fee, important farmland will be permitted to be converted?**]
- Significant job generation projects or projects of regional importance (such as a four year college)
- Regional growth corridors which involve high density mixed use as well as commercial or industrial opportunities.
- Boundary adjustments where Master Planning efforts demonstrate exemplary land use efficiency standards above and beyond base standards.
- Boundary expansion in consistent with the San Joaquin Valley Regional Blueprint.

... No new towns would be allowed on important farmland unless equivalent capacity is transferred from CACUDBs or HDBs through mechanisms such as purchase and transfer of development rights to offset the loss of important farmland.” RDEIR at 4-32.

The re-insertion of these “criteria” – especially the provision that would reinstate the regional growth corridors, Planned Community Areas (“Master Planning efforts”) – is entirely inconsistent with the overall concept of “confined” growth. **Only with these exceptions in mind could the RDEIR conclude that the impacts of this alternative on biological, agricultural, air quality, greenhouse gas emissions, and traffic resources are significant and unavoidable.**

The bottom line is that we agree with the California Attorney General's criticism of the 2008 DEIR, which also applies here: "The alternatives ignore a range of "smart growth" alternatives that would concentrate development in already existing urban areas near mass transit and preserve more agricultural land and open space," and noted that "a more intense 'smart growth' alternative would appear to be feasible given the evidence that existing cities can currently accommodate all of the growth anticipated by the County. . . to be consistent with CEQA, the DEIR must consider a broader range of alternatives that would focus more of the development in existing urban areas, or explain and provide evidence supporting a conclusion as to why such alternatives would be infeasible." (Letter from Office of the Attorney General, dated April 14, 2008, copy attached.) **The County should consider and adopt a true smart and healthy growth alternative such as the one suggested by the Tulare County Citizens for Responsible Growth in 2008.**

While CEQA stresses the importance of seriously evaluating a range of alternatives, the County appears to have signaled its intention to disregard potentially superior alternatives to its preferred project, by stressing the importance of the "escape clause" it sees, before even having presented the proposed alternatives:

It is important to understand, however, that the mere inclusion of an alternative in an EIR does not constitute definitive evidence that the alternative is in fact "feasible." The ultimate decision regarding the feasibility of alternatives lies with the ultimate decision-maker for a project, which in this case is the County of Tulare Board of Supervisors. Such determinations are to be made in statutorily mandated findings addressing potentially feasible means of reducing the severity of significant environmental effects. One finding that is permissible, if supported by substantial evidence, is that "specific economic, legal, social, technological, or other considerations . . . make infeasible the . . . alternatives identified" in the EIR (Pub. Resources Code, § 21081, subd. [a]; see also CEQA Guidelines, § 15901, subd. [a]). CEQA Guidelines section 15364 defines feasible" to mean "capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social, and technological factors." In deciding whether an alternative is feasible or infeasible, a decision-making body may consider the stated project objectives in an EIR, and may balance any relevant economic, environmental, social, and technological factors.

RDEIR at page 4-1.

But the purpose of CEQA is not to generate paper, but to compel government at all levels to make decisions with environmental consequences in mind. (*Bozung v. LAFCO* (1975) 13 Cal.3d 263). **In making its recommendation on a final EIR, we urge the County to heed CEQA's requirement that it focus on alternatives which are**

capable of avoiding or substantially lessening any significant effects for the project, even if these alternatives would impeded to some degree the attainment of the project objectives, or would be more costly. See CEQA §15126.6(c).

The Revised Foothill Growth Management Plan

I. Undisclosed Revisions, Deletions, Other Changes

As noted earlier in these comments, and as examined in more detail below, although the County has told the public many times that the Foothill Growth Management Plan was not being changed in connection with the GPU process, it has been changed significantly in a number of ways. For instance, on page 1-1, the “Background” section states that “...the Community and other Plans... will not be changed as part of this update, except for Dinuba... and Pixley.” RDEIR 1-1. But on page 2-13, the RDEIR discloses that both the RVL and FGMP “will be adopted in revised form.” Although the RDEIR describes the changes in this introductory statement as merely deleting obsolete or outdated information and policies, providing “clarification” to policies and consistency with the new Land Use Element, as well as identifying responsible agencies, implementation timeframes, and restoring FGMP development standards, RDEIR at 2-13, examination of the FGMP, for instance, reveals significant substantive changes.

In addition to not calling the public’s attention to the fact that the FGMP has been changed¹⁵, the RDEIR does not compare the provisions of the two plans to make clear what has been changed and in what ways, doesn’t provide any – let alone a sufficient – rationale for the changes, doesn’t establish or analyze baseline conditions upon which it could evaluate the potential impact of the proposed changes, and doesn’t assess the potential direct or indirect negative impacts of the changes, either on an individual or cumulative basis. All of the policies and IM s are shown in the implementation timeline as “ongoing” with no anticipated completion date. But virtually all have been in the FGMP since 1981 – what progress has been made? Where is the supporting data? Baselines against which to measure future progress?

- The Introduction to the Policies section of the 1981 Plan establishes that

[t]he overall objective of the study is to accommodate development within the foothills while recognizing limitations imposed by factors such as excessive slope, present development patterns, increased wildfire

¹⁵ In fact, the County has many times represented that the FGMP has not been changed, but is being incorporated into the GPU.

potential, service availability, water availability, soil limitations for septic tanks, site accessibility, etc.... Further, the policies reflect the fact that even though land may be physically capable of being developed, other overriding factors such as the preservation and protection of foothill-grazing lands may limit such activity.

1981 Plan at 11.

These statements, which set out the fundamental underpinnings of the Foothill Growth Management Plan, and explicitly recognize the limitations that must inform all development decisions in the Foothills, have been deleted from the Revised FGMP.

Please explain why the Revised FGMP has completely eliminated this crucial statement of fundamental principals underlying the Foothill Growth Management Plan, and assess 1) what the direct, indirect, and cumulative impacts of deleting this statement of principals will be; 2) how those impacts have been or will be measured; and 3) how the County will mitigate the impacts resulting from the elimination.

Answers to these questions are critical in light of the County's demonstrated willingness (and in some instances, apparently eagerness) to green-light development within the FGMP that disregards (and even requests exemption from) the policies and standards of the FGMP.

Moreover, the RDEIR does not disclose that the Revised FGMP fails to include, even by reference, the substantial additional data resulting from the federally-funded, in-depth study of the Foothill area, which are contained in the Appendices to the 1981 Plan:

- a description of the Foothill region; socioeconomic, housing and land use data; a detailed baseline description of environmental factors, including climate, air quality, watershed data, geological and soils information (including an in-depth soil matrix), and biological factors (including vegetation and wildlife data.)
- a study of Foothill Circulation Systems, including specific data on traffic volume by road and area, and expected impacts of anticipated growth
- an examination of existing public service systems and utilities in the Foothills fire protection (including identification of County and State fire stations and the service areas they cover); law enforcement (identifying the exiting Sheriff's office locations and service areas); school districts; health care providers; solid waste disposal services; public utilities; water and liquid waste systems; and public libraries serving the area
- legal authority for Specific Plans
- an explanation of the Site Plan review process applicable to the Foothills, including Foothill Extension and Development Corridors
- a detailed Environmental Impact Report (including comments)
- implementing Resolutions of the Tulare County Planning Commission and Board of Supervisors, including findings of fact and preliminary amendments to the 1981 Plan

- definitions of terms used in the 1981 Plan, and
- detailed maps, including maps of
 - the Foothill Growth Management Plan area that identify identifying lands designated as “valley agriculture extension”, “foothill extension”, “extensive agriculture” and scenic highways and roads);
 - Foothill Development Corridors, including designations of current and future land use and circulation patterns;
 - land capacity (identified by use-suitability);
 - slopes and flood-prone areas; and
 - vegetation (including identification of critical deer winter habitat)

Nor does the Revised FGMP update this information by providing equivalent current data. While some limited amount of this data may have changed over time, most – especially all the data regarding the physical characteristics of the area, circulation systems, etc. – has not. The data and maps are therefore still pertinent and should be restored.¹⁶

The Revised FGMP also has completely eliminated, without having disclosed these provisions as having been deleted, the following provisions in the 1981 Plan:

- The Site Plan Review process as it applies to the FGMP
- All three of the agriculture policies that now require the County to protect foothill agriculture from encroachment of development, require zoning to protect viability of foothill agriculture, and limit residential development densities in Success Valley
- Environmental Protection Goal 8, Flora & Fauna, Policy 2, which provides “Prevent encroachment of development onto riparian woodland habitats.”
- New Development policies 1 (Development proposals shall conform to all development standards) and 5 (To the greatest extent possible, new residential development should be compatible with existing residential development patterns).
- The environmental impact report process that is now required in connection with evaluating the appropriateness of proposed developments
- Various Implementation Measures associated with policies that still exist

The RDEIR does not disclose the elimination of these provisions in the Revised FGMP, and has not, therefore, sufficiently or at all addressed any of the potential impacts elimination of these provisions may have.

Perhaps more disturbing is that, since the County was in fact changing the FGMP, it did not take the opportunity to revise and strengthen the policies, to update them by integrating smart growth, conservation, and dark skies policies that would preserve and provide strong protections for the environmental factors that make the Foothills unique.

¹⁶ The 1981 FGMP has been amended since it was first adopted, yet those amendments have not been identified, so the public has no way of knowing what the actual status of the FGMP – which must function as the baseline since there is no other specified – is.

II. Ineffectual Policies; Vanished Implementation Measures

Every policy must have at least one Implementation Measure. An implementation measure is an action, procedure, program, or technique that carries out general plan policy. State Guidelines, at 16.

- A full thirty three percent (33%) of the Revised FGMP policies have no Implementation Measures at all. Each of those policies is therefore deficient under both the State Guidelines and CEQA – it was impossible for the County to have evaluated the possibly direct, indirect or cumulative environmental impacts of a policy that has no force. Similarly, those policies in other sections of the GPU or the RDEIR which rely on the cited FGMP policies, or which cite them in mitigation of another assessed impact, are defective and must be fixed.
- In many other policies, the cited Implementation Measure does not in fact advance or implement the policy, or the language of the Implementation Measure is so limited in scope that it will do little to carry out the policy. Without enforceable implementation measures, the goals and policies of the Revised FGMP are merely wishful thinking, and cannot be relied on in any meaningful evaluation of potential direct, indirect, or cumulative impacts resulting from adoption or implementation of the GPU.
- Given the failure of the DEIR to base its analysis on specific policies and implementation measures that actually provide what the DEIR says they provide, the DEIR does not provide meaningful guidelines on which the public and decision-makers may rely. (And, although these comments focus on the FGMP section of the DEIR and GPU, it is reasonable to assume that the problems plaguing the FGMP portion of the DEIR are also present in other areas.) Accordingly, the DEIR does not meet the standards required by CEQA.

As a result of these failures, and the deficiencies set out below, the RDEIR as relates both to the FGMP and the GPU in general is inadequate under CEQA and California state laws, and must be completely revised to provide the reliable analysis of the potential impacts that may be expected if the GPU is adopted and implemented. (Another cutting/pasting/rearranging will not do.) Even if County staff wanted to implement the faulty policies, they would be subject to challenge, as the County will have no legal foundation upon which to require adherence to what are in effect mere hopeful statements.

In light of the significance of the changes made, and the inevitable impact eliminating currently-existing protections will have, such an analysis requires establishment and/or analysis of current baseline conditions, upon which it could reasonably evaluate the impact of the potential direct or indirect changes that could result from adoption and implementation of the GPU, on both an individual basis and as a whole.

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The following chart sets out the revised policies of the FGMP, the Implementation Measures intended to actualize the policies, suggested modifications or revisions to the language of policies or Implementation Measures, and overall comments. Included in the Comments sections are issues raised under CEQA as well as questions regarding the FGMP itself, as revised, and requests for further revisions.

	POLICY	PROPOSED IMPLEMENTATION MEASURE	SUGGESTED MODIFICATION OR REVISION
GOAL 1	To maintain the natural beauty of the foothills while allowing focused growth in identified growth areas. [New]		
FGMP-1.1	<p>The County shall assure the existing values and identity of unincorporated areas in the foothills are properly addressed as development proceeds.</p> <p>[Current: Community Identity Goal 2: Assure that existing community values and identity are properly addressed as development proceeds in established areas.]</p>	IM-1. The County shall concentrate rural and urban development in the development corridors delineated on a Master Development Plan.	SEE PROPOSED MODIFICATION OF IM-5, BELOW AT 1.5, WHICH ALSO APPLIES HERE.
<p>COMMENTS: Policy 1.1 – currently a goal under the 1981 FGMP -- only indirectly furthers the goal of maintaining the natural beauty of the foothills. Please explain why this goal has been reduced to a policy under a goal that it does not directly relate to, and why the implementation measures that actually further this goal in the current plan have been eliminated or associated with some other goal.</p> <p>The goal/policy has been weakened by deletion of the important phrase “as development proceeds <i>in established areas.</i>” Please explain why the focus of this Policy has been changed from development in established areas to new development in planned communities (which won’t have existing values and identity). Please also explain what “properly addressed” means.</p>			

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	<p>The sole implementation measure for this policy, IM-1, is a re-working of the IM on page 35 of the current FGMP. The current IM “concentrates rural and urban development in the development corridors <i>only</i>.”</p> <p>IM-1 does not implement the policy because it fails to provide specific direction to consult with unincorporated communities to determine their values or “identity” as development decisions are made. Moreover, because IM-1 is linked to a Master Development Plan, which is referenced only in connection with Planned Communities, IM-1 applies only to new developments and specifically, to new planned communities.</p> <p>As revised, FGMP 1.1 and IM-1 deny existing communities the opportunity to accommodate some of the rural and urban development themselves. Public workshops and testimony strongly indicated that many existing communities need and want strengthening, some of which could come via limited development. Instead, IM-1 sets forth only the County’s determination to focus growth in development corridors within new, planned communities. Why has IM-1 been reduced in scope and weakened?</p>		
<p>FGMP-1.2</p>	<p>The County shall ensure that new development is designed in a manner that minimizes grading, vegetation disturbance, and intrusion onto natural watercourses, canyons and prominent landmarks, or rare and endangered species sites.</p> <p>[New Development: Goal 2 - same language]</p>	<p>IM-2. The County shall amend the Tulare County's Improvement Standards to reflect changes in foothill, street and grading standards.</p> <p>IM-3. The County shall require a grading and slope stabilization plan for that portion of the development exceeding slopes of greater than 15 percent.</p> <p>IM-4. The County shall require information in the site plan review process to delineate slopes 30 percent or greater on the development site. Review of the proposal by the Committee will prescribe a project design that will maintain 30 percent slopes generally free of improvements, unless the problems associated with steep slopes are sufficiently mitigated.</p>	<p>PROPOSED MODIFICATION: IM-2. The County shall amend the Tulare County Improvement Standards to reflect changes in foothill, street and grading standards that will regulate and minimize grading, and prohibits disturbance of native vegetation, intrusion onto natural watercourses, canyons and prominent landmarks, or sites important to rare, endangered, threatened, or candidate species.</p> <p>Additional Implementation Measure(s) that specify how the policy will be realized are required to fully implement the policy. (Revision of IM-2 and specific Improvement Standards may be sufficient to meet this requirement.)</p>
<p>COMMENTS: Under the California Endangered Species Act, threatened and candidate-species must be protected as well as those named as rare or endangered. Please revise FGMP 1-2 as shown above..</p> <p>All the IMs which are supposed to implement this policy address construction issues as regards safety issues, not protection of natural resources, which is the focus of the policy. They do not, therefore advance the policy.</p>			

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	<p>IM-2: good start, but the IM doesn't specifically require the County to change the standards in a way that will actually implement the policy. Please modify IM-2 as indicated above in bold. New standards should be specific and set out details to provide guidance to residents and to planners. (Please also fix the typo - delete "the" before "Tulare County's" or leave "the" and delete "s")</p> <p>As written, IM-2 is also vague - what are the Tulare County Improvement Standards? What changes have been or are being made in foothill street and grading standards? Or is this intended to apply to ensure that any future changes are incorporated into the TCIS by amendment? Please clarify.</p> <p>IM-3 deals only with slopes - how does this implement the policy elements related to vegetation disturbance, protection of watercourses, canyons, landmarks, and rare and endangered species?</p> <p>IM-4: again, good start, but addresses none of the policy elements other than to regulate improvements on slopes in excess of 30 percent. More disturbing: the entire section in the 1981 FGMP that set out the Site Plan Review process as it applies to the FGMP has been deleted; without this section, all the IMs that rely on actions of the Site Plan Review process or the Site Plan Committee are meaningless.</p>		
<p>FGMP-1.3</p>	<p>When circumstances warrant, Community Plans, Master Development Plans, Specific Plans, Area Development Plans, and Hamlet Plans, shall be undertaken for identifiable community areas.</p> <p>[When circumstances warrant, specific plans, pursuant to the California Government Code, shall be undertaken for identifiable community areas.]</p>	<p>IM-5. The County shall appoint a committee of interested community residents when the Board of Supervisors determines a Community Plan, Master Development Plan, Specific Plan, Area Development Plan, or Hamlet Plan is necessary for an identifiable community area where the project boundary is coterminous with an existing HDB, UDB or PCA.</p>	
<p>COMMENTS: IM-5 does not implement either the prior Goal from which this Policy was formed or the new Policy, as the IM appears to apply only when new development is taking place outside an existing Development Boundary or Planned Community Area, and when it will be "coterminous" - that is, when it will take place right on the community's boundary.</p> <p>The intent of the prior Goal (and of the current proposed policy) was and is to create specific plans for identifiable community areas in the foothills. Inherent in the Goal was the understanding that it applied to existing communities.</p> <p>What are the "circumstances [that] warrant" development of a Plan? To provide guidance to the public and to future members of the Board of Supervisors and Planning Commission, these circumstances should be identified.</p> <p>What is the "project" referred to in IM-5 as the trigger for involving community members in creating a Plan?</p>			

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	Under what circumstances could a Planned Community exist and have “community residents” before a Master Development Plan had already been adopted?		
FGMP-1.4	A citizen's advisory committee representative of residents of the affected area shall be utilized in any Community Plans, Master Development Plans, and Hamlet Plans undertaken which impacts an established community where the project boundary is coterminous with an existing HDB, UDB, or PCA.	IM-5. The County shall appoint a committee of interested community residents when the Board of Supervisors determines a Community Plan, Master Development Plan, Specific Plan, Area Development Plan, or Hamlet Plan is necessary for an identifiable community area where the project boundary is coterminous with an existing HDB, UDB or PCA.	<p>PROPOSED MODIFICATION, POLICY 1.4: An advisory committee consisting of interested community residents shall be utilized in connection with the drafting, revising, or updating of any Community Plans Master Development Plans and Hamlet Plan.</p> <p>PROPOSED MODIFICATION, IM-5: To ensure that existing community values and identity are preserved consistent with Policy 1.1, the County shall work with a committee of interested community residents whenever the Board of Supervisors determines a Community Plan, Master Development Plan, Specific Plan, Area Development Plan, or Hamlet Plan is necessary for an identifiable community area.</p>
<p>COMMENTS: The policy to involve community members in planning decisions that will affect the area in which they live is commendable, however, both the proposed new Policy 1.4 and IM-5 appear to apply only in very limited circumstances, i.e., when new development outside an existing Development Boundary will be coterminous with that Boundary.</p> <p>Why has the policy been framed only to apply when a proposed project is coterminous with a Development Boundary?</p>			
FGMP-1.5	The County shall encourage new development be designed in a manner that preserves the visual quality of the foothill setting by encouraging the use of curvilinear streets, vegetation reestablishment on cuts and fills, cluster development, and housing site locations that blend into the landscape rather than becoming a focal point.	<p>IM-7. The Site Plan Review Committee shall review the consistency of the project with the location, type of design criteria of the County's policies for projects that only require Site Plan Review. Should the project not meet the County's policies, findings to that effect shall be forwarded to the appropriate decision-making body.</p> <p>ORIGINAL LANGUAGE: [The Site Plan Review Committee shall determine the consistency of the project with the location, type and design criteria of</p>	<p>Better: The County shall require new development to be designed in a manner that preserves the visual quality of the foothill setting through the use of curvilinear streets, vegetation reestablishment on cuts and fills, cluster development, and housing site locations that blend into the landscape rather than becoming a focal point.</p> <p>Better: IM-7. The Site Plan Review Committee shall ensure that the proposed project complies with</p>

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	<p>[New development shall be designed in a manner that preserves the visual quality of the foothill setting by encouraging the use of curvilinear streets, vegetation reestablishment on cuts and fills, cluster development, and housing site locations that blend into the landscape rather than becoming a focal point.]</p>	<p>the policy. Should the project not meet the intent of the above policy, findings to that effect shall be forwarded to the appropriate decision-making body. THE IM THAT APPLIED TO NEW DEVELOPMENT GENERALLY SAYS “The Site Plan Review Committee shall insure that the design of the proposal meets the policies and development standards of the FGMP.”]</p>	<p>the policies of this General Plan Update, the Foothill Growth Management Plan, and with the County’s Development Standards for the proposed project location. No project that does not meet the County’s policies and standards shall be approved or recommended for approval.</p>
<p>FGMP 1.5</p>	<p>COMMENTS: While what’s left of the policy language carried forward from the existing FGMP is still good, proposed Policy 1.5 has stripped the current Policy, Goal 3 Policy 3, of its force by replacing the mandatory language (“New development SHALL be designed”) with the ineffective admonition to “encourage” new development to employ the cited design criteria. Why has the policy been weakened? The County promised it had not changed the FGMP. Please explain 1) why this provision was revised to weaken it; 2) what the potential direct, indirect, and cumulative impacts of changing this provision will be; 3) how the potential direct, indirect, and cumulative impacts of new development that chooses not to respond to the County’s “encouragement” on the visual resources of the foothills have been or will be measured; 4) what new baseline data has been compiled on the potential direct, indirect, and cumulative impacts of such development; and 5) how the County will mitigate the potential direct, indirect, and cumulative impacts resulting from the weakening of this provision. Please also provide the analysis and rationale underlying the decision to change the provision from a mandatory one. Finally, Please restore the original intent and language.</p> <p>The proposed revision indicates that IM-7 is the same as the Implementation Measure for this policy in the current FGMP. In fact, the IM cited (“page 25”) does not refer at all to the visual quality of the foothills or the design elements set out in new Policy 1-5: it implements a policy dealing specifically with neighborhood commercial centers and the criteria for such centers. Moreover, even in that context, the IM had more “teeth” – as it exists now, the Site Plan Review Committee <i>shall determine</i> the consistency of the project, not simply “review” it.</p> <p>The IM that <i>does</i> correspond to original policy dealing with new development in general, is found on page 24 of the 1981 FGMP and provides “The Site Plan Review Committee shall insure the design of the proposal meets the policies and development standards of the FGMP.” (FGMP Page 24)</p> <p>Please restore the appropriate IM to this policy, in its original form.</p> <p>Additionally, this proposed revision of the FGMP has deleted the entire section in the 1981 FGMP that set out the Site Plan Review process as it applies to the FGMP; without this section, the Implementation Measures that rely on actions of the Site Plan Review process or the Site Plan Committee are meaningless.</p> <p>(Note: as revised, the language of IM-7 is also confusing. What does “type of design criteria of the County’s policies” mean? It appears that some language from this IM was omitted.)</p>		

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	<p>Where are the design criteria which encourage the curvilinear streets etc. set out?</p> <p>Which projects only require site plan review and which require more? What more? What governs that other body's review?</p> <p>Who is the appropriate decision-making body and what obligation does it have to adopt the findings of the SPLC? What authority does it have to ignore them?</p> <p>Overall, IM-7 does not provide the necessary guidance to implement the policy.</p> <p>SEE ALSO discussion of Impacts 3.1-3, 3.1-4 and 3.1-5. which cite this policy and IM in mitigation of the GPU's Significant Unavoidable environmental impact, below.</p>		
<p>FGMP-1.6</p>	<p>The County shall allow neighborhood commercial centers in designated areas of a development corridor and shall only include uses that provide neighborhood-related services (for example, grocery store, laundromat, real estate office, etc.). Criteria for location and design of this type of commercial use are as follows:</p> <ul style="list-style-type: none"> • The architectural and landscaping design of the neighborhood center shall be compatible with surrounding residential uses, • The major tenant of the complex shall be a grocery store • The maximum size of the commercial center shall be 10 acres • The commercial center may be included as a part of the planned residential development • The center shall meet the policies and development standards of the FGMP • The center shall not have direct access from State Highway 190 and 198 	<p>IM-7. The Site Plan Review Committee shall review the consistency of the project with the location, type of design criteria of the County's policies for projects that only require Site Plan Review. Should the project not meet the County's policies, findings to that effect shall be forwarded to the appropriate decision-making body.</p>	

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	<p>[Current FGMP: Neighborhood commercial centers shall be allowed in designated areas of the development corridor and shall only include uses of a type and size to service a neighborhood (i.e., grocery store, laundromat, real estate office, etc.). Criteria for location and design of this type of commercial use are as follows:</p> <ul style="list-style-type: none"> • The architectural and landscaping design of the neighborhood center shall be compatible with surrounding residential uses, • The major tenant of the complex shall be a grocery store • The maximum size of the commercial center shall be 5 acres • The commercial center may be considered as a part of the planned residential development • The center shall meet the policies and development standards of the FGMP • The center shall not have direct access from State Highway 190 and 198] • The general areas where neighborhood commercial centers should be located because of distance from existing shopping areas and future supporting populations are the Globe Drive/Pleasant Valley, Upper Balch park Road, and Frazier Valley areas, and • Uses proposed for a neighborhood commercial center shall be consistent with uses outlined in the Planned 		
<p>COMMENTS: Policy 6 of the 1981 Plan's New Developments section limited neighborhood commercial centers to those of "a type and size to service a</p>			

	<p>neighborhood". The Revised FGMP has removed this limitation, and will permit any developments "that provide neighborhood services" – which may be interpreted to mean any commercial enterprise as long as customers are drawn from the undefined " neighborhood." The language "neighborhood-related services" is vague and broad. What does this mean? The current language, "of a size and type to service a neighborhood", gives more guidance. This provision is especially relevant since the proposed new language doubles the permitted size of a neighborhood commercial center from 5 acres to 10 acres, thus making the center much larger than one designed to provide only neighborhood-related services. The current language signals the rural character of permitted commercial activities - it should be restored.</p> <p>What is the average size in acres of existing neighborhood commercial centers in the Foothills? Why is 5 acres no longer adequate?</p> <p>IM-7 doesn't implement the very specific elements set out in the policy. The criteria set out in FGMP-1.6 should be set out in an IM</p> <p>See also comment and proposed revision to IM-7 at FGMP 1.5, above.</p> <p>Why must the major tenant of every neighborhood commercial center be a grocery store? This requirement will result in an overabundance of grocery stores (unlikely, as grocery stores are expensive businesses to establish and maintain) or fewer neighborhood services – such as local restaurants, laundromats, offices, etc. – made available.</p> <p>What are the uses outlined in the PD-F zone?</p>		
<p>FGMP-1.7</p>	<p>The County shall encourage commercial recreation uses near unique natural features, thus enabling the visiting public to enjoy the recreational and visual amenities the area has to offer. Criteria for the location and approval of commercial recreation are as follows:</p> <ul style="list-style-type: none"> • The use shall have access from a State Highway • The use shall meet the policies and development standards of the FGMP • The use shall not detract from the visual amenities of the foothills. Landscaping, sufficient setback distances, and well designed buildings and signs are tools that shall be used to protect the visual environment, and 	<p>IM-7. The Site Plan Review Committee shall review the consistency of the project with the location, type of design criteria of the County's policies for projects that only require Site Plan Review. Should the project not meet the County's policies, findings to that effect shall be forwarded to the appropriate decision-making body.</p>	<p>Better: The County shall support commercial recreation uses located near unique natural features that enable the visiting public to enjoy the recreational and visual amenities the area has to offer. To ensure that the natural beauty of the foothills is preserved consistent with this Goal, Commercial recreation uses shall:</p> <ul style="list-style-type: none"> • have access from a State Highway • meet the policies and development standards of the FGMP • not detract from the visual amenities of the foothills • employ landscaping, sufficient setback distances, and well designed buildings and signs that protect the visual environment,

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	<ul style="list-style-type: none"> Proposed commercial recreation shall be consistent with uses outlined in the Planned Development-Foothill Zone 		<ul style="list-style-type: none"> and be consistent with uses provided for in the Planned Development-Foothill Zone when located in such Zone <p>Better: IM-7. The Site Plan Review Committee shall ensure that the proposed project complies with the policies of this General Plan Update, the Foothill Growth Management Plan, and with the County's Development Standards for the proposed project location. No project that does not meet the County's policies and standards shall be approved or recommended for approval. (NOTE - for this proposed revision to have any effect, the section setting out the Site Plan Review Process must be restored to the FGMP.)</p>
<p>COMMENTS: New policy 1-7 has materially changed Goal 3 Policy 7 of the 1981 FGMP by deleting the current requirement that commercial recreation uses “shall be located in close proximity to unique natural features” to a policy that promotes such uses (“County shall encourage commercial recreation uses near unique natural features.”) The change in language alters the purpose of the policy from establishing a limitation on commercial locations (i.e., requiring commercial recreation uses to be located close to the natural feature they plan to exploit) to a policy urging the County to encourage new commercial ventures near such features.</p> <p>Please explain 1) why this provision was changed to alter its focus; 2) what the potential direct, indirect, and cumulative impacts of changing this provision will be on traffic patterns, air quality, wildlife and human populations and habitat, and on the natural features located in the foothills; 3) how the potential direct, indirect, and cumulative impacts of this change have been or will be measured; 4) what baseline data has been compiled on the potential direct, indirect, and cumulative impacts of such a change; and 5) how the County will mitigate the potential direct, indirect, and cumulative impacts on fragile natural features and the foothill population (human and wildlife) resulting from implementation of this provision. Please also provide the analysis and rationale underlying the decision to change the provision.</p> <p>Implementation measures should provide specific measurable criteria on which compliance can be evaluated -- .How do you implement “encouragement”?</p> <p>As revised IM-7 divests the Site Plan Review Committee of its authority to determine the consistency of a project with the standards set out in the policy (now 1.7) by changing the language to “shall review”. IM-7 has also been re-written to replace the current “the intent of the above policy” with “the County’s policies” - which suggests that the FGMP is no longer the controlling policy. Finally, IM -7 doesn’t provide any real guidance as to the type of landscaping to be</p>			

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	<p>employed, the minimum setback distance, etc. See also comment and proposed revision to IM-7 at FGMP 1.5, above.</p> <p>This revision of the FGMP has also deleted the entire section in the 1981 FGMP that set out the Site Plan Review process as it applies to the FGMP; without this section, the Implementation Measures that rely on actions of the Site Plan Review process or the Site Plan Committee are meaningless.</p> <p>SEE ALSO discussion of Impacts 3.1-3, 3.1-4 and 3.1-5, which cite this policy and IM in mitigation of the GPU's Significant Unavoidable environmental impact, below.</p>		
FGMP-1.8	<p>The County shall encourage mobile home projects to locate and be designed in a manner that is compatible with existing development patterns and does not detract from the visual amenities of the foothill environment.</p>	<p>NO IMPLEMENTATION MEASURE</p>	
<p>COMMENTS: New Policy 1.8 weakens the existing FGMP policy, which uses the mandatory “shall” to REQUIRE mobile home projects to be located and designed in a manner compatible with existing development patterns and that does not detract from the visual amenities of the foothill environment, to a policy which simply requires the County to “encourage” compliance with the policy. How do you implement “encouragement”?</p> <p>Please explain 1) why this provision was revised to weaken it; 2) what the potential direct, indirect, and cumulative impacts of changing this provision will be; 3) how the potential direct, indirect, and cumulative impacts of the new, more lenient policy have been or will be measured; 4) what data has been compiled on the potential direct, indirect, and cumulative impacts of the revision; and 5) how the County will mitigate the potential direct, indirect, and cumulative impacts resulting from the weakening of this provision. Please also provide the analysis and rationale underlying the decision to change the provision from a mandatory one.</p> <p>Please reinstate the language of the existing FGMP, which more accurately furthers the stated goal of maintaining the natural beauty of the foothills while still allowing focused growth.</p> <p>FGMP 1.8 has no Implementation Measure. The State of California General Plan Guidelines¹⁷ require at least one implementation measure for each policy. FGMP 1.8 fails to meet the minimum standard under the Guidelines.</p>			

¹⁷ The State of California General Plan Guidelines 2003, Governor’s Office of Planning and Research, at page 16. Referred to hereinafter as “the Guidelines” or “Guidelines”. Implementation Measures are actions, procedures, programs or techniques that carry out a policy, and should provide specific measurable criteria on which compliance and progress can be evaluated.

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	<p>The lack of an Implementation Measure also makes it impossible to evaluate the environmental impact the policy will have, good or bad, as required under CEQA. As a result, any and all citations to this policy and/or IM in the RDEIR in mitigation of an environmental impact are baseless and unreliable.</p> <p>Why has the Implementation Measure associated with this policy in the 1982 FGMP (“The Site Plan Review Committee shall review mobilehome parks and subdivisions to encourage designs that “fit” into existing development patterns”) been deleted?</p>		
FGMP-1.9	<p>The County shall allow light industrial uses in a development corridor subject to a special use permit, planned development, or other equivalent plan. A decision on these uses shall be based on, but not limited to, criteria such as land use conflicts, water requirements, design/location and liquid waste disposal.</p>	<p>NO IMPLEMENTATION MEASURE</p>	<p>Proposed Modification of original Policy: The County shall determine whether to grant a conditional use permit for proposed light industrial uses within a development corridor on the basis of specific data obtained through the environmental impact report process.</p>
<p>COMMENTS: New Policy 1.9 has materially changed New Development Policy 10 in the current 1981 FGMP by weakening the County’s ability to evaluate proposed light industrial uses on their own merits, in the proposed locational context, by changing the current discretionary policy (“The County MAY ALLOW”) to a policy that makes allowance of light industrial uses mandatory¹⁸ (“The County SHALL ALLOW”). The revision has also exchanged the previously required conditional use permit for a special use permit.</p> <p>Please explain why this provision was revised to remove the County’s discretion in approving light industrial uses in foothill development corridors and made such approval mandatory. Please also explain 1) what the potential direct, indirect, and cumulative impacts of changing this provision will be; 2) how the potential direct, indirect, and cumulative impacts of this mandatory approval measure have been or will be measured; 4) what baseline data has been compiled on the potential direct, indirect, and cumulative impacts of such potential development; and 5) how the County will mitigate the potential direct, indirect, and cumulative impacts resulting from the weakening of this provision. Please also provide the analysis and rationale underlying the decision to change the provision from a discretionary to a mandatory one.</p> <p>The language of Policy 1.9 is also internally inconsistent, as the mandatory “SHALL ALLOW” in the first sentence makes the decision criteria set out in the second sentence on which discretionary decisions could be made irrelevant.</p> <p>Please restore the original language.</p>			

¹⁸ See Tulare County Ordinance Code §145(a), Definitions. (“Shall” is mandatory and “may” is permissive.)

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	<p>New Policy 1.9 is further deficient: How do you implement any policy without an implementation measure? The Guidelines require at least one implementation measure for each policy. FGMP 1.9 fails to meet the minimum standard under the Guidelines.</p> <p>The 1981 FGMP IM for this policy provided strong guidance: “The environmental impact report process is the mechanism which will provide specific data both to the Site Plan Review Committee and the Planning Commission for purposes of determining a decision on the conditional use permit.” Please reinstate the 1981 Implementation Measure (as modified above.)</p> <p>The lack of an Implementation Measure also makes it impossible to evaluate the environmental impact the policy will have, good or bad, as required under CEQA. As a result, any and all citations to this policy and/or IM in the RDEIR in mitigation of an environmental impact are baseless and unreliable</p>		
FGMP-1.10	<p>The County shall limit residential densities within the development corridor areas of Success Valley in order to avoid conflicts with intensive agricultural uses in the Valley.</p>	<p>IM-21. The County shall maintain the two areas within Success Valley of the Tule River development corridor on the Land Use/Circulation Plan to a classification (zone), which prohibits any residential densities greater than one unit per five acres.</p>	<p>.Better: IM -21. The County shall limit residential density in the two Success Valley areas within the Tule River Development Corridor (on the Land Use/Circulation Plan) to one unit per five acres.</p>
<p>COMMENTS: This policy and IM have been in effect since 1981; the implementation timeline shows the anticipated attainment date as “ongoing.” Please indicate whether the required zoning has been implemented</p>			
FGMP-1.11	<p>The County shall require that hillside development be designed so as to preserve the skyline and maintain an unobstructed scenic panorama of the foothills.</p>	<p>IM-13. The County shall ensure that the design of subdivision is reviewed by the Site Plan Review Committee to assure the visual impact to the foothills is minimal.</p>	<p>Better: IM-13. The County shall not approve any development or other improvement that will be situated on a hillside in such a way that the finished construction will be visible from areas accessible to the public. Hilltop construction shall not be approved.</p>
<p>COMMENTS: IM-13 deals only with the design of subdivisions, and even then permits hillside development that will disturb the skyline so long as the disturbance is considered “minimal.” Please explain how IM-13 implements Policy 1.11, when it is limited in scope to subdivisions, and when it provides no guidance in determining whether a visual impact may be considered “minimal.”</p> <p>This revision of the FGMP has deleted the entire section in the 1981 FGMP that set out the Site Plan Review process as it applies to the FGMP; without this section, the Implementation Measures that rely on actions of the Site Plan Review process or the Site Plan Committee are meaningless.</p>			

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	<p>“Minimizing” is not “preserving”</p> <p>An appropriate IM for this policy would not be limited to subdivisions, and would direct the County to develop zoning standards that specifically prevent hilltop or hillside development that will interrupt the natural skyline of the foothills. Please revise</p>		
FGMP-1.12	<p>The County shall designate existing, legally conforming commercial uses not located in the communities of Springville and Three Rivers with an appropriate land use designation, providing the use is consistent with other policies in this FGMP.</p>	<p>IM-8. Substantial improvement or expansion to commercial uses not located in Three Rivers, Springville, and Lemon Cove shall conform to the development standards contained in the FGMP.</p>	<p>PROPOSED REVISION: The County shall identify all existing foothill commercial uses not located in the communities of Springville and Three Rivers and evaluate each such existing uses for compliance with the policies of this FGMP and GPU. Appropriate land use designations shall be assigned to all such uses that are found to be legal conforming commercial uses. Uses which do not conform to the policies of this FGMP and GPU shall be given the opportunity to come into compliance (where possible) or shall be directed to cease operation within a reasonable time.</p>
<p>COMMENTS: This policy has been changed from a <i>permissive</i> “legally conforming commercial uses <i>may</i> be recognized with an appropriate use designation providing the recognized use is consistent with other policies in the FGMP” to a mandatory “County <i>shall designate</i>.” Why has the County’s discretion to determine appropriate land use designations been removed and replaced with a mandate?</p> <p>Please explain the analysis and rationale behind this change divesting the County of discretion in this land-use determination. What is its anticipated direct, indirect, and cumulative impact, and on what data is this expectation based?</p> <p>The 1981 Policy is implemented by two Implementation Measures (page 22): “Under Level III of the FGMP, existing commercial uses may be shown as commercial on the land use map,” and “Substantial improvements to <i>existing</i> zoned commercial uses . . . shall conform to the development standards contained in the FGMP.”</p> <p>Although IM-8 retains half of the measures that previously controlled how the policy was enforced, it has deleted the important word “existing.” More importantly, however, it does not really implement Policy 1.12: the policy directs the County to give appropriate designations to existing, legally conforming uses in the FGMP area, and does not deal with improvements (substantial or otherwise) or expansion of those uses. IM-8 on the other hand, deals only with improvements or expansion of commercial uses, requiring them to conform to FGMP standards.</p> <p>Please revise IM-8 to appropriately implement Policy 1.12.</p>			

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	The substance of IM-8 is good and should be made a policy in its own right, with an appropriate IM of its own.		
FGMP-1.13	Planned development within the foothills may be located within development corridors on lands designated Foothill Mixed use (FMU) and zoned Planned Development-Foothill Combining-Special Mobile Home Zone (PD-F-M), or within development corridors delineated on a Master Development Plan, established in compliance with the FGMP first and second level planning criteria, where an area has been designated as a Planned Community Area (PCA) in the FGMP and zoned Planned Community (PC) pursuant to requirements of the Tulare County Planned Community (PC) Zoning Ordinance. PCA land uses shall included [sic] equivalent General Plan land use designations allowed within UDBs.	NO IMPLEMENTATION MEASURE	
<p><u>COMMENTS:</u> Policy 1.13 is so confusing that it fails to provide comprehensible guidance to the public. It is also inconsistent with other FGMP policies.</p> <p>As revised, policy 1.13 permits development on lands designated FMU and lands zoned Planned Development -Foothill Combining-Special Mobile Home Zone OR within development corridors delineated on a Master Development Plan. It is thus inconsistent with FGMP Policy 1.1, which specifically restricts new development to development corridors delineated within a Master Development Plan. Since Master Development Plans are referenced only in connection with Planned Communities to be formed on plots in excess of 200 acres. Moreover, in limiting PCA compliance with the FGMP to Levels I and II, it completely removes PCA developments from the FGMP resource-based analysis of site and project suitability required under Levels III and IV. As noted even in this revised FGMP, this process is a “critical component to the implementation of the FGMP.” At Part II, page 3-4. This revised policy is inconsistent with the intent, and other policies, of the FGMP. Please revise to bring it into compliance.</p> <p>In addition, by providing that Planned Community Area land uses shall include “equivalent General Plan land use designations allowed within UDBs,” it is unclear whether the foothill-specific development standards will apply. (This also creates an inconsistency with Policy 1.14, which does reference the FGMP standards.)</p> <p>Finally, there is no Implementation Measure for Policy 1.13, which makes the policy meaningless and unenforceable. The Guidelines require at least one implementation measure for each policy. Accordingly, FGMP 1.13 fails to meet the minimum standard under the Guidelines</p>			

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	<p>The lack of an Implementation Measure also makes it impossible to evaluate the environmental impact the policy will have, good or bad, as required under CEQA. As a result, any and all citations to this policy and/or IM in the RDEIR in mitigation of an environmental impact are baseless and unreliable.</p>		
FGMP-1.14	<p>For Panned Community Areas within the foothills, the Planned Community (PC) Zone shall be used. Development corridors shall be delineated through the Master Development Plan (MDP) process. The MDP shall clearly demonstrate how "First and Second Level" FGMP planning criteria are or can be met. Lands that fail to meet these criteria for development will be protected for open space uses.</p>	<p>NO IMPLEMENTATION MEASURE</p>	
	<p>COMMENTS: To ensure compliance with the FGMP, please change the word "will" to "shall". "Will" signifies only a prediction that lands will be protected for open space uses, while "shall" requires the County to comply,</p> <p>Because there is no Implementation Measure for Policy 1.14, this provision fails to meet the minimum standards required under the Guidelines. At least one implementation measure is required for each policy.</p> <p>The lack of an Implementation Measure also makes it impossible to evaluate the environmental impact the policy will have, good or bad, as required under CEQA. As a result, any and all citations to this policy and/or IM in the RDEIR in mitigation of an environmental impact are baseless and unreliable.</p>		
FGMP-1.15	<p>For Planned Community Areas and Development Corridors within the foothills, road linkages may be used to provide for continuity of otherwise discontinues [sic] development corridors, provided that new road construction is consistent with all other requirements of the General Plan.</p>	<p>NO IMPLEMENTATION MEASURE</p>	
	<p>COMMENTS: Policy 1.15 appears to be an attempt to overcome the objection that development of new communities ("planned" or otherwise) that are discontinuous with, and not natural outgrowths or expansions of, existing communities create urban sprawl. However, simply building new roads to connect otherwise scattered developments ("provide continuity") does not ameliorate the problems associated with leapfrog development, and in fact exacerbates the problem by creating more traffic-inducing roadways. The cumulative impact of such roads, connecting an unspecified number of discontinuous new developments, has not – but must be – assessed to adequately determine the environmental impact of the construction.</p> <p>A more appropriate policy would require that Development Corridors be designated only where there are already existing road linkages. Please revise.</p>		

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	<p>Happily, there is no Implementation Measure for this Policy, so it is unenforceable as well as inadequate under the Guidelines. Please create an appropriate IM to implement the revised policy.</p> <p>The lack of an Implementation Measure also makes it impossible to evaluate the environmental impact the policy will have, good or bad, as required under CEQA. As a result, any and all citations to this policy and/or IM in the RDEIR in mitigation of an environmental impact are baseless and unreliable.</p>		
FGMP-1.16	<p>Unless it can be demonstrated that an alternative standard will result in attainment of a superior environment, when preparing Specific Plans, Master Development Plans, or Area Development Plans and standards therein for areas within the foothills, at a minimum, the development standards within the FGMP Appendix shall apply.</p>	<p>IM-8. Substantial improvement or expansion to commercial uses not located in Three Rivers, Springville, and Lemon Cove shall conform to the development standards contained in the FGMP.</p>	.
	<p>COMMENTS: NOTE: FGMP Development Standards are set out in Section 3.12, not an Appendix.</p> <p>Policy: How is “superior environment” to be measured? Criteria?</p> <p>IM-8 doesn’t implement Policy 1.16 as it applies only to substantial improvement to or expansion of commercial uses, whereas Policy 1.16 applies to all development in the designated areas.</p> <p>Both FGMP- 1.16 and its implementation measure must be revised to provide measurable guidelines</p>		
Goal 2	<p>To strengthen and ensure the existing community values and identity in Springville Three Rivers Lemon Cove and the Badger Development Corridor, as development proceeds.</p>		
FGMP-2.1	<p>The County shall encourage new commercial development to first consider the communities of Springville, Three Rivers, and Lemon Cove, which are suitable for commercial development. For Planned Community Areas within the foothills, commercial areas will be designated within the development corridors through the Master Development Plan process.</p>	<p>IM-9. The County shall ensure that the land use and circulation plan for a development corridor will limit retail commercial development designations outside Three Rivers, Springville, and Lemon Cove unless determined to be appropriate and acceptable as included in a Master Development Plan.</p>	

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	<p>COMMENTS: Policy: In changing the language of the provision to require the County only to “encourage” consideration of these communities, the Revised FGMP has shifted the decision-making power from the County – which formerly could determine where a proposed enterprise would be appropriate based on all relevant factors – to the commercial enterprise, which most likely is not in possession of all the information available to the County. Please explain the analysis and rationale for shifting the decision-making power (which in effect is a basic land-use determination) away from the County. Please also explain 1) what the potential direct, indirect, and cumulative impacts of changing this provision will be; 2) how the potential direct, indirect, and cumulative impacts have been or will be measured; 3) what baseline data has been compiled on commercial location decision-making; and 4) how the County will mitigate the potential direct, indirect, and cumulative impacts resulting from the deletion of this provision.</p> <p>How does encouraging new commercial development strengthen and ensure existing community values and identity? If it is assumed that it does further the goal by strengthening a community’s local economy, the new policy language regarding Planned Community Areas is inherently inconsistent with the goal, as it neither follows from nor relates to encouraging development first in Three Rivers, Springville, Lemon Cove or the Badger Development Corridor, and in fact undermines the policy by permitting commercial development in new planned community developments (which would be the subject of any Master Development Plan). Construction of commercial structures will almost always be easier when done in connection with completely new development rather than as infill construction. The likely result of permitting development of new towns, including commercial development within those towns, in the foothills will be that it will be increasingly difficult to encourage commerce to locate in the existing towns.</p> <p>Accordingly, FGMP-2.1 doesn’t promote the goal of strengthening and ensuring the values and identities of Springville, Three Rivers, Lemon Cove or Badger. The language re: PCAs should not be part of this policy statement.</p> <p>IM -9 - rather than encouraging commercial development to locate in the existing towns, IM-9 simply enables “appropriate and acceptable” commercial development to be included in a Master Development Plan. Development Corridor without providing any specific means of determining what is “appropriate” or “acceptable.” A new Implementation Measure should be drafted that sets out specific measures the County will take to achieve the policy.</p>		
FGMP-2.2	The County shall maintain appropriate zoning within the Badger Development Corridor in order to promote residential densities compatible with established land use patterns.	IM-11. The County may initiate changes in the FGMP specifically for the Badger Development Corridor to accommodate uses of property and densities not presently reflected in the FGMP, so long as specific plans for development and densities have been prepared and are available for review at the time the Commission initiates consideration of the plan change.	
	<p>COMMENTS: What are the “established land use patterns” within the Badger Development Corridor? No such patterns or zones are shown on either the Badger/Elderwood Development Corridor Map (Figure 3-2) or the GPU Land Use Map; without documentation of existing land use patterns it will be impossible to assess either the progress toward achieving the goal, or the environmental impact of implementing the Plan.</p>		

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	<p>Rather than implementing Policy 2.2, IM-11 implements changes by authorizing the County to initiate changes to accommodate uses and densities not contemplated in the FGMP. The provision that “specific plans for development and densities” must have been prepared and made available for review provides no guidance as to what must have been provided as part of those plans, and no assurance that the proposed development will be consistent with either the intent or the specific policies of the FGMP.</p> <p>Please explain why this policy and IM depart so radically from the overall policies of the FGMP. What opportunities will be afforded for public review and input into proposed changes? What are the “uses” and densities that may be proposed and/or permitted? What demonstrated need supports what is in essence a nullification of the FGMP in the Badger/Elderwood corridor? What are the direct and reasonably foreseeable indirect effects of the proposed changes?</p> <p>This policy and IM have been in effect since 1981, and the implementation timeline shows this policy and IM as “ongoing.” Please disclose what changes have been made since the adoption of the 1981 FGMP. FGMP 2.2 cites “Amendment 83-03. New Development, Modification to Adopted Element” – why is this Amendment to the FGMP not included as part of the FGMP, and why are any changes not disclosed on the land use map and/or FGMP map so that the public and planners are aware of the FGMP as currently constituted?</p> <p>How does IM-11 relate to Policy FGMP-2.3 and IM-10?</p> <p>This IM does not meet the minimum requirements of Guidelines.</p>		
FGMP-2.3	The County shall limit the maximum residential density of areas within the Badger Development Corridor to one (1) dwelling unit per five (5) acres.	IM-10. The County shall maintain appropriate zoning within the Badger Development Corridor which requires a 5-acre minimum parcel size.	
	<p>COMMENTS: At last! One that actually seems appropriate! BUT! Why do this policy and IM depart from the overall FGMP approach of basing development on environmental factors such as water availability, slope, vegetation, landmarks, watercourses, etc.? If background data exist to support these densities and parcel sizes, please include them in the revised FGMP. If such background data don’t exist, how will the County assess progress toward achieving the goal, or the environmental impact of implementing the Plan?</p>		
Goal 3	<p>To ensure that new development be designed in a manner which minimizes impact to foothill areas including grading, vegetation disturbance, tree removal, and intrusion onto natural</p>		

	<p>watercourses, canyons, and prominent landmarks, or rare and endangered species sites, and protects the County's dark skies.¹⁹</p>		
<p>FGMP-3.1</p>	<p>The County shall encourage innovatively-designed residential development in the foothills, such as planned unit or cluster development that conserves and preserves surrounding open space from unnecessary disturbances.</p>	<p>IM-7. The Site Plan Review Committee shall review the consistency of the project with the location, type of design criteria of the County's policies for projects that only require Site Plan Review. Should the project not meet the County's policies, findings to that effect shall be forwarded to the appropriate decision-making body.</p>	<p>PROPOSED REVISION: The County shall require development in the foothills, whether residential or commercial, to employ innovative design, such as planned unit or cluster development, and to meet LEED-ND or LEED-NC standards to conserve and preserve surrounding open space from unnecessary disturbance.</p> <p>PROPOSED REVISION: The County shall adopt the LEED-NC and LEED-ND design standards and guidelines for development in the foothills which will require development to follow smart growth principles such as, but not limited to, planned unit or cluster development, and to conserve and preserve surrounding open space from unnecessary disturbance. minimize grading, vegetation disturbance, and intrusion onto natural watercourses, canyons, or areas which host rare or endangered species of prominent landmarks.</p>
<p>COMMENTS: Policy: while this policy is basically a good one, it would be more effective if revised to require new developments to comply with LEED-ND standards. It should also be clarified to establish that the term "residential development" is not limited to developments of whole neighborhoods, but also applies to individual construction, which should be required to meet LEED-NC standards in order to minimize the identified impacts.</p> <p>IM-7 does not implement this policy – although the direction to “encourage” is inherently weak itself, the passive review of proposals already submitted for Site Plan Review does not even “encourage” innovative design. Strong, specific design standards that make clear the County’s intention to require innovative design would allow developers to present appropriately designed projects in the first instance, thus saving both the County and the developer time and money.</p>			

¹⁹ Language in red is a proposed strengthening revision consistent with the intent of the expressed goal.

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	<p>Please also specify which types of projects only require Site Plan Review so the public can tell to what this policy and IM apply. This revision of the FGMP has also deleted the entire section in the 1981 FGMP that set out the Site Plan Review process as it applies to the FGMP; without this section, the Implementation Measures that rely on actions of the Site Plan Review process or the Site Plan Committee are meaningless.</p> <p>Please see also prior comments re IM-7 (in response to Policies 1.5, 1.6 and 1.7)</p> <p>SEE ALSO discussion of Impact 3.4-1, which cites this policy and IM in support of the RDEIR's conclusion that the identified environmental impact is "Less Than Significant," and Impact 3.4-3, which cites this policy and IM in mitigation of the identified Significant and Unavoidable impact, below.</p>		
FGMP-3.2	<p>The County shall allow rock, sand, and gravel excavation operations in the foothills upon approval of a Surface Mining Permit. A decision on said use shall be based on, but not limited to, criteria such as irreversible environmental impacts, reclamation measures and procedures that mitigate the environmental impacts as identified in the ERM Section 8.2: Mineral Resources - Surface Mining and Section 8.3: Mineral Resources - Other.</p>	<p>NO IMPLEMENTATION MEASURE</p>	

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FGMP 3.2
cont'd

COMMENTS: This policy is a mess.

INITIAL INCONSISTENCY: Policy 3.2 relies on mitigation measures “as identified in the ERM Section 8.2: Mineral Resources - Surface Mining and 8.3: Mineral Resources - Other.” **Section 8.2 contains 13 policies and 21 Implementation Measures, all but two of which seek to facilitate exploitation of mineral deposits; Section 8.3 contains 5 policies and 2 Implementation Measures, only one of which mentions environmental impacts, and none of which sets out criteria that could be used to mitigate such impacts. (The one that does simply requires an analysis under CEQA, which would be required anyway.) NOTE: only one of the five policies in ERM Section 8.3 has an Implementation Measure.**

Why has new FGMP-3.2 weakened the County's ability to evaluate the appropriateness of proposed excavation operations by changing the current discretionary policy (“The County MAY ALLOW”) to a policy that makes allowance of rock, sand and gravel excavation operations mandatory (“The County SHALL ALLOW”)?) The language of Policy 3.2 is also internally inconsistent, as the new mandatory “SHALL ALLOW” in the first sentence makes the decision criteria set out in the second sentence (on which discretionary decisions should be made) both meaningless and irrelevant.

Mining and excavation activities have both temporary, short term as well as long-term, permanent environmental impacts. The County should not be REQUIRED to grant permission for such excavations. The 1981 policy required a conditional use permit; the revised policy requires a mining permit. **Why was this requirement changed, and what are the implications and impacts of the change?**

The current, 1981 plan also specifies that it the policy will be implemented through the “environmental impact report process” (p. 27 of 1981 FGMP). This IM properly addresses the concerns shared both by Foothill residents and CEQA. **Why has it been deleted?**

New FGMP 3.2 is also weaker than the policy from which it is drawn because as revised, it no longer requires the County to consider short-term environmental, social and economic impacts when considering a request for a Surface Mining Permit. These elements are highly relevant to CEQA analysis and should be restored.

New Policy 3.2 is even further deficient: it cannot be enforced without an implementation measure. The Guidelines require at least one implementation measure for each policy. FGMP 3.2 fails to meet the minimum standard under the Guidelines.

The lack of an Implementation Measure also makes it impossible to evaluate the environmental impact the policy will have, good or bad, as required under CEQA. As a result, **any and all citations to this policy and/or IM in the RDEIR in mitigation of an environmental impact are baseless and unreliable.**

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	<p>Please explain what effect the change from a conditional use permit to a mining permit will have. Why was consideration of social and economic impacts of such excavation operations removed from the factors that must be considered before approving the permit? Please also explain 1) what will the potential direct, indirect, and cumulative impacts of changing this provision overall be; 2) how the potential direct, indirect, and cumulative impacts have been or will be measured; 4) what data has been compiled on the potential direct, indirect, and cumulative impacts of such mandatorily-approved activities; and 5) how the County will mitigate the potential direct, indirect, and cumulative impacts of such activities, especially as concerns social and economic concerns in the area of the excavations. Please also provide the analysis and rationale underlying the decision to change the provision from a mandatory one.</p>		
FGMP-3.3	<p>The County shall ensure that development proposals conform to all standards related to the Foothill Mix [sic] Use designation and the FGMP Development Standards.</p>	<p>IM -20. The County shall ensure the Zoning Ordinance maintains the Planned Development-Foothill (PD-F-M) Zone which will be applied to properties in a development corridor that are suited for development.</p>	
	<p>COMMENTS: How does IM-20, which relates only to maintenance of the PD-F-M Zone, implement the policy, which requires that development proposals conform to FGMP Development Standards and the Foothill Mixed Use standards?</p> <p>Does “development” as used in Policy FGMP-3.3 refer only to large-scale developments? How will IM-20 ensure that the FGMP Development Standards are met for single buildings or small scale (i.e. non Planned Development) projects?</p>		
Goal 4	<p>To provide recreational and open space opportunities both for local residents and for the visiting public.</p>		
FGMP-4.1	<p>The County shall identify and protect those environmentally sensitive areas in the foothill development corridors which should be maintained as open space, such as areas characterized by floodplains, steep slopes (30 percent or greater), unstable geology, unique archaeological/historical sites, habitat of special status species, and scenic vistas.</p>	<p>NO IMPLEMENTATION MEASURE</p>	
	<p>COMMENTS: Policy 4.1, while essentially a good one, does not further the goal of providing recreational and open space opportunities. It is also limited insofar</p>		

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	<p>as it applies only to areas in development corridors. Since Planned Community Areas are not at this time limited to areas within development corridors, and may be permitted anywhere in the foothill region, it is crucial that environmentally sensitive areas throughout the region be identified and protected.</p> <p>Please revise the policy to encompass the entire foothill region instead of just areas within development corridors.</p> <p>As restated in the GPU, Policy 4.1 has also changed the previous reference to “special wildlife species” to “special status species.” The previous designation permitted the County to determine that a species was “special” whether or not it qualifies for formal protection as a “special status” species. As revised, the County no longer has the ability – or the obligation – to do this. The language of the 1981 FGMP is environmentally superior.</p> <p>Policy 4.1 is more appropriately a policy under Goal 8 (Environment Protection). Please move the policy accordingly and provide Guidelines-compliant implementation measures for it that directly address identifying and protecting environmentally sensitive areas.</p> <p>Finally, the Guidelines require at least one implementation measure for each policy. FGMP 4.1 fails to meet the minimum standard under the Guidelines. The lack of an Implementation Measure also makes it impossible to evaluate the environmental impact the policy will have, good or bad, as required under CEQA. As a result, any and all citations to this policy and/or IM in the RDEIR in mitigation of an environmental impact are baseless and unreliable.</p>		
FGMP-4.2	The County shall encourage private recreational uses in the foothills to help meet future demand for recreational activities, provided they meet the development standards of this FGMP and other County policies.	NO IMPLEMENTATION MEASURE	
<p>COMMENTS: The revised version of FGMP-4.2 fails to meet the minimum standard under the Guidelines, as the Guidelines require at least one implementation measure for each policy.</p> <p>The lack of an Implementation Measure also makes it impossible to evaluate the environmental impact the policy will have, good or bad, as required under CEQA. As a result, any and all citations to this policy and/or IM in the RDEIR in mitigation of an environmental impact are baseless and unreliable.</p> <p>In providing an appropriate IM for this policy, please specify how the County will “encourage” and regulate proposed recreational uses to ensure that they are also consistent with the goal of protecting the fragile environment and the beauty of the foothills.</p>			
FGMP-4.3	The County shall not require common open space areas in the foothills to maintain access for the general public except as provided by the developer or owners of the property or where otherwise	IM-15. Unauthorized encroachment in environmentally or archeologically sensitive areas on a project site which are to remain in common open space shall be prohibited.	

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	required by the General Plan.		
	<p>COMMENTS: Policy: Please clarify: the term “common open space” implies that, by definition, the open space is dedicated to the public. Under what circumstances will the County not require public access to common open space? If the intent of this policy is to protect a private landowner’s ability to exclude the public from land designated as open space, please revise the policy by deleting the word “common.”</p> <p>IM-15 (without the limitation as to “a project site which [is] to remain in common open space” is more appropriate as a policy, as it establishes a good step in the direction of protecting sensitive areas but is unrelated to, and does not implement, policy FGMP-4.3. Please revise.</p>		
Goal 5	To maintain and preserve extensive and intensive agricultural uses in the foothill area.		
	<p>Despite the GPU’s key objective of protecting County agriculture, the Agricultural Lands element of the 1981 FGMP has been decimated in this revision. What was Goal 5 in the 1981 FGMP now appears as both the Goal and the sole FGMP Ag. policy – Policy 5.1 does no more than repeat the language of the goal. Moreover, the revised FGMP fails to disclose that not one of the three current policies has been brought forward to the GPU and misleadingly indicates that FGMP 5.1 is the same as 1981 “Goal 5; Policy 5-1, p. 15.” That the prior language has also been weakened by the addition of the words “whenever possible” is also not disclosed.</p> <p>The deleted policies are:</p> <ol style="list-style-type: none"> 1. Protect extensive and intensive agricultural areas as identified by the FGMP from encroachment on non-agricultural uses through the use of large lot exclusive agricultural zoning. 2. Assure that the Tulare County Zoning Ordinance contains agricultural zones that will protect and enhance the viability of foothill agriculture through the provision of adequate minimum parcel 		

	<p>size.</p> <p>3. Limit residential development densities within the “Planned Development-Foothill” areas of Success Valley in order to avoid conflicts with intensive agricultural uses in the Valley.</p> <p>Deletion of these policies is inherently inconsistent with the overall policies of the Revised General Plan 2030 Update. Please explain why these important policies have been deleted, what the potential direct, indirect, and cumulative impacts of deleting these provisions will be on continued agricultural uses in the foothills; 3) how the potential direct, indirect, and cumulative impacts on foothill agriculture have been or will be measured; 4) what new baseline data has been compiled on foothill agricultural uses; and 5) how the County will mitigate the potential direct, indirect, and cumulative impacts resulting from the deletion of these provisions. Please also provide the analysis and rationale underlying the decision to delete the provisions and why this major change was not disclosed.</p>		
FGMP-5.1	<p>The County shall maintain and preserve extensive and intensive agricultural uses in the foothills, wherever possible.</p>	<p>IM-12. The County shall assure that the Tulare County Zoning Ordinance maintains agricultural zones that will protect and enhance the viability of foothill agriculture through the provisions of adequate minimum parcel sizes.</p> <p>IM-17. The County shall ensure the Tulare County Zoning Ordinance maintains a zone that protects extensive agriculture. This zone shall ensure that the minimum parcel size is adequate to protect foothill grazing. The zone shall also be flexible enough to allow for intensive agricultural uses to be divided from larger extensive agricultural uses.</p>	

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		<p>IM-18. The County shall identify and maintain extensive and intensive agricultural areas, as identified by the FGMP through the use of large lot exclusive agricultural zoning to reduce encroachment of non-agricultural uses.</p> <p>IM-19. The County may require agricultural lands that are in a development corridor and the Planned Development-Foothill Zone to remain in agricultural use, if, under the site plan review process, an inadequate amount of water or improper soils for waste water disposal exists.</p>	
<p>COMMENTS: Policy 5-1 substantially changes Agricultural Lands policy 1 in the 1981 Plan. Where FGMP-5.1 now provides only that “The County shall maintain and preserve extensive and intensive agricultural uses in the foothills”, the provision on which it is based provided much more: “Protect extensive and intensive agricultural areas as identified by the FGMP from encroachment of non-agricultural uses through the use of large lot exclusive agriculture zoning.” By omitting the statement of means by which these agricultural lands shall be maintained, the FGMP removes one level of protection from these properties. The policy also merely duplicates Goal 5 in a weakened form because of the added words “whenever possible.”</p> <p>Given the County’s emphasis on preserving agricultural lands, please provide the analysis and rationale behind the modification of this provision. Please also explain 1) what the potential direct, indirect, and cumulative impacts of changing this section will be; 2) how the potential direct, indirect, and cumulative impacts have been or will be measured; 3) what baseline measures of currently existing foothill agricultural land have been compiled; and 4) how the County will mitigate the potential direct, indirect, and cumulative impacts resulting from the weakening of this section.</p> <p>IM-12 is the former Policy 5-2. Because Implementation Measures must be specific, quantifiable measures, the language of the former policy is inadequate to ensure that the policy is carried out.</p> <p>IM-17 and IM-18 are loosely based on current policy 5-1 which provides “Protect extensive and intensive agricultural areas as identified by the FGMP from encroachment on non-agricultural uses through the use of large lot exclusive agricultural zoning.”</p> <p>As reformatted, the IMs no longer provide the protection from encroachment of non-agricultural uses provided in the current 1981 policy: today the policy clearly requires the large-lot zoning to apply to areas identified in the FGMP, while IM-17 is vague and does not directly link the zoning requirement to lands within the FGMP. IM-18 further weakens the protection by substituting “identify and maintain” for the current “protect.”</p> <p>IM-17 is also unclear - what does “flexible enough to allow for intensive agricultural uses to be divided from larger extensive agricultural uses” mean and why</p>			

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	<p>should intensive agriculture need to be “divided from” extensive agriculture?</p> <p>IM-18 has also weakened the current policy by replacing the direction to “protect ... agricultural uses... from encroachment” with the weaker “reduce encroachment” of non-agricultural uses, which implies that some unspecified level of encroachment is acceptable.</p> <p>Please restore 1981 Policies 5.1 - 5.3 as policies with appropriate IMs.</p>		
<p>Goal 6</p>	<p>To provide local protection of scenic highways and routes within the foothills.</p>		
<p>FGMP-6.1</p>	<p>The County shall ensure that the visual qualities of State Highways 190 and 198 and County scenic routes are maintained and protected against obtrusive development improvements.</p>	<p>IM-6. The County shall use the Site Plan Review Committee to ensure that the new development adjacent to scenic highways and roads meets the requirements set forth in the development standards.</p>	<p>PROPOSED REVISION: The County shall develop specific standards to govern development or improvements proposed for locations adjacent to scenic highways and roads. The Site Plan Review Committee shall not approve any proposed development or improvement that fails to meet the requirements set forth in the scenic roadways development standards.</p>
	<p>COMMENTS: IM-6 is vague and therefore provides little guidance to either planners or the public - to which development standards does it refer? Please specify both the FGMP and the General Plan Scenic Corridors/Scenic Roads standards. As written, the Implementation Measure is also ineffective because it relates only to new development, while the policy covers improvements of any kind – including changes to existing ones. Please revise.</p> <p>The current FGMP implements this policy by requiring the Site Plan Review Committee to review development along scenic highways and roads “to insure that the visual qualities of the thoroughfare are not blighted.” However, this revision of the FGMP has deleted the entire section in the 1981 FGMP that set out the Site Plan Review process as it applies to the FGMP; without this section, the Implementation Measures that rely on actions of the Site Plan Review process or the Site Plan Committee are meaningless. Please restore.</p> <p>Please provide the analysis and rationale for deleting the Site Plan Review process from the FGMP, and also explain 1) what the potential direct, indirect, and cumulative impacts of the change will be; 2) how the potential direct, indirect, and cumulative impacts have been or will be measured; 3) what data has been compiled to justify the change; 4) how the County will mitigate the potential direct, indirect, and cumulative impacts resulting from the modification of this and other provisions that rely on the Site Plan Review process for implementation.</p> <p>SEE ALSO discussion of Impacts 3.1-3, 3.1-4 and 3.1-5, which cite this policy and IM in mitigation of the GPU’s Significant Unavoidable environmental impact, below.</p>		

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FGMP-6.2	The County shall continue to seek and identify County routes, which due to their scenic and rural characteristics, should receive a County "scenic routes" designation.	NO IMPLEMENTATION MEASURE	
<p><u>COMMENTS:</u> The language of this policy has been changed, substituting the word "route" for the word "roads." What is the significance of this change?</p> <p>Policy 6.2 is a good beginning but it doesn't go far enough. The County should not only seek and identify scenic routes, it should designate the roads as such so that they become subject to standards designed to protect scenic routes. Simply identifying a route does not provide protection for its unique nature. Please revise.</p> <p>Because there is no Implementation Measure for this policy, it is unenforceable. The Guidelines require at least one Implementation Measure for each policy. Without an Implementation Measure, FGMP 6.2 fails to meet the minimum standard under the Guidelines. Please provide an appropriate Implementation Measure.</p> <p>The current FGMP implements this policy (page 30) by stating "Level III of the FGMP provides for circulation patterns for each of the development corridors. Those roads with unique visual qualities are shown as scenic roads." These roads – Hwy. 245; Hwy 198 from north of Exeter through Three Rivers; M-296/J37 - Yokohl Drive/Balch Park Drive (from Hwy 198 to Hwy. 190); J28 from near Springville to Strathmore; portions of Hwy. 190; Globe Drive near Springville; and J42/Success Drive – were included in maps in the 1981 Plan which have now been deleted, but they do not show up in any of the revised land use maps showing development corridors in the FGMP area, nor are they identified in the body of the revised FGMP. Why have they been deleted? Which, if any, of the designated scenic roads have received official status as County Scenic Roads?</p> <p>Please explain 1) why these listings were deleted; 2) what the potential direct, indirect, and cumulative impacts of deleting these listings will be on the levels of protection afforded the affected roads; 3) how the potential direct, indirect, and cumulative impacts on scenic roads have been or will be measured; 4) what new baseline data has been compiled on State and County scenic roads; and 5) how the County will mitigate the potential direct, indirect, and cumulative impacts resulting from the deletion of these maps and listings. Please also provide the analysis and rationale underlying the decision to delete the provisions.</p> <p>The lack of an Implementation Measure also makes it impossible to evaluate the environmental impact the policy will have, good or bad, as required under CEQA. As a result, any and all citations to this policy and/or IM in the RDEIR in mitigation of an environmental impact are without foundation and unreliable. SEE ALSO discussion of Impacts 3.1-3, 3.1-4 and 3.1-5, which cite this policy and IM in mitigation of the GPU's Significant Unavoidable environmental impact, below.</p>			
FGMP-6.3	The County shall require that development along all scenic highways and routes meet the development standards of the FGMP.	IM-6. The County shall use the Site Plan Review Committee to ensure that the new development adjacent to scenic highways and roads meets the	PROPOSED REVISION: The County shall require that development along all scenic highways and

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		<p>requirements set forth in the development standards.</p> <p>IM-14. The County shall promote the use of cluster development, greater setback distances, landscaping, and innovative lot design to protect scenic corridors within the County. Provisions for the use of these tools shall be incorporated into the County's land development ordinances.</p>	<p>routes meet the development standards of the General Plan Update 2010 and of the FGMP; development shall not detract from the visual amenities of the area</p>
<p>COMMENTS: The Revised DGPU appears to have incorporated additional standards that are intended to protect scenic highways, routes and corridors. Please revise this policy to require development along scenic roads in the FGMP area to meet <i>all</i> the relevant standards.</p> <p>IM-6 is ineffective because it relates only to new development, while the policy covers development of any kind – including changes to existing structures. Please revise. (See proposed revision at 6.1 above). Since the Revised DGPU appears to have incorporated additional standards that are intended to protect scenic highways, routes and corridors, please also revise to require development along scenic roads in the FGMP area to meet <i>all</i> the relevant standards.</p> <p>This revision of the FGMP has deleted the entire section in the 1981 FGMP that set out the Site Plan Review process as it applies to the FGMP; without this section, the Implementation Measures that rely on actions of the Site Plan Review process or the Site Plan Committee are meaningless.</p> <p>IM-14 should be revised to specify (1) provisions and protocols against which progress on achieving the policy and goal will be achieved – how will the County “promote” the cited design conditions?, (2) that landscaping installed along scenic routes must use trees and vegetation native to the foothills (to preserve the integrity of the environment and to ensure that the water needs of any plants installed is appropriate for the climate) and (3) to expand the scope of the Measure to cover scenic roads that may not also be located within a designated scenic corridor.</p> <p>SEE ALSO discussion of Impacts 3.1-3, 3.1-4 and 3.1-5, which cite this policy and IM in mitigation of the GPU's Significant Unavoidable environmental impact, below.</p>			
FGMP-6.4	<p>The County shall require that projects located within a scenic corridor be designed in a manner, which does not detract from the visual amenities of that thoroughfare. The County shall support through the use [o]f its authority and police powers the design of infrastructure that minimizes visual</p>	<p>IM-14. The County shall promote the use of cluster development, greater setback distances, landscaping, and innovative lot design to protect scenic corridors within the County. Provisions for the use of these tools shall be incorporated into the County's land development ordinances.</p>	<p>PROPOSED MODIFICATION: The County shall require that development located along or in proximity to a scenic road or highway, or within a scenic corridor, be designed in a manner which does not detract from the visual amenities of the area or that thoroughfare. The County shall require the</p>

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	<p>impacts to surrounding areas by locating roadways in areas that minimize the visual impact on rural and natural places whenever feasible.</p>		<p>design of infrastructure in scenic areas to minimize visual impacts to surrounding areas. For example, new roadways or improvement to or expansion of existing roadways shall be located in areas that minimize the visual impact on rural and natural places.</p>
	<p>COMMENTS: Because Goal 6 is intended to apply throughout the foothills, the Policy should not be limited in its application to designated scenic corridors, and the requirement should not be weakened by the open-ended phrase “whenever feasible.” The Policy should also not be limited in application to “roadways” – it should apply to all improvements or developments, as the goal is to protect the view as seen from the road as well as protecting the view from the road’s presence.</p> <p>If the County intends to grant exemptions or exceptions to the policy it should specify the conditions under which such exceptions or exemptions will be considered and how requests will be evaluated.</p> <p>IM-14 is limited in its application to designated scenic corridors. It will not, therefore, further the goal of protecting all scenic roads and highways in the foothills.</p> <p>The IM also does not set out specific, quantifiable measures that will provide guidance as to how the County will “support” the Infrastructure design. What exactly does the “use of [the County’s] authority and police powers” mean in this context? How does this language provide guidance to the public or to planners?</p> <p>Finally, IM-14 does not include any measures that implement the policy of locating roadways to minimize visual impact. It thus does not meet the requirements of the Guidelines.</p> <p>SEE ALSO discussion of Impacts 3.1-3, 3.1-4 and 3.1-5, which cite this policy and IM in mitigation of the GPU’s Significant Unavoidable environmental impact, below.</p>		
<p>FGMP-6.5</p>	<p>The County shall encourage projects proposed on lands within a scenic corridor with a non-agricultural or non-open space land use designation, to use a cluster development concept. Appropriate land uses for the open space areas shall include, but will not be limited to, public or private open space, wildlife habitat or agriculture.</p>	<p>IM-7. The Site Plan Review Committee shall review the consistency of the project with the location, type of design criteria of the County's policies for projects that only require Site Plan Review. Should the project not meet the County's policies, findings to that effect shall be forwarded to the appropriate decision-making body.</p> <p>IM-14. The County shall promote the use of cluster development, greater setback distances, landscaping, and innovative lot design to protect</p>	

	<p>scenic corridors within the County. Provisions for the use of these tools shall be incorporated into the County's land development ordinances.</p>	
	<p>COMMENTS: Policy 6.5, while generally good, needs significant tightening. How will the County “encourage” the use of cluster development? “Encourage” should be changed to “require.” As written it is unclear whether the use of the term “open space” in the second sentence is being used generically (i.e., does it refer to open space within a development?) or whether it refers to the specific land use designation. If the latter, is this a zoning determination? If so, the IM should direct the change to the zoning ordinance. Finally, and again, while the policy is generally a good one it does not really relate to protecting scenic roads and highways, and might be more appropriately a policy under Goal 8.</p> <p>IM-7 See also comment to IM-7 at FGMP 1.5, above, which also applies here.</p> <p>This revision of the FGMP has deleted the entire section in the 1981 FGMP that set out the Site Plan Review process as it applies to the FGMP; without this section, the Implementation Measures that rely on actions of the Site Plan Review process or the Site Plan Committee are meaningless.</p> <p>IM-14 - appears duplicative of the policy itself. How shall the County “promote” the use of these elements? What provision will be incorporated? The Guidelines require IMs to provide measurable steps; this IM is inadequate.</p> <p>SEE ALSO discussion of Impact 3.1-5, which cites this IM in mitigation of the GPU's Significant Unavoidable environmental impact, below.</p>	
<p>Goal 7</p>	<p>To protect historical/archeological sites located in the Foothill Area</p>	
	<p>The policies under this Goal misleadingly suggest that they have “modified” the existing FGMP policies when they have actually replaced them. 1981 Policy 7-1 and 7-2 required inventory and mapping of historical sites by experts in Tulare County history “for purposes of environmental impact review of foothill projects.” The proposed revision inappropriately abdicates this responsibility to developers.</p> <p>By contrast, the required additional mitigating policies ERM-6.2, 6.3 and 6.6 provide specific instructions that the County shall protect cultural and archaeological resources, and permit development only after a site specific investigation has been conducted. The same level of</p>	

	<p>protection should apply to Foothill sites. If ERM-6.2, 6.3 and 6.6 (as revised and with further revision to create effective Implementation Measures) are intended to apply to the FGMP, they should be cross-referenced to ensure application to development within the FGMP area.</p>		
<p>FGMP-7.1</p>	<p>The County may require the developer to provide information at time of application submittal regarding any historical site and/or building that occupies the project area that is worthy of historical preservation.</p>	<p>IM- 22. The developer shall provide the appropriate fees for review of a project area by the California Archeological Inventory Information Center if the project site and affected areas are located in proximity to hilltops, buttes, watercourses, etc. which might have archeological value. A more thorough on-site investigation by a qualified archeologist should be undertaken if deemed necessary by the District Archeologist.</p>	<p>Not a policy - improperly transfers responsibility for protecting historical sites to developer who has no basis for knowledge of historical sites or evaluating whether "worthy" of preservation and more critically, no interest in finding a historical site that may or will interfere with the developer's plans (and \$\$\$)</p>
<p>COMMENTS: This Policy has been significantly revised from the current 1981 policy, which requires the County to obtain an inventory of historical sites and buildings worthy of protection from the Tulare County Historical Society. Has such an inventory been compiled and kept up to date? If, 30 years later, the inventory has not been made, please explain why not. How can the public rely on Implementation Measures propounded on paper by the County if they are not carried out?</p> <p>The RDEIR points out at page 3.12-10 that <u>only qualified professionals can access the records maintained by the Information Center at California State University Bakersfield records associated with reported cultural resources surveys, including the records pertinent to sensitive sites.</u> How then is a developer going to be able to provide the information requested in this Policy and IM?</p> <p>The discretionary language of FGMP-7.1 ("County may") makes the provision of the specified information an option, not a requirement at all. The policy also inappropriately places the determination of whether a historical site or building exists or is "worthy of historical preservation" on the developer, whose interests will by definition be in conflict with either disclosing the existence of a possibly historic site or with a finding of historical worthiness. The policy, as written, will not advance the goal of protecting historical or archeological sites.</p> <p>IM -22 is good start for protection of archeological sites, insofar as it defers evaluation of the site to a professional organization with appropriate expertise. However, FGMP-7.1 deals with all historic sites and buildings, not just archaeological sites. IM 22 therefore doesn't further the policy for other historic sites or buildings. In addition, IM.22 only applies to areas "located in proximity to hilltops, buttes, watercourses, etc." To be truly effective in protecting historic and archeological sites this limitation should be eliminated so that a proper evaluation is made no matter where the site is located. Please revise.</p>			

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	Please confirm the identity of the California Archeological Inventory Information Center, as no organization of this name appears to exist.		
FGMP-7.2	The County may require the developer to provide information at time of application submittal regarding possible archeological sites if a project is located in proximity to archeological sensitive areas such as hilltops, buttes, watercourses, etc.	IM-22. The developer shall provide the appropriate fees for review of a project area by the California Archeological Inventory Information Center if the project site and affected areas are located in proximity to hilltops, buttes, watercourses, etc. which might have archeological value. A more thorough on-site investigation by a qualified archeologist should be undertaken if deemed necessary by the District Archeologist.	
	<p>COMMENTS: The policy inappropriately places the responsibility for identifying possible archeological sites on the developer, who is not qualified to make such determinations, and whose interests will by definition be in conflict with disclosing the existence of a possibly historic site. The policy, as written, will not advance the goal of protecting historical or archeological sites.</p> <p>The current 1981 FGMP more appropriately places responsibility for identifying <i>and mapping</i> historic and archeologically important sites on the County with the assistance of the Tulare County Historical Society. Please revise to return responsibility to an entity or entities which do not have an inherent conflict of interest, and to make the policy mandatory.</p> <p>The current Implementation Measure for this policy also asserts that “An archeological sensitivity map has been prepared for Tulare County by the Anthropology Department, California State University Fresno. This map is for general use to determine areas of the foothills that have the potential of encompassing archaeological sites. If a project is within a sensitive area, a more thorough on-site investigation by a qualified archaeologist should be undertaken.” Where is this map? Has it been updated since 1981? Why has it not been included in either the revised FGMP or the General Plan documents?</p> <p>The discretionary language of FGMP-7.2 (“County may”) also makes the provision of the specified information an option, not a requirement. Again, the policy, as written, will not advance the goal of protecting historical or archeological sites.</p>		
FGMP-7.3	The County shall protect significant historical or archeological sites, such as the one located on Rocky Hill, from development through maintenance of the site in open space. This policy shall not preclude development on adjacent property even though such property may be under	NO IMPLEMENTATION MEASURE	

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	the same ownership as the site to be protected.		
	<p>COMMENTS: In requiring protection of historical or archeological sites, Policy 7.3 is good. However, the new, added language permitting development on adjacent property, without an appropriate buffer zone, is likely to lead to the degradation or even loss of the site to be protected through any number of unavoidable environmental impacts. The County should create and adopt a policy that requires a site that has been identified as worthy of protection to be evaluated by a qualified expert to determine what additional measures, including possible development restrictions on adjacent properties, may be required to fully protect the site. The tacked-on language permitting development on adjacent property should be deleted. What were you thinking??</p> <p>Because there is no Implementation Measure for this policy, the policy is unenforceable and mere wishful thinking. The Guidelines require at least one implementation measure for each policy. FGMP 7.3 fails to meet the minimum standard under the Guidelines.</p> <p>The current FGMP implements the original policy as follows: "The site plan review process will insure that significant historical and archaeological sites will remain protected through provision for open space easements on such sites."</p> <p>The lack of an Implementation Measure makes it impossible to evaluate the environmental impact the policy will have, good or bad, as required under CEQA. As a result, any and all citations to this policy and/or IM in the RDEIR in mitigation of an environmental impact are baseless and unreliable.</p>		
Goal 8	To protect the natural features of the foothills by directing development to selected areas.		
FGMP-8.1	The County shall discourage the location of development and improvements that are in close proximity to watercourse areas and riparian habitat, and prevent actual encroachment into those habitats.	<p>IM-7. The Site Plan Review Committee shall review the consistency of the project with the location, type of design criteria of the County's policies for projects that only require Site Plan Review. Should the project not meet the County's policies, findings to that effect shall be forwarded to the appropriate decision-making body.</p> <p>IM- 23. The County shall ensure environmentally sensitive and riparian areas within development corridors are designated as open space on the FGMP reference maps.</p>	
	<p>COMMENTS: Watercourse and riparian areas are critical to the County's ability to recharge its water supply. Development, improvements and encroachments should be prohibited, not just discouraged. (Exceptions for minimal uses such as diversions for watering livestock may be specified.)</p>		

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	<p>IM-7 see prior comments on IM-7 above. Note also that any Implementation Measure for this policy should specify the distance to be maintained from a riparian area – “close proximity” is a subjective measure.</p> <p>IM-23 applies only to environmentally sensitive areas “within development corridors”, thus leaving sensitive areas outside development corridors – to which Policy 8.1 apparently also applies – open to encroachment and destruction. IM-23 also does not ensure that development in identified and mapped areas will be prohibited, as it requires only that the area be designated on reference maps.</p>		
FGMP-8.2	The County shall assure that drainage patterns of foothill developments are designed to prevent contamination and sedimentation due to soil erosion.	IM-29. The County shall require submission of a drainage plan with development projects in conjunction with the site plan review.	
FGMP-8.3	The County shall prohibit development of residences or permanent structures within the 100-year floodway.	NO IMPLEMENTATION MEASURE	
	<p>COMMENTS: Until an appropriate Implementation Measure is provided for this policy, it is unenforceable. The Guidelines require at least one implementation measure for each policy. FGMP 8.3 fails to meet the minimum standard under the Guidelines. The lack of an Implementation Measure also makes it impossible to evaluate the environmental impact the policy will have, good or bad, as required under CEQA. As a result, any and all citations to this policy and/or IM in the RDEIR in mitigation of an environmental impact are baseless and unreliable.</p> <p>SEE ALSO discussion of Impact 3.4-3, which cites this policy and IM in support of the RDEIR’s conclusion that policies in the GPU support the Attorney General’s recommendations as set out in Table 3.4-5.</p>		
FGMP-8.4	The County shall ensure that new wastewater systems meet the standards of the Regional Water Quality Control Board and Tulare County Health & Human Services.	IM-31. The County shall ensure that unconventional disposal methods will be reviewed by the Tulare County Health and Human Services Agency to ensure that the standards of the Water Quality Control Board are met.	
	<p>What is an “unconventional disposal method”? Would it be the same as an “innovative” method?</p>		
FGMP-8.5	The County shall protect Lake Kaweah and Lake Success from contamination due to runoff from development, underground seepage of waste effluent, or intrusion of incompatible land uses by	IM-30. The County shall require a properly designed wastewater disposal system to prevent surface or groundwater contamination and a drainage plan which minimizes sedimentation	

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	utilizing appropriate design and engineering concepts and adequately separating the project from the lake environment.	and/or contamination of the lake environment are engineering measures capable of meeting the intent of this policy. Should there be some question regarding the reliability of the engineered systems, the Site Plan Review Committee shall condition the project to provide an adequate separation between the body of water and the development site.	
	<p>COMMENTS: IM-30 appears to be missing some language (“and a drainage plan which minimizes sedimentation and/or contamination of the lake <u>environment</u> <u>are</u> engineering measures capable of meeting ...”) Please correct so that the effectiveness of this IM can be properly evaluated.</p> <p>If there is some question about the reliability of the engineered system, the appropriate response is to require that it be re-engineered to ensure reliability; permitting the project to proceed anyway, with the quick fix of a separation between the lake and the development site merely moves the pollution to another location!</p> <p>This policy is cited as a mitigating factor as to Impact 3.6-1, Impacts 3.11-1, 3.11-2, 3.11-3, 3.11-4, and 3.11-5 in the RDEIR - as written this policy cannot mitigate the environmental impacts of development.</p> <p>This revision of the FGMP has deleted the entire section in the 1981 FGMP that set out the Site Plan Review process as it applies to the FGMP; without this section, the Implementation Measures that rely on actions of the Site Plan Review process or the Site Plan Committee are meaningless.</p>		
FGMP-8.6	The County shall ensure that projects proposed in the Frazier Valley watershed portion of the Tule River Development Corridor do not aggravate the downstream flooding problem by generating additional runoff from the project site.	IM-24. Drainage plan shall be required for all projects within the "Foothill Mixed Use" areas of Frazier Valley. The Site Plan Review Committee shall not approve any project within Frazier Valley until the Resource Management Agency has reviewed said drainage plan and certified that the proposed drainage facilities will prohibit any additional storm water discharge from the project that would aggravate downstream flooding problems.	
FGMP-8.7	The County shall encourage cluster-type development, narrower road widths, and minimized cut and fill projects to minimize soil disturbances. New roads in the foothills should,	IM-3. The County shall require a grading and slope stabilization plan for that portion of the development exceeding slopes of greater than 15 percent.	

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	<p>whenever possible, conform to the natural contours of the existing foothill landscape.</p>	<p>IM-14. The County shall promote the use of cluster development, greater setback distances, landscaping, and innovative lot design to protect scenic corridors within the County. Provisions for the use of these tools shall be incorporated into the County's land development ordinances.</p> <p>IM-25. The developer will be required to phase road construction to correspond with the phases of the development proposal.</p>	
<p>COMMENTS: This is a good policy, but it could be inconsistent with PF-2.7, which requires development within community UDBs to impose urban development standards, including minimum road widths. Please ensure that Foothill standards will supersede PF-2.7.</p> <p>The Implementation Measures for this policy are insufficient to implement the policy:</p> <p>IM-3 regulates only development on slopes greater than 15%, and then only requires a stabilization plan - which may mitigate but does not minimize cut and fill. IM-14 does not address road widths, minimized cut and fill or contour-conforming roads. See also comments regarding IM-14 above at FGMP 6.3, 6.4, 6.5. Please also explain in clear and explicit terms, how IM 14 will “promote” the use of cluster developments. Please also explain why IM 14, which is part of the Foothill Growth Management Plan, applies only to protecting designated scenic corridors, rather than the Foothill region generally. What analysis was done to determine that such limited scope was warranted? Please explain what the potential direct, indirect, and cumulative impacts of limiting the application of this IM to scenic corridors will be; 3) how the potential direct, indirect, and cumulative impacts have been or will be measured; 4) what baseline measures have been taken against which to measure the potential direct, indirect, and cumulative impacts of so limiting this provision; 5) how the County will mitigate the potential direct, indirect, and cumulative impacts resulting from the limited scope of this IM.</p> <p>SEE ALSO discussion of Impact 3.1-5, which cites this IM in mitigation of the GPU's Significant Unavoidable environmental impact, below.</p> <p>IM-25 addresses the timing of road construction, but doesn't address any of the issues raised in the policy.</p> <p>Please provide appropriate IM s.</p>			
<p>FGMP-8.8</p>	<p>The County shall require erosion mitigation measures in new developments to prevent soil loss.</p>	<p>IM-3. The County shall require a grading and slope stabilization plan for that portion of the development exceeding slopes of greater than 15</p>	

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		percent.	
	COMMENTS: IM-3 regulates only development on slopes greater than 15%. How will the County prevent soil loss from grading etc. on slopes 15% or less?		
FGMP-8.9	The County shall restrict the removal of natural vegetation, except for wildland fire prevention purposes.	NO IMPLEMENTATION MEASURE	
	<p>COMMENTS: Policy 8.9 has a great deal of support, as Foothill residents highly value the natural vegetation – the oak woodlands and wildflowers are considerable tourist attractions. The policy should be expanded to expressly include native trees and brush.</p> <p>The County has been urged, and has said it intends to adopt an Oak Woodlands Ordinance that would protect native woodlands. It should have been included in this General Plan.</p> <p>Without an implementation measure, however, the policy is just wishful thinking. Please give this policy some teeth by providing a strong set of Implementation Measures.</p> <p>NOTE - THE RDEIR CITES IMS 15, 23 AND 25 IN CONNECTION WITH THIS POLICY. BECAUSE THESE IM s ARE NOT ASSOCIATED WITH THE POLICY IN THE REVISED FGMP, THE DOCUMENTS ARE NOT CONSISTENT. IN ADDITION, ONLY IM 23 IS EVEN REMOTELY RELEVANT TO THE POLICY.</p> <p>The Guidelines require at least one implementation measure for each policy. FGMP 8.9 fails to meet the minimum standard under the Guidelines. The lack of an Implementation Measure also makes it impossible to evaluate the environmental impact the policy will have, good or bad, as required under CEQA. As a result, any and all citations to this policy and/or IM in the RDEIR in mitigation of an environmental impact are baseless and unreliable.</p> <p>SEE ALSO discussion of Impact 3.4-3, which cites this policy and IM in support of the RDEIR's conclusion that policies in the GPU support the Attorney General's recommendations as set out in Table 3.4-5.</p>		
	<p>NOTE: FGMP Development Standards 20 and 21 provide that “Removal or grading around native trees (with a trunk of 6" or larger in diameter or [sic] 3' above ground surface) which may disturb the root system shall not be allowed during the construction process unless the Site Plan Review Committee deems it necessary because of road alignments or infrastructure improvements. Any trees to be removed shall be indicated on the submitted site plan.” and “Removal of native trees in areas restricted to open space shall not e allowed unless the health, safety or welfare of residents associated with the development is endangered. Any trees proposed for removal must be indicated on the submitted site plan with accompanying information stating why the tree must be removed.</p>		

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	<p>The policy and the Development Standards are inconsistent insofar as the policy creates an absolute prohibition with one wildfire exception, while the Development Standards imply that removal of native vegetation <i>is</i> permitted to accommodate roads and “infrastructure improvements” – a term so broad and vague it could encompass almost any development. Please revise the standards to be consistent with the policy.</p>		
FGMP-8.10	The County shall prohibit development that is considered to be geologically hazardous (slides, earthquake faults, etc.)	NO IMPLEMENTATION MEASURE	
	<p>COMMENTS: This policy has nothing to do with the goal of protecting natural features. It should be associated with Goal 10.</p> <p>It appears that this Policy inadvertently omitted the words “in areas that are” following the word “development” and before the words “considered to be”; development itself cannot be geologically hazardous. Please correct.</p> <p>How will this policy be implemented without an implementation measure? The Guidelines require at least one implementation measure for each policy. FGMP 8.10 fails to meet the minimum standard under the Guidelines.</p> <p>The lack of an Implementation Measure also makes it impossible to evaluate the environmental impact the policy will have, good or bad, as required under CEQA. As a result, any and all citations to this policy and/or IM in the RDEIR in mitigation of an environmental impact are baseless and unreliable.</p>		
FGMP-8.11	The County shall not allow development on slopes 30 percent or greater, unless the applicant can sufficiently mitigate the inherent problems associated with developing on steep slopes.	IM-4. The County shall require information in the site plan review process to delineate slopes 30 percent or greater on the development site. Review of the proposal by the Committee will prescribe a project design that will maintain 30 percent slopes generally free of improvements, unless the problems associated with steep slopes are sufficiently mitigated.	
	<p>COMMENTS: This revision of the FGMP has deleted the entire section in the 1981 FGMP that set out the Site Plan Review process as it applies to the FGMP; without this section, the Implementation Measures that rely on actions of the Site Plan Review process or the Site Plan Committee are meaningless.</p>		
FGMP-8.12	The County shall prohibit unnecessary removal of native trees on development sites prior to approval	IM-7. The Site Plan Review Committee shall review the consistency of the project with the	

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	<p>of development plans to control erosion, preserve wildlife habitat, and maintain the natural character of developing areas.</p>	<p>location, type of design criteria of the County's policies for projects that only require Site Plan Review. Should the project not meet the County's policies, findings to that effect shall be forwarded to the appropriate decision-making body.</p>	
	<p>COMMENTS: The policy is unnecessarily limited to removal of trees “prior to approval of development plans” and thus does not really protect native trees at all. Trees are routinely removed before permits are applied for even though this policy has been in effect since 1981. Since there is also no requirement that development plans not be approved if they require removal of native trees, or to require mitigation if trees must be removed, the policy is ineffective to protect trees as part of Site Plan Review.</p> <p>Current protocols do not require developers to indicate the location or size of existing trees on a site when plans are submitted, and there is no requirement that trees not be unnecessarily removed in connection with the development. (Or, if there are, they are not currently being followed.)</p> <p>See comment and proposed revision to IM-7 at FGMP 1.5, above. Because IM-7 does not implement any strategy to limit removal of native trees as part of site plan review, plans will simply continue to be approved with no consideration for preserving the trees.</p> <p>The County has said it supports and intends to adopt an ordinance to protect oak woodlands – this Policy should reference such an ordinance and be linked to it.</p> <p>In addition to being inappropriately limited in time, the policy is also flawed because it fails to specify how the “necessity” of removal will be determined. How will it be determined whether a removal is “unnecessary”?</p> <p>SEE ALSO comments regarding Impact 3.4-3 and Table 3.4-5, citing this Policy in support of the RDEIR’s conclusion that polices of the GPU support the Attorney General’s recommendations.</p>		
	<p>NOTE: FGMP Development Standards 20 and 21 provide that “Removal or grading around native trees (with a trunk of 6" or larger in diameter or [sic] 3' above ground surface) which may disturb the root system shall not be allowed during the construction process unless the Site Plan Review Committee deems it necessary because of road alignments or infrastructure improvements. Any trees to be removed shall be indicated on the submitted site plan.” and “Removal of native trees in areas restricted to open space shall not e allowed unless the health, safety or welfare of residents associated with the development is endangered. Any trees proposed for removal must be indicated on the submitted site plan with accompanying information stating why the tree must be removed.</p>		
	<p>This revision of the FGMP has entirely deleted current FGMP Policy 8/Flora & Fauna - 2, which provides “Prevent encroachment of development onto riparian woodland habitats.” 1981 FGMP at p. 18. The Implementation Measure that</p>		

	<p>currently carries out this policy by designating major riparian areas of each development corridor as open space (FGMP, p. 34) has also been lost. This policy is neither obsolete nor outdated. Please explain 1) why these provisions have been deleted; 2) what the potential direct, indirect, and cumulative impacts of deleting these provisions will be on riparian woodland habitats; 3) how the potential direct, indirect, and cumulative impacts on the woodlands, waterways, and area wildlife have been or will be measured; 4) what new baseline data has been compiled on riparian woodland habitats; 5) how the County will mitigate the potential direct, indirect, and cumulative impacts on the woodlands, waterways, and area wildlife resulting from the deletion of these provisions. Please also provide the analysis and rationale underlying the decision to delete the provisions.</p> <p>Please reinstate the 1981 policy with appropriate Implementation Measures.</p> <p>The current IM for the policy states that “Level III designates the <i>major riparian areas</i> of each development corridor as <i>open space</i>.” Please also see comments at FGMP 8.14, which also apply here.</p>		
FGMP-8.13	The County shall encourage developers to use landscaping plant materials that are compatible with the surrounding native foothill vegetation.	IM-26. The County shall review landscaping plans through the site plan review process to ensure that areas to be landscaped are compatible with surrounding native vegetation.	
	<p>COMMENTS: How will the County “encourage” the use of compatible plants in landscaping? To truly achieve the goal, the County should either require or create incentives for compliance with policies.</p> <p>This revision of the FGMP has deleted the entire section in the 1981 FGMP that set out the Site Plan Review process as it applies to the FGMP; without this section, the Implementation Measures that rely on actions of the Site Plan Review process or the Site Plan Committee are meaningless.</p>		
FGMP-8.14	Where special status species have been identified, the County shall protect their habitat against encroachment by development.	<p>NO IMPLEMENTATION MEASURE</p>	To strengthen this policy – after reinstating the superior 1981 version – the County is encouraged to avoid use of terms with particular defined meanings (such as “special status species”) and use more generalized terms which will permit the County to make its own determination that a species is worthy of protection by the County whether or not it has been designated as sensitive, candidate or special

		under CEQA or federal law.
	<p>COMMENTS: In what is beginning to look like an intentional policy of weakening protection for wildlife, its habitat, and the environment in general, the new, unimproved version of current Goal 8 Flora & Fauna Policy 4, Revised Policy 8.14 has been entirely re-focused and eviscerated.</p> <p>The current policy clearly <u>directs the County to identify and protect rare and endangered species against encroachment by development</u>. As re-written, the County must protect only the habitat of “special status species” that have already been identified by some other, unnamed entity.</p> <p>The current IM for this policy (page 34) states that “Level II of the FGMP <i>identifies wildlife habitats</i> in each development corridor. Level III ... <i>designates sensitive wildlife areas as open space</i> in each development corridor.” Where has this information been incorporated into the RDGPU? Why is it not shown on any of the maps depicting development corridors in the FGMP area, or on a separate map of its own?</p> <p>Please explain 1) why this provision was deleted; 2) what the potential direct, indirect, and cumulative impacts of deleting this provision will be; 3) how the potential direct, indirect, and cumulative impacts have been or will be measured; 4) what baseline measures have been taken against which to measure the potential direct, indirect, and cumulative impacts of deleting this provision; 5) how the County will mitigate the potential direct, indirect, and cumulative impacts resulting from the deletion of this provision. Please also provide the analysis and rationale underlying the decision to delete this provision.</p> <p>By comparison with the Revised FGMP, which provides no Implementation Measure at all for this weakened policy, the current 1981 FGMP implements the policy via the FGMP tri-level analysis : Level II of the 1981 Plan identifies wildlife habitats in each development corridor, and Level III designates sensitive wildlife areas as open space in each development corridor.</p> <p>Please identify where in the Revised FGMP these habitats and designated open space wildlife areas are identified. If the Revised FGMP does not identify these habitats and open space wildlife areas, please explain 1) why this data and implementation measure were deleted; 2) what is the status of previously-designated open space under the revised FGMP; 3) what the potential direct, indirect, and cumulative impacts of deleting this data and implementation measures will be on the habitats and designated wildlife open spaces; 3) how the potential direct, indirect, and cumulative impacts have been or will be measured; 4) what baseline measures have been taken against which to measure the potential direct, indirect, and cumulative impacts of deleting these provisions; and 5) how the County will mitigate the potential direct, indirect, and cumulative impacts resulting from the deletion of this data and implementation measure.</p> <p>CEQA now affords equal protection to species and habitats that are considered sensitive, candidate or special status species. Accordingly, this policy should be expanded to reference all categories of protected species.</p> <p>Even this weak policy cannot be enforced without an Implementation Measure; the Guidelines require at least one implementation measure for each policy. FGMP 8.14 fails to meet the minimum standard under the Guidelines.</p>	

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	<p>The lack of an Implementation Measure also makes it impossible to evaluate the environmental impact the policy will have, good or bad, as required under CEQA. As a result, any and all citations to this policy and/or IM in the RDEIR in mitigation of an environmental impact are baseless and unreliable.</p>		
FGMP-8.15	<p>The County shall restrict development in chaparral since these areas present extreme wildland fire potential.</p>	<p>NO IMPLEMENTATION MEASURE</p>	
	<p>COMMENTS: The Guidelines require at least one implementation measure for each policy. FGMP 8.15 fails to meet the minimum standard under the Guidelines.</p> <p>The lack of an Implementation Measure also makes it impossible to evaluate the environmental impact the policy will have, good or bad, as required under CEQA. As a result, any and all citations to this policy and/or IM in the RDEIR in mitigation of an environmental impact are baseless and unreliable.</p> <p>SEE ALSO discussion of Impact 3.4-3, which cites this policy and IM in support of the RDEIR's conclusion that policies in the GPU support the Attorney General's recommendations as set out in Table 3.4-5.</p>		
FGMP-8.16	<p>The County shall encourage the concentration of development along major travel routes to allow for future public transportation services and minimize travel distances to frequently used facilities.</p>	<p>NO IMPLEMENTATION MEASURE</p>	.
	<p>COMMENTS: Simply concentrating development along major travel routes without requiring new developments to also provide for demonstrably sufficient employment opportunities, service providers, and shopping venues within that development will not minimize travel distances, and may in fact encourage the creation of "bedroom communities" which will increase overall vehicle miles traveled.</p> <p>This policy has been in effect since 1981, yet extensive public transportation services that would minimize reliance on individual vehicles has yet to materialize. The RDEIR at 3.2-36 notes that transit service "is largely market driven" and will "expand as needed and will be self mitigating." The reasoning is backwards –the GPU is saying we will build in remote areas along highways so that sometime in the future, buses can reach the population that's already there, rather than developing where the transit already exists or can easily be expanded to cover the newly developed area.</p> <p>The Guidelines require at least one implementation measure for each policy. FGMP 8.16 fails to meet the minimum standard under the Guidelines. The lack of an Implementation Measure also makes it impossible to evaluate the environmental impact the policy will have, good or bad, as required under CEQA.</p>		

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	<p>As a result, any and all citations to this policy and/or IM in the RDEIR in mitigation of an environmental impact are baseless and unreliable.</p> <p>SEE ALSO discussion of Impact 3.4-1, which cites this policy and IM in support of the RDEIR's conclusion that the environmental impact is "Less Than Significant," and Impact 3.4-3, which cites this policy and IM in mitigation of the identified Significant and Unavoidable impact, below.</p>		
FGMP-8.17	<p>The County shall discourage the scattering of development throughout the foothills to reduce vehicular emissions by decreasing home to destination distances.</p>	<p>IM-1. The County shall concentrate rural and urban development in the development corridors delineated on a Master Development Plan.</p>	
	<p>COMMENTS: A good policy, but weak – how will the County “discourage” scattered development throughout the foothills?</p> <p>IM-1 relies on concentrating development in the development corridors “delineated on a Master Development Plan”, but since Master Development Plans are required only for Planned Community Areas, which may be approved anywhere in the County – including outside designated development corridors – the IM makes the Policy meaningless. How will scattered development be prevented in areas that are within Foothill development corridors but that are not PCAs?</p> <p>The proposed policy to allow creation of PCAs in the foothills (and elsewhere) is inherently inconsistent with this long-standing policy of the FGMP.</p> <p>The policy and the IM also do not address the impact that the proposed PCAs – at least one of which has already been proposed for an area in the foothills outside any development corridor – will have on vehicle miles traveled.</p> <p>SEE ALSO discussion of Impact 3.4-1, which cites this policy and IM in support of the RDEIR's conclusion that the environmental impact is "Less Than Significant," and Impact 3.4-3, which cites this policy and IM in mitigation of the identified Significant and Unavoidable impact, below.</p>		
FGMP-8.18	<p>The County shall ensure that hilltop development is designed to preserve the skyline and maintain an unobstructed scenic panorama of the foothills for residents and visitors to enjoy.</p>	<p>IM-13. The County shall ensure that the design of subdivision is reviewed by the Site Plan Review Committee to assure the visual impact to the foothills is minimal.</p>	<p>PROPOSED REVISION: IM-13. The County shall prohibit hilltop development and hillside development that will interrupt the skyline. The Site Plan Review Committee shall develop and employ design standards and review procedures to assure there is no visual impact to the foothills by development.</p> <p>NOTE: Revised FGMP 8.18 is essentially the same as Revised FGMP 1.11; both cite as their source 1981 FGMP Goal 8, Policy 8-19, page</p>

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			<p>19. If the County intends to create duplicative policies, one for hillside development and another for hilltop development, they and their Implementation Measures should be as closely aligned as possible</p>
	<p>COMMENTS: To achieve the policy of preserving the skyline the policy should not be limited to hilltop development. No development that will interrupt the skyline should be permitted.</p> <p>IM-13 doesn't implement the policy because it will permit development that obstructs the skyline by permitting construction that the Site Plan Review Committee subjectively determines – without benefit of any guidelines – to be “minimal.”</p> <p>The policy should also not be limited to subdivisions: a single McMansion or collection of individually-built structures on a hilltop or situated on a hillside so that the skyline is broken will be just as detrimental.</p> <p>The IM doesn't provide a measurable means of attaining the policy. Please see proposed revision above.</p> <p>This revision of the FGMP has deleted the entire section in the 1981 FGMP that set out the Site Plan Review process as it applies to the FGMP; without this section, the Implementation Measures that rely on actions of the Site Plan Review process or the Site Plan Committee are meaningless.</p> <p>SEE ALSO discussion of Impacts 3.1-3, 3.1-4 and 3.1-5, which cite this IM in mitigation of the GPU's Significant Unavoidable environmental impact, below.</p>		
<p>FGMP-8.19</p>	<p>The County shall encourage maintenance and protection of unique open space areas such as riparian woodlands, oak groves, interesting rock formations, and scenic vistas.</p>	<p>IM-7. The Site Plan Review Committee shall review the consistency of the project with the location, type of design criteria of the County's policies for projects that only require Site Plan Review. Should the project not meet the County's policies, findings to that effect shall be forwarded to the appropriate decision-making body.</p>	<p>The County shall maintain and protect unique open space areas such as riparian woodlands, oak groves, interesting rock formations, and scenic vistas.</p>
	<p>COMMENTS: This policy, which was previously Policy 2 under the 1981 FGMP Goal 8-9, p. 15, is basically a good one, despite the weak “encourage” language, but IM-7 does not explain how the policy will be realized..</p> <p>See also comment and proposed revision to IM-7 at FGMP 1.5, above. Also, this revision of the FGMP has deleted the entire section in the 1981 FGMP that set</p>		

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	<p>out the Site Plan Review process as it applies to the FGMP; without this section, the Implementation Measures that rely on actions of the Site Plan Review process or the Site Plan Committee are meaningless.</p> <p>Please revise as shown above right and provide at least one appropriate Implementation Measure.</p>		
Goal 9	<p>Te ensure that water and sewer facilities are constructed in a manner that protects the public health and safety and that the disposal of wastewater is done in a manner that does not degrade ground and/or surface waters.</p>		
FGMP-9.1	<p>In reference to water needs (domestic and firefighting) and wastewater generation, the County shall not allow new development to exceed the maximum physical holding capacity (based on water availability and soils) of the parcel in question.</p>	<p>IM-27. The Tulare County Health and Human Services Agency and the Fire Department shall determine the minimum water requirement for projects to ensure that the magnitude of the project does not exceed the amount of water available to the subject site.</p>	
	<p>COMMENTS: A more environmentally sound policy would also take into consideration the impact the new development may have on other users (including wildlife) and limit new development to a level below the maximum holding capacity of the land.</p>		
FGMP-9.2	<p>The County shall require evidence, prior to project approval, which (1) describes a safe and reliable method of wastewater treatment and disposal; and (2) substantiates an adequate water supply for domestic and fire protection purposes.</p>	<p>NO IMPLEMENTATION MEASURE</p>	
	<p>COMMENTS: The Guidelines require at least one implementation measure for each policy. FGMP 9.2 fails to meet the minimum standard under the Guidelines.</p> <p>The lack of an Implementation Measure also makes it impossible to evaluate the environmental impact the policy will have, good or bad, as required under CEQA. As a result, any and all citations to this policy and/or IM in the RDEIR in mitigation of an environmental impact are baseless and unreliable.</p>		
FGMP-9.3	<p>The County shall delegate the maintenance and operation of water and/or wastewater</p>	<p>NO IMPLEMENTATION MEASURE</p>	

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	treatment facilities to a responsible entity, which shall be established prior to approval of the final subdivision map.		
	<p>COMMENTS: The policy is ambiguous, gives absolutely no guidance and is unenforceable – there is no standard set for the qualifications that must be met by an entity to which responsibility for water services will be delegated, or for what “a responsible entity” must be able to provide. The policy also applies only to new proposed subdivisions.</p> <p>The Guidelines require at least one implementation measure for each policy. FGMP 9.3 fails to meet the minimum standard under the Guidelines. The lack of an Implementation Measure also makes it impossible to evaluate the environmental impact the policy will have, good or bad, as required under CEQA. As a result, any and all citations to this policy and/or IM in the RDEIR in mitigation of an environmental impact are baseless and unreliable.</p>		
FGMP-9.4	Based on existing soil conditions, types of land uses, effluent yield per land use, and the density of the proposed project, the County shall work with the Regional Water Quality Control Board and the Tulare County Health and Human Services Agency to review the adequacy of wastewater disposal areas.	IM-28. The County shall appoint a registered civil engineer or sanitarian along with a representative of the Tulare County Health Department to ensure that the magnitude of proposed projects do not exceed the physical holding capacity of the on-site soils to accept the estimated waste effluent.	
	<p>COMMENTS: A more environmentally sound policy and IM would also take into consideration the impact the new development may have on other users (including wildlife) and cap development at a level below maximum actual holding capacity rather than simply assessing the holding capacity of the project site.</p>		
FGMP-9.5	The County may allow unconventional methods of disposing of sewage effluent, provided the system meets the performance standards of the Water Quality Control Board and the Tulare County Health and Human Services Agency. Such systems may include, but are not limited to common leach field, soil absorption mounds, aerobic septic tanks, or evapotranspiration systems.	IM-31. The County shall ensure that unconventional disposal methods will be reviewed by the Tulare County Health and Human Services Agency to ensure that the standards of the Water Quality Control Board are met.	
	<p>COMMENTS: At last.</p>		

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Goal 10	To accommodate development in the foothills that is serviceable by the various public agencies in a manner that does not become an economic burden on the County.		
FGMP-10.1	To provide for the integration of efficient road systems, existing community values, infrastructural improvements, and open space patterns, the County shall encourage development projects within a definable geographic area of a development corridor to comply with a common development or specific plan designed for that area.	<p>IM-16. The County shall explore the options for voluntary Williamson Contract cancellation on lands that are within a development corridor and under a Planned Development-Foothill Zone.</p> <p>IM-32. The County shall work with landowner and developers to promote coordinated master plans for multiple purposes.</p>	
<p>COMMENTS: IM-16 does not implement the policy It is also inconsistent with the Right to Farm policy fundamental to the County as well as with the oft-stated policy of protecting agriculture throughout the County and with the specific Goal of protecting agricultural uses in the Foothills (FGMP Goal 5). Productive agricultural uses on lands within a development corridor should be permitted to continue; it should be rezoned consistent with the common development or specific plan for that area when and if the land ceases to be in agricultural use.</p> <p>IM-32 is vague and ambiguous - what does this mean? what “multiple purposes” are intended? IM-32 provides no guidance to the public or to planners.</p> <p>The 1981 Implementation Measure on which IM-16 is based also called on the County to explore the legality of voluntary cancellations. Has this been done? What result? The implementation timeline for this IM shows “ongoing”. Surely by now the County has explored this option!?</p>			
FGMP-10.2	The County shall ensure that development is located in areas of the foothills that can be adequately served by existing Tulare County fire stations and the Sheriff's Department unless new facilities are proposed or required for the development.	NO IMPLEMENTATION MEASURE	
<p>COMMENTS: This policy has been revised (without disclosure) from the 1981 policy on which it is based: the current policy prohibits development in areas that cannot be serviced by existing County fire stations and Sheriff's Department facilities within a 15-minute “attack time.” (See also “The Corridor Areas The First Level (2) at page 3-2, above). The modification to permit development if new facilities “are proposed or required” without also requiring those proposed or required facilities to be provided and financed by the developer puts the public at risk (because adequate services</p>			

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	<p>may not be available or provided) and puts a financial burden on the County. The current FGMP requires property that falls outside the 15-minute “attack time” to be designated as open space or agricultural land. Please revise to return the current limitations on development in these areas.</p> <p>The Guidelines require at least one implementation measure for each policy. FGMP 10.2 fails to meet the minimum standard under the Guidelines. The lack of an Implementation Measure also makes it impossible to evaluate the environmental impact the policy will have, good or bad, as required under CEQA. As a result, any and all citations to this policy and/or IM in the RDEIR in mitigation of an environmental impact are baseless and unreliable.</p>		
FGMP-10.3	<p>The County shall require that fire and crime protection plan considerations, including financing, be incorporated into all proposed developments to ensure adequate emergency services are available and able to serve new development.</p>	<p>NO IMPLEMENTATION MEASURE</p>	
	<p>COMMENTS: FGMP 10.3 is vague - what does “fire and crime protection plan considerations” mean? What does it mean to say that such considerations must be incorporated into proposed developments? If the intent of this policy is to require developers to provide for, and establish the ability to finance ongoing operations of, fire and crime protection services, the policy should clearly state that as a requirement.</p> <p>The policy cannot be enforced without an implementation measure. The Guidelines require at least one implementation measure for each policy. FGMP 10.3 fails to meet the minimum standard under the Guidelines. The lack of an Implementation Measure also makes it impossible to evaluate the environmental impact the policy will have, good or bad, as required under CEQA. As a result, any and all citations to this policy and/or IM in the RDEIR in mitigation of an environmental impact are baseless and unreliable.</p>		
FGMP-10.4	<p>Where a specific plan is to be prepared for a sub-area of a development corridor, the County shall require a financing plan for the installation, operation, and ongoing maintenance of infrastructure resources to support growth in the specific plan area.</p>	<p>IM-33. The Planning Commission and the Board of Supervisors shall consider the financing plan during their review and consideration of the specific plan, Master Development Plan, or Area Development Plan. The financing plan shall be used as a basis for establishing programs and standards within the specific plan, Master Development Plan, or Area Development Plan which mitigate or avoid the adverse fiscal impact of development upon local public service agencies and County agencies.</p>	<p>The Planning Commission and the Board of Supervisors shall use the financing plan supplied by the proponent of any specific plan, Master Development Plan, or Area Development Plan as the basis for programs and standards to apply within the specific plan. The financing plan demonstrate substantial mitigation or avoidance of any adverse fiscal impact of development upon local public service agencies and County agencies.</p>

COMMENTS: This modified policy is not implemented by IM-33. See proposed revision above.

FGMP DEVELOPMENT STANDARDS

The RDEIR states that it has “restored” a “comprehensive list of FGMP development standards.” RDEIR at 2-13. But while many of the 1981 standards have been included in the Revised FGMP, a number have been modified, without disclosing that changes have been made. The standards have also now been prefaced with a disclaimer. Adherence to the FGMP standards is now no longer mandatory because a developer may “demonstrate” that “an alternative standard will result in attainment of a superior environment.” The standard against which the proposed superior environment will be measured is unspecified, and apparently left to the subjective judgment of the County. This is unacceptable. The public is entitled to know what standards must be met by new development that will affect current residents as well as new ones. If adherence to published standards is discretionary, the public is left un-advised and neither the public nor planners have been given any guidance. A developer is free to exceed the established standards, but must adhere to the FGMP Development Standards at a minimum.

And while most of the 1981 standards have in fact been incorporated into the Revised FGMP, the County has missed an opportunity to update and strengthen the standards to support and enhance today’s environmental concerns. For instance, Standard 25 permits waiver of minimum lot width and setback requirements for properties along a scenic highway “if it is deemed appropriate because of existing development patterns.” Under this language, an entire scenic corridor could be lost to incremental development creep – one or two encroaching structures may be cited to justify another. Then there are three, five, ten....

Another example: Development Standard 27 exempts “newly created parcels that are 10 acres or larger” from the requirement that each residential or planned unit development in a development corridor join or form an association or community organization or mutual water company to monitor and maintain the water system. Why should development on parcels larger than 10 acres be exempt from this requirement, when large-scale developments are likely to use more water, and thus should be even more aware of their water usage?

More importantly, the County could – and should – have taken this opportunity to specifically incorporate provisions to

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ensure that new development within the FGMP area incorporate energy-efficient “smart growth” standards (i.e., LEED-ND), and “dark sky” provisions to protect the County’s outstanding nightscape from light pollution.

An Implementation Measure in the 1981 FGMP required the County to “Adopt by Ordinance the Foothill Development Standards which are now included as a subsection of the Foothill Growth Management Plan.” **Please indicate when this Ordinance was adopted and provide a citation for it. Why isn’t it referenced in the GPU?**

Other changes:

Development Standard 5 appears to have deleted the word “open” before the word “space” in the last line, which changes the meaning of the standard: there is no designation of “common space.” Please correct by reinstating the word “open”.

Development Standard 8 (graded slopes shall be planted with native plant materials wherever possible) appears to conflict with Standard 17 (Exposed slopes shall be planted with native plant materials or similar climactically adapted vegetation. . . .).

Development Standard 32 has added a requirement that residential subdivision or planned unit developments provide a financing and maintenance mechanism acceptable to the County for street maintenance and replacement, but no guidelines or specific standards are provided.

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The purpose of CEQA is not to generate paper, but to compel government at all levels to make decisions with environmental consequences in mind. (*Bozung v. LAFCO* (1975) 13 Cal.3d 263)

Tulare County Citizens for Responsible Growth

Working to ensure that future growth protects our local economy, communities and natural resources

April 15 2008

Tulare County Resource Management Agency
ATTN: David Bryant, Project Planner
Government Plaza
5961 South Mooney Boulevard
Visalia, CA 93277

RE: General Plan 2030 Update and Draft Environmental Impact Report (SCH No. 2006041162)

Dear Mr. Bryant:

On behalf of Tulare County Citizens for Responsible Growth, thank you for the opportunity to comment on the Draft Environmental Impact Report (DEIR) for the Tulare County General Plan Update 2030 (GPU). We are eager to continue working with you, the Board of Supervisors and the Planning Commission to shape a final General Plan that protects everything we love about Tulare County, while providing appropriate opportunities for development that benefits our communities.

Who we are

Tulare County Citizens for Responsible Growth is a diverse group of local residents concerned about the direction of growth in our County. We are united by a desire for a General Plan Update that will ensure cleaner air, secure and reliable water supplies, a strong and more diverse economy, and the protection of our agricultural and natural resource lands. We believe that focusing future growth in our existing urbanized areas is the key to achieving these priorities.

Tulare's Chance to get it Right

Our tremendous natural resources, successful agricultural economy, central location, huge recreational potential, and attractive small towns provide a strong foundation on which to grow. Our General Plan must work to ensure that the County's growth will be a blessing, not a curse.

The DEIR is Flawed Because It's Tied To A Flawed General Plan

The DEIR, which must evaluate the potential environmental impacts of adopting and implementing the GPU, recognizes **31** significant and unavoidable impacts. Such extensive negative impacts clearly should be considered unacceptable in a plan that claims “The beauty of the County and the health and safety of its residents will be protected and enhanced.”

Furthermore, the DEIR’s impact analysis is inadequate. The DEIR fails to establish baselines for such vital components as water supply and current land uses, or to quantify the impacts brought about by this General Plan Update (e.g., number of acres of prime agricultural land converted, number of additional tons of CO₂ emitted, etc.) because the General Plan Update on which it is based is riddled with loopholes, vague language and inconsistent provisions. The GPU in its current form provides no meaningful land use designations, comprehensive land use diagrams or maps. The GPU’s determined avoidance of mandatory language, and refusal to “solidly advocate, promote, or represent any one development scenario because any attempt to predict the exact pace and locations of market-driven growth is considered speculative” not only fails to guide future growth of the County, but makes it impossible for the DEIR to adequately evaluate the environmental impacts of the Plan.

Without detailed information, provided by the goals, policies and implementation measures of the GPR, regarding where and to what extent future growth will occur, it is impossible for this DEIR -- or any DEIR – to provide an adequate baseline or analysis or to adequately describe the potential environmental impacts of the projected growth.

The GPU and DEIR must be significantly revised if either document is to fulfill its intended purpose and statutory responsibility. We are therefore asking for a substantial revision and recirculation of the General Plan Update and DEIR, with the inclusion of our “Healthy Growth” Alternative, which would also be the environmentally superior alternative.

We propose the following alternate goals, policies and implementation measures, which will provide a clear direction for the County’s future growth, mitigating potential negative impacts associated with the County’s anticipated substantial population increase, and permitting the revised GPU and DEIR to meet the needs of future decision-makers:

- 1. Base the location, density, and amount of growth within urbanized areas on their desire and capacity to accommodate growth.**

The General Plan Update¹ should promote a balanced and functional mix of land uses consistent with community values and resource availability. Existing infrastructure, water supply, environmental conditions, and proximity to jobs, transit, schools, and civic and commercial centers, and the desire of the community to accommodate additional growth should be the primary considerations in determining where to locate growth. Our current Rural Valley Lands Plan and Foothill Growth Management Plan laid the foundation for resource-driven land use planning. The spirit of these admirable planning documents should inform this Alternative, and the General Plan Update.

We suggest the following revisions to the draft policies set out below (current GPU provisions in italics; proposed revisions below):

PF- 1.4 Available Infrastructure: The County shall encourage residential growth to locate in existing UDBs and HDBs where infrastructure is available. The County shall ensure that development does not occur unless adequate infrastructure is available or can be made available for that area and that there are adequate provisions for long term maintenance.

This is a good goal that needs to be clarified and strengthened. We urge the County to do so by adopting the following revision: *The County shall permit residential growth to locate in existing UDBs and HDBs only where infrastructure is available or has been funded and will be provided concurrently with development, and where there are adequate provisions for long term maintenance.*

PF-1.6 Appropriate Land Uses by Location: The County shall utilize the Land Use Element and adopted community, hamlet or area plans to designate land uses and intensities that reflect and maintain the appropriate level of urbanized development in each community, hamlet, or planning area.

Please clarify this policy by defining “appropriate,” and provide a supporting implementation measure. The GPU should quantify “appropriate” levels by setting standards for population density and development intensity for each community, hamlet, and area plan, based on sustainable, available resources such as a safe, reliable water supply. In order to do this, the GPU must first provide a comprehensive baseline analysis of existing conditions, infrastructure, and resource availability for each community and hamlet. Only once the DEIR portion of the GPU has provided this analysis can it reasonably evaluate the suggested Alternatives.

¹ Because, as noted in the DEIR at ES-2-3, the DEIR is so interrelated with the GPU Background and Goals and Policies Reports, we refer to the combined documents as the General Plan Update or GPU in this comment letter.

PF -1.9 Capacity Building and Self Governance: The County shall encourage the residents in unincorporated communities and hamlets to be actively involved in self governance.

PF 2.4 Community Plans: The County shall ensure that Community Plans are prepared (where no plan exists), updated, and maintained for each of the communities. These plans shall include the entire area within the community's UDB and shall address the community's short- and long-term ability to provide necessary urban services.

PF-3.3 Hamlet Plans: The County shall ensure that Hamlet Plans are updated and maintained for each of the identified hamlets. These plans shall include the entire area within the HDB. The plans will provide a land use diagram with a discussion of allowed uses and densities/intensities. A discussion of the hamlet's short- and long-term ability to provide necessary urban services will also be provided.

We applaud these policies that encourage local residents to play an active role in the planning and evolution of their community or hamlet. It is critical that that the plans be based on clear and accurate information about available infrastructure and resources so as to better inform community and hamlet decision-makers about current conditions and future options. Adoption and implementation of the proposals made above with respect to PF-1.4 and 1.6 will support the County's efforts in this regard. Moreover, without such detailed and specific plans, it is impossible for the DEIR to provide an adequate baseline, to evaluate the potential impacts of growth on these areas or the County as a whole, or to determine what mitigation measures are required or likely to be effective.

Until hamlet plans can be developed, we suggest that the County adopt the Ahwahnee Principles and require interim development to adhere to them. No significant new development project should be approved in a community whose guiding planning document is nonexistent, inadequate or out of date. We must start requiring resource efficient growth now if we are to protect our natural resource, agricultural and open space lands.

Despite the County's purported support of community and hamlet plans, most community and hamlet plans are woefully out of date or nonexistent. The County should prioritize the development and updating of community and hamlet plans. These plans be developed through an inclusive, democratic process that is open to all and fosters broad community participation and support for the plan.

PF-2.4 and PF 3.3 should therefore include a provision which reads: The County shall require that all Community/Hamlet Plans be prepared through a process which includes extensive public participation and outreach. To implement this provision, the County should develop guidelines for public participation and outreach that must be adhered to during the creation, implementation and update of community and hamlet plans. Important items to include in these guidelines:

- The County shall hold meetings in the local community/hamlet in the evening so that residents can participate after work
- The County shall provide adequate notice of meetings in Spanish and English and post them in public areas of unincorporated communities and hamlets
- The County shall conduct meetings in both English and Spanish if at least 10% of the community/hamlet speaks predominantly Spanish
- All documents for public review shall be translated into Spanish if at least 10% of the community/hamlet speaks predominantly Spanish.

2. Locate development (except that which is directly related to agriculture) within existing Development Boundaries, without loopholes or exceptions that allow for “leapfrog” new town or growth corridor development.

Locate new development according to these priorities:

- Renew and maintain existing urbanized areas
- Develop vacant land within urban areas that is already served by streets, water, sewer, and other public services
- When necessary to develop beyond the existing urban footprint, use land contiguous to existing development

Do not permit new urban development, other than replacement or redevelopment of existing urban uses in urban areas, in:

- Areas without current adequate public service and utility capacities or funded capital improvement plans
- Areas where the proposed project would result in significant adverse and unavoidable impacts to biological and/or agricultural resources; or
- Outside existing urban development boundaries, unless:
 - The County specifically finds that no suitable alternative site exists within the urban boundaries,

- The proposed project is otherwise consistent with all applicable General Plan goals and policies,
- The County can assure residents that the project will not be used as a precedent for future developments outside the development boundaries, and
- The project directly benefits the nearby communities.

We suggest revisions to the following draft policies:

PF-1.2 Location of Urban Development

The County shall ensure that urban development takes place only within the following areas:

1. *Within incorporated cities. As an exception to this policy, the County may consider proposals for urban development within UAB or UDB for cities if all of the following criteria are met. . .*

This policy contradicts Policy PF-4.4, which establishes that the cities are responsible for urban development within their UDBs; accordingly, development within an incorporated city should be approved only by the city itself.

The County should avoid creating pockets of low density, unincorporated development within or adjacent to cities. These unincorporated “islands” complicate and frustrate the provision of adequate infrastructure, law enforcement and other essential public facilities and services. Additionally, such development interferes with orderly, planned growth of the cities by creating inefficient, often low-density unincorporated “neighborhoods” incompatible with more efficient urban growth.

We suggest that PF-1.2 be revised to read:

The County shall ensure that urban development only takes place in the following areas:

- *Within incorporated cities, within the UDBs of adjacent cities in other counties, unincorporated communities and HDBs of hamlets* with the remainder of the policy deleted.

PF-5.1 New Towns

The development of new communities should be discouraged, at least to the extent that haphazard attempts at community development away from established urban centers should be discouraged. However, should circumstances appear to justify development of a ‘planned’ community with its

own complex of residential, commercial, industrial, public use areas and related facilities, it would have to be judged on its individual merits and functions as it would affect the area as a whole and other policies and proposals of the General Plan.

Policy PF – 5.1 fundamentally undermines the Guiding Principles and other policies within the Planning Framework which emphasize directing growth into existing communities, and it directly contradicts the priorities of the citizens of Tulare County.

In effect, this provision encourages the building of entirely new towns by failing to establish any specific, measurable standards for when such a massive undertaking might be “justified” by unspecified and unlimited “circumstances” that “would have to be judged on its individual merits.” This vague language leaves the door to “leapfrog” development wide open.

While we recognize that there is a New Towns provision in the General Plan now being updated, the purpose of an Update is to revise the Plan to reflect changed needs and priorities. A New Towns provision is no longer needed or justified: planned communities can easily be accommodated within existing development boundaries, and Tulare County citizens don’t want to see more new towns. The County’s existing cities, communities and hamlets already offer more than enough land within their existing development boundaries to accommodate 50 years worth of growth at current densities;² more than that at higher density. Moreover, existing urban areas can more efficiently expand their infrastructure to support such growth at a much lower cost than would be required to establish entirely new roads, water and power systems, public safety facilities, schools, etc. The County’s existing urban areas should be permitted to grow and provide whatever “benefits” any new town could provide.

Instead, this proposed policy forces Tulare County’s cities, hamlets and communities to compete with undeveloped land for investment dollars. While infill development may be more of a challenge to developers, it can also be ultimately more rewarding, as property values rise as a result of their development. Infill development also benefits the entire community – not just a particular development – as older downtowns revitalize, attracting new businesses and good-paying jobs, and bringing much-needed revenue to improve aging infrastructure.

By inviting new town development, Tulare County is putting its existing communities at a competitive disadvantage and jeopardizing their chances of getting the investment they need. This growth-inducing policy will also invite sprawl; worsen air quality; increase traffic problems; accelerate loss of agricultural lands, wildlife habitat, open

² Tulare County General Plan “Policy Alternatives” August 2005

space, and scenic views; and result in higher costs and greater inefficiencies because of failure to utilize existing services, facilities, and infrastructure – to the detriment of the quality of life of all Tulare County residents.

If the County chooses to retain the New Towns provisions in the GPU, the DEIR must carefully examine the impact on the existing communities. As explained above, it is likely that creation of New Towns in Tulare County would result in significant adverse impacts on existing communities, many of which already suffer from lack of adequate infrastructure and public services. Moreover, the County must specifically define the conditions under which New Towns may be considered justified. The rules should be defined during the General Plan Update process, not tailor-made for each individual project at the time the project is proposed for approval.

We recommend that this policy be removed altogether as there is simply NO NEED for, and County citizens have said they don't want to see the development of, entirely new towns.

LU-4.2 Big Box Development: The County shall limit the size of large, “big box,” retail businesses on a case-by-case basis to be consistent with the character of the area.

The County should adopt a uniform standard policy for “big box” development, which should be limited to cities and larger communities that serve a regional, rather than a local, population. Allowing case-by-case evaluation of proposed big box retail locations (which often take over formerly-agricultural land) outside of UDBs would be extremely growth-inducing, as additional retail and other development clusters and expands around the “anchor” location.

This policy should be revised to read: *The County shall approve large, “big box,” retail businesses only within UDBs, and then only when they are consistent with the character of the area, the desires of the citizenry and the area’s economic development plans.*

LU-4.3 Commercial Service Locations: The County shall provide for commercial service businesses such as warehouses, repair services, business support services, furniture sales and building materials sales where they will not adversely affect surrounding properties, typically in areas serving occasional needs rather than day-to-day needs. Criteria to be used in siting commercial service areas are...

These types of large commercial services belong within the UDBs of cities or communities, and should not be allowed in areas set aside for agriculture unless their service is directly related to agriculture. This policy should be revised to read:

The County shall provide for non-agricultural commercial service businesses such as warehouses, repair services, business support services, furniture sales and building materials sales where they will not adversely affect surrounding properties, typically in areas serving occasional needs rather than day-to-day needs, and only within UDBs of communities.

3. Require (or incentivize) efficient development, within or contiguous to existing urbanized areas.

- Work with cities, communities and other agencies (e.g., the Local Agency Formation Commission) to promote more efficient development
- Require minimum efficiency standards in higher density development
- Prioritize the redevelopment and reuse of existing urban cores, by creating incentives (e.g., density bonuses and/or tax incentives)
- Restrict the extension of urban services (sewer lines, water, roads, electricity, etc.) into areas not identified in adopted plans for contiguous urban growth
- Defer approval of development within incorporated cities' Spheres of Influence to city governments
- Adopt smart growth principles and provide policies prohibiting "leapfrog" developments

We suggest the following policy revisions and additions:

New Policy: Efficient development in communities

The County should add a new policy under PF-2 that establishes standards for land use efficiency within communities. These standards could be mandatory, and/or it could be linked to incentives such as mitigation requirements, impact fees, permit expediting, etc.

Such a policy has two benefits: (1) it will minimize the conversion of lands important for agriculture and natural resources by ensuring that every acre is used efficiently; and (2) efficient development fosters a built environment that is more conducive to economically sound development patterns, making communities more attractive to both investors and residents by emphasizing mixed-use, and promoting pedestrian, bicycle, and public transit services, which in turn enhance a feeling of community and overall quality of life.

New Policy: Efficient Development in Hamlets

For the reasons stated directly above re PF-2, the County should also add a new policy under PF-3 that establishes standards for land use efficiency within hamlets. These standards could be mandatory, or it could be linked to incentives such as mitigation requirements, impact fees, permit expediting, etc.

PF-4.1 UABs for Cities: The County shall establish UABs which define the area where land uses are presumed to have an impact upon the adjacent incorporated city, and within which the cities' concerns are to be given serious consideration as part of the land use review process. The lands within the UAB are considered to be the next logical area in which urban development may occur and the area within which UDBs may ultimately be expanded.

By requiring only that the County give “serious consideration” to cities’ concerns regarding County-authorized development decisions in UABs, rather than setting concrete standards, this policy enables inefficient rural development in the path of urban growth, precluding the future orderly expansion of cities and encouraging the premature conversion of farmland, wildlife habitat and open space. In consideration of appropriate revenue sharing agreements, the County should not consider or approve development in the inevitable path of city growth. Lands outside the UDBs should remain rural, until such time as those lands are added to the UDB.

PF-4.4 Planning in UDBs: The County acknowledges that the cities have primary responsibility for planning within their UDBs and are responsible for urban development and the provision of urban services within their UDBs.

We support this policy, recognizing that cities alone should be approving development within their UDBs; we commend this policy and recommend revising the contradictory policy in PF-1.2, which allows the County to approve development within the UDBs of cities.

PF 4.6 Orderly Expansion of City Boundaries: The County shall encourage orderly outward expansion of urban development by supporting those city UDB expansion proposals where the city has demonstrated a need for additional territory after documenting a good faith effort to implement programs for infill development and/or increased efficiency of development and minimize conversion of agricultural lands.

This is a good policy that needs strengthening and clarification. The County should include implementation measures detailing specific efficiency standards or average densities that would have to be met before UDB expansion would be considered.

However, in situations in which an underdeveloped hamlet can be serviced by a nearby incorporated city, and the citizens of the hamlet support such an effort, the County should work with the City to encourage annexation, even if it means creating irregular boundaries. These beneficial annexations, while not meeting the ultimate goal of concentric growth, would help meet the goals of providing adequate water and wastewater infrastructure to existing underserved populations and preserving prime agricultural lands.

LU-1.1: Smart Growth and Healthy Communities; LU-1.2: Innovative Development; LU-1.3: Prevent Incompatible Uses; LU-1.4: Compact Development; LU-1.8: Encourage Infill Development

These excellent policies are unfortunately rendered meaningless by the failure to make their provisions mandatory; they must be strengthened. We also recommend an additional policy: *Efficiency of land use*. This set of policies should inform the entire General Plan Update process. A GPU built around these smart-growth principles, the Awhahnee Principles, and/or the new LEED-ND standards would reduce the environmental impacts of a growing population, while ensuring a better future for Tulare County residents.

Specific Plan Content (Policy LU 1.10): All specific plans prepared for projects in the unincorporated portions of the county must meet the requirements of state law and comprise five planning frameworks...

This policy states that all Specific Plans must comprise five planning frameworks: Land Use, Design, Circulation, Infrastructure/Public Facilities and Finance. Specific Plans should also include a Conservation/Open Space Framework, which addresses issues including, but not limited to, preservation of agricultural and open space lands and wildlife habitat; protection of water resources; energy and water efficiency; and air quality.

LU-3.2 Clustering of Rural Development: The County shall encourage proposed residential development to be clustered onto portions of the site that are more suitable to accommodating the development, and shall require access either directly onto a public road or via a privately-maintained road designed to meet County road standards.

ERM-1.3 Encourage Cluster Development: When reviewing development proposals, the County shall encourage cluster development in areas with moderate to high potential for sensitive habitat

We support the concept of clustering, which has been shown to minimize overall impacts of rural development when done properly. However, absent detailed guidelines for where and how and under what circumstances clustering should occur, such policies can cause unintended problems by creating isolated pockets of dense development without adequate provisions for circulation, fire protection and sewer, water and other public services. We recommend that the County develop a cluster ordinance that addresses issues including, but not limited to:

- Locational criteria requiring clustered development to be adjacent to existing development with adequate public services and facilities.
- Requirements for both maximum and minimum densities of clustered parcels;
- Procedures that ensure the permanent preservation of remainder portions of the property;
- Thresholds of significance for provision of shared services such as water and sewer, fire-safe design (i.e., defensible space and multiple access roads), and transportation improvements;
- In hillside areas, use of a slope-density formula to calculate the number of allowable clustered parcels.³
- In Foothill Agriculture zones, require additional dwelling units to be ancillary to the original agricultural operation and clustered in one area to avoid the parcelization of grazing lands.

LU-3.5 Rural Residential Designations: The County shall not designate any new areas for rural residential development in the RVLPA area, unless it can be shown that other objectives such as buffers can be achieved.

Low-density development such as would be permitted under the current provision, (commonly termed “sprawl”), stresses water and wastewater infrastructure, encourages reliance on unmonitored groundwater resources, fragments wildlife habitat, and consumes open space – including important agricultural land. Such development also threatens the economic, social and political vibrancy of our existing communities because it draws residents and businesses away from our community centers. We

³ Slope-density formulas are widely used by jurisdictions throughout California that allow development in hillside areas, in recognition of the fact that very steep slopes cannot safely support as much development as more gradual slopes due to geologic and fire hazards, and water, septic and road constraints. See Santa Clara County Code sections 2.20 and 5.45

suggest this policy be revised so that it reads: *The County shall not designate any new areas for rural residential development* with the remainder of the policy deleted.

4. Make community and hamlet development boundaries meaningful, long-term planning boundaries by firmly limiting the circumstances under which they can be expanded.

- Require a General Plan amendment for any proposed expansion of development boundaries, in addition to an amendment to the community or hamlet plan (if it has adopted one), including a well-advertised public hearing and comment period, held at times convenient for public participation.
- Focus on revitalization of existing urbanized areas before allowing greenfield development, especially in areas that lack adequate infrastructure and reliable water supplies.

We suggest the following policy revisions:

PF-2.2 Modification of Community UDB

1. The County may consider modification to a community UDB under the following circumstances:

- *A request for expansion can be applied for as part of a subdivision or Specific Plan proposal, or at the request of a special district or the community.*

Notwithstanding the foregoing criteria, the County may consider modification to a community UDB if it is determined that the modification qualifies as a “regionally significant proposal,” which means that the proposal must demonstrate “special significance” to Tulare County based on any of the following factors:

- i. The proposed land uses will be consistent with innovative land use planning and design principles in addition to those in this plan;*
- ii. Significant habitat or agricultural resources will be addressed through on-site preservation or through the acquisition of off-site resources and/or fees in lieu thereof*

- iii. *Substantial financial benefits will be conferred on county wide operations; or*
- iv. *Any other relevant factor considered on a case-by-case basis*

We support the concept of the UDB because it will attract economic investment and improve the quality of life in existing communities, while discouraging premature conversion of agricultural and natural resource lands. However, the UDB will be a useful tool only if it creates a real boundary that is enforced. The current language creates opportunities for the UDB to be changed anytime there is a subdivision proposal, or potential “financial benefits” to the county, or even “any other relevant factor considered on a case by case basis.” The result is that the Urban Development Boundary is no boundary at all. This provision should be revised completely to strengthen and uphold UDBs as meaningful planning tools.

We applaud the concept of drawing the boundaries in the context of a comprehensive community plan update, and we recommend that the policy be changed to state that modification of the UDB will be allowed only in the context of a comprehensive community plan update, or a community plan amendment and general plan amendment.

PF-3.2 Modification of HDB-Hamlet

The County may consider modification of a HDB under the following circumstances:

- *A request for expansion can be applied for as part of a subdivision or specific plan proposal, or at the request of a special district or residents.*

Comments provided above in connection with PF-2.2, apply equally to this policy. PF-3.2 must likewise be completely revised to make the HDB a meaningful boundary.

5. Discourage the conversion of agricultural lands to urban uses, and offset unavoidable impacts to agricultural lands and natural resource areas with mandatory mitigation measures such as conservation and agricultural easements.

Work with the Local Agency Formation Commission (LAFCO) and the incorporated cities to develop policies based on the following principles:

- Agricultural land shall not be annexed for non-agricultural purposes when feasible alternatives exist
- New development shall not be approved on prime agricultural lands unless the Board specifically finds that no feasible alternative sites exist to accommodate the proposed project and that the proposed project will fill an objectively identified need in the community
- The continued productivity and viability of agricultural land surrounding existing urbanized areas shall be promoted by preventing the conversion of agricultural land to other uses before an objective need has been found, and, to the extent feasible, by minimizing conflicts between agricultural and other land uses (e.g., by establishing adequate buffers, by enforcing Right to Farm measures, etc.)
- Division of agricultural lands shall not be permitted unless the Agricultural Commissioner / Sealer – Weights & Measures finds that the resulting parcels can be viably farmed.
- Water supplies that historically supported agricultural operations shall not be used to support residential or commercial development.

Work with the cities and the Tulare County Association of Governments to establish a comprehensive agricultural land mitigation program, including specific mitigation ratios and triggers to ensure adequate offsets, based on the following principles:

- At least one acre of equivalent agricultural land must be permanently preserved as mitigation for each acre of agricultural land changed to a non-agricultural zoning classification (1:1 ratio)
- Each acre of agricultural or other land proposed as mitigation for the potential loss of an equivalent acre must be proven equivalent in terms of: soil quality, water supply adequacy, proximity to the subject site, and other relevant factors
- The division of agricultural land shall not be permitted unless the resulting parcels can support viable agricultural operations

We suggest the following policy revisions:

AG-1.4 Williamson Act in UDBs and HDBs: The County shall support non-renewal or cancellation processes for lands within UDBs and HDBs.

County should develop a minimum land use efficiency standard that must be adhered to in exchange for supporting Williamson Act cancellations and non-renewals in HDBs and UDBs.

In addition, we propose that this provision be amended to read: *The County shall support landowner-initiated non-renewal or cancellation processes for lands within UDBs and HDBs.*

Contracts for lands within UDBs are currently reviewed every five (5) years to determine whether any community is unduly restrained in its growth by the existence of an agriculture preserve. The County initiates the non-renewal process if a property is found to be inhibiting urban growth, and the contract is allowed to lapse at the end of its term. This existing procedure is more than adequate to protect the interests of both the urban community and the agricultural user. The proposed amendment to AG-1.4 would ensure that Williamson Act contracts on land within UDBs or HDBS are not earlier cancelled or non-renewed unless requested by the landowner, thus preventing premature conversion of land from agricultural to other uses before the natural expansion of the urban center would require it, and simply because the land had become enveloped by a UDB or HDB.

AG-1.12 Ranchettes: The County shall discourage the creation of ranchettes in areas designated Valley Agriculture and Foothill Agriculture.

We support the concept of limiting ranchette development, but this policy has no supporting implementation measure, which renders it meaningless. We suggest that this policy be revised to read: *The County shall not allow the creation of ranchettes in areas designated Valley Agriculture and Foothill Agriculture.*

ERM-1.2 Development in Environmentally Sensitive Areas: The County shall limit development within areas that contain a moderate to high potential for sensitive habitat, and direct development into less significant habitat areas. Development in natural habitats shall be controlled so as to minimize erosion and maximize beneficial vegetative growth.

This is a good policy, but it lacks specific, detailed measures to identify or to ensure that environmentally sensitive areas are protected, and it fails to provide for mitigation for destruction of these lands. Moreover, it is not clear what is meant by “limit”. In addition to establishing a standard by which an area’s potential for sensitive habitat and communities can be evaluated, the policy should be revised as follows:

ERM-1.2: Development in Environmentally Sensitive Areas: The County shall prohibit, restrict, or modify proposed development in areas that contain essential habitat for special status species, sensitive natural communities, and wetlands and riparian habitats as necessary to ensure the continued health and survival of these species and sensitive areas. Approved development projects

shall be modified to avoid impacts to these resources to the maximum extent feasible.

If habitat cannot be preserved, the County shall require developers of these resources to preserve at least one acre of land with comparable or greater resource value for every acre developed. The preservation of resource land shall be accomplished by purchasing the land in fee and dedicating a permanent conservation easement to a local non-profit land conservation organization; by dedicating a permanent easement over a portion of the property to be developed (generally on the edges of natural communities); or by paying a fee that will allow land with comparable resource values to be purchased and maintained by a local land conservation organization.

ERM-5.15 Open Space Preservation: The County shall preserve natural open space resources through the concentration of development in existing communities, use of cluster development techniques, maintaining large lot sizes in agricultural areas, avoiding conversion of lands currently used for agricultural production, limiting development in areas constrained by natural hazards, and encouraging agricultural and ranching interests to maintain natural habitat in open space areas where the terrain or soil is not conducive to agricultural production.

This is a good policy, but the implementation measures identified are inadequate. A number of tools, both voluntary and mandatory, are available to assist the County and landowners in preserving open space. For example, a transfer of development rights program, or TDR, that creates an economic incentive for landowners to protect open space by selling their development rights to a developer in an area where development is appropriate. In exchange, that developer is able to increase the density of development on his or her project. Such an implementation measure might look like:

TDR Program. Establish a Transfer of Development Rights program to achieve effective protection of open space and agricultural lands and maintain viability of existing agricultural operations and conservation of habitat and watershed lands. The County in collaboration with local non-profits will seek funding to prepare and implement a TDR program including the following:

a) Evaluate the potential for donor and receiver sites within the unincorporated county as well as consider the feasibility of potential receiver sites within incorporated cities and unincorporated communities in Tulare County.

- b) Establish criteria to identify donor and receiver sites, and recommend procedures for the resale and transfer of purchased residential development rights*
- c) Evaluate the feasibility of utilizing existing non-profit entities to administer or participate in an expanded program.*
- d) The program should be prepared by qualified consultants with expertise in developing and implementing TDR programs.*

Other tools include transfer of development rights to, or participation in, conservation programs offered through the California Rangeland Trust, the California Rangeland Conservation Coalition, and other agricultural or environmental groups.

6. Provide strong, clear policies with concrete, enforceable implementation measures that include definite timeframes, funding sources, and departments in charge of monitoring and enforcement.

The draft GPU provides future elected officials with too little real guidance, and the people of Tulare County with too little assurance, that their vision for the County's future will be protected. We need a General Plan with strong, clear, enforceable policies and concrete, trackable, timely implementation measures.

The GPU states that a policy is "a statement that guides a specific course of action for decision-makers to achieve a desired goal. The County has strived to develop clear and unambiguous policies." The Goals and Policies Report (GPR) goes on to state that the GPR is the "essence" of the General Plan and that it "identifies a full set of implementation measures that will ensure the goals and policies in the General Plan will be carried out." Finally, the GPR states that an implementation measure is "a specific measure, program, procedure, or technique that carries out plan policies" and that "Implementation measures should describe actions that are concrete and measurable so their completion can be easily monitored in annual reports."

Unfortunately, the GPU fails to meet its own standards in many respects. Many of the policies are far from specific, clear, and unambiguous, and many have no identified corresponding implementation measures. Many of the implementation measures that are provided are so vague as to be neither measurable nor enforceable; many state that they are "new," yet indicate for their timeline that they are "ongoing," so that one cannot determine whether they are supposedly already being implemented (in which case the date of actual implementation should be shown) or when one could expect them to be in force; others are scheduled to be commenced so far in the future that it is doubtful that

much in the way of meaningful outcomes can be made to result from them within the life of the General Plan.

Below are a few examples:

LU-7.13: The County shall encourage preservation of buildings and areas with special and recognized historic, architectural, or aesthetic value. New development should respect architecturally and historically significant buildings and areas.

“Encourage” is not a clear, unambiguous, specific course of action, as required by the GPU’s earlier definition of a policy. The Implementation Measure (#23) states: *The County shall cooperate with local preservation groups and community property owners who identify historic buildings . . . to encourage perpetuation of identified architectural characteristics in new proposed development . . . within the same viewshed as the historic building.* This is set forth as a New Program, but the timeframe is shown as “Ongoing.”

This Implementation Measure is simply not “a specific measure, program, procedure, or technique,” nor is it concrete or measurable, as prescribed by the GPR’s definition of an implementation measure. How does one measure or enforce “encourage,” “should,” and “cooperate?” The policy to “encourage” is to be implemented by a measure requiring the County to “cooperate” with others to “encourage.” The goal behind this policy is admirable, but neither the policy nor its implementation measure can possibly ensure achievement of the desirable goal.

LU-7.15: The County shall encourage the use of solar power and energy conservation building techniques in all new development.

This policy’s Implementation Measure (#24) says *“The County shall review LEED and LEED-ND certification requirements and develop an implementation program.”* This review is timed to start sometime between 2010-2015. Again, the policy (“encourage”) is in no way a statement of a clear, unambiguous, specific course of action, and the implementation measure (“develop . . . a program”) is far from being a concrete, measurable, specific measure, program, procedure, or technique. Given the urgency of global warming and the need to comply with AB32, not to mention the County’s severe air and water problems, and also given the abundance of jurisdictions which have already adopted and implemented LEED standards, the County must do much more than merely “encourage” use of solar power and energy conservation building techniques, and the requirement to do so should commence well before 2010.

Unfortunately, these examples are typical of the GPU's policies and implementation measures: vague, ambiguous, and not measurable. Thus, the policies and implementation measures cannot be relied on to achieve the goals of the GPU, to effect the DEIR's mitigation measures, nor to implement the selected DEIR Alternative.

Analysis of the General Plan Update and Draft Environmental Impact Report

Mandatory General Plan Requirements

California Government Code contains certain concrete and specific requirements for general plans. Some of the key provisions of state law as it relates to Tulare County General Plan Update are listed below:

Land Use

The Land Use Element (LUE) designates the general distribution and location and extent of the uses of the land for housing, business, industry, etc. Gov. C §65302(a). The LUE must include a "statement of standards of population density and building intensity recommended" for the all areas covered by the General Plan. Id.

Housing

The General Plan Housing Element (HE) must identify and analyze existing and projected housing needs and to state "goals, policies, quantified objectives, financial resources, and scheduled programs for the preservation, improvement and development of housing." Gov. C. §65883. The HE must identify adequate sites for housing, and must make adequate provision for existing and projected needs of all economic segments of the community. Id. The HE must include an assessment of housing needs and an inventory of resources and constraints relevant to meeting those needs. Gov. C. §65883(a). This means that the Tulare County General Plan must include an honest and objective assessment of the County's of need for additional housing and the availability of resources (e.g. water supplies, wastewater treatment capacity, circulation infrastructure, etc.) to meet the anticipated needs.

Based on its conclusions regarding the County's future housing needs, the County must designate areas that are best suited to meeting that need. In so doing, the County must critically consider availability of resources (e.g. water supplies, sewer treatment capacity, infrastructure, etc.), the priority goals of protection of natural and agricultural resources, and land use patterns.

The HE does not contain an adequate analysis of the County's anticipated housing needs.

Conservation

The Conservation Element (CE) must analyze and devise policies for the conservation, development and utilization of natural resources. Gov. C. §65302(d). The CE must consider the effects of the growth and development proposed by the LUE on natural resources. There is no indication that the CE has or will include the kind and extent of analysis of the General Plan as is required by the Gov. Code.

State law further requires that the portion of the conservation element addressing water must be developed in coordination with any countywide water agency and with all district and city agencies, including flood management, water conservation, or groundwater agencies that have developed, served, controlled, managed, or conserved water of any type for any purpose in the county or city for which the plan is prepared. Id.

Here, it does not appear that the amendments to the CE have been developed in coordination with water agencies to the extent required by the Code.

Open Space

State law also requires the County to include an Open Space Element (OSE) to ensure “the continued availability of land for the production of food fiber, for the enjoyment of scenic beauty, for recreation and for the use of natural resources.” Gov. C. §65561(a).

The legislature declared that:

“The anticipated increase in the population of the state demands that cities, counties, and the state at the earliest possible date make definite plans for the preservation of valuable open space land and take positive action to carry out such plans by the adoption and strict administration of laws, ordinances, rules and regulations as authorized.” Gov. C. §65561(e).

The legislature adopted the requirement for an OSE to ensure that the County “will prepare and carry out open-space plans which, along with state and regional open-space plans, will accomplish the objectives of a comprehensive open-space program.” Gov. C. §65562(b). The OSE must include an action plan containing specific programs that the County intends to pursue to implement its open-space plan. Gov. C. §65564.

It does not appear that the County’s OSE, even with the proposed updates, meets the requirements of the Government Code. The OSE does not contain specific measures or an “action plan” for implementation of concrete preservation goals and objectives.

Project Description

The DEIR states that although the General Plan contains policies to control the amount and location of growth, “it does not solidly advocate, promote or represent any one

development scenario because any attempt to predict the exact pace and locations of future market-driven growth is considered speculative” (EIR 2-9).

The following passage in the DEIR (ES-5) further reveals the passive nature of the proposed General Plan Update: “Approximately 75% of the population growth is expected to occur within the Urban Development Boundaries of incorporated cities throughout the County. The remaining population growth will be directed towards unincorporated communities, hamlets and development corridors.”

These statements suggest that the principal purpose of the General Plan update is to accommodate and absorb population growth wherever the market drives it, rather than direct growth in areas that do not conflict with the goal of preserving Tulare County’s farm lands, scenery and other natural resources.

The County may not abdicate its responsibility to chart a logical and appropriate path for the County’s future growth and prosperity on the theory that growth is driven purely by market forces that are wholly unpredictable and not subject to government control. Both state law and good planning principles require the County, in consideration of the will of the people and their needs, to chart a course for the future of the County.

Critique of Land Use Policies

Proposed Policy PF2.2 (modification of Community UDB) provides that *a request for expansion [of a community UDB] can be applied for as part of a subdivision map or specific plan proposal, or at the request of a special district or the community.* As proposed, this policy essentially reduces to a nullity Policy PF-2 which purports to limit urban development to the area within the designated UDB for each community. This policy would encourage disorderly development outside UDBs without regard to existence of alternative sites with the community UDB, or any objective community need for the proposed project. Applications for projects outside the community UDB should be prohibited out right, or at a minimum be allowed only if the County finds that there is a demonstrable need for the proposed project, that no alternative sites exist within the community or neighboring communities to accommodate the project, and that the project would not result in significant adverse impacts on biological or agricultural resources.

PF-2.2 also provides that the County may consider a modification of the UDB if the modification qualifies as a regionally significant proposal. It is not clear whether the criteria set forth in the proposed policy apply to individual projects, or whether projects that are not regionally significant may not be the subject of a request for modification of the UDB. This must be clarified.

As the DEIR notes, most community plans in Tulare are out of date. The General Plan should include a mandate that proposals for UDB expansion shall not be approved unless and until the community plan has been updated. Without such a mandate, it is likely that communities will continue to grow, not subject to a comprehensive plan that takes into account community needs and resources, but based on financial speculation and not in an orderly manner.

Policy PF-3.2, like PF 2.2, contains a provision pursuant to which a request for expansion of a Hamlet Development Boundary (HDB) can be made as part of a subdivision or specific plan proposal. Comments above relevant to PF2.2 apply equally to Policy 3.2.

GPU policy (PF-5.1) retains the language regarding consideration of new town development in Tulare County:

The development of new communities should be discouraged at least to the extent that haphazard attempts at community development away from established urban centers should be discouraged. However, should circumstances appear to justify development of a “planned” community.....it would have to be judged on its individual merits and functions as it would affect the area as a whole and other policies and proposals of the General Plan.

In regard to any “circumstances that appear to justify development of a planned community,” the revised DEIR must disclose whether land outside of existing urban and hamlet boundaries is required to meet growth projections contained in the draft General Plan Update. In answering this question, the revised DEIR must reference a study prepared by Tulare County consultants, which found that over 950,000 people could be accommodated within existing development boundaries, and that over 826,000 people could be accommodated within the development boundaries of the incorporated cities alone (Tulare County General Plan “Policy Alternatives,” p. 9).

If, as Tulare County’s consultants have concluded, all projected population growth in Tulare County can be accommodated within existing urban growth boundaries, the revised DEIR must disclose the specific need to retain policies in the General Plan Update that would allow for new town development. Since existing development boundaries have more than enough capacity to absorb the population of 621,000 people projected in the General Plan Update, in what way would any new town development be justified by current or projected growth circumstances?

The GPU should further explain and define the “circumstances that appear to justify development of a planned community.” The GPU should set forth specific objectives

and guidelines to better explain the circumstances that can justify the approval of a new community. Without a more concrete definition and guidelines, a clever planner can explain why a given new planned community is justified by any set of circumstances. To fulfill its legal mandate to serve as the constitution of the County, the General Plan must give the residents of Tulare County a much better idea of the circumstances which would justify the creation of a new community.

Critique of the DEIR

The DEIR fails to meet CEQA requirements in every resource section, lacks baseline measurements, and fails to disclose, analyze or mitigate GPU impacts.

The DEIR lacks any meaningful baseline measurements, without which the impact analysis is fatally flawed. As a preliminary matter, CEQA requires the EIR to describe the baseline environmental conditions against which the impacts of the project will be measured.

For example, the DEIR fails to provide baseline information on the location of different classifications of farm land, current air quality and related health conditions, existing groundwater supplies, peak hour traffic conditions and current vehicle trips, special-status species or their habitats, scenic resources, water quality, etc. The lack of baseline measurements means that the public and Tulare County decision-makers have no basis to analyze and assess the significance of the environmental impacts that will be caused by the GPU.

The DEIR consistently fails to provide a quantified, objective analysis of the significant impacts that would be generated by the GPU. Instead, thinly supported, general impact assessments are put forth with little description, with the conclusion that 31 impacts are significant and unavoidable. The DEIR lacks any form of analysis to evaluate the significance of a particular impact compared with current conditions.

The DEIR also consistently fails to suggest feasible mitigation measures that could plausibly reduce the severity of likely impacts.

Both the General Plan Update and the DEIR, therefore, must be revised to provide the public and decision-makers more specific information about where development will and won't be allowed, agricultural, natural resource, scenic, historical and other areas that will and will not be protected, the full set of associated specific and cumulative environmental impacts compared with baseline conditions, and mitigation measures sufficient to reduce the significance of those impacts.

The revised DEIR must describe the monitoring, mitigation and enforcement program that will be used for each of the identified impacts. The revised DEIR must provide as much detail on all of these programs as possible, including analysis and justification where the DEIR claims proposed mitigation measures will sufficiently or effectively offset significant adverse effects of the GPU. We ask that particular attention be paid to impacts that affect ecosystem functions, human health, wildlife habitat and agricultural resources.

The analysis requested above must include a discussion of any relevant empirical data which the County contends supports the choice of mitigation measures. Other important evidence includes but is not limited to case studies, studies, articles, books and other that can support the choice and the analysis of the efficacy of the proposed mitigation measures.

The DEIR does not address the enforcement mechanisms that the County intends to utilize to ensure that the mitigation measures adopted by the County will be implemented. What are the consequences for failure to implement mitigation measures? What will happen if the proposed mitigation measures prove to be ineffective in reducing significant adverse impacts of development?

AGRICULTURE

Tulare County contains some of the most fertile and productive farmlands in California, making this County one of the most agriculturally productive counties in the state, if not the world. Our history is founded on agriculture; agriculture influences our culture and drives our economy.

The DEIR lists as one of the General Plan's guiding principles: "Protect the County's important agricultural resources and scenic natural lands from urban encroachment." Yet the first impact analyzed in the DEIR, AG-1, states that the "General Plan Update could result in the substantial conversion of important farmland to non-agricultural uses."

The DEIR fails to provide specific information about the extent and location of farmland conversion that could occur. Instead, the DEIR again offers only a vague projection of the amount of future development that would occur on agricultural lands, which would be dependent upon the whims of the marketplace, rather than by clearly defined growth boundaries or mandatory polices to protect farmland.

The DEIR states (3-6):

Although these future population distribution patterns form one of the key assumptions behind the General Plan Update, the specific location as to where this development would occur within these unincorporated communities is

currently not known and would only be available as future development proposals are brought forward for consideration by the County. Consequently, the specific impacts to existing or future agricultural resources cannot be quantified at this time. Because of this uncertainty, this analysis assumes that future growth and development within the County would result in some limited conversion of existing agricultural resources to developed uses.

A revised and re-circulated DEIR must provide specific information about the amount and the location of farmland in all categories (farmland of statewide importance, prime farmland, grazing land) that would be converted or be at risk of being converted to non-agricultural uses under the General Plan Update at build-out. The build-out scenario should assume that development is conducted at the maximum level of intensity and density that would be allowed by the proposed land use designations, new town, transportation development corridors and other provisions in the Draft GPU.

If the County contends that the maximum build-out scenario is unlikely, in addition to the maximum build-out scenario, the GPU and the revised DEIR could include a “likely build-out” scenario to explain the level of build-out that the County believes will likely result. Of course, such a scenario should be adequately justified with reference to factors that the County believes are likely to result in less than a maximum build-out.

Without disclosing the full extent of potential farm land conversion that would be allowed by the GPU, the DEIR fails to achieve a core CEQA requirement to disclose and analyze project impacts.

Agricultural Mitigation Measures

The DEIR offers a number of mitigation measures to offset the potentially “substantial” loss of farm lands designed to “promote the conservation of agricultural resources.” The DEIR fails to disclose how these measures would actually protect farmland from conversion to urban uses should a “market-driven” proposal for a subdivision or other development be proposed. A revised DEIR should disclose whether these provisions offer any substantive protection against farmland conversion to developed uses.

AG policy 1.6 (3-9) calls for the development of an Ag Conservation Easement Program to help protect and preserve agricultural lands within the County. This mitigation measure is poorly defined and is not reasonably crafted to ensure it will be effective. Because it is open-ended and absent any deadlines for the creation of the Program, AG Policy 1.6 may not be effective in mitigating the loss of a substantial amount of AG lands that could result from implementation of the General Plan Amendments.

To be effective, the GPU must set specific deadlines and milestones for the creation of the Program to ensure its timely implementation. Moreover, the GPU must contain a prohibition against approving projects that would result in loss of agricultural lands

until and unless the Program is in place, unless the County requires alternative mitigation measures in lieu of taking part in the Program.

AG Policy 1.6 is also inadequate in that it does not contain specific and well defined guidelines for acquisition of agricultural conservation easements. The type of details that must be defined by the General Plan include the appropriate ratio of agricultural land to mitigation land, the type of amenities that mitigation lands must possess, location criteria for the mitigation lands, etc. Unless these important details are worked out during the environmental review program, it would be impossible to determine at this stage whether the Program proposed by AG Policy 1.6 could effectively and adequately mitigate the conversion of agricultural lands the GPU will undoubtedly foster.

Williamson Act Contracts

Cancellation of a Williamson Act contract requires elected officials to make a number of mandatory findings. The DEIR must be revised and re-circulated to include a description of the findings necessary to cancel Williamson Act contracts.

Similarly, the DEIR must be revised to include an estimate of the number of acres of farmland currently protected by Williamson Act contracts, including a break down by land type, type of crop, and identify (by geographic area or other criteria) of the farmland that is most likely to be subject to cancellation of Williamson Act contracts to accommodate development as a result of the adoption of the GPU. These calculations should be based on a maximum density and intensity of development scenario within each land use designation.

The revised DEIR should include maps showing the current distribution of Williamson Act contracts and agricultural preserves by land type and crop, and a map depicting agricultural preserves and Williamson Act-protected acreage impacted at build-out of the GPU, at maximum allowed development intensity and density.

The revised DEIR must describe the impact that cancellation of Williamson Act contracts would have on adjacent agricultural properties. The revised DEIR should include an analysis of whether the findings in support of cancellation of Williamson Act contracts can be made by the County.

Indirect Impacts

DEIR Impact AG-3 describes the significant and unavoidable indirect impacts from urban development allowed by the GPU that would be accrue in areas currently identified as important farmland. These impacts include increased costs to agricultural operations, rising land values for residential development, again encouraging

conversion of additional important farmland to urban uses. Again, the DEIR fails to provide specific information about the extent and location of farmland conversion that could occur.

A revised and re-circulated DEIR must specify the amount, location of farmland in all categories (farmland of statewide importance, prime farmland, grazing land) that would be converted or be at risk of being converted to non-agricultural uses due to the indirect effects described in GPU Impact AG-3 at build-out, assuming that development is conducted at the maximum level of intensity and density that would be allowed by the proposed land use designations, new town and transportation corridor and other provisions in the Draft GPU.

The GPU and DEIR must be revised to include policies that would replace the current weak, permissive, ambiguous and unenforceable plan language with specific, mandatory, strong, enforceable policies to actually achieve the GPU's stated goal of: "Protect[ing] the County's important agricultural resources and scenic natural lands from urban encroachment."

TCCRG has provided specific policy recommendations as part of a proposed "Healthy Growth Alternative" later in this document under the heading "Alternatives to the General Plan."

SCENIC LANDSCAPES

As explained above, state law requires the County General Plan to include concrete plans, laws and implementation programs to identify and preserve scenic resources. The County's General Plan, as updated, does not meet this mandate. Instead, the General Plan Open Space Element contains vague goals and policies that give the County decision makers much discretion to analyze projects on a case by case basis. Without specific maps, plans and guidelines, and mandatory requirement for all development projects and zoning decisions to conform to these plans and guidelines, future growth and development will likely result in adverse impact to the County's open space and biologically sensitive lands.

For example, Policy SL-1 (intended to protect and feature the beauty of the County's views of working and natural landscapes) requires the County to "as appropriate, require new development to not significantly impact or block views of Tulare County landscapes." This goal, along with others that are similarly worded, will not effectively protect natural resources and viewsheds.

The County Open Space Element violates state law because it does not contain include specific plans for preservation of specific open space lands.

Impact SL-1: The General Plan Update would substantially degrade the existing visual character or quality in areas of the County.

The DEIR states: *...it is assumed that some new development (i.e., new residential, commercial, or infrastructure-related, etc.) resulting from population growth associated with the General Plan Update would result in changes to existing views within the County's communities, hamlets, or rural areas. As a portion of this new development could be proposed on land currently used for a variety of rural residential, agricultural, and open space uses, new development would alter the existing open space views of surrounding visible areas and contrast with the surrounding open space/agricultural environment at the edge of these new development areas. Consequently, even with implementation of the below mentioned policies and implementation measure, this impact is still considered potentially significant.*

Similar to its inadequate analysis of the specific impacts of the GPU on agriculture, the DEIR fails to provide specific information about the extent and location of development on scenic open space lands that could result from the implementation of the GPU.

The DEIR forecasts that only “a portion” of new development would occur on land currently in open space. This claim is not substantiated with reference to evidence in the record. The EIR should be revised to include a more thorough explanation for this claim. On the other hand, if this claim is not supported by substantial evidence, it must be stricken from the EIR.

A revised and re-circulated DEIR must specify the amount and location of scenic open space that would be converted or be at risk of being converted to development uses at build-out of the GPU, assuming that development is conducted at the maximum level of intensity and density that would be allowed by the proposed land use designations, including new town, transportation corridor and other provisions.

The revised DEIR must describe the scenic impacts caused by road widening, traffic and related pollution that obscures scenic views, new power lines, light and glare and the myriad other ways in which scenic landscapes would be cluttered with residential, commercial, and resort development under the GPU at build-out.

The revised DEIR must analyze policies that would avoid or minimize the sort of rural residential sprawl development that would destroy agriculture, open space and scenic views, including policies that locate all development to within existing UDBs and HDBs and require compact, efficient development, expanding in concentric circles from existing urban areas.

TCCRG has provided a set of recommendations for protecting scenic landscapes in a later section detailing our proposed “Healthy Growth Alternative.”

Impact SL-3: The GPU would create a new source of substantial light or glare which would adversely affect day or nighttime views in areas of the County.

The DEIR States (4-9) : ... *new development resulting from population growth anticipated as part of the General Plan Update would increase the amount of light and glare associated with the development of urban uses, such as additional parking lots, building lights, and streetlights within areas that currently have no light or minimal amounts of light and glare. While the types of lighting and their specific locations are not specified at this point, development proposed under the General Plan Update would increase the amount of spill light and glare onto adjacent areas.*

The revised DEIR must provide baseline conditions by documenting the size and location of areas of the county that currently enjoy night views that currently have no light or a minimal amount of light and glare. The DEIR should describe the current view of the night sky from current and proposed urban development areas in the County.

The revised DEIR must then specify the total amount and location of areas that currently have dark night skies that would be negatively impacted by spill light and glare at build-out of the GPU, assuming that development is conducted at the maximum level of intensity and density that would be allowed by the proposed land use designations, development of new towns, transportation development corridors, and other provisions.

BIOLOGICAL RESOURCES

Impact ERM-1: The GPU could have a substantial adverse effect, directly and through habitat modification, on many fish or wildlife species including those officially designated species identified as endangered, threatened, candidate, sensitive or special status species...

This impact is assessed as significant and unavoidable.

The DEIR states: Sensitive vegetation communities or habitats in the County include Northern Hardpan Vernal Pool, Valley Saltbrush Scrub, Central Valley Drainage Hardhead/Squawfish Stream, and Blue Ridge Ecological Reserve (Condor Habitat). Within these sensitive habitat areas, a number of sensitive plant and wildlife species are known to occur or have the potential to occur in the County.”

The DEIR fails to describe or map the location of the sensitive vegetation communities or habitats, or to list or map a single sensitive plant or wildlife species that reside in

those habitats. Again, the DEIR fails to describe the baseline condition against which impacts of the proposed GPU could be realistically assessed, failing a crucial requirement of CEQA. The revised DEIR must address this failure by surveying and mapping the location of sensitive vegetation communities or habitats, along with resident endangered, threatened, candidate, sensitive or special status wildlife species and sensitive plant species. A thorough biological study must be conducted and documented, using approved and up-to-date protocols. The revised DEIR must disclose the survey methods used to conduct biological assessments.

The revised DEIR should reference the “Recovery Plan for Upland Species of the San Joaquin Valley,” adopted by the U.S. Fish and Wildlife Service in 1998, and discuss ways in which the proposed GPU is consistent with, or contradictory to, the findings and recommendations of the report.

The DEIR describes in a general way the myriad negative impacts that could be caused to sensitive habitats, plants and species by the GPU: *...the General Plan Update will allow for the introduction of development (predominately agricultural land uses) into largely undisturbed areas. Such construction has the potential to result in a significant impact on sensitive habitats, individual plants, and wildlife species. The primary impact will be the potential for removal of sensitive habitats for building pad development and the construction of buildings, infrastructure and roadways. Additional impacts will result from a continued increased incidence of fire due to human activity, increased erosion from roadways, and the introduction of non-native weed species. The introduction of developed land uses will also result in the elimination of habitat and food resources for wildlife through the removal of vegetative communities. The introduction of new sources of light and glare could affect nesting habitat and migratory corridors. These effects may be particularly pronounced for wildlife species with low tolerance for habitat modification or disturbance, especially some riparian bird and reptile species.*

Again the DEIR has failed to disclose or map the location and extent of effects from development that would be allowed by the proposed GPU. A revised DEIR must specify and map the total size and location of development that could be introduced into currently undisturbed areas by the GPU, resulting in the removal of sensitive habitats and vegetative communities. Similarly, the revised DEIR must quantify the size and location of negative impacts to sensitive species that would be caused by increased fire risk, erosion, introduction of non-native weed species, light glare, the introduction of thousands of domestic pets, and other effects of development allowed under the GPU. These impact analyses must assume that development is conducted at the maximum level of intensity and density that would be allowed by the proposed land use

designations, including new town, transportation corridor and other provisions proposed in the GPU.

Impact ERM-2: The General Plan Update could have a substantial adverse effect on the riparian habitat or other sensitive natural communities identified in local or regional plans, policies, regulations or by the California Department of Fish and Game or U.S. Fish and Wildlife Service.

The DEIR states: *As more fully described above under Impact ERM-1, development resulting from implementation of the General Plan Update may result in both direct and indirect significant adverse impacts to riparian and other sensitive natural communities occurring in the County.*

The DEIR fails to describe, survey or map the location of riparian, forest, oak woodlands, wetlands or vernal pool habitats, or to list a list a single plant or wildlife species that resides in those habitats. The revised DEIR must correct this by mapping the location and size of riparian, forest, oak woodlands, wetlands or vernal pool habitats, along with an inventory of resident endangered, threatened, candidate, sensitive or special status wildlife species and sensitive plant species.

A revised DEIR must specify and map the total amount and location of development that could be introduced into currently undisturbed areas by the GPU, resulting in the removal of riparian, forest, oak woodlands, wetlands, and vernal pool habitats. The DEIR must disclose the wildlife and plant species that would be negatively impacted by development of these habitat areas.

The impacts of new structures and roadways extend far beyond their physical location. Native species have reduced survival and reproduction rates near homes and roadways. The zone from which an ecological impact of houses and roads is seen on plant and wildlife communities is termed the “Disturbance Zone,” and can stretch several hundred meters around buildings and roads. When including disturbance zones in the calculation for development impacts, the area of impact increases greatly. The revised DEIR should include disturbance zones in its evaluation of cumulative impacts on native wildlife, wildlife habitat and plant species.

The revised DEIR must fully disclose and describe all potential impacts to riparian habitat and other sensitive natural communities caused by the diversion of water, loss of groundwater recharge areas, diminishment of groundwater resources, lowering of water tables, and related effects of development facilitated by the GPU.

Oak Woodlands

Tulare County is blessed with one of the largest expanses of blue oak woodland in California. Tulare County's oak woodlands are some of the most visible and magnificent features of the county. They help make Tulare County unique, and give us a sense of place.

Oak woodland runs through the foothills of Tulare County, covering a vast, relatively uninterrupted landscape. Most of our blue oak woodlands are also working landscapes – doubling as habitat for wildlife and grazing land for ranchers. The oak woodland ecosystem provides a home to more than 200 plant species and 300 vertebrate wildlife species⁴, including mountain lion, mule deer, and raptors, which depend on a large, interconnected ecosystem to maintain viable populations.

The revised DEIR should acknowledge that Valley Oak and Blue Oak woodlands are two of the most threatened ecosystems in the state. The revised DEIR should evaluate the extent to which the proposed GPU at build-out would divide the current range of blue oak woodland into fragments. The DEIR must disclose all potential impacts, including the possible disturbance or disruption of the north-south gene flow of blue oak woodland species and disturbance or interruption of migration patterns of any wildlife and bird species.

The DEIR must describe the way in which the GPU would comply with California Senate Bill 1334, an oak woodland protection bill passed into law in 2005.

GPU Policy ERM 1.12 Management of Oak Woodland Communities: The County shall support the conservation and management of oak woodland communities and their habitats.” This mitigation measure would attempt to offset the conversion of oak woodlands destroyed by development by planting new oaks elsewhere. (ERM, IM 16) This mitigation measure is premised on the assumption that a newly planted oak can offset the destruction of a mature tree. The two aren't remotely equivalent. The revised DEIR should acknowledge that planting young saplings is not an adequate mitigation measure for destruction of mature or old growth trees, and forests.

We applaud the County for considering developing an oak woodland management plan in order to qualify for funding under the Oak Woodlands Conservation Act of 2001. However, the County should commit to developing this management plan, rather than simply agreeing to assemble stakeholders to assess the feasibility of such a program.

⁴ Standiford, R.B., J. Klein, and B. Garrison. 1996. Sustainability of Sierra Nevada hardwood rangelands. In: Status of the Sierra Nevada: Volume III Sierra Nevada Ecosystem Project Report. Pages 637-680. UC Division of Agriculture and Natural Resources. Wildland Resources Center Report No. 38

The DEIR states (4-16): *The policies ERM-1.1 through 1.8 and 1.12 require the County to protect other key sensitive habitats (i.e., riparian, wetlands, and oak woodlands, etc.) by encouraging future County growth outside these sensitive habitat areas. Policy ERM-1.14 directs the County to support the establishment and administration of a mitigation banking program.*

These policies are typical of the weak, permissive mitigation measures that are embedded throughout the DEIR. In what way would policies ERM-1.1 through 1.8 and 1.12 protect sensitive habitat areas, in cases where “market-driven” development proposals are presented for consideration in these areas, despite “encouragement” to develop elsewhere?

Policy ERM-1.14 is inadequate in that it fails to provide any details about or guidelines for mitigation banking programs to be established. What type of offsets would be required for destruction of sensitive wildlife habitats and species, and sensitive plant species? What is the ratio of sensitive species habitat that would be restored and preserved in exchange for destruction of sensitive habitat? How would effective mitigation of destroyed habitat be assessed? Unless these important details are worked out during the environmental review program, it would be impossible to determine at this stage whether the Program proposed by Policy ERM-1.14 could effectively and adequately mitigate the “substantial adverse effect” to sensitive wildlife and plant habitats and species that is predicted to occur as a result of GPU implementation.

Impact ERM-3: The General Plan Update could have a substantial adverse effect on “federally protected” wetlands as defined by Section 404 of the Clean Water Act (including, but not limited to, marsh, vernal pool, etc.) through direct removal, filling, hydrological interruption, or other means.

Protection of wetlands should not be limited to those that are “federally protected” under the Federal Clean Water Act. In California, different state agencies have adopted their own wetland definition, all of which are broader and therefore more conservative than the federal definition. Under the Keene-Nejedly California Wetlands Preservation Act wetlands are defined as: “...streams, channels, lakes reservoirs, bays, estuaries, lagoons, marshes, and the lands underlying and adjoining such waters, whether permanently or intermittently submerged to the extent that such waters and lands support and contain significant fish, wildlife, recreational, aesthetic, or scientific purposes.” (Pub. Res. Code §5812).

Under the California Wildlife Protection Act “wetlands” means lands which may be covered periodically or permanently with shallow water and which include saltwater marshes, freshwater marshes, open or closed brackish water marshes, swamps,

mudflats, fens, and vernal pools. (Fish & Game Code §2785) We urge you to use one of the more conservative State definitions. For more information regarding the definition of “wetland” please go to http://ceres.ca.gov/wetlands/introduction/defining_wetlands.html.

The DEIR failed to address the following demand for identification of affected waters, submitted by the California Regional Water Quality Control Board, Central Valley Region, on 5/30/06, as comment on the NOP for the GPU:

“Please map all waters of the State, as defined by CWA Section 13050(e), potentially affected by the development proposed....and list them in appropriate tabular format, organized by waterbody type. Include wetlands, riparian areas as defined by the National Academy of Sciences, and “isolated” waters. For waterbodies expected to be directly affected, identify the approximate acreage and (for drainage features) the number of linear feet directly impacted and sum the total affected acres and linear feet by waterbody type. Identify any “isolated” wetlands or other waters excluded from federal jurisdiction by court decisions.”

As it is, the DEIR has not provided a baseline assessment of wetlands in Tulare County, as previously requested by the California Regional Water Quality Control Board, Central Valley Region, failing a basic CEQA requirement. The revised DEIR must correct this by mapping the location and size of all Tulare County wetlands, including those protected under Section 404 of the Clean Water Act, as well as riparian areas and “isolated” waters, and areas that meet the State definition of wetlands.

A revised DEIR must specify and map the total amount and location of development that could occur on Tulare County wetlands, including wetlands protected by Section 404 of the Clean Water Act. How many acres of wetlands would be directly or indirectly impacted by the development at build-out of the GPU at maximum allowable density and intensity of development within each land use designation? How will loss of wetlands affect rates of flooding and volume of flood waters, stream bank erosion, water quality, and riparian and aquatic habitat?

Impact ERM-4: The General Plan Update could interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites.

The DEIR states (4-19): “Several areas within the County (predominately waterways and the riparian areas that border them) are utilized as migratory corridors for the movement of wildlife (including a variety of bird, mammal, and fish species). As more

fully described above under Impact ERM-1, development resulting from implementation of the General Plan Update may have potential to remove or interfere with existing linkages between habitat areas currently providing cover and could increase the distance that animals would need to traverse. Additionally, development within the County would also cause an increase in both vehicular traffic levels and nighttime light levels, which would also serve to deter wildlife movement in the area.”

The DEIR fails to describe or map the location of resident or migratory wildlife corridors or nursery sites. The DEIR has failed to provide a critical baseline condition against which impacts of the proposed GPU could be realistically assessed. The revised DEIR must correct this by mapping the location of resident or migratory wildlife corridors or nursery sites.

The revised DEIR must quantify the size and location of negative impacts to resident or wildlife corridors or nursery sites that would be caused by implementation of the General Plan Update, including direct development, traffic, noise, lighting, increased presence of humans and pets, etc.

The Solution

The solution to protecting Tulare County’s biological resources is to adopt a General Plan that requires compact, efficient development within our existing development boundaries, and specific, mandatory, enforceable protections against development in riparian, forest, oak woodlands, wetlands or vernal pool habitats, and other areas where sensitive wildlife and plant species reside.

We have provided a detailed set of policy proposals to accomplish this objective in an accompanying document describing our proposed Healthy Growth Alternative. This Alternative should be incorporated into a revised GPU, and analyzed in the revised DEIR.

RECREATION AND OPEN SPACE RESOURCES

Impact ERM-11: The General Plan Update would result in the substantial physical deterioration of existing neighborhood and regional parks or other recreational facilities through increased use.

This impact is assessed as insignificant in the DEIR, based upon the assumption that new or expanded park facilities and recreation programs will be developed to accommodate the development facilitated by the GPU. A related impact, *ERM-12*, states: *The General Plan Update would include recreational facilities or require the construction or expansion of recreational facilities, which would have an adverse physical effect on the environment.*

The DEIR states: *Similar to any other development in areas of new growth, the construction of any future required park or recreation facilities could also result in a variety of environmental impacts (i.e., conversion of existing open space/agricultural lands, noise, traffic, light/glare, etc.) that cannot be mitigated. Without definitive plans, it cannot be determined at this time whether these impacts would be substantial and are therefore characterized as potentially significant.*

The revised DEIR must provide an analysis of the total size and location of park or recreation facilities that would be required to accompany the development that could be facilitated by the GPU.

CULTURAL RESOURCES

The DEIR states (4-37): *Impacts on particular properties or areas are not identified because specific information concerning the location and design of future development is unknown at this time. Thus, the DEIR fails to provide a map or to list known historic, cultural or paleontological resources that are within areas that could be opened to new development under the Draft GPU. The DEIR again lacks baseline information required by CEQA to evaluate the significance of impacts that will be caused by project (GPU) implementation.*

All areas of spiritual, cultural, historical, archaeological, paleontological, etc. significance by tribes with roots in Tulare County, and/or by historical societies which are at risk of development under the GPU at build-out should be clearly identified. The potential impact on each of these areas should be assessed and discussed with as much detail as possible.

Mitigation measures

ERM Implementation Measure 56A Archaeological Resource Surveys. Prior to project approval and after consultation, the County shall determine the need for project applicant to have a qualified archeologist conduct the following activities: (1) conduct a record search at the Regional Archaeological Information Center and other appropriate historical repositories, (2) conduct field surveys where appropriate, and (3) prepare technical reports, where appropriate, meeting California Office of Historic Preservation Standards (Archeological Resource Management Reports). [New Policy – Draft EIR Analysis].

The revised DEIR must specify the criteria that will be used by the County to determine the need for a project application to have a qualified archaeologist. Without knowing

these criteria, it would be impossible to determine the efficacy of this proposed mitigation measure.

ERM Implementation Measure 56B Discovery of Archaeological Resources: In the event that archaeological or paleontological resources are discovered during site excavation, the County shall require that grading and construction work on the project site be suspended until the significance of the features can be determined by a qualified archaeologist or paleontologist. The County will require that a qualified archeologist/paleontologist make recommendations for measures necessary to protect any site determined to contain or constitute an historical resource, a unique archaeological resource, or a unique paleontological resource or to undertake data recovery, excavation, analysis, and curation of archaeological or paleontological materials. County staff shall consider such recommendations and implement them where they are feasible in light of project design as previously approved by the County. [New Policy – Draft EIR Analysis].

The revised DEIR must specify the criteria that will be used to determine the “feasibility” of considering recommendations made by archaeologists/paleontologists for measures to protect sites determined to contain or contain or constitute an historical resource, a unique archaeological resource, or a unique paleontological resource. For example, what cost to a developer for the purposes of redesigning a project to avoid these resources would be considered excessive and infeasible? Specific guidelines must be provided in the DEIR to guide County staff in making determinations about when recommendations MUST be not only considered, but adopted. Without stricter guidelines, the mere promise that the County staff will “consider” expert recommendations and make a feasibility determination – without any public review—amounts almost to no mitigation at all.

ERM Implementation Measure 56C Discovery of Human Remains: “If any human remains are discovered or recognized in any location on the project site, there shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent human remains until:

...The landowner or his or her authorized representative rejects any timely recommendations of the descendent, and mediation conducted by the Native American Heritage Commission has failed to provide measures acceptable to the landowner. [New Policy – Draft EIR Analysis].

This exception must be deleted in a revised DEIR, as it completely contradicts and disregards other provisions designed to avoid or minimize disturbance of human remains, particularly those of Native American origin. If this provision is retained, the

revised DEIR must analyze whether this provision conflicts with Section 7050.5 of the California Health and Safety Code and CEQA Guidelines Section 15064.5. We contend that this provision would conflict with both the Code and the CEQA Guidelines.

The DEIR states: *Because it is possible that, after County decision-makers have approved a development project, grading activities in an area identified for development reveal an archaeological resource meeting the definition of an historical resource, and that such a previously unknown historical resource cannot be preserved or avoided without substantial redesign at significant cost, the County cannot be sure that impacts on all such historical resources can be mitigated to less than significant levels. For this reason, impacts to historical resources would still result in a significant and unavoidable impact.*

This DEIR language leaves open the possibility that no historical resources would be protected because of cost considerations. The revised DEIR must provide more specificity about how “substantial” redesign and how “significant” cost would have to be in order for those factors to take precedence over preservation of historic resources.

This discussion also ignores the County’s responsibility to ensure these cultural and historical resources are protected.

AIR QUALITY AND GLOBAL CLIMATE CHANGE

Air Quality

Tulare County residents already suffer from some of the worst air quality in the nation. It has been said that breathing our air is the equivalent to smoking a half a pack of cigarettes a day. As the DEIR points out, Tulare County is already in violation of small particulate (PM10) and ozone standards.

The people of Tulare County have emphasized repeatedly that improvement in air quality is their highest priority for the County’s goals. The EIR should include public input on air quality concerns generated at public workshops, hearings and other forums in the development of the Tulare County General Plan Update.

Impact AQ-1: The General Plan Update would result in a cumulatively considerable net increase of air pollutants. Future growth in accordance with the General Plan Update would exceed the SJVAPCD thresholds for ROG and PM-10.

The revised DEIR must examine and disclose the health effects of the increase in ROG and PM-10.

The San Joaquin Valley Air Basin is designated non-attainment for ozone and particulate matter (PM₁₀ and PM_{2.5}). The revised DEIR must describe how any net increase in PM₁₀, PM_{2.5}, and ozone will exacerbate the degree to which Tulare County is in violation of these standards.

The revised DEIR must provide data on expected increases to baseline air pollution figures that will result from the proposed General Plan Update at build-out at maximum allowable intensity/density of development. The assessment of air quality impacts for the revised DEIR must include methodology, data inputs and model assumptions, such as the distribution of future land uses facilitated by the GPU and resulting traffic patterns.

The DEIR states (4-54): *Depending on the feasibility and level of implementation as applied to individual development projects consistent with the General Plan, the inclusion of additional trip reduction measures would help to further reduce vehicle-related emissions.*

The revised DEIR must describe how “feasibility” of trip reduction measures will be determined. This language should be altered to say: *Mandatory trip reduction measures will be required to offset new development projects that increase vehicle trips.*

Impact AQ-2: The General Plan Update would not conflict with or obstruct implementation of an applicable air quality plan.

The revised DEIR must examine how the GPU would affect regional air quality and compliance with the Clean Air Act and the San Joaquin Valley Air Pollution Control District (SJVAPCD) standards, regulations and rules. The revised DEIR should also include an independent critique of project air pollution impacts from the SJVAPCD.

The DEIR must address requirements of SJVAPCD’s new Indirect Source Review (Rule 9510), and disclose mitigation measures for emissions covered by the new ISR rule as well as for emissions not covered by the rule.

Impact AQ-3: The General Plan Update would expose sensitive receptors to substantial pollutant concentrations.

In the last decade, the rate of childhood asthma has soared – in the Central Valley it has nearly doubled. Tulare County experiences some of the worst health conditions in the state, with avoidable hospitalizations about 20% higher than the statewide average, including diagnoses of asthma, congestive heart failure, diabetes, and hypertension.

The revised DEIR must include data pertaining to current air pollution-related health problems in Tulare County. The EIR must provide analysis of expected air pollution-related health impacts, including projected incidences of air pollution-related diseases in Tulare County as the result of the impacts from the GPU as proposed at build-out at maximum allowable densities per land use designation.

The revised DEIR should incorporate statistics related to projected work days lost and premature deaths per year caused directly or indirectly by the additional air pollution that would be generated by the proposed GPU at build-out, assuming maximum allowable intensity/density of development.

The County must assess the health effects of the GPU on sensitive receptors. The revised DEIR must provide specific mitigation measures that would reduce the significance of projected air pollution and health impacts, including measures strong enough to reduce the significance of impacts to sensitive receptors such as children, the elderly and persons with chronic illnesses. The basis used to evaluate the sufficiency and effectiveness of the proposed mitigation measures must also be provided.

Climate Change

Impact AQ-5: The General Plan Update could conflict with implementation of state goals for reducing greenhouse gas emissions and thereby have a negative effect on Global Climate Change due to CO₂ emissions from on-road vehicles and methane emissions from cattle and cattle manure.

In the California Global Warming Solutions Act of 2006, the State has declared, “Global warming poses a serious threat to the economic well-being, public health, natural resources, and the environment of California.” This legislation requires statewide greenhouse gas (GHG) emissions to be reduced to 1990 levels by 2020. Reducing global warming gas emissions is a statewide priority, and the CA Attorney General has stated that lead agencies, such as Tulare County, have the responsibility under CEQA to address the issue.

The DEIR concludes that Tulare County’s General Plan Update will create greenhouse gas emissions equivalent to 1% of the entire state of California’s reduction goal. The revised DEIR must disclose the data inputs and assumptions used to make this forecast. Is the 1% growth in greenhouse gas emissions forecast in the DEIR based upon baseline conditions versus a 2030 build-out scenario at maximum density and intensity, including the substantial amount of new town, transportation growth corridor and leapfrog sprawl development that would be allowed under the GPU?

The greenhouse gas emissions inventory in the revised DEIR must take account of the emissions from electricity and gas usage, vehicle trips generated by the GPU, water supply and transportation, operation of construction vehicles and machinery,

transportation of construction materials, and waste disposal including transport of solid waste.

The revised DEIR must also assess the impacts of global warming on planning and development considerations within the GPU, including flooding caused by increased rainfall and a proportionate reduction in the amount of snow, increased average temperature, and increased risk of fire.

The DEIR fails to incorporate or analyze development strategies or mitigation measure that would significantly reduce Tulare County's contribution of greenhouse gas emissions, in accordance with AB32. California counties that have failed to sufficiently plan to mitigate greenhouse gas emissions in their general plans have faced challenges from the California Attorney General, including the following examples:

In a June 19, 2007, letter to the City of San Jose regarding its Coyote Valley Specific Plan, the California Attorney General stated, "More importantly, we note that the City has avoided its fundamental responsibility under CEQA to determine whether this Project's contribution to the quintessentially cumulative problem of global warming is significant and, if so to require changes or mitigation that will avoid or reduce these impacts."

The August 21, 2007, agreement between the California Attorney General and San Bernardino County requires the County to add a policy to its General Plan that "describes the County's goal of reducing those greenhouse gas emissions reasonably attributable to the County's discretionary land use decisions and the County's internal government operations, and calls for adoption of a Greenhouse Gas Emissions Reduction Plan." In addition to requiring the County to inventory GHG emissions, the agreement requires the County to include in its Plan "a target for the reduction of those sources of emissions reasonably attributable to the County's discretionary land use decisions and the County's internal government operations."

The City of Rancho Cordova in its recent Rio del Oro Specific Plan EIR/DEIS stated, "A project would increase GHG (greenhouse gasses) above the (Global Warming Solutions Act of 2006) 1990 goal if it would result in generation of more than 2 tons of CO₂ per capita annually." The same document then computed that "approximately 6 tons of CO₂ /person would be generated by the project annually." Thus, "These emissions would be nearly 3 times the per capita level that would be needed to achieve 1990 GHG levels, if the goals of AB 32 were extended to all sources of emissions." Considering this information as well as the number of new residents of the project, the document concluded that, "The project would, therefore, contribute substantially to global warming impacts." A conclusion of substantial contribution and significance for GPU at buildout could very well be the same, and the revised DEIR should address this issue.

The Center for Biological Diversity (CBD) argues convincingly in their September, 2007, report entitled *The California Environmental Quality Act – On the Front Lines of California’s Fight Against Global Warming* that “In light of the magnitude and scope of the climate change impacts facing California and the mandate of both the California Global Warming Solutions Act of 2006 and Executive Order S-3-05 that existing levels of greenhouse gases be significantly reduced, any new emissions generated by a project should be considered cumulatively significant.”

The revised DEIR should discuss whether, in light of AB32, any new greenhouse gas emissions caused by implementation of the General Plan Update should be considered cumulatively significant.

CEQA requires the County to consider a reasonable range of alternatives to avoid the impact on global warming. In this case, a reasonable range of alternatives include higher density development, mixed use, and alternative locations closer to urban areas that would reduce vehicle miles traveled.

In addition to considering alternatives, the County must also consider mitigation measures to reduce the project’s impacts on global warming. PRC §21002. The County’s first priority must be to adopt mitigation measures that would reduce the project’s greenhouse emissions. See PRC § 21100(b)(3); CEQA Guidelines, App. F; see also Anderson First Coalition v. City of Anderson (2005) 130 Cal.App.4th 1173.

The DEIR (4-67) states that “addition of trip reduction measures would help reduce vehicle-related CO₂ emissions,” but fails to include any such measures. The revised DEIR must require specific trip-reduction measures that would significantly reduce CO₂ emissions, including general plan policies which locate all development to within existing UDBs and HDBs, and require (or incentivize) compact, efficient development, expanding in concentric circles from existing urban areas.

The revised DEIR should analyze suggestions contained in a September, 2007 report prepared by the California chapter of the American Planning Agency titled, “Planning Policy Principles for Climate Change Response.” Suggestion for reduction of greenhouse gas emissions by local governments include adoption of land use plans and codes that encourage mixed land use, higher densities (especially around transit), affordable housing, compact form, non-motor vehicle circulation, water and energy conservation, and other strategies.

TCCRG has proposed a “Healthy Growth Alternative” for inclusion in a revised DEIR that utilizes these principles, which would greatly reduce the amount of transportation-related greenhouse gas emissions produced by the GPU. This alternative, described later on in this document, should be evaluated in the DEIR for its efficacy in greatly reducing

the level of greenhouse gas emissions produced in Tulare County during the term of the GPU.

URBAN AND WILDLAND FIRE HAZARDS

Impact HS-11: The General Plan Update could expose people or structures to a significant risk of loss, injury, or death involving wildland fires, including where wildlands are adjacent to urbanized areas or where residences are intermixed with wildlands.

This impact is assessed as less than significant. The revised DEIR should re-evaluate the fire risk that would be caused by the GPU at build-out, and upgrade the significance of this impact.

The DEIR states (4-89): Wildland fires would continue to pose a significant threat to the people and structures of the County, in particular those residing in the Foothill and Mountain Growth Areas, which are more susceptible to wildland fires due to potential fuel loads (grassland and other vegetation). One of the primary factors contributing to the effective control of a vegetation fire is the rapid response by local fire units. This is especially true during fire season, when fire units may be committed to other fires and are unavailable to respond as quickly.

The DEIR fails to analyze how much new development would be allowed by the GPU at build-out in areas assessed as high or extreme wildfire risk. This must be disclosed in the revised DEIR, to allow a more comprehensive assessment of new fire risks posed by urban construction in fire-prone areas.

The revised DEIR must provide baseline data on the number of Tulare County residents that currently reside in areas at high risk of wildland fire, and compare that number with the number of people that residences and persons that would live in high wildland risk areas at full GPU build-out. How would the introduction of this development and population affect the wildland fire risk of current residents of these areas? How would the total increase in population and residences of these areas affect the ability of local fire units to provide adequate coverage to the full area at build-out?

The DEIR does not disclose the cost of providing an adequate number of firefighters to help protect the vast areas of new development allowed by the GPU. The revised DEIR must disclose the cost of providing adequate fire protection for the proposed GPU at build-out. The revised DEIR must also disclose lessening of fire protection for existing communities that would occur in a scenario where adequate additional funding is not provided.

The DEIR fails to consider the impacts of climate change on fire risk in Tulare County, particularly the widely forecast diminishment of snowpack, resulting in drier conditions for a longer portion of the year. The revised DEIR must include a discussion of the increase in wildland fire risk that is predicted by climate change forecasts, and describe how that increase risk will inform development siting decisions.

The revised DEIR should compare the relative fire risks and financial burden to the county of General Plan alternatives that allow sprawling rural development versus development within existing boundaries served by existing fire-fighting districts. The revised DEIR should analyze the following approaches to lowering risk and costs of wildfire in the General Plan Update:

- Mandatory impact fees on new development that reflect the true cost of providing fire protection and fuel reduction over the long-term
- Infill development within existing development boundaries which keeps fire emergency response time short and makes fire fuel-reduction programs more efficient.
- Restriction of new parcels in high hazard fire areas outside of fire district boundaries.

NOISE

Impact HS-13: The General Plan Update would result in the exposure of persons to or generation of noise levels in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies; or would result in a substantial permanent increase in ambient noise levels in the project vicinity above levels existing without the project; or would result in a substantial temporary or periodic increase in ambient noise levels in the project vicinity above levels existing without the project.

The revised DEIR must include data on current average ambient noise levels, including analysis of peak noise events and one-hour averages (for multiple periods of the day and night) at selected undeveloped areas eligible for development under the GPU. This data must then be compared with projected average, peak and one-hour events post-GPU build-out, assuming development occurs at maximum density and intensity within all land use designations. The revised DEIR should quantify the expected increase in noise levels that will be experienced by those living along travel routes that will experience substantial increases in traffic volume as a result of development patterns allowed and facilitated by the GPU at build-out.

The revised DEIR must describe the impact of increased noise on health and stress levels for humans living or working in areas that will have significant increases in noise

levels at GPU build-out. What impact will permanent, temporary and periodic increases in ambient noise levels have on wildlife species and habitat?

WATER RESOURCES

Water Supply

The GPU DEIR explains that water supplies and water infrastructure analysis for the General Plan is contained in a document entitled Water Resources General Plan Update. The DEIR relies upon and refers to this water report. EIR 4-105. But consistent with California Oak Foundation et al. v. City of Santa Clarita (2005), 133 Cal.App.4th 1219, the EIR is required to summarize the conclusions and analysis of the Water Resources General Plan. The DEIR does not contain an adequate summary of the information and analysis contained in the Background Report (BR).

The BR explains that demand for water within Tulare County is met from 4 major sources, which include groundwater, surface water, imported water, and exchanged surface water. EIR 7-10. Untreated groundwater constitutes the principle source of water in the County. Ibid. As the DEIR admits, although the water suppliers that operate within the County are not subject to County control, the County must coordinate with these districts to assure that sufficient water will be available to meet the demand created by the anticipated growth.

Overall, the DEIR and the BR on which it relies are legally inadequate because they lack sufficient detail about existing and projected water supplies. In most instances, the BR does not quantify existing supplies, or explain whether sufficient supplies likely exist to meet future water needs. Generally, the assessment of these water districts is not based on accurate and reliable data. Instead of relying on verifiable data and studies of underground water supplies, the BR relies on anecdotal evidence, and hearsay.

In many instances, the BR states that individual water agency's water supplies can be increased simply by adding new wells and/or water delivery infrastructure. These claims are contradicted and undermined by information contained elsewhere in the report, which reveals that the overdraft in the Tulare Lake Basin is estimated at a staggering 820,000 acre-feet per year (AFY). BR 10-11. The BR admits that this massive overdraft is the greatest overdraft projected in the state, and accounts for 56% of the statewide total overdraft.

The BR further explains that this overdraft is largely caused by restrictions on, and reductions in surface waters supply deliveries from the Delta, which have been caused in part by reductions that have resulted from the implementation of the Endangered Species Act in the Delta, "and other factors." Ibid. CVP exporters, who have seen their

deliveries reduced by up to 50%, have turned to pumping groundwater. BR 10-12. The BR further states that overdraft is most pronounced along the western boundary of the county, but there has also been a progressive lowering of groundwater levels along the easterly margins of the basin, particularly in the southerly part of the Kern-Tulare Water District's jurisdiction. Ibid.

The BR speculates that future reduction in irrigated acreage along the County's western boundary, as well as importation of CVP water through the Cross Valley Canal, obtained by exchange with Arvin-Edison Water Storage District, "will act to mitigate the lowering of water levels. . . ." Ibid. The BR fails to provide any evidence to support these speculations. No evidence is cited to support the contention that irrigated acreage will be reduced, or to describe the water exchange. There is no information from which the reader can understand whether the proposed exchange is likely to occur, the size of the exchange, or what approvals will be needed. Moreover, the BR makes no attempt to quantify the impact of these alleged mitigation measures, or to offer clues about the magnitude of the mitigation. The BR contains very little analysis or explanation of the environmental and regulatory factors that have resulted in the reduction of deliveries from the Delta.

The BR and the EIR do not contain the type of reliable and objective evidence that affords the County Board of Supervisors the ability to make reasoned and well-informed decisions about future growth in Tulare County.

Although these comments will not address each individual water supplier discussed in the EIR and the BR, the following examples illustrate these shortcomings.

Alpaugh Joint Power Authority

The BR explains that the Alpaugh Joint Power Authority water system has been plagued by high arsenic levels. (7-15). With respect to Well #10 (a new well on the edge of town), the BR states that water from this well is safe by government standards, as indicated by State Health officials. The BR then goes on to state that federal arsenic standards became more stringent in January 2006. The report fails to explain, however, whether water from Well No. 10 meets this more recent and stringent federal standard. The reader, therefore, is left to wonder whether water from Well No. 10 is safe or not.

The BR also states that "[a]lthough the Authority is unable to support additional connections at this time, ongoing system improvements will improve the system capacity and allow for additional service connections within the time horizon of the General Plan." (Background Report (BR)7-15.) This summary assessment of the Authority's future capacity does not constitute reliable or "substantial" evidence because it lacks any detail, and fails to discuss how system capacity will be improved, and

whether additional water will be available even if the system is improved, whether the water will be safe, and finally how much additional water may become available.

Cutler Public Utility District

The BR states that some of the water from the District's wells is not suitable for drinking because of high nitrate levels. BR 7-15. The BR also states that the District intends to dig additional wells and facilities to mix and dilute the contaminated water to make it suitable for drinking. The BR does not discuss the total capacity of the aquifer from which groundwater can be extracted, or the extent of the contamination, or whether it can or will be remediated. Without this information, it is impossible to draw any conclusions about future water supply availability.

Earlimart Public Utility District

The BR states that based on "available" information, this water system is operating at 88% capacity. BR 7-19. This statement leaves the reader to wonder whether the system can reliably serve its customers' water demand through multiple dry years, or whether the 88% refers to an average year. Likewise, insufficient information is provided to decide whether the aquifer from which Earlimart PUD extracts water has sufficient capacity to support additional supplies to support any additional growth.

California Water Service Company

The BR contains only anecdotal information about this water company, which supplies water to the community of Goshen. *Ibid.* The WRGPU expresses some "concerns" about water supplies, based on conversations with Cal. Water staff, who "indicated that with the projected population growth, the water supply is inadequate with concerns [sic.]" *Ibid.* Despite the water quality concerns and the apparent inadequacy of existing supplies, the BR opines that "water supply to accommodate future growth would likely be derived from additional groundwater wells." The BR makes no attempt to discuss the extent of the nitrate contamination of the Cal. Water wells, the company's ability to afford additional infrastructure, or whether the community has sufficient supplies to accommodate any future growth.

Ivanhoe PUD

The BR states that Ivanhoe PUD has ample water supplies, but sites no documents or studies as support for this contention. BR 7-20

London Community Services District

The BR admits that "specific carrying capacity information [for London CSD] is not available, however, it is likely that the London CSD would need to expand its water supply and improve the distribution system to support any significant growth . . ." BR 7-22. The BR goes on to report that the "district is confident that their water supply (three

wells) could support additional development” with additional infrastructure. The statement that specific capacity information is lacking cannot be reconciled with the CSD’s “confidence” that existing wells can support additional capacity. The BR’s conclusions and analysis are therefore unreliable.

Poplar Community Services District

The BR states that “based on available” information, Poplar CSD has excess capacity that can be used to accommodate future growth. BR 7-24. The BR does not provide the reader with any information about the source or reliability of the “available information.” The conclusions drawn from this undisclosed information, therefore, are inherently unreliable.

Springville PUD

The Springville PUD derives all of its water from the Tule River. The BR states that current demand is on average .3 million MGD, but Springville PUD estimates that it has a capacity of 1.5 MGD. BR 7-25.

Water Code §10910 et seq.

Water Code (“Wat C”) §10910 et seq., which codified SB 610, requires that when the lead agency (here, the County) prepares a notice of preparation for an EIR, it must identify public water systems that may supply water for the implementation of the proposed project, and must ask each such water agency to assess whether demand for water supplies generated by the proposed project was included in a the most recent urban water management plan (UWMP).

If the project was not accounted for by an adopted UWMP, or one does not exist, the water supplier(s) must prepare a Water Supply Assessment (WSA) to analyze the availability of water for the project. The WSA, which must be adopted at regular or special meeting of the water supply agency, must be included in the EIR.

This requirement applies to a general plan amendment. It does not appear that the County here has complied with the requirements of Wat. C. §10910 et seq., in that the Draft EIR does not contain any WSAs, nor any evidence that the County timely requested that water suppliers prepare a WSA as required by the Water Code.

In the recent Vineyard Area Citizens et al. vs City of Rancho Cordova et al. 40 Cal. 4th 412 (2007) decision, the California Supreme Court stated,

“We conclude that while the EIR adequately informed decision makers and the public of the County’s plan for near-term provision of water to the development, it failed to do so as to the long-term provision and hence failed to disclose the

impacts of providing the necessary supplies in the long term. While the EIR identifies the intended water sources in general terms, it does not clearly and coherently explain, using material properly stated or incorporated in the EIR, how the long-term demand is likely to be met with those sources, the environmental impacts of exploiting those sources, and how those impacts are to be mitigated.”

The revised EIR must include verification of sufficient water supplies for the future and must discuss the environmental impacts of supplying future water to all development allowed by the GPU at full build-out, assuming maximum permissible development intensity and density.

The EIR Water Supply Analysis is Inadequate

The EIR fails to adequately describe and analyze the substantial uncertainty surrounding the County’s water supplies. As noted above, the majority of the County’s residents and businesses consume groundwater. Despite the BR’s admission that the groundwater basin underlying the County suffers from massive overdraft, the EIR fails to adequately disclose and discuss the overdraft and how it affects the County’s existing residents, not to mention future growth.

The EIR does not really contain a detailed analysis of water supplies. As explained above, the water supply analysis in the BR does not cite or rely on objective, reliable sources for its water supply analysis. Instead, the BR and the EIR largely rely on hearsay and anecdotal information to conclude in most instances that sufficient supplies exist with additional wells and/or infrastructure. In its discussion of individual water agencies, the EIR uncritically states that the water supplies can be expanded with new wells and/or improvements to the distribution infrastructure. The EIR’s discussion of the individual suppliers ignores the EIR’s admission that

...in some of the unincorporated urban developments development areas, there are concerns that adequate water supplies cannot be achieved through sustainable groundwater management, that is, without creating declining groundwater levels, and adversely affecting existing wells. Such concerns are heightened by the fact that most of these areas are presently dependent on groundwater supplies. (4-129); and

Until comprehensive assessments of groundwater and groundwater management efforts occur, it is not possible to conclude that the County’s groundwater resources would be capable of meeting future water demands resulting from implementation of the General Plan Update. (4-130).

In other words, the EIR's conclusion that individual water supply agencies could increase capacity by digging additional wells did not take into account the overdraft condition of the aquifer. The DEIR must be revised in order to specifically identify communities whose water supplies cannot be expanded without exacerbating the existing overdraft conditions. A water demand and supply analysis should be conducted by Tulare County, in coordination with local water agencies, and presented in the revised DEIR. The General Plan must also be revised to include a curb on new development in such areas unless new sources of water are found.

Remarkably, the EIR never admits that any community within the County will not have sufficient supplies to meet future growth. Table 4-4, which contains a population estimate of the unincorporated community in the County, includes an estimate of population under the General Plan. It is completely unclear whether these population estimates take water supplies into account.

Table 4-5 summarizes domestic water supply conditions for unincorporated communities. Despite the groundwater overdraft, the cutbacks in water deliveries from the Delta, and the fact that the BR admits some communities do not possess water supplies adequate to support existing residents, let alone future growth, Table 4-5 finds that all rural communities have adequate or more than adequate water supplies. EIR, 4-107.

Instead of this vague and inaccurate table, the EIR must be revised to accurately and realistically disclose the extent of water supplies and admit the potential shortcomings without subterfuge. It should be noted that although not disclosed in Table 4-5, the text of the EIR admits that "sufficient water supplies may not be available at this time to serve all future growth consistent with the General Plan Update within some unincorporated communities" (4-127).

Elsewhere, the EIR admits that the County does not possess adequate information about groundwater resources (4-129). This revelation, although more honest than Table 4-5, is still too vague. The revised DEIR should clearly and unambiguously identify the communities which lack sufficient water to accommodate growth.

The General Plan, likewise, should be revised to identify those areas which, owing to lack of reliable water supplies, are not capable of sustaining growth. Moreover, the General Plan should be revised to include policies that clearly mandate that additional growth in unincorporated areas is not to be approved unless sufficient water supplies are provided. The revised DEIR must include analysis of general plan policies and mitigation measures that would maximize protection of groundwater supplies and groundwater recharge.

The DEIR also fails to adequately analyze the significant environmental impacts that would be caused by the increased pumping of groundwater to sustain the anticipated level of growth over the term of the General Plan Update. The revised DEIR should answer these questions:

- What effect will increased groundwater pumping have on groundwater levels and on water quality?
- How will potential lowering of groundwater levels affect nearby agricultural wells?
- Where will recharge water come from?
- Will this water be of sufficient quality to be used for recharge purposes?
- Rights to this recharge water should be substantiated.
- What are the long-term competing uses for this groundwater, for the agricultural water, and for the recharge water?
- What uncertainties are associated with long-term groundwater or alternative water supplies?
- What are the environmental impacts associated with securing and delivering these supplies?
- What mitigation is feasible for these environmental impacts?

The DEIR fails to adequately analyze the widely forecast impacts of climate change, including diminished snowpack and the resulting diminished water supply. The Final DEIR must provide an analysis of how available surface and groundwater would be affected by climate change impacts, and in turn how those projections will be used to inform planning for future development in Tulare County.

Water Quality

Impact WR-4: The General Plan Update could violate water quality standards or waste discharge requirements, or otherwise degrade water quality.

The DEIR analyzes this impact is less than significant. No analysis of baseline conditions is provided, and no analysis is performed of water quality impacts that will occur as a result of intensive new development allowed by the GPU. As such, the water quality assessment fails basic requirements to provide a baseline assessment of conditions, and to analyze significant effects that will be caused by project implementation.

The revised DEIR must provide a more substantial analysis of the impact that the GPU would have on the health of Tulare County watersheds and water quality. This analysis must include impacts associated with the wholesale grading of natural topography, loss

of natural vegetation, filling of streams and wetlands, compaction of soils, and removal of trees. The revised DEIR should describe the extent of such watershed disturbances projected to occur as a result of the GPU at full build-out at maximum allowable densities, and related affects such as alteration of local drainage patterns, increased impervious cover, loss of topsoil, increased erosion, and increased runoff.

Numerous studies indicate that when 10% or less of a watershed is covered in impervious surfaces, it becomes impaired. Greater amounts of impervious cover result in water quality impairments from increased pollution and runoff, as well as water supply impacts due to loss of groundwater recharge and contamination of local supplies. Increased runoff results in erosion and instability of stream banks, changes to channel structure, loss of natural vegetation and increased sedimentation.

The revised DEIR should analyze the expected increase in impervious coverage that would result from the GPU at full build-out, assuming maximum allowable development intensity/density, and describe related stormwater, runoff pollution, flooding, erosion, loss of groundwater recharge and all other related impacts that would occur.

In analyzing the impact of increased impervious coverage, the DEIR should reference the Impervious Coverage Model, and studies that link a percentage of watershed impervious surface with water body impairment

TRAFFIC

Impact TC-1: The General Plan Update would result in a substantial increase in vehicular traffic.

Between 1990 and 2000, VMT increased by 30% in the Sierra region, and is expected to continue to increase. (Planning for the Future, 2005, SBC Sierra Wealth Index) This increase in VMT is nearly double the increase in population, indicating that low-density development patterns are leading to longer commutes and more driving. This translates to development that consumes more land and generates greater amounts of impervious cover in the watershed.

A key factor driving these patterns is use separation, a conventional zoning practice that separates housing, jobs, schools, and retail, and is a common characteristic of suburban and exurban sprawl. The result is more driving – longer trips and more trips – because people need to drive between various uses to take care of daily needs.

The DEIR concludes that the General Plan Update will produce a substantial increase in traffic, and worsening conditions on most of our roads. The DEIR anticipates the need to widen 8 road segments in the county from 4 lanes to 6 lanes.

The DEIR states (5-12): Implementation of the General Plan Update would result in additional County-wide residential and non-residential land use developments, with many of the resulting population growth contributing additional vehicle use on local and regional streets and highways.

Despite a general forecast of increased traffic requiring widening of many roads, The DEIR fails to provide baseline assessments of peak hour traffic conditions at major intersections, current daily vehicle trips (DVT) or vehicle miles traveled (VMT) per day in Tulare County, etc. The DEIR also fails to quantify expected increases in vehicle trips, vehicle miles traveled and peak hour traffic conditions at major intersections.

The revised DEIR must quantify projections on expected increases in DVT, VMT and peak hour traffic at key intersections that would be allowed and facilitated by the GPU at full build-out. The revised DEIR must provide details of the traffic model and assumptions used to justify those projections, including analysis of traffic increases that would be caused by a substantial increase in new town, transportation growth corridor and rural residential sprawl development allowed under the GPU.

One of the most important numbers in determining traffic impacts (and resulting air quality impacts) is the number of vehicle trips per household per day. Clearly, the more such vehicle trips, the greater the traffic and air pollution. The Institute of Traffic Engineers single-family housing average value (and the default value for the URBEMIS air quality model) is 9.57 trips per household per day. If a rate lower than the average 9.57 rate is used in the revised DEIR, it should be thoroughly documented and justified. Similarly, methodology to determine the projected number of vehicle trips per tourist, per employee, etc. at project build-out must be disclosed.

The DEIR should analyze the increase in traffic gridlock expected if funds are not available for new road widening or interchange improvements. The revised DEIR must also analyze all of the impacts that would be caused by increased traffic and road widening, including increased noise, polluted road runoff, dust from pulverized road abrasives, loss of groundwater recharge areas, etc.

The DEIR states that “trip reduction measures” would help to offset the additional air pollution from automobiles forecast under the plan, but no such measures are proposed in the document. Other than proposed road widening and interchange improvements, for which funding is not identified, the DEIR offers no mitigation measures to reduce the substantial increases in traffic.

The revised DEIR must include measures to mitigate the impact of new traffic that will be caused by this plan, including an analysis of general plan policies that would locate

all development to within existing UDBs and HDBs, and require compact, efficient development.

The revised DEIR must compare and describe the difference in daily vehicle trips, vehicle miles traveled, road congestion, etc caused by general plan policies that allow substantial auto-dependent rural sprawl vs. policies that require efficient, compact development utilizing smart growth principles.

PUBLIC FACILITIES AND SERVICES

Wastewater

Impact PFS-1: The General Plan Update would exceed wastewater treatment requirements of the RWQCB for certain service providers and/or result in a determination by the wastewater treatment provider that serves or may serve the project that it has inadequate capacity to serve the project's projected demand in addition to the provider's existing commitments.

The DEIR notes that most of the wastewater treatment facilities (WWTF) in the County operate at or above capacity. Although the DEIR notes that some districts have plans to increase capacity, the DEIR correctly concludes that the future adequacy of wastewater capacity is unpredictable at this point in time. Based on this unpredictability, the DEIR essentially concludes that the growth planned by the General Plan exceeds the current and predicted wastewater treatment capacity. The DEIR notes that this constitutes a significant adverse impact. Owing to this significant adverse impact, the County must adopt concrete guidelines that would prevent future growth unless the County makes a finding that reliable wastewater treatment capacity exists to serve the proposed growth.

The revised DEIR must also provide a more comprehensive analysis of existing sewer system and wastewater treatment infrastructure upgrade needs in all areas of Tulare County, and an analysis of how funds diverted to service new development would affect investment in upgrading existing wastewater infrastructure.

The revised DEIR should analyze the higher costs of serving dispersed development and extending new infrastructure rather than repairing and maintaining existing systems, and the expected extra burden to rate and tax payers.

Impact PFS-4: The General Plan Update could substantially alter the existing drainage pattern of the area, including through the alteration of the course of a stream or river, in a manner which would result in substantial erosion or siltation on- or off-site or substantially increase the rate or amount of surface runoff in a manner which would result in on- or off- site flooding.

The DEIR states (5-50): Drainage runoff from developing areas or parcels is dependent on the percent of impervious surface assigned to individual parcels or projects. Development proposed under the Preferred Alternative especially on currently undeveloped areas, will increase the amount of impervious surfaces, thereby increasing the amounts and speed of runoff. Increased runoff volumes and speeds may increase erosion or siltation and result in localized nuisance flooding in areas without adequate drainage facilities.

The DEIR analyzes this impact as less than significant. No analysis of baseline conditions is provided, and no analysis is performed of changes in drainage patterns and resulting erosion, siltation or surface runoff that will occur as a result of intensive new development allowed by the GPU at build-out.

The revised DEIR must analyze all changes to drainage patterns and related runoff, flooding, erosion and other effects that would occur under the GPU build-out, including impacts associated with the wholesale grading of natural topography, increases in impervious cover, loss of natural vegetation and topsoil, filling of streams and wetlands, compaction of soils, loss of topsoil, and removal of trees.

Stormwater runoff

Impact PFS-5: The General Plan Update could create or contribute runoff water which would exceed the capacity of existing stormwater drainage systems or provide substantial additional sources of polluted runoff.

The DEIR analyzes this impact as less than significant. No analysis of baseline conditions is provided, and no analysis is performed of runoff volume that will occur as a result of intensive new development allowed by the GPU, nor whether existing or proposed stormwater drainage systems would be adequate to absorb the increased runoff. As such, stormwater runoff assessment fails basic requirements to provide a baseline assessment of conditions, and to analyze significant effects that will be caused by project implementation.

FOOTHILL GROWTH MANAGEMENT PLAN

The DEIR lists 21 impacts related to the FGMP update proposed in the GPU. However, the DEIR fails to sufficiently analyze or reveal the scale of adverse impacts that would be generated by changes to the existing FGMP, including policies that may ease restrictions on development in foothill growth corridors, such as the new proposed policy FGMP.

The DEIR fails to provide baseline data for the current FGMP, a rationale for why any changes are needed to the existing FGMP, or what the range of impacts will be related to each proposed change and all of the changes on a cumulative basis.

The revised DEIR must provide this information, and reveal how much additional development could be allowed during the term of the GPU by proposed changes to the FGMP, compared with continued implementation of the existing plan. All proposed changes to policies and implementation measures should be displayed side by side, so that the reader can fully understand what exactly will change in the FGMP, the basis for those changes, and the corresponding impacts that could occur with those changes if development is permitted at the maximum levels of intensities and densities allowed.

MOUNTAIN FRAMEWORK PLAN

The DEIR fails to sufficiently analyze or reveal the scale of adverse impacts that would be generated by changes to the existing Mountain Framework Plan, including policies that may ease restrictions on development, such as the new proposed policies contained in Framework Plan Policy M-1.

The DEIR fails to provide baseline data for the current Mountain Framework Plan, a rationale for why any changes are needed to the existing Mountain Framework Plan, or what the range of impacts will be related to each proposed change and all of the changes on a cumulative basis.

The revised DEIR must provide this information, and reveal how much additional development could be allowed during the term of the GPU by proposed changes to the Mountain Framework Plan, compared with continued implementation of the existing plan. All proposed changes to policies and implementation measures should be displayed side by side, so that the reader can fully understand what exactly will change in the Mountain Framework Plan, the basis for those changes, and the corresponding impacts that could occur with those changes if development is permitted at the maximum levels of intensities and densities allowed.

ALTERNATIVES TO THE GENERAL PLAN UPDATE

The DEIR states (7-1): “The purpose of this section of the EIR is to describe a reasonable range of alternatives to the project...that could feasibly attain most of the objectives of the project, but would avoid or substantially lessen any of the significant effects of the project, and to evaluate the comparative merits of the alternatives.” Unfortunately, the DEIR fails all aspects of this CEQA requirement.

As an initial matter, the DEIR can't reasonably evaluate any alternatives, including the GPU alternative, unless meaningful baseline measures have been established. The total

lack of such baseline measures makes both the GPU and the DEIR merely speculative, and as such, not in compliance with the core CEQA requirements.

The DEIR also fails to provide a “reasonable range of alternatives” for consideration by Tulare County citizens and decision-makers. As described in the DEIR, each proposed Alternative “assumes that all of the proposed policies and implementation measures contained in the Goals and Policies Report for the updated General Plan would be included as part of (this) alternative.” In other words, the four GPU Alternatives proposed in the DEIR (in addition to the “no-project alternative”), while offering minor differences on the surface, have all been framed to implement the same non-specific and loophole-ridden General Plan policies and implementation measures set out in the GPU.

Although the proposed Alternatives have different titles and different stated priorities, they are as vague and general in nature as the underlying General Plan that they would implement. Because all Alternatives incorporate the policies and implementation measures of the GPU, they lack specific growth-directing measures that would in fact produce different General Plan outcomes. As a result, each Alternative would allow, and even encourage, costly, inefficient sprawl development that would challenge our existing communities economically and politically while also jeopardizing Tulare County’s farmlands, natural resources, public health, and quality of life.

This critique applies equally to Alternative 5, which was purportedly developed based upon “comments from Tulare County Citizens for Responsible Growth and American Farmland Trust.” While we appreciate the attempt to include a GPU Alternative that addresses the goals we share with the overwhelming majority of Tulare County citizens who participated in the “visioning” process, the proposed Alternative 5 is not reflective of our core concerns or the extensive and detailed input we previously provided. Given its exceptions, omissions and vagueness, Alternative 5 offers little essential or practical difference from the other development alternatives presented, and cannot therefore be objectively considered a true, much less an environmentally-superior, development alternative.

The DEIR projects that, whichever Alternative is selected, 26-30% of growth during the term of the GPU would occur in Tulare County’s unincorporated areas. Again, the nearly identical outcomes in terms of future population distribution are predetermined by the incorporation of the GPU’s flawed policies and implementation measures into each “alternative.” No alternative is provided that would, for example, direct 90% or more of future growth to already urbanized areas, require resource-efficient development, and strictly limit the circumstances under which development boundaries could be modified.

Notably, however, there is *no* population distribution information given for the "Confined Growth" Alternative 5. Why is this information "not available" for this Alternative only?

The DEIR is also inherently inadequate because it includes only a superficial assessment of the degree to which each proposed Alternative would meet the stated objectives of the GPU, without detailed justification for its conclusions. Conclusions about the failure of the City-Centered and the Confined-Growth alternatives to meet various project objectives are not well explained, and are simply not supportable given the absence of details provided about the specifics of each Alternative's proposal.

Similarly, the DEIR fails to provide a quantified, objective comparison of the significant impacts that would result from the adoption of each Alternative. Instead, unsupported, general assessments are proffered about the impact each Alternative would have compared with the General Plan Update (i.e., a more or less Significant Impact than the GPU), with no basis provided for these assessments. What criteria were used to categorize the relative impacts generated by each proposed Alternative to the GPU? What data, benchmarks, thresholds or other forms of analysis were used to conclude that an impact created by one Alternative would be lesser or greater than the GPU's impact? Indeed, how can any assessment be made at all, without baseline measures against which the results can be compared?

The root of the DEIR's problem is that non-specific Alternatives are proposed to implement a vague and loophole-ridden GPU, making it virtually impossible to "evaluate the comparative merits of the alternatives," as required by CEQA.

As a result, the relative comparisons of the Alternatives are meaningless and of little or no value in helping Tulare County decision-makers select an Alternative that could "feasibly attain most of the objectives of the project, but would avoid or substantially lessen any of the significant effects of the project."

To fulfill the most basic of CEQA requirements, the DEIR must be meaningfully revised to present a reasonable range of General Plan Alternatives that includes at least one alternative that clearly and firmly directs growth into those urbanized areas that have the desire and capacity to accommodate that growth.

Healthy Growth Alternative

We urge the County to include an Alternative to the GPU that truly directs growth into our existing urbanized areas, that protects agriculture and open space through efficient development, that allows no leapfrog development of new towns and growth corridors, and provides only very limited circumstances under which urban development

boundaries may be expanded. This loophole-free "Healthy Growth Alternative" should include clear, firm policies that support the following:

- Base the location, density, and amount of growth within urbanized areas on their desire and capacity to accommodate growth.
- Locate development (except that which is directly related to agriculture) within existing Development Boundaries, without loopholes or exceptions that allow for leapfrog new town or growth corridor development.
- Require (or incentivize) efficient development within or contiguous to existing urbanized areas.
- Make community and hamlet development boundaries meaningful, long-term planning boundaries by firmly limiting the circumstances under which they can be expanded.
- Discourage the premature conversion of agricultural lands to urban uses, and offset unavoidable impacts to agricultural lands and natural resource areas with mandatory mitigation measures such as conservation and agricultural easements.
- Provide strong, clear policies with concrete, enforceable implementation measures that include definite timeframes, funding sources, and departments in charge of monitoring and enforcement.

To provide a true Healthy Growth Alternative for consideration in a revised DEIR, the underlying General Plan Update must also be substantially revised to provide specificity about where growth will be directed during the duration of the GPU, and how agricultural and natural resource lands will be protected and preserved.

The revised DEIR must include for the Healthy Growth Alternative a detailed, quantified, justified analysis of its relative costs, benefits and capacity to achieve GPU objectives relative to other proposed GPU Alternatives.

In performing a quantified comparison of a true range of General Plan Update Alternatives, the revised DEIR must identify which of the Alternatives would "avoid or substantially lessen any of the significant effects of the project," particularly in regard to areas identified as priorities for the County in the DEIR:

- Transportation and Circulation Impacts
- Air Quality Impacts
- Noise and Nuisance Effects
- Loss of Agricultural Land
- Biological Resource Impacts
- Viewshed Impacts

The revised DEIR must compare the specific environmental and fiscal effects of an Alternative that features efficient city and community-centered development with the effects of Alternatives that allow "market-driven," sprawling development -- including specific effects on agricultural/open space land consumption, costs of providing and servicing infrastructure (e.g., roads, water, sewer, schools, police, firefighters, parks, etc.), vehicle miles traveled per capita, tons of greenhouse gases and air pollutants such as NOx emitted, impact on and compatibility with existing water supplies, water quality and wastewater treatment facilities, amount of new impervious surfaces created, acres of wildlife habitat lost, etc.

The following are examples of the specific questions that must be addressed in a quantitative comparison of GPU Alternatives, including TCCRG's proposed "Healthy Growth Alternative."

- What is the difference between the General Plan Update and each Alternative in the number of acres of important agricultural land converted to urban or other non-agricultural uses?
- What acreage of wildlife habitat would be disrupted by each Alternative?
- How many tons of additional air pollutants, such as ozone and PM2.5 will be produced by each Alternative?
- How many additional air pollution- induced diseases, such as asthma, are projected to occur under each Alternative?

The DEIR describes policies (e.g., Land Use policies 1.1, 1.2, 1.3, 1.4, 1.8) to reduce air pollution, including the following which are "designed to encourage economic and social growth while retaining quality of life standards":

- smart growth and healthy communities
- innovative development
- prevent incompatible uses
- compact development
- encourage infill development

The revised DEIR should address the ways that the various GPU Alternatives would conform to the above air-pollution reducing planning approaches, as well as proposed "trip reduction measures." The extent to which the proposed GPU Alternatives would meet these criteria should be evaluated in the context of existing land uses, traffic patterns, location of employment and shopping centers, etc. in Tulare County.

The revised DEIR must quantify projected increases in vehicle trip generation and vehicle emissions that will accompany each alternative, including analysis of TCCRG's

proposed Healthy Growth Alternative. The underlying traffic model and assumptions must be provided. How many more cars are expected on our roads per day under each alternative? How much traffic gridlock delay is expected if funds are not available for new road widening or interchange improvements? What effect would such road widening or interchange improvements have on overall traffic levels? On air quality?

Using the best greenhouse gas modeling tools available, the Final EIR must provide a more specific, quantified analysis of the difference in greenhouse gas emissions that would be produced by each alternative, including TCCRG's proposed Healthy Growth Alternative. The revised DEIR should consider which of the proposed GPU Alternatives would be most commensurate with California AB32. As part of this analysis, the revised DEIR should reference a September, 2007 report prepared by the California chapter of the American Planning Agency entitled, "Planning Policy Principles for Climate Change Response." Its suggestions for reduction of greenhouse gas emissions include mixed land use, higher densities (especially around transit), affordable housing, compact form, non-motor vehicle circulation, water and energy conservation, and other strategies.

How would open space scenery and night sky views be affected by alternatives that allow significant growth in currently undeveloped areas, as opposed to an alternative that would direct all growth to within existing development boundaries, using efficient, infill development approaches? A visual/scenic simulation of each proposed GPU Alternative at build-out should be provided, from the vantage point of key observation points in the County.

The DEIR should compare the amount of projected population increase that would be accommodated within the existing development footprint (urbanized areas) of Tulare County, and within existing development boundaries, among the GPU Alternatives, using a range of density per acre scenarios. Similarly, the revised DEIR should analyze the corresponding acreage of farmland and wildlife habitat that would be developed, vehicle trips generated, air pollution generated and related impacts associated with compact, efficient development within existing urbanized areas versus a more dispersed, sprawling pattern of development.

The revised DEIR should analyze the expected increase in impervious coverage that would result from each GPU Alternative at full build-out, assuming maximum allowable development intensity/density, and describe related stormwater, flooding, erosion, loss of groundwater recharge and other impacts that would occur.

- What is the acreage of new impervious surfaces that would be created under each Alternative?

- How would total area of impervious cover differ among Alternatives in groundwater recharge areas?
- How do the Alternatives compare in terms of reliance upon depleted or unknown water supplies?
- How do the Alternatives compare in regard to compatibility with existing wastewater infrastructure?

If, after conducting a specific analysis among all Alternatives, the revised DEIR concludes that the Healthy Growth Alternative is the environmentally-superior alternative but evaluates it as being less feasible, more costly, or less able to achieve the desired GPU outcomes, then the revised DEIR must provide detailed substantiation of these conclusions.

The revised DEIR must include extensive analysis and justification for assessments made about the ability of each of the proposed Alternatives to meet project objectives, as well as the relative priority of each Project Objective. For example:

- What is the relative importance to Tulare County of helping unincorporated communities to grow versus meeting other project objectives such as protecting the County's agricultural uses and scenic lands from urban encroachment, avoiding rural residential sprawl and promoting reinvestment in existing communities?
- What is the relative importance of helping unincorporated communities to grow versus accommodating new growth in places that produce the fewest negative effects to farm land, water quality and supply, traffic volumes, air quality, etc?

In considering the economic feasibility and/or costs of implementing a Healthy Growth Alternative compared with the four Alternatives presented in the DEIR that would allow leapfrog sprawl and related development, the revised DEIR should reference relevant studies conducted on the financial costs of sprawl vs. efficient, infill development.

In recent decades, numerous studies have documented the costs of public services to serve different development patterns. Unsurprisingly, most of these studies have found that it costs considerably less to provide linear services (sewer, water, streets) to a compact, efficient development pattern (city/community-centered growth) than to a sprawling pattern. The revised DEIR should include reference to at least the following studies and their conclusions:

- A 1995 study, *Alternatives for future urban growth in California's Central Valley: The Bottom Line*, compared the consequences of adding an expected 8 million people by the year 2040 to the Central Valley in two possible scenarios: at

3 dwelling units per acre and at 6 units per acre. The study concluded that cities and counties would save \$29 billion in the cost of taxpayer-financed services over a 45 year period if housing developed at an average density of 6 units per acre rather than 3 units per acre.

- A CSU-Bakersfield study compared the infrastructure costs associated with a community-centered development in central Bakersfield with those costs for a sprawling subdivision away from town. The sprawl development cost 25% more, \$927 per house, per year, to service.

The revised DEIR must address these relevant studies, and apply their findings. Any findings presented in the DEIR contrary to those provided in relevant studies such as those presented above must be substantiated. As part of the analysis of the costs to Tulare County of servicing different GPU Alternatives, the revised DEIR must relate those findings to the ability of Tulare County to achieve the stated GPU Project Objectives, including: Promote reinvestment in existing communities and hamlets in a way that enhances the quality of life in these locations.

In other words, the DEIR must determine which of the Alternatives would be expected to generate the most revenue and cost the least to serve, and therefore produce the most net funds to help existing communities to meet currently un-met needs, such as water supply and transportation infrastructure upgrades.

Finally, in order to ensure that the DEIR is revised sufficiently to provide a reasonable range of Alternatives under CEQA, including a true Healthy Growth Alternative, and that the GPU documents have been revised sufficiently to provide clear, unambiguous policies and concrete, measurable implementations that would truly effectuate a Healthy Growth Alternative, we urge the County to engage the public by circulating the improved, revised draft GPU and DEIR.

Growth Inducing Effects of the General Plan Update

Population Growth: Induced or Absorbed?

The General Plan Update is predicated upon a substantial increase in population in Tulare County by 2030. The DEIR states, that “future development in Tulare County will be driven by population growth and the distribution of that growth throughout the County.”

The DEIR states that the “...County experienced a 36.8 percent population increase since 1980.” Yet, the DEIR forecasts a 69% rate of growth during the term of the

General Plan Update, nearly double the rate of growth that has occurred over the last two decades.

The revised DEIR must fully disclose the data, models and assumptions used by the California Department of Finance and the Tulare County Association of Governments to project growth in Tulare County over the life of the General Plan Update. Why is the rate of growth projected during the term of the GPU projected at nearly double the rate of growth that has occurred in recent decades?

The DEIR states that “implementation of the GPU would induce some of the population and housing growth in the County, in part because it increases intensity of uses and densities in both the cities and communities that comprise the County.”

The revised DEIR must disclose what portion of the population growth projected in the DEIR would be induced by the increases of uses and densities, and other changes proposed in the GPU, including new towns, growth corridors and alterations to the FGMP. The revised DEIR should include a TCAG forecast for population growth in Tulare County that would occur under the current General Plan/no-project Alternative.

A revised DEIR must analyze the extent, to which the proposed GPU would allow and even encourage sprawl development, and therefore induce population growth rather than serve as a guide for where growth is to be allowed. In other words, what is the expected future population level under General Plan policies that would direct growth to defined areas, versus induce growth by allowing leapfrog sprawl development wherever it is proposed? What level of population growth, with what impacts, would occur if market-driven growth were permitted at maximum density on all land use designations, as proposed in the GPU?

Since Tulare County’s consultants have concluded that all projected population growth in Tulare County can be accommodated within existing urban development boundaries, the revised DEIR must disclose the reason for not directing a greater share of expected growth within those boundaries, as well as the rationale for directing 25% of expected population growth to growth corridors, new towns, and rural areas throughout the county.

The DEIR should analyze how much new population could be accommodated within the existing development footprint (e.g., infill) of Tulare County’s existing urbanized areas if density were increased from current levels to a range of 10-30 people per acre, with increasing density scaled in over the term of the GPU.

Without this information, it would be impossible to adequately analyze the various alternatives proposed by DEIR in order to reach an informed and reasoned conclusion.

Thank you for consideration of our comments.

Sincerely,

Sarah Graber
Executive Director

Laurie Schwaller
Co-Chair

Jeff Steen
Co-Chair



1515 CLAY STREET, 20TH FLOOR
P.O. BOX 70550
OAKLAND, CA 94612-0550

Public: (510) 622-2100
Telephone: (510) 622-2142
Facsimile: (510) 622-2270
E-Mail: Susan.Fiering@doj.ca.gov

April 14, 2008

By Overnight Mail and Facsimile

David Bryant
Project Planner
Tulare County Resource Management Agency
Government Plaza
5961 South Mooney Boulevard
Visalia, CA 93277

RE: Draft Environmental Impact Report for Tulare County General Plan 2030 Update
SCH # 2006041162

Dear Mr. Bryant:

The Attorney General submits these comments pursuant to the California Environmental Quality Act ("CEQA") on the Draft Environmental Impact Report ("DEIR") for the Tulare County General Plan 2030 Update ("General Plan").¹

1. Introduction

The general plan is "at the top of the hierarchy of local government law regulating land use[.]"² As the California Supreme Court has noted, this basic land use charter governing the direction of future land use is in the nature of a planning "constitution."³ Taking some measure of control over future land use is the local government's affirmative duty. "The planning law . . . compels cities and counties to undergo the discipline of drafting a master plan to guide future

¹The Attorney General provides these comments pursuant to his independent power and duty to protect the natural resources of the State from pollution, impairment, or destruction in furtherance of the public interest. (See Cal. Const., art. V, § 13; Cal. Govt. Code, §§ 12511, 12600-12; *D'Amico v. Board of Medical Examiners* (1974) 11 Cal.3d 1, 14-15.) These comments are made on behalf of the Attorney General and not on behalf of any other California agency or office.

²*DeVita v. County of Napa* (1995) 9 Cal.4th 763, 773 (internal citation omitted).

³*Ibid*; *Leshar Communications, Inc. v. City of Walnut Creek* (1990) 52 Cal.3d 531, 542.

local land use decisions.”⁴ The Tulare County General Plan thus presents both an opportunity and a responsibility to the County – an opportunity to shape the future growth of the County, and a responsibility to ensure that such growth is consistent with State and local goals, including protecting the public health and welfare of the County’s inhabitants and protecting the environment.

According to the DEIR, the Plan anticipates that the population of Tulare County will reach 621,549 by 2030, an increase of approximately 254,000 people,⁵ and that emissions of carbon dioxide (CO₂) from this growth will increase by approximately 1.7 million tons/year. As you are aware, global warming presents profoundly serious challenges to California and the nation. While we commend the County for addressing greenhouse gas (“GHG”) emissions in the DEIR, we have concluded that the DEIR is not in compliance with the requirements of CEQA in significant respects. First, the DEIR does not disclose the actual growth that may occur under the proposed General Plan – which leaves much of the control over land uses and growth patterns to the market – and the GHG emissions that will result from such growth. Second, the DEIR considers only vehicle miles traveled and dairies as sources of GHG emissions, and neglects to consider other significant new sources of GHG emissions, including emissions from construction, residential and non-residential energy use, and other activities that will result from the build-out of the Plan. Third, the DEIR considers only a narrow range of alternatives, ignoring any alternative that would aggressively foster “smart growth” by more significantly limiting development to existing urban areas. Finally, the DEIR does not impose enforceable and quantifiable mitigation measures to mitigate the impact of the GHG emissions.

Because the analysis of GHG emissions is inadequate and incomplete, the DEIR does not comply with CEQA, and does not provide substantial evidence to support the County’s finding that the impacts of GHG emissions will be “significant and unavoidable.”

2. Climate Change Background

Before discussing the General Plan and legal adequacy of the DEIR, it is important to understand why human-caused climate change is of particular concern to California and to the San Joaquin Valley.⁶

The impacts of climate change are not limited to remote parts of the world – they are being felt in California today. In California, global warming is causing damage to agriculture, losses to the Sierra snowpack, higher risks of fire, eroding coastlines, and habitat modification

⁴*DeVita, supra*, 9 Cal.4th at p. 773.

⁵The County indicates that the General Plan is intended to accommodate 25% of this growth in the unincorporated areas, an increase of approximately 64,000 residents.

⁶The physics of climate change are well described in the Intergovernmental Panel on Climate Change, Fourth Assessment Report, “Frequently Asked Questions” (available at http://ipcc-wg1.ucar.edu/wg1/Report/AR4WG1_Print_FAQs.pdf) and need not be repeated here.

and destruction. Global warming affects public health directly, through heat-related illnesses and deaths caused by more hot days, and longer heat waves, and indirectly as higher temperatures favor the formation of ozone and particulate matter in areas that already have severe air pollution problems.⁷

The impacts of climate change are of particular concern to the San Joaquin Valley and Tulare County, especially in the areas of agriculture and public health. According to a whitepaper from the California Climate Action Team on the impacts of climate change on agriculture, “California’s cornucopia is predicated on its current climate and its supply and distribution of irrigation water[.]”⁸ Rising temperatures will cause larger crops growing in warmer climates to use more water and also may stimulate more weeds and insect pests. Pollination – essential to many Valley crops – will be negatively affected if warming causes asynchronization between flowering and the life cycle of insect pollinators. And the occurrence of adequate winter chill, necessary for fruit trees to flower, may be lost for many fruit species.⁹ Higher temperatures due to global warming also have an impact on the dairy industry, which is of special importance to Tulare County, by causing lower milk production and heat-related animal deaths. Dairy producers will no doubt recall the extended heat wave of 2006, which caused the death of thousands of cows and created a backlog of carcasses for disposal.¹⁰

The health related impacts of climate change are also of substantial importance to the County. A Stanford study details how for each increase in temperature of 1 degree Celsius (1.8 degrees Fahrenheit) caused by climate change, the resulting air pollution would lead annually to about a thousand additional deaths and many more cases of respiratory illness and asthma.¹¹ The effects of warming are most significant where the pollution is already severe. Thus, the study has serious implications for California overall and for the San Joaquin Valley in particular. Given that California is home to six of the ten U.S. cities with the worst air quality, including Visalia-Tulare, and that the San Joaquin Valley has some of the worst air quality in the nation, the State and the Valley are likely to bear an increasingly disproportionate public health burden if we do not significantly reduce our GHG emissions.

⁷A summary of impacts to California, together with citations, is available on the Attorney Generals’ website at <http://ag.ca.gov/globalwarming/impact.php>.

⁸California Climate Change Center, *An Assessment of the Impacts of Future CO2 and Climate on Californian Agriculture* (March 2006) at p. 1, available at <http://www.energy.ca.gov/2005publications/CEC-500-2005-187/CEC-500-2005-187-SF.PDF>.

⁹*Id.*, Abstract.

¹⁰Williams, “Dairy producers regroup after cow deaths,” *Bakersfield Californian* (Aug. 5, 2006) available at <http://www.bakersfield.com/102/story/66292.html>.

¹¹ Jacobson, Mark Z., *On the causal link between carbon dioxide and air pollution mortality*, *Geophysical Research Letters*, Vol. 35 L03809 (2008).

The atmospheric concentration of CO₂, the leading GHG, is now 380 parts per million (ppm),¹² higher than any time in the last 650,000 years,¹³ and rising at about 2 ppm per year. According to experts, an atmospheric concentration of CO₂ “exceeding 450 ppm is almost surely dangerous” to human life because of the climate changes it will cause.¹⁴ Thus, we are fast approaching a “tipping point,” where the increase in temperature will create unstoppable, large-scale, disastrous impacts for all the inhabitants of the planet.¹⁵

We must take prompt action and control of our future. In the words of Rajendra Pachauri, Chairman of the United Nations Intergovernmental Panel on Climate Change, “If there’s no action before 2012, that’s too late. What we do in the next two to three years will determine our future. This is the defining moment.”¹⁶

3. Description of the General Plan

Pursuant to Government Code section 65302, subdivision (a) a general plan must contain a land use element that

designates the proposed general distribution and general location and extent of the uses of the land for housing, business, industry, open space . . . and other categories of public and private uses of land. . . .

The distribution and general location of land uses under the Tulare County General Plan Update is almost impossible to discern from Plan documents. Maps typically accompany general plans.¹⁷ While the General Plan does identify a limited number of land use designations (General Plan at pp. 5-5 to 5-12), it does not include any maps or diagrams identifying where the designations are, or the acreage available for development within each designation. A document entitled Board Update, dated April 2006, which was provided to the Board of Supervisors, includes detailed land use maps for certain limited areas – specifically, each of the 21 existing

¹²<http://www.esrl.noaa.gov/gmd/ccgg/trends/>

¹³IPCC 4th, WGI, Frequently Asked Question 7.1, *Are Increases in Atmospheric Carbon Dioxide and Other Greenhouse Gases During the Industrial Era Caused by Human Activities?* http://ipcc-wg1.ucar.edu/wg1/Report/AR4WG1_Print_FAQs.pdf.

¹⁴ See http://www.nasa.gov/centers/goddard/news/topstory/2007/danger_point.html.

¹⁵ See *ibid.*

¹⁶Rosenthal, *U.N. Chief Seeks More Leadership on Climate Change*, N.Y. Times (November 18, 2007).

¹⁷See *Las Virgenes Homeowners Federation, Inc. v. County of Los Angeles* (1986) 177 Cal.App.3d 300, 307 [general plan maps are visual depictions of planned development policies indicating the geographic or spatial aspects of the plan].

unincorporated communities “hamlets.” These maps, however, are not included in the General Plan. Nor does the Plan contain a table or tables indicating the general location, extent and type of land uses that could occur in the various geographic areas of the County. Ultimately, it is “impossible to relate any tabulated density standard of population to any location in the County.”¹⁸

The General Plan contains a Goals and Policies Report that purports to set forth a “hierarchy of goals, policies, and implementation measures designed to guide future development in the County.” (General Plan at p. 1-3.) The policies and implementation measures are in many cases nothing more than statements of preferences and opinions, rather than definite commitments to adopt enforceable policies and specific standards, or to use the powers the County has to enact ordinances and control development.

For example, one policy states that the County shall “encourage” residential growth to locate in existing Urban Development Borders (“UDBs”), Urban Area Boundaries (“UABs”), and Hamlet Development Boundaries (“HDBs”), but none of the accompanying implementation measures provide enforceable requirements or standards that would ensure that this policy is followed.¹⁹ (General Plan at pp. 2-16 to 2-21.) Similarly, while the Plan states a policy of discouraging “new towns” (*id.* at p. 2-12), the policy has only very broad, general criteria and appears to allow new planned communities at an unlimited number of locations in the County as controlled by the market.²⁰ In the area of Land Use, the Plan again states a series of policies that are said to promote smart growth, encourage mixed use and infill development, etc. (General Plan at pp. 5-12 to 5-19), but the accompanying implementation measures contain no enforceable requirements that would ensure that development occurs consistent with these policy statements. (*Id.* at pp. 5-22 to 5-24.)

Thus, despite the general goals of the Plan to direct development in urban areas and in unincorporated hamlets and communities, nothing in the Plan will prevent a significant portion of the future growth from occurring outside the UDBs, for example in the foothill areas in the far eastern part of the County that are far from services, jobs, and transportation.

Ultimately, it appears that, rather than being a “constitution” for future development, the General Plan will largely leave the shape of new development, in amount and in location,

¹⁸See *Camp v. Board of Supervisors of Mendocino County* (1981) 123 Cal.App.3d 334, 350.

¹⁹ According to the 2003 State of California General Plan Guidelines (“General Plan Guidelines”) at pp. 16-17, published by the Governor’s Office of Planning and Research, a general plan should contain implementation measures which are actions, procedures, programs, or techniques, that carry out the general plan policy, as well as standards, which are rules or measures establishing a level of quality or quantity that must be complied with or satisfied.

²⁰ Similarly the Plan states a policy to “discourage the creation of ranchettes. . . .” (Plan at p. 4-4), which are residences built on large lots from 1.5 acres up. This policy does not, however, impose any enforceable limitations on ranchette development.

primarily to the control of the market. This is as much as acknowledged in the DEIR which states repeatedly that “[w]hile the proposed General Plan Update includes policies intended to control the amount and location of new growth. . . it does not solidly advocate, promote or represent any one development scenario because any attempt to predict the exact pace and locations of future market-driven growth is considered speculative.” (DEIR at p. ES-7.)

4. CEQA Requirements

An EIR is an informational document intended to provide both the public and government agencies with detailed information about the effects of a proposed project on the environment, to list ways in which those effects can be mitigated, and to discuss and analyze alternatives to the project.²¹ 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. . . .”²² The project must be adequately described in the EIR,²³ and the entirety of the project must be considered, not just some smaller portion of it.²⁴ A decision to approve a project “is a nullity if based upon an EIR that does not provide the decision-makers, and the public, with the information about the project that is required by CEQA.”²⁵

CEQA was enacted to ensure that public agencies do not approve projects unless feasible measures are included that mitigate the project’s significant environmental effects.²⁶ CEQA therefore requires that “[e]ach public agency shall mitigate or avoid the significant effects on the environment of projects that it carries out or approves whenever it is feasible to do so.”²⁷ The mitigation measures must be enforceable and the benefits quantifiable, rather than just vague

²¹*Laurel Heights Improvement Ass’n v. Regents of University of California* (1988) 47 Cal.3d 376, 390-91 (citing Pub. Res. Code, § 21061; Cal.Code Regs., tit. 14, § 15003, subd. (b)-(e) (hereafter “Guidelines”).

²² Guidelines, § 15378, subd. (a).

²³ Guidelines, § 15124.

²⁴ *San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645, 654.

²⁵ *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 721-22 (quoting *Santiago County Water Dist. v. County of Orange* (1981) 118 Cal.App.3d 818, 829).

²⁶ Pub. Res. Code, § 21002.

²⁷ Pub. Res. Code, §§ 21002.1, subd. (b); *City of Marina Board of Trustees* (2006) 39 Cal.4th 341, 360.

policy statements.²⁸

The CEQA Guidelines further provide that the EIR must discuss a “range of reasonable alternatives to the project or to the location of the project which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives.”²⁹ The EIR must include sufficient information about each alternative to provide meaningful analysis and comparison,³⁰ and must consider alternatives that could eliminate significant effects or reduce them to a less than significant level, even if the alternatives could impede the attainment of the project’s objectives to some degree.³¹

5. The DEIR Does Not Adequately Analyze GHG Emissions Under CEQA

As the Legislature has recognized, global warming is an “effect on the environment” under CEQA, and an individual project’s incremental contribution to global warming can be cumulatively considerable and therefore significant.³² The DEIR briefly and generally discusses global climate change, noting that California has passed Assembly Bill 32 (“AB 32”), the Global Warming Solutions Act of 2006, which requires the Air Resources Board to implement regulations to reduce GHG emissions statewide to 1990 levels by 2020. (DEIR at pp. 4-44 to 4-46.) The DEIR concludes that, even with mitigations, the GHG emissions from the project will be significant and unavoidable and will conflict with the goals of AB 32. (*Id.* at pp. 4-64 to 4-68). This analysis is deficient for the reasons discussed below.

a. The DEIR Does Not Adequately Disclose and Analyze All of the Potential Growth and GHG Emissions that May Result from the General Plan

A general plan embodies an agency’s decisions as to how to guide future development, and any evaluation of the general plan “must necessarily include a consideration of the larger

²⁸See Publ. Res. Code, § 21081.6, subd. (b); *Federation of Hillside and Canyon Associations v. City of Los Angeles* (2000) 83 Cal.App.4th 1252, 1261 (agency must take steps to ensure mitigation measures are fully enforceable through permit conditions, agreements, or other measures).

²⁹ Guidelines, § 15126.6, subd. (a).

³⁰ Guidelines § 15126.6, subd. (d).

³¹ Guidelines § 15126.6, subd. (b); see also *Save Round Valley Alliance v. County of Inyo* (2007) 157 Cal.App.4th 1437, 1456-57 [cannot exclude alternative simply because it impedes project objectives or is more costly].

³²See Pub. Res. Code, § 21083.05 subd. (a); see also Sen. Rules Com., Off. of Sen. Floor Analyses, Analysis of Sen. Bill No. 97 (2007-2008 Reg. Sess.) Aug. 22, 2007.

project, i.e., the future development permitted by the amendment.”³³ Thus, in order to comply with CEQA, the DEIR must describe and consider the full extent of the growth permitted by the Plan and must quantify the GHG emissions, both direct and indirect from that growth.³⁴

Because the Plan does not include enforceable measures guiding how and where development will occur in Tulare County, the DEIR performs its analysis based on “assumptions” about “population growth and the market distribution of that growth throughout the County.” (DEIR at p. 2-7.) The DEIR states that the population of Tulare County is anticipated to reach 621,549 by 2030, an increase of approximately 254,000 people, and assumes that approximately 75% of that growth is expected to occur within the UDBs of the incorporated cities, with the remaining 25%, or approximately 64,000 new residents, in unincorporated communities, hamlets and development corridors. (*Id.* at pp. ES-5, 2-7.)

In fact, however, as discussed above, the proposed General Plan is so open-ended that it does nothing to constrain market-driven population growth in the County and appears to allow unlimited development far beyond the scope of what is assumed in the DEIR. The actual remaining capacity for development within the existing UABs and UDBs of unincorporated communities in Tulare County is over 126,000 residents, indicating that the existing potential for growth in unincorporated areas is nearly twice the 64,000 that the DEIR assumes.³⁵ Further, development is not limited to existing communities and hamlets, but can occur at the discretion of the County in new towns located in rural, undeveloped areas of the County. Such development is not only likely in the future – it is already in progress; the County is currently considering just such a development project, the Yokohl Valley Ranch, a 10,000 unit residential development to be located in the Sierra Nevada foothills on land that is currently set aside for agriculture.³⁶

In order to comply with CEQA, it is not sufficient for the DEIR to disclose only an assumed level of growth based on population projections, and an assumed distribution of that growth based on general policies and statements of preference. Rather, it must disclose the full potential for market-driven growth that is permitted under the Plan, and must evaluate the extent and impact of GHG emissions if a significant portion of that growth is accommodated in rural,

³³ *City of Redlands v. County of San Bernardino* (2002) 96 Cal.App.4th 398, 409.

³⁴ See Guidelines, §§ 15126, 15358, subd. (a)(1), (2); *Las Virgenes Homeowners Federation, supra*, 177 Cal.App.3d at p. 307 [in adopting General Plan, County “necessarily addressed the cumulative impacts of buildout to the maximum possible densities allowed by those plans”]; see also *Christward Ministry v. Superior Court* (1986) 184 Cal.App. 3d 180, 194 [evaluation of general plan must include future development permitted by amendment].

³⁵ Tulare County General Plan Board Update (2006) at p. 8 [table showing estimate of population capacity within existing UDBs and UABs of unincorporated communities].

³⁶ See Notice of Preparation and Initial Study for Yokohl Ranch Project, available at <http://www.ceqanet.ca.gov/DocDescription.asp?DocPK=617530>.

undeveloped areas, as the Plan appears to allow.

b. The DEIR Does Not Adequately Quantify the Emissions from the Assumed Growth

In addition to failing to disclose the full amount of potential growth that may occur under the General Plan, the DEIR also fails to properly quantify the GHG emissions from the development it does disclose. The DEIR purports to quantify GHG emissions from the anticipated increase in vehicle miles traveled (“VMT”) in the assumed market-driven development, stating that CO₂ emissions will increase from 1,997,046 to 3,446,934 tons/year, (approximately a 73% increase). (DEIR at p. 4-50.)

There is no explanation or supporting analysis describing how the DEIR derives this number. It would seem impossible to determine VMT without knowing in general terms where the new development will occur in the County and the distance from workplaces and services. Development that occurs close to urban centers and mass transit will produce significantly less VMT (and GHG emissions) than development that occurs in the far foothills, away from the population centers. Since the General Plan relies on “market-driven” development and does not implement enforceable procedures to guide development, the assessment of GHG emissions from increased VMT is inaccurate and incomplete.

Second, the DEIR discusses only emissions related to VMT and dairy operations. While the DEIR notes that there will be increased emissions from the actual “buildout” of the Plan (including increased use of electricity, woodburning fireplaces, natural gas, and equipment), it states that it lacks information to quantify these emissions, and therefore makes no effort to do so. (DEIR at p. 4-50) These omitted emissions are almost certainly substantial. According to the California Energy Commission, residential, commercial, and industrial sources make up about 30% of the CO₂ emissions in the State,³⁷ and that does not include methane production from sources such as landfills and wastewater treatment.

There are a number of models available to assist the County in estimating future GHG emissions. One source of helpful information is the report issued by the California Air Pollution Control Officers Association (CAPCOA), “CEQA and Climate Change.”³⁸ The document discusses a variety of models that can be used to calculate GHG emissions. Similarly, the Attorney General’s Website provides a table of currently available models that are useful for calculating emissions.³⁹ Other models are available from a variety of sources,⁴⁰

³⁷California Energy Commission, *Inventory of California Greenhouse Gas Emissions and Sinks: 1990 to 2004*, December 2006, Table 6.

³⁸The document is available at <http://www.capcoa.org/>.

³⁹ http://ag.ca.gov/globalwarming/ceqa/modeling_tools.php.

⁴⁰ See, e.g., UPlan at <http://ice.ucdavis.edu/doc/uplan>.

The DEIR must fully quantify and consider all of the emissions from the project, including those resulting from the build-out.

c. The DEIR Does Not Include All Feasible Alternatives and Does Not Quantify GHG Emissions from Those Alternatives

The DEIR considers five alternatives which it terms the (1) No-Project alternative, (2) City-Centered Alternative, (3) Rural Communities Alternative, (4) Transportation Corridors Alternative, and (5) Confined Growth Alternative. (DEIR at pp. ES-8 to 9, 7-3 to 7-34.) Based on Table 7-1, which outlines the assumed population growth in unincorporated areas for each of the alternatives, it appears that the range of alternatives is narrow, representing a difference of only approximately 4% in growth in unincorporated areas (from 26% to 30%). (DEIR at pp. 7-3 to 7-4.) The alternatives thus ignore a range of “smart growth” alternatives that would concentrate development in already existing urban areas near mass transit and preserve more agricultural land and open space. A more intense “smart growth” alternative would appear to be feasible given the evidence that existing cities can currently accommodate all of the growth anticipated by the County.⁴¹ Thus, in order to be consistent with CEQA, the DEIR must consider a broader range of alternatives that would focus more of the development in existing urban areas, or explain and provide evidence supporting a conclusion as to why such alternatives would be infeasible.

Moreover, while the DEIR purports to compare the impacts of the various alternatives, the discussion of the alternatives is inadequate. There are no anticipated population numbers provided for two of the alternatives (No-Project and Confined Growth alternatives), making it impossible to compare them to the other three alternatives (DEIR at pp. 7-3 to 7-4), and the discussion of alternatives does not even mention GHG emissions. (DEIR at pp. 7-14 to 7-34.) In order to comply with CEQA, the DEIR must quantify and compare the GHG emissions from each of the alternatives. Again, as discussed above, there are modeling resources available to the County for performing this analysis.

d. The DEIR Does Not Impose All Feasible Measures to Mitigate GHG Emissions

CEQA provides that a public agency should not approve a project as proposed if there are additional feasible mitigation measures that would substantially lessen the significant environmental effects of the project.⁴² Further, in order to ensure that mitigation measures are actually implemented, they must be “fully enforceable through permit conditions, agreements, or

⁴¹Tulare County General Plan: Policy Alternatives, Board of Supervisors Edition (August 2005) at p. 9, available at <http://generalplan.co.tulare.ca.us/documents.html>.

⁴² Pub. Res. Code, § 21002.

other measures.”⁴³

The DEIR refers to a series of policies in the General Plan that purport to mitigate GHG emissions related to general development. They include, for example, requiring any development to minimize air impacts, requiring the County to “consider” any strategies identified by the California Air Resources Board, studying methods of transportation to reduce air pollution, encouraging departments to replace existing vehicles with low emission vehicles, and identifying opportunities for infill. (General Plan at pp. 9-4 to 9-5.) While these policies are a positive step, they are general and unenforceable, as are the accompanying implementation measures. Further, the DEIR makes no attempt to quantify the extent to which these mitigation measures will reduce GHG emissions, instead simply jumping to the conclusion that the climate change impacts from the project would be “significant and unavoidable.” (DEIR at pp. 4-65 to 4-68.)⁴⁴

In fact, there are many mitigation measures that are readily available to the County to decrease GHG emissions from new development. We are not suggesting that the County must adopt any specific set of mitigation measures, since this is a decision within its discretion. The County is, however, required by law to determine which measures are reasonable and feasible and to implement and enforce those measures. In considering which mitigation measures to implement, the County has many resources available. It can consider, for example, the measures set out in the CAPCOA document referenced above (pp. 79-87 and Appendix B-1), and those set forth in the list on the Attorney General’s website⁴⁵ (copy attached), and in the comments in the letter of the San Joaquin Valley Unified Air Pollution Control District (“APCD”) dated May 26, 2006, included in Appendix A to the Notice of Preparation. All of these sources provide concrete and enforceable recommendations, and address all aspects of project development that have an impact on GHG emissions, including conservation, land use, circulation, housing, open space,

⁴³ Pub. Res. Code, § 21081.6, subd. (b); *Federation of Hillside & Canyon Ass’ns, supra*, 83 Cal.App.4th at p. 1261.

⁴⁴ The shortcomings of the mitigation discussion is further apparent in the DEIR’s discussion of mitigation measures for dairies, which addresses GHG reduction only incidentally in the context of reducing other air pollutants, and which fails to discuss many potentially significant mitigation measures that are available. (DEIR at pp. 4-66 to 4-67.) To take one example, methane digesters, which are increasingly being used on dairies in California, process animal waste under anaerobic conditions, yielding methane gas that is collected on site and can be sold directly to utilities or used to generate electricity, bringing in revenue to the dairy. See California Energy Commission, *Dairy Power Production Program, Dairy Methane Digester System 90-Day Evaluation Report, Eden-Vale Dairy*, December 2006 at p. 4; http://cpuc.ca.gov/Final_resolution/68429.htm; <http://www.epa.gov/agstar/resources.html>; Fresno County Notices of Intention to Adopt a Mitigated Negative Declaration (Unclassified Conditional Use Permits 3215-3218).

⁴⁵ <http://ag.ca.gov/globalwarming/ceqa.php>.

safety, and energy. Other sources discussing mitigation measures are readily available.⁴⁶

Finally, the DEIR states that the County will, at some unspecified future time, develop a GHG Emissions Reduction Plan that parallels requirements adopted by the California Air Resources Board. (DEIR at p. 4-67) While we commend the County for recognizing that such a plan is necessary, this reference to an as yet undeveloped and completely undefined plan cannot serve as mitigation for the project's GHG emissions, since deferring environmental assessment to some future date is counter to CEQA's mandate that environmental review be performed at the earliest stages in the planning project.⁴⁷

We encourage the County to pursue adoption of a GHG Emissions Reduction Plan as part of its General Plan. To constitute effective mitigation, the County should consider including in the Plan a baseline inventory of the GHGs currently being emitted in the County from all sources, projected emissions for target years (e.g., 2020 and beyond), targets for the reduction of those sources of emissions that are consistent with AB 32 and Executive Order #S-03-05, and a suite of feasible emission reduction measures to meet the reduction target(s).⁴⁸ An effective plan would also likely include monitoring and reporting requirements so that the County will obtain information on the performance of its plan, and an adaptive management element to ensure that the Plan, once implemented, can be adjusted if necessary to meet the reduction targets.

In sum, given the wealth of resources available describing specific mitigation measures for GHG emissions, it is feasible for the County to develop and impose a set of mitigation measures that will be implemented and enforced as conditions of all future development projects. Since the County has not fully explored the extent to which there are feasible mitigation measures that would substantially reduce the global warming impacts of this project, it has not complied with CEQA.

e. The DEIR Cannot Conclude, Without Fuller Analysis, that GHG Effects are Significant and Unavoidable and Inconsistent with AB 32

⁴⁶ See, e.g., www.gosolarcalifornia.ga.gov/nshp [discussing the California Energy Commissions' New Solar Homes Partnership which provides rebates to developers of six units or more who offer solar power on 50% of the new units]; www.energy.ca.gov/efficiency/lighting/outdoor_reduction.html and www.newbuildings.org/lighting.htm [energy efficient lighting]; www.energy.ca.gov/title24/2005standards/ [feasible green building measures identified by the California Energy Commission's Compliance Manuals]; www.vtppi.org/park_man.pdf [discussion of parking management programs that provide environmental benefits].

⁴⁷ Pub. Resources Code, § 21003.1; *Sunstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 307 (and cases cited therein).

⁴⁸ See the Attorney General's settlement with San Bernardino County, available at http://ag.ca.gov/cms_pdfs/press/2007-08-21_San_Bernardino_settlement_agreement.pdf.

The DEIR concludes that the GHG emissions from the project will be significant and unavoidable. (DEIR at p. 4-68.) In light of the fact that the emissions are not fully quantified, enforceable mitigation measures are not imposed, and the efficacy of any mitigation are not analyzed qualitatively or quantitatively, this conclusion is unsupported and contravenes CEQA.⁴⁹

6. Conclusion

This is a critical time for all of California. Scientists acknowledge that global warming is real. Unless we depart from the “business as usual” paradigm and embrace the new principles of “smart growth,” we risk pushing the environment past the “tipping point” into cataclysmic climate change. The stakes are too high for Tulare County to abdicate its responsibilities, allowing the market to control the future of the hundreds of thousands of people who currently live and work – and the hundred thousands more who will live and work – in Tulare County. The County, through its General Plan and the CEQA process, has the opportunity, and indeed the duty, to become one of the leaders in planning the future of California. The decisions the County makes today will determine what the County will look like in the coming years and 30 years from now, and they can help move California forward into a new era of development and sustainable growth, consistent with the State’s goals for a lower-carbon future.

Thank you for your consideration of these comments. We would appreciate the opportunity meet with County staff to discuss these comments further in an effort to work cooperatively on these issues.

Sincerely,

/S/

SUSAN S. FIERING
Deputy Attorney General

For EDMUND G. BROWN JR.
Attorney General

⁴⁹ See *Berkeley Keep Jets Over the Bay Committee v. Board of Port Commissioners* (2001) 91 Cal.App.4th 1344, 1371 [lead agency cannot simply conclude that there are overriding considerations that would justify a significant and unavoidable effect without fully analyzing the effect].



1515 CLAY STREET, 20TH FLOOR
P.O. BOX 70550
OAKLAND, CA 94612-0550

Public: (510) 622-2100
Telephone: (510) 622-2142
Facsimile: (510) 622-2270
E-Mail: Susan.Fiering@doj.ca.gov

April 14, 2008

By Overnight Mail and Facsimile

David Bryant
Project Planner
Tulare County Resource Management Agency
Government Plaza
5961 South Mooney Boulevard
Visalia, CA 93277

RE: Draft Environmental Impact Report for Tulare County General Plan 2030 Update
SCH # 2006041162

Dear Mr. Bryant:

The Attorney General submits these comments pursuant to the California Environmental Quality Act ("CEQA") on the Draft Environmental Impact Report ("DEIR") for the Tulare County General Plan 2030 Update ("General Plan").¹

1. Introduction

The general plan is "at the top of the hierarchy of local government law regulating land use[.]"² As the California Supreme Court has noted, this basic land use charter governing the direction of future land use is in the nature of a planning "constitution."³ Taking some measure of control over future land use is the local government's affirmative duty. "The planning law . . . compels cities and counties to undergo the discipline of drafting a master plan to guide future

¹The Attorney General provides these comments pursuant to his independent power and duty to protect the natural resources of the State from pollution, impairment, or destruction in furtherance of the public interest. (See Cal. Const., art. V, § 13; Cal. Govt. Code, §§ 12511, 12600-12; *D'Amico v. Board of Medical Examiners* (1974) 11 Cal.3d 1, 14-15.) These comments are made on behalf of the Attorney General and not on behalf of any other California agency or office.

²*DeVita v. County of Napa* (1995) 9 Cal.4th 763, 773 (internal citation omitted).

³*Ibid*; *Leshar Communications, Inc. v. City of Walnut Creek* (1990) 52 Cal.3d 531, 542.

local land use decisions.”⁴ The Tulare County General Plan thus presents both an opportunity and a responsibility to the County – an opportunity to shape the future growth of the County, and a responsibility to ensure that such growth is consistent with State and local goals, including protecting the public health and welfare of the County’s inhabitants and protecting the environment.

According to the DEIR, the Plan anticipates that the population of Tulare County will reach 621,549 by 2030, an increase of approximately 254,000 people,⁵ and that emissions of carbon dioxide (CO₂) from this growth will increase by approximately 1.7 million tons/year. As you are aware, global warming presents profoundly serious challenges to California and the nation. While we commend the County for addressing greenhouse gas (“GHG”) emissions in the DEIR, we have concluded that the DEIR is not in compliance with the requirements of CEQA in significant respects. First, the DEIR does not disclose the actual growth that may occur under the proposed General Plan – which leaves much of the control over land uses and growth patterns to the market – and the GHG emissions that will result from such growth. Second, the DEIR considers only vehicle miles traveled and dairies as sources of GHG emissions, and neglects to consider other significant new sources of GHG emissions, including emissions from construction, residential and non-residential energy use, and other activities that will result from the build-out of the Plan. Third, the DEIR considers only a narrow range of alternatives, ignoring any alternative that would aggressively foster “smart growth” by more significantly limiting development to existing urban areas. Finally, the DEIR does not impose enforceable and quantifiable mitigation measures to mitigate the impact of the GHG emissions.

Because the analysis of GHG emissions is inadequate and incomplete, the DEIR does not comply with CEQA, and does not provide substantial evidence to support the County’s finding that the impacts of GHG emissions will be “significant and unavoidable.”

2. Climate Change Background

Before discussing the General Plan and legal adequacy of the DEIR, it is important to understand why human-caused climate change is of particular concern to California and to the San Joaquin Valley.⁶

The impacts of climate change are not limited to remote parts of the world – they are being felt in California today. In California, global warming is causing damage to agriculture, losses to the Sierra snowpack, higher risks of fire, eroding coastlines, and habitat modification

⁴*DeVita, supra*, 9 Cal.4th at p. 773.

⁵The County indicates that the General Plan is intended to accommodate 25% of this growth in the unincorporated areas, an increase of approximately 64,000 residents.

⁶The physics of climate change are well described in the Intergovernmental Panel on Climate Change, Fourth Assessment Report, “Frequently Asked Questions” (available at http://ipcc-wg1.ucar.edu/wg1/Report/AR4WG1_Print_FAQs.pdf) and need not be repeated here.

and destruction. Global warming affects public health directly, through heat-related illnesses and deaths caused by more hot days, and longer heat waves, and indirectly as higher temperatures favor the formation of ozone and particulate matter in areas that already have severe air pollution problems.⁷

The impacts of climate change are of particular concern to the San Joaquin Valley and Tulare County, especially in the areas of agriculture and public health. According to a whitepaper from the California Climate Action Team on the impacts of climate change on agriculture, “California’s cornucopia is predicated on its current climate and its supply and distribution of irrigation water[.]”⁸ Rising temperatures will cause larger crops growing in warmer climates to use more water and also may stimulate more weeds and insect pests. Pollination – essential to many Valley crops – will be negatively affected if warming causes asynchronization between flowering and the life cycle of insect pollinators. And the occurrence of adequate winter chill, necessary for fruit trees to flower, may be lost for many fruit species.⁹ Higher temperatures due to global warming also have an impact on the dairy industry, which is of special importance to Tulare County, by causing lower milk production and heat-related animal deaths. Dairy producers will no doubt recall the extended heat wave of 2006, which caused the death of thousands of cows and created a backlog of carcasses for disposal.¹⁰

The health related impacts of climate change are also of substantial importance to the County. A Stanford study details how for each increase in temperature of 1 degree Celsius (1.8 degrees Fahrenheit) caused by climate change, the resulting air pollution would lead annually to about a thousand additional deaths and many more cases of respiratory illness and asthma.¹¹ The effects of warming are most significant where the pollution is already severe. Thus, the study has serious implications for California overall and for the San Joaquin Valley in particular. Given that California is home to six of the ten U.S. cities with the worst air quality, including Visalia-Tulare, and that the San Joaquin Valley has some of the worst air quality in the nation, the State and the Valley are likely to bear an increasingly disproportionate public health burden if we do not significantly reduce our GHG emissions.

⁷A summary of impacts to California, together with citations, is available on the Attorney Generals’ website at <http://ag.ca.gov/globalwarming/impact.php>.

⁸California Climate Change Center, *An Assessment of the Impacts of Future CO2 and Climate on Californian Agriculture* (March 2006) at p. 1, available at <http://www.energy.ca.gov/2005publications/CEC-500-2005-187/CEC-500-2005-187-SF.PDF>.

⁹*Id.*, Abstract.

¹⁰Williams, “Dairy producers regroup after cow deaths,” *Bakersfield Californian* (Aug. 5, 2006) available at <http://www.bakersfield.com/102/story/66292.html>.

¹¹ Jacobson, Mark Z., *On the causal link between carbon dioxide and air pollution mortality*, *Geophysical Research Letters*, Vol. 35 L03809 (2008).

The atmospheric concentration of CO₂, the leading GHG, is now 380 parts per million (ppm),¹² higher than any time in the last 650,000 years,¹³ and rising at about 2 ppm per year. According to experts, an atmospheric concentration of CO₂ “exceeding 450 ppm is almost surely dangerous” to human life because of the climate changes it will cause.¹⁴ Thus, we are fast approaching a “tipping point,” where the increase in temperature will create unstoppable, large-scale, disastrous impacts for all the inhabitants of the planet.¹⁵

We must take prompt action and control of our future. In the words of Rajendra Pachauri, Chairman of the United Nations Intergovernmental Panel on Climate Change, “If there’s no action before 2012, that’s too late. What we do in the next two to three years will determine our future. This is the defining moment.”¹⁶

3. Description of the General Plan

Pursuant to Government Code section 65302, subdivision (a) a general plan must contain a land use element that

designates the proposed general distribution and general location and extent of the uses of the land for housing, business, industry, open space . . . and other categories of public and private uses of land. . . .

The distribution and general location of land uses under the Tulare County General Plan Update is almost impossible to discern from Plan documents. Maps typically accompany general plans.¹⁷ While the General Plan does identify a limited number of land use designations (General Plan at pp. 5-5 to 5-12), it does not include any maps or diagrams identifying where the designations are, or the acreage available for development within each designation. A document entitled Board Update, dated April 2006, which was provided to the Board of Supervisors, includes detailed land use maps for certain limited areas – specifically, each of the 21 existing

¹²<http://www.esrl.noaa.gov/gmd/ccgg/trends/>

¹³IPCC 4th, WGI, Frequently Asked Question 7.1, *Are Increases in Atmospheric Carbon Dioxide and Other Greenhouse Gases During the Industrial Era Caused by Human Activities?* http://ipcc-wg1.ucar.edu/wg1/Report/AR4WG1_Print_FAQs.pdf.

¹⁴ See http://www.nasa.gov/centers/goddard/news/topstory/2007/danger_point.html.

¹⁵ See *ibid.*

¹⁶Rosenthal, *U.N. Chief Seeks More Leadership on Climate Change*, N.Y. Times (November 18, 2007).

¹⁷See *Las Virgenes Homeowners Federation, Inc. v. County of Los Angeles* (1986) 177 Cal.App.3d 300, 307 [general plan maps are visual depictions of planned development policies indicating the geographic or spatial aspects of the plan].

unincorporated communities “hamlets.” These maps, however, are not included in the General Plan. Nor does the Plan contain a table or tables indicating the general location, extent and type of land uses that could occur in the various geographic areas of the County. Ultimately, it is “impossible to relate any tabulated density standard of population to any location in the County.”¹⁸

The General Plan contains a Goals and Policies Report that purports to set forth a “hierarchy of goals, policies, and implementation measures designed to guide future development in the County.” (General Plan at p. 1-3.) The policies and implementation measures are in many cases nothing more than statements of preferences and opinions, rather than definite commitments to adopt enforceable policies and specific standards, or to use the powers the County has to enact ordinances and control development.

For example, one policy states that the County shall “encourage” residential growth to locate in existing Urban Development Borders (“UDBs”), Urban Area Boundaries (“UABs”), and Hamlet Development Boundaries (“HDBs”), but none of the accompanying implementation measures provide enforceable requirements or standards that would ensure that this policy is followed.¹⁹ (General Plan at pp. 2-16 to 2-21.) Similarly, while the Plan states a policy of discouraging “new towns” (*id.* at p. 2-12), the policy has only very broad, general criteria and appears to allow new planned communities at an unlimited number of locations in the County as controlled by the market.²⁰ In the area of Land Use, the Plan again states a series of policies that are said to promote smart growth, encourage mixed use and infill development, etc. (General Plan at pp. 5-12 to 5-19), but the accompanying implementation measures contain no enforceable requirements that would ensure that development occurs consistent with these policy statements. (*Id.* at pp. 5-22 to 5-24.)

Thus, despite the general goals of the Plan to direct development in urban areas and in unincorporated hamlets and communities, nothing in the Plan will prevent a significant portion of the future growth from occurring outside the UDBs, for example in the foothill areas in the far eastern part of the County that are far from services, jobs, and transportation.

Ultimately, it appears that, rather than being a “constitution” for future development, the General Plan will largely leave the shape of new development, in amount and in location,

¹⁸See *Camp v. Board of Supervisors of Mendocino County* (1981) 123 Cal.App.3d 334, 350.

¹⁹ According to the 2003 State of California General Plan Guidelines (“General Plan Guidelines”) at pp. 16-17, published by the Governor’s Office of Planning and Research, a general plan should contain implementation measures which are actions, procedures, programs, or techniques, that carry out the general plan policy, as well as standards, which are rules or measures establishing a level of quality or quantity that must be complied with or satisfied.

²⁰ Similarly the Plan states a policy to “discourage the creation of ranchettes. . . .” (Plan at p. 4-4), which are residences built on large lots from 1.5 acres up. This policy does not, however, impose any enforceable limitations on ranchette development.

primarily to the control of the market. This is as much as acknowledged in the DEIR which states repeatedly that “[w]hile the proposed General Plan Update includes policies intended to control the amount and location of new growth. . . it does not solidly advocate, promote or represent any one development scenario because any attempt to predict the exact pace and locations of future market-driven growth is considered speculative.” (DEIR at p. ES-7.)

4. CEQA Requirements

An EIR is an informational document intended to provide both the public and government agencies with detailed information about the effects of a proposed project on the environment, to list ways in which those effects can be mitigated, and to discuss and analyze alternatives to the project.²¹ 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. . . .”²² The project must be adequately described in the EIR,²³ and the entirety of the project must be considered, not just some smaller portion of it.²⁴ A decision to approve a project “is a nullity if based upon an EIR that does not provide the decision-makers, and the public, with the information about the project that is required by CEQA.”²⁵

CEQA was enacted to ensure that public agencies do not approve projects unless feasible measures are included that mitigate the project’s significant environmental effects.²⁶ CEQA therefore requires that “[e]ach public agency shall mitigate or avoid the significant effects on the environment of projects that it carries out or approves whenever it is feasible to do so.”²⁷ The mitigation measures must be enforceable and the benefits quantifiable, rather than just vague

²¹*Laurel Heights Improvement Ass’n v. Regents of University of California* (1988) 47 Cal.3d 376, 390-91 (citing Pub. Res. Code, § 21061; Cal.Code Regs., tit. 14, § 15003, subd. (b)-(e) (hereafter “Guidelines”).

²² Guidelines, § 15378, subd. (a).

²³ Guidelines, § 15124.

²⁴ *San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645, 654.

²⁵ *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 721-22 (quoting *Santiago County Water Dist. v. County of Orange* (1981) 118 Cal.App.3d 818, 829).

²⁶ Pub. Res. Code, § 21002.

²⁷ Pub. Res. Code, §§ 21002.1, subd. (b); *City of Marina Board of Trustees* (2006) 39 Cal.4th 341, 360.

policy statements.²⁸

The CEQA Guidelines further provide that the EIR must discuss a “range of reasonable alternatives to the project or to the location of the project which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives.”²⁹ The EIR must include sufficient information about each alternative to provide meaningful analysis and comparison,³⁰ and must consider alternatives that could eliminate significant effects or reduce them to a less than significant level, even if the alternatives could impede the attainment of the project’s objectives to some degree.³¹

5. The DEIR Does Not Adequately Analyze GHG Emissions Under CEQA

As the Legislature has recognized, global warming is an “effect on the environment” under CEQA, and an individual project’s incremental contribution to global warming can be cumulatively considerable and therefore significant.³² The DEIR briefly and generally discusses global climate change, noting that California has passed Assembly Bill 32 (“AB 32”), the Global Warming Solutions Act of 2006, which requires the Air Resources Board to implement regulations to reduce GHG emissions statewide to 1990 levels by 2020. (DEIR at pp. 4-44 to 4-46.) The DEIR concludes that, even with mitigations, the GHG emissions from the project will be significant and unavoidable and will conflict with the goals of AB 32. (*Id.* at pp. 4-64 to 4-68). This analysis is deficient for the reasons discussed below.

a. The DEIR Does Not Adequately Disclose and Analyze All of the Potential Growth and GHG Emissions that May Result from the General Plan

A general plan embodies an agency’s decisions as to how to guide future development, and any evaluation of the general plan “must necessarily include a consideration of the larger

²⁸See Publ. Res. Code, § 21081.6, subd. (b); *Federation of Hillside and Canyon Associations v. City of Los Angeles* (2000) 83 Cal.App.4th 1252, 1261 (agency must take steps to ensure mitigation measures are fully enforceable through permit conditions, agreements, or other measures).

²⁹ Guidelines, § 15126.6, subd. (a).

³⁰ Guidelines § 15126.6, subd. (d).

³¹ Guidelines § 15126.6, subd. (b); see also *Save Round Valley Alliance v. County of Inyo* (2007) 157 Cal.App.4th 1437, 1456-57 [cannot exclude alternative simply because it impedes project objectives or is more costly].

³²See Pub. Res. Code, § 21083.05 subd. (a); see also Sen. Rules Com., Off. of Sen. Floor Analyses, Analysis of Sen. Bill No. 97 (2007-2008 Reg. Sess.) Aug. 22, 2007.

project, i.e., the future development permitted by the amendment.”³³ Thus, in order to comply with CEQA, the DEIR must describe and consider the full extent of the growth permitted by the Plan and must quantify the GHG emissions, both direct and indirect from that growth.³⁴

Because the Plan does not include enforceable measures guiding how and where development will occur in Tulare County, the DEIR performs its analysis based on “assumptions” about “population growth and the market distribution of that growth throughout the County.” (DEIR at p. 2-7.) The DEIR states that the population of Tulare County is anticipated to reach 621,549 by 2030, an increase of approximately 254,000 people, and assumes that approximately 75% of that growth is expected to occur within the UDBs of the incorporated cities, with the remaining 25%, or approximately 64,000 new residents, in unincorporated communities, hamlets and development corridors. (*Id.* at pp. ES-5, 2-7.)

In fact, however, as discussed above, the proposed General Plan is so open-ended that it does nothing to constrain market-driven population growth in the County and appears to allow unlimited development far beyond the scope of what is assumed in the DEIR. The actual remaining capacity for development within the existing UABs and UDBs of unincorporated communities in Tulare County is over 126,000 residents, indicating that the existing potential for growth in unincorporated areas is nearly twice the 64,000 that the DEIR assumes.³⁵ Further, development is not limited to existing communities and hamlets, but can occur at the discretion of the County in new towns located in rural, undeveloped areas of the County. Such development is not only likely in the future – it is already in progress; the County is currently considering just such a development project, the Yokohl Valley Ranch, a 10,000 unit residential development to be located in the Sierra Nevada foothills on land that is currently set aside for agriculture.³⁶

In order to comply with CEQA, it is not sufficient for the DEIR to disclose only an assumed level of growth based on population projections, and an assumed distribution of that growth based on general policies and statements of preference. Rather, it must disclose the full potential for market-driven growth that is permitted under the Plan, and must evaluate the extent and impact of GHG emissions if a significant portion of that growth is accommodated in rural,

³³ *City of Redlands v. County of San Bernardino* (2002) 96 Cal.App.4th 398, 409.

³⁴ See Guidelines, §§ 15126, 15358, subd. (a)(1), (2); *Las Virgenes Homeowners Federation, supra*, 177 Cal.App.3d at p. 307 [in adopting General Plan, County “necessarily addressed the cumulative impacts of buildout to the maximum possible densities allowed by those plans”]; see also *Christward Ministry v. Superior Court* (1986) 184 Cal.App. 3d 180, 194 [evaluation of general plan must include future development permitted by amendment].

³⁵ Tulare County General Plan Board Update (2006) at p. 8 [table showing estimate of population capacity within existing UDBs and UABs of unincorporated communities].

³⁶ See Notice of Preparation and Initial Study for Yokohl Ranch Project, available at <http://www.ceqanet.ca.gov/DocDescription.asp?DocPK=617530>.

undeveloped areas, as the Plan appears to allow.

b. The DEIR Does Not Adequately Quantify the Emissions from the Assumed Growth

In addition to failing to disclose the full amount of potential growth that may occur under the General Plan, the DEIR also fails to properly quantify the GHG emissions from the development it does disclose. The DEIR purports to quantify GHG emissions from the anticipated increase in vehicle miles traveled (“VMT”) in the assumed market-driven development, stating that CO₂ emissions will increase from 1,997,046 to 3,446,934 tons/year, (approximately a 73% increase). (DEIR at p. 4-50.)

There is no explanation or supporting analysis describing how the DEIR derives this number. It would seem impossible to determine VMT without knowing in general terms where the new development will occur in the County and the distance from workplaces and services. Development that occurs close to urban centers and mass transit will produce significantly less VMT (and GHG emissions) than development that occurs in the far foothills, away from the population centers. Since the General Plan relies on “market-driven” development and does not implement enforceable procedures to guide development, the assessment of GHG emissions from increased VMT is inaccurate and incomplete.

Second, the DEIR discusses only emissions related to VMT and dairy operations. While the DEIR notes that there will be increased emissions from the actual “buildout” of the Plan (including increased use of electricity, woodburning fireplaces, natural gas, and equipment), it states that it lacks information to quantify these emissions, and therefore makes no effort to do so. (DEIR at p. 4-50) These omitted emissions are almost certainly substantial. According to the California Energy Commission, residential, commercial, and industrial sources make up about 30% of the CO₂ emissions in the State,³⁷ and that does not include methane production from sources such as landfills and wastewater treatment.

There are a number of models available to assist the County in estimating future GHG emissions. One source of helpful information is the report issued by the California Air Pollution Control Officers Association (CAPCOA), “CEQA and Climate Change.”³⁸ The document discusses a variety of models that can be used to calculate GHG emissions. Similarly, the Attorney General’s Website provides a table of currently available models that are useful for calculating emissions.³⁹ Other models are available from a variety of sources,⁴⁰

³⁷California Energy Commission, *Inventory of California Greenhouse Gas Emissions and Sinks: 1990 to 2004*, December 2006, Table 6.

³⁸The document is available at <http://www.capcoa.org/>.

³⁹ http://ag.ca.gov/globalwarming/ceqa/modeling_tools.php.

⁴⁰ See, e.g., UPlan at <http://ice.ucdavis.edu/doc/uplan>.

The DEIR must fully quantify and consider all of the emissions from the project, including those resulting from the build-out.

c. The DEIR Does Not Include All Feasible Alternatives and Does Not Quantify GHG Emissions from Those Alternatives

The DEIR considers five alternatives which it terms the (1) No-Project alternative, (2) City-Centered Alternative, (3) Rural Communities Alternative, (4) Transportation Corridors Alternative, and (5) Confined Growth Alternative. (DEIR at pp. ES-8 to 9, 7-3 to 7-34.) Based on Table 7-1, which outlines the assumed population growth in unincorporated areas for each of the alternatives, it appears that the range of alternatives is narrow, representing a difference of only approximately 4% in growth in unincorporated areas (from 26% to 30%). (DEIR at pp. 7-3 to 7-4.) The alternatives thus ignore a range of “smart growth” alternatives that would concentrate development in already existing urban areas near mass transit and preserve more agricultural land and open space. A more intense “smart growth” alternative would appear to be feasible given the evidence that existing cities can currently accommodate all of the growth anticipated by the County.⁴¹ Thus, in order to be consistent with CEQA, the DEIR must consider a broader range of alternatives that would focus more of the development in existing urban areas, or explain and provide evidence supporting a conclusion as to why such alternatives would be infeasible.

Moreover, while the DEIR purports to compare the impacts of the various alternatives, the discussion of the alternatives is inadequate. There are no anticipated population numbers provided for two of the alternatives (No-Project and Confined Growth alternatives), making it impossible to compare them to the other three alternatives (DEIR at pp. 7-3 to 7-4), and the discussion of alternatives does not even mention GHG emissions. (DEIR at pp. 7-14 to 7-34.) In order to comply with CEQA, the DEIR must quantify and compare the GHG emissions from each of the alternatives. Again, as discussed above, there are modeling resources available to the County for performing this analysis.

d. The DEIR Does Not Impose All Feasible Measures to Mitigate GHG Emissions

CEQA provides that a public agency should not approve a project as proposed if there are additional feasible mitigation measures that would substantially lessen the significant environmental effects of the project.⁴² Further, in order to ensure that mitigation measures are actually implemented, they must be “fully enforceable through permit conditions, agreements, or

⁴¹Tulare County General Plan: Policy Alternatives, Board of Supervisors Edition (August 2005) at p. 9, available at <http://generalplan.co.tulare.ca.us/documents.html>.

⁴² Pub. Res. Code, § 21002.

other measures.”⁴³

The DEIR refers to a series of policies in the General Plan that purport to mitigate GHG emissions related to general development. They include, for example, requiring any development to minimize air impacts, requiring the County to “consider” any strategies identified by the California Air Resources Board, studying methods of transportation to reduce air pollution, encouraging departments to replace existing vehicles with low emission vehicles, and identifying opportunities for infill. (General Plan at pp. 9-4 to 9-5.) While these policies are a positive step, they are general and unenforceable, as are the accompanying implementation measures. Further, the DEIR makes no attempt to quantify the extent to which these mitigation measures will reduce GHG emissions, instead simply jumping to the conclusion that the climate change impacts from the project would be “significant and unavoidable.” (DEIR at pp. 4-65 to 4-68.)⁴⁴

In fact, there are many mitigation measures that are readily available to the County to decrease GHG emissions from new development. We are not suggesting that the County must adopt any specific set of mitigation measures, since this is a decision within its discretion. The County is, however, required by law to determine which measures are reasonable and feasible and to implement and enforce those measures. In considering which mitigation measures to implement, the County has many resources available. It can consider, for example, the measures set out in the CAPCOA document referenced above (pp. 79-87 and Appendix B-1), and those set forth in the list on the Attorney General’s website⁴⁵ (copy attached), and in the comments in the letter of the San Joaquin Valley Unified Air Pollution Control District (“APCD”) dated May 26, 2006, included in Appendix A to the Notice of Preparation. All of these sources provide concrete and enforceable recommendations, and address all aspects of project development that have an impact on GHG emissions, including conservation, land use, circulation, housing, open space,

⁴³ Pub. Res. Code, § 21081.6, subd. (b); *Federation of Hillside & Canyon Ass’ns, supra*, 83 Cal.App.4th at p. 1261.

⁴⁴ The shortcomings of the mitigation discussion is further apparent in the DEIR’s discussion of mitigation measures for dairies, which addresses GHG reduction only incidentally in the context of reducing other air pollutants, and which fails to discuss many potentially significant mitigation measures that are available. (DEIR at pp. 4-66 to 4-67.) To take one example, methane digesters, which are increasingly being used on dairies in California, process animal waste under anaerobic conditions, yielding methane gas that is collected on site and can be sold directly to utilities or used to generate electricity, bringing in revenue to the dairy. See California Energy Commission, *Dairy Power Production Program, Dairy Methane Digester System 90-Day Evaluation Report, Eden-Vale Dairy*, December 2006 at p. 4; http://cpuc.ca.gov/Final_resolution/68429.htm; <http://www.epa.gov/agstar/resources.html>; Fresno County Notices of Intention to Adopt a Mitigated Negative Declaration (Unclassified Conditional Use Permits 3215-3218).

⁴⁵ <http://ag.ca.gov/globalwarming/ceqa.php>.

safety, and energy. Other sources discussing mitigation measures are readily available.⁴⁶

Finally, the DEIR states that the County will, at some unspecified future time, develop a GHG Emissions Reduction Plan that parallels requirements adopted by the California Air Resources Board. (DEIR at p. 4-67) While we commend the County for recognizing that such a plan is necessary, this reference to an as yet undeveloped and completely undefined plan cannot serve as mitigation for the project's GHG emissions, since deferring environmental assessment to some future date is counter to CEQA's mandate that environmental review be performed at the earliest stages in the planning project.⁴⁷

We encourage the County to pursue adoption of a GHG Emissions Reduction Plan as part of its General Plan. To constitute effective mitigation, the County should consider including in the Plan a baseline inventory of the GHGs currently being emitted in the County from all sources, projected emissions for target years (e.g., 2020 and beyond), targets for the reduction of those sources of emissions that are consistent with AB 32 and Executive Order #S-03-05, and a suite of feasible emission reduction measures to meet the reduction target(s).⁴⁸ An effective plan would also likely include monitoring and reporting requirements so that the County will obtain information on the performance of its plan, and an adaptive management element to ensure that the Plan, once implemented, can be adjusted if necessary to meet the reduction targets.

In sum, given the wealth of resources available describing specific mitigation measures for GHG emissions, it is feasible for the County to develop and impose a set of mitigation measures that will be implemented and enforced as conditions of all future development projects. Since the County has not fully explored the extent to which there are feasible mitigation measures that would substantially reduce the global warming impacts of this project, it has not complied with CEQA.

e. The DEIR Cannot Conclude, Without Fuller Analysis, that GHG Effects are Significant and Unavoidable and Inconsistent with AB 32

⁴⁶ See, e.g., www.gosolarcalifornia.ga.gov/nshp [discussing the California Energy Commissions' New Solar Homes Partnership which provides rebates to developers of six units or more who offer solar power on 50% of the new units]; www.energy.ca.gov/efficiency/lighting/outdoor_reduction.html and www.newbuildings.org/lighting.htm [energy efficient lighting]; www.energy.ca.gov/title24/2005standards/ [feasible green building measures identified by the California Energy Commission's Compliance Manuals]; www.vtpi.org/park_man.pdf [discussion of parking management programs that provide environmental benefits].

⁴⁷ Pub. Resources Code, § 21003.1; *Sunstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 307 (and cases cited therein).

⁴⁸ See the Attorney General's settlement with San Bernardino County, available at http://ag.ca.gov/cms_pdfs/press/2007-08-21_San_Bernardino_settlement_agreement.pdf.

The DEIR concludes that the GHG emissions from the project will be significant and unavoidable. (DEIR at p. 4-68.) In light of the fact that the emissions are not fully quantified, enforceable mitigation measures are not imposed, and the efficacy of any mitigation are not analyzed qualitatively or quantitatively, this conclusion is unsupported and contravenes CEQA.⁴⁹

6. Conclusion

This is a critical time for all of California. Scientists acknowledge that global warming is real. Unless we depart from the “business as usual” paradigm and embrace the new principles of “smart growth,” we risk pushing the environment past the “tipping point” into cataclysmic climate change. The stakes are too high for Tulare County to abdicate its responsibilities, allowing the market to control the future of the hundreds of thousands of people who currently live and work – and the hundred thousands more who will live and work – in Tulare County. The County, through its General Plan and the CEQA process, has the opportunity, and indeed the duty, to become one of the leaders in planning the future of California. The decisions the County makes today will determine what the County will look like in the coming years and 30 years from now, and they can help move California forward into a new era of development and sustainable growth, consistent with the State’s goals for a lower-carbon future.

Thank you for your consideration of these comments. We would appreciate the opportunity meet with County staff to discuss these comments further in an effort to work cooperatively on these issues.

Sincerely,

/S/

SUSAN S. FIERING
Deputy Attorney General

For EDMUND G. BROWN JR.
Attorney General

⁴⁹ See *Berkeley Keep Jets Over the Bay Committee v. Board of Port Commissioners* (2001) 91 Cal.App.4th 1344, 1371 [lead agency cannot simply conclude that there are overriding considerations that would justify a significant and unavoidable effect without fully analyzing the effect].