



May 27, 2010

Via Electronic and Regular Mail (w/CD of Exhibits)

Dave Bryant
Div. Manager - Special Projects
Tulare County Resource Management Agency
5961 S. Mooney Blvd.
Visalia, CA 93277
dpbryant@co.tulare.ca.us

Re: Comments on Revised Draft Environmental Impact Report for Tulare County General Plan Update (SCN#2006041162)

Dear Mr. Bryant:

These comments are submitted on behalf of the Center for Biological Diversity ("CBD"), the Center on Race, Poverty & the Environment ("CRPE"), Community Water Center ("CWC") and the California Rural Legal Assistance Foundation ("CRLAF") on the Revised Draft Environmental Impact Report ("RDEIR") for the Tulare County General Plan Update. CBD is a non-profit environmental organization dedicated to the protection of native species and their habitats through science, policy, and environmental law. CBD's Climate Law Institute works to reduce greenhouse gas emissions to protect biological diversity, our environment, and public health. CBD has over 225,000 members and e-activists including those located in the County of Tulare. CRPE is a

national non-profit environmental justice organization that provides legal and technical assistance to grassroots groups in low-income communities and communities of color fighting environmental hazards. CRPE works with many communities, hamlets, and residents in Tulare County. CWC is a nonprofit organization based in Tulare County that seeks to create community-driven water solutions through organizing, education and advocacy in California's San Joaquin Valley. CWC works directly with a number of low-income, primarily Latino communities in Tulare County and elsewhere in the Valley to address problems that range from chronic drinking water contamination to barriers to participation in local water governance. CRLAF's mission is to improve the quality of life for California farm-workers, their families, and their communities. CRLAF utilizes various strategies to accomplish our mission, including litigation, research, policy and legislative advocacy, and community capacity-building.

As the "constitution for all future developments," general plans are required to be "comprehensive and long term."¹ Given the importance of general plans in the planning process, state planning law "compels cities and counties to undergo the discipline of drafting a master plan to guide future local land use decisions."² Unfortunately, this requisite discipline appears to be entirely lacking in the County's Update to the General Plan. The County has provided little in the way of additional clarity and consistency since the first Draft Update to the General Plan was originally circulated over two years ago. Indeed, the latest Draft Update fails to fulfill its most basic purpose of guiding future development because the Land Use Element does not meaningfully describe or illustrate the location and intensity of land uses. Absent this information, it is impossible to intelligently assess Project impacts or have any degree of certainty as to what type of growth would occur under the General Plan. Accordingly, the draft Update to the General Plan does not meet the requirements of the Planning and Zoning Code and the RDEIR fails as an informational document.

The undersigned organizations urge the County to go back to the drawing board and prepare a legally sufficient Update to the General Plan that sets forth a sustainable future for the County by directing more growth to existing cities and ensuring that growth that does occur in unincorporated areas is guided toward infill opportunities in existing communities and hamlets. The County can thereby preserve its agricultural heritage and avoid the many environmental impacts and fiscal costs that result from sprawl development. Rather than allow sprawl development, the County can better meet its obligations to underserved communities in unincorporated areas and hamlets by entering into revenue sharing arrangements with Tulare cities. In exchange for directing new growth within City boundaries, Cities must be required to address infrastructural disparities with bordering, fringe, and island unincorporated communities and hamlets. In addition, revenue generated by the County from those revenue-sharing agreements must be set aside for ensuring adequate infrastructure and services for existing unincorporated communities and hamlets. In this manner, targeted investments by the County can help improve the quality of life for existing County residents, while future growth occurs in a sensible and sustainable manner.

¹ *DeVita v. County of Napa*, 9 Cal.4th 763, 773 (1995).

² *Id.*

I. THE LAND USE ELEMENT DOES NOT MEET THE REQUIREMENTS OF GOVERNMENT CODE SECTION 65302.

Government Code § 65302(a) requires that a land use element designate “the proposed general distribution and general location and extent of the uses of land” for specified purposes and “include a statement of the standards of population density and building intensity recommended for the various districts and other territory covered by the plan.” This requirement is very much the heart of the General Plan. Absent a clear understanding of the proposed location and intensity of land uses, in conjunction with population density standards for the various regions, the impacts of the General Plan Update cannot be properly ascertained.

As presented in the proposed General Plan Update, the land use element only appears to describe land use designations and indicate whether the given designation is allowed in a city, community, hamlet or other unincorporated area. Beyond this very general description, the Land Use Element does not appear to indicate with any specificity the location and extent of each of these uses. For example, the General Plan does not identify the total acreage of proposed land uses and the extent to which changes in land use represent a difference from current conditions. Indeed, the General Plan does not even contain a map that clearly illustrates where and which land uses will occur under the proposed Update. Absent such information, it is impossible to assess Project impacts or understand exactly what is being contemplated by the Plan.

To the extent information on proposed land use designations is available elsewhere, this is insufficient to render the General Plan consistent with state planning law. In providing sufficient information on future land use designations, courts have held that while a map or maps that actually delineate proposed land uses and population standards might exist or be cobbled together from existing data, “uncoordinated documents make resort to [the General Plan] for planning information an awkward exercise and would also seem to generate doubt concerning the integrity of the plan.” *Camp v. Board of Supervisors of Mendocino County*, 123 Cal. App. 3d 334, 349 (1981) (land use element that did not correlate density and land use classifications with locations within county failed to comply with section 65302).

Because the land use element is so woefully uninformative, it must be significantly revised to provide an understanding of the potential growth possible under the General Plan and evaluate impacts based on this worst-case scenario. In revising the General Plan, the County could look to the Land Use Element recently completed by Yolo County.³ Unlike the Project, the Yolo County General Plan land use element provides maps illustrating the land uses contemplated by the General Plan, and the total acreage occupied by these uses. This information can be compared against current uses so decisionmakers and the public are able to surmise how the General Plan would

³ Yolo County, 2030 General Plan Update, Land Use Element.

represent a change from both existing baseline conditions and allowable growth under the existing General Plan.

The deficiencies of the land use element cannot be understated. Without data on where growth will occur, other required general plan elements, such as the circulation and open space elements, are meaningless and potentially inconsistent. As presented, it is entirely unclear whether the objectives and policies set forth in these elements are consistent with the vague and ill-defined land use element.

The land use element's failure to provide enforceable and stable policies to direct growth further precludes a meaningful understanding of where growth could occur. For example, the General Plan would allow for the development of entire new towns. (Goal PF-5.) Because the location, density, and population of these potential new towns is not identified, the extent and type of growth contemplated under the General Plan cannot be accurately ascertained. Similarly, urban development is only "encouraged" in existing UDBs and HDBs but could occur in a number of other locations with ill defined criteria. (PF-1.4.; PF 1.2 (allowing urban growth within foothill development corridors "as determine by procedures set forth in Foothill Growth Management Plan."))

II. THE RDEIR VIOLATES CEQA

A. The Project Description Lacks Sufficient Detail to be Meaningful

An EIR cannot accurately assess project impacts if the project itself is not sufficiently described. Accordingly, "[a]n accurate, stable and finite project description is the *sine qua non* of an informative and legally sufficient EIR." *San Joaquin Raptor v. County of Stanislaus*, 27 Cal.App.4th 713, 730 (1994). Because the RDEIR does not provide a meaningful and stable description of the land uses contemplated by the General Plan, it is unclear what exactly is the "project" under review.

While the RDEIR refers to Figure 4.1 in the General Plan Update in an attempt to describe the Project, Figure 4.1 does not identify land uses designated under the General Plan, it simply references other planning documents. Reference to a patchwork of other plans, which themselves contain conflicting and incomplete information, is an insufficient project description. To accurately and sufficiently describe the Project, the RDEIR must be revised to provide maps of the location and intensity of allowable future development.

The RDEIR describes the Project as directing 75% of new population growth to occur within CACUDBs and Spheres of Influence of incorporated cities and 25% to occur mainly within unincorporated communities and hamlets, foothill development corridors, urban and regional growth corridors and mountain service centers. (RDEIR at 2-24). Yet given the utter lack of clarity of where growth could occur, and the significant loophole allowing the creation of new planned communities of potentially tens of thousands of residents in unincorporated areas, there does not appear to be any evidentiary basis to support this assertion. Indeed, the General Plan does not appear to

modify land uses to meet and guide projected population growth, but rather to keep future development options as open-ended as possible. While growth may occur as described, it also may not. The RDEIR must provide a worst-case scenario of how growth might be distributed based on allowable development land use designations and intensities set under the General Plan (to the extent clear designations even exist). To the extent the Project could create capacity for most or all projected population growth to occur in unincorporated areas, through new planned communities and/or by providing a wide range of potential development intensity in rural areas, it is inaccurate and misleading to characterize the Project as directing 75% of new population growth to CACUDBs and Spheres of Influence.

B. The Description of Existing Environmental Conditions Lacks Sufficient Detail

CEQA requires that an EIR “include a description of the physical environmental conditions in the vicinity of the project.” Guidelines § 15125. While the RDEIR contains some generalized data on land use designations in a handful of planning areas, it fails to provide maps or otherwise identify where these designations occur and how they may be distributed. Additionally, physical environmental conditions under CEQA refer to on-the-ground environmental conditions, not permitted conditions. Therefore, the RDEIR must be revised to describe development that currently exists in the County, not what may be permissible under existing land use designations. Only in this manner may impacts from the Project be accurately compared and assessed.

C. The RDEIR Fails to Analyze and Mitigate Project Land Use Impacts Adequately

The mitigating policies and implementation measures listed by the County under this element are insufficient to address the potential adverse impacts created by the project. We suggest the following additional considerations to the policies and implementation measures.

LU-1.1: Smart Growth and Healthy Communities - This measure focuses on connectivity between new and existing development. There are many existing, underserved existing communities whose health would benefit greatly from a policy encouraging connectivity between communities and between communities and larger municipal service providers. This policy does not address the benefits of encouraging connectivity among existing communities.

LU-1.8: Encourage Infill Development – This is a beneficial policy but the Zoning Ordinance discussed in Implementation Measure 3 should promote smart growth principles and reduce cumulative impacts.

LU-1.9: Specific Plans - It could be desirable to have the planning frameworks found in Table 4.3 consider, for example, how much water a municipal provider is likely to need to provide for possible future connections by nearby existing unincorporated communities. This might be one way of ensuring that new developments don't impede future service connections by existing unincorporated communities.

LU-4.1: Neighborhood Commercial Uses - The County should also encourage development of neighborhood commercial uses in existing unincorporated communities where such uses will not disproportionately burden such communities. For example, corner stores might be desirable in these areas whereas water-intensive uses would probably not be desirable.

LU-4.2: Big Box Development – Considering big box developments on a case by case basis, as currently planned, subverts many of the policies laid out in the General Plan, such as the smart growth principles and the community center policies (Economic Development Policy 6.1). A California State Bakersfield study linked the big box development, specifically a proposed Wal-mart, with the potential for increasing urban decay in the surrounding area.

LU-5.1: Industrial Developments – The County policy to encourage industrial development activities in “appropriate locations” should include criteria or guidance to ensure that “appropriate” is applied fairly and protects existing unincorporated communities. Such guidance might include a requirement for buffers where industrial uses will be sited near existing unincorporated communities and, where appropriate, hiring preferences for people in adjacent areas should be pursued.

LU-5.2: Industrial Park Developments & ED-3.2: Industry Clusters – The County should adopt restrictions to prevent cumulative impacts to local residents.⁴

ED-2.2: Land Requirements - Clustering industries in industrial parks or industrial areas can be beneficial in terms of reducing impacts on neighbors. However, in terms of some industries, clustering can create local cumulative impacts or hot spots increasing pollution for local residents. The County should adopt an implementation measure that prevents an increase in cumulative impacts.

LU-5.6: Industrial Use Buffer & ED-2.11: Industrial Parks - The County sets forth a 500 foot buffer as one of the policies, however, the South Coast Air Quality Management District requires a larger buffer for some industries such as warehouses. The California Air Resource Board also has guidance regarding land use planning that discusses the need for set backs. The County should adopt restrictions to prevent cumulative impacts to local residents.⁵ In addition, there should be a requirement, or at least a preference, for recreational or green buffers and a requirement for adequate landscaping and screening (not just a high wall) between the uses to minimize visual impacts and enhance the quality of the environment.

LU-7.6: Screening – There is no criteria to determine what constitutes “landscaping to adequately screen.”

Land Use Implementation Measure 18 - The measure has no standards for what constitutes a “significant buffer,” nor does it lay out what alternative measures would be adequate to create this buffer.

Additionally, the County should recognize community and hamlet councils and resident groups during reviews of permits and proposals within their UBD or HBD (Planning Framework Implementation Measure 3) to ensure projects proposed in these areas have the least adverse impact and most benefit for the local residents. In the same vein, partnering with project applicants to prepare community plans has the potential to

⁴ See: <http://www.arb.ca.gov/ch/handbook.pdf>.

⁵ See <http://www.arb.ca.gov/ch/handbook.pdf>

create a conflict of interest and promote inefficient and incongruent planning between communities and hamlets. This policy (PF-2.5) should be removed from the General Plan.

D. The RDEIR Fails to Analyze and Mitigate Project Traffic and Circulation Impacts Adequately

The mitigating policies and implementation measures listed by the County under this element are insufficient to address the potential adverse impacts created by the Project. We suggest the following additional considerations to the policies and implementation measures.

TC-1.1: Provision of an Adequate Public Road Network - This policy commits the County to establishing and maintaining roads. The implementation measures center around impact fees, Measure R funding, and other state or federal funding sources. The bulk of Measure R funding centers around Visalia leaving 23 unincorporated communities and hamlets to divide up a very small pot. The County should prioritize Measure R money to redress communities and hamlets neglect. They are often least able to leverage their resources to acquire the funds necessary to repair the roads.

TC-1.7: Intermodel Freight Villages - The County shall consider the appropriate placement of intermodel freight villages in the County. These villages could have significant air quality impacts for the region and must be tied to implementation measures or sighting criteria that reduce those impacts. As part of Implementation Measure 11, the County should also explore opportunities to build the infrastructure for alternative fuel vehicles. If the infrastructure is in place, the County could then require the use for good movement vehicles operating in the County.

TC-1.8: Promoting Operational Efficiency - The County is going to give consideration to those programs that improve the efficiency of the goods movement and enhance farm to market connectivity. This should be tied to reductions in air pollution and should not be at the expense of historically neglected communities and hamlets- the residents of which are farm laborers whose work helps drive the economy of the County. Specifically, the County should promote safer, affordable labor transportation for farm workers in the region through incentives. The County should support programs such as the Kings County Agricultural Industries Transportation Services Farm Worker Vanpool program.

TC-1.15: Traffic Impact Study - The County's threshold of significance of 100 peak hour trips per day seems high. For some areas of the County a number under 100 peak hour trips per day might be significant under CEQA. The County should consider that a lower number of peak hour trips might trigger a traffic study depending on the environmental setting.

TC-4.4: Nodal Land Use Patterns that Support Public Transit - While we realize that nodal land use patterns are critical to ensuring public transit systems that are more effective, many of these "service area hubs" are also being accessed by residents of the unincorporated communities. The County should have an implementation plan to provide an easy, affordable and effective way for unincorporated community residents to access these hubs with public transit.

TC-4.5: Transit Coordination - Regional coordination is critical for residents of the rural unincorporated communities. Many of the challenges they face is lack of frequency of service from their unincorporated communities into major city areas such as Visalia or Dinuba, however, these challenges are increased when there is a large lag time, or significant walking distance to access local city transit services. Better coordination between city and transit systems is critical to serving the needs of transit dependent residents of the county.

E. The RDEIR Fails to Analyze and Mitigate Project Air Quality Impacts Adequately

The RDEIR fails to analyze and mitigate the air quality impacts of the projected increase in dairies and feedlots and their associated emissions in Tulare County adequately. A recent study on Ozone production in the San Joaquin Valley found that reactive organic gas (ROG) from livestock feed dominates the ROG contributions to ozone formation in the Valley.⁶ The contribution was higher than that of light duty vehicles in the Valley.⁷ Table 3.3-1 should be amended to include livestock feed as a major pollutant source of Ozone. In addition, the Project should discuss the potential environmental impacts from increased dairies in the Valley and the possible mitigation measures. Impacts 3.3-2 and 3.3-3 incorrectly state that no additional mitigation measures are available for the potential project impacts of a net increase of criteria air pollutants or obstruction of implantation of an air quality plan. Simply relying on the San Joaquin Valley Unified Air Pollution Control District's Rule 4570 to mitigate dairy and feedlot emissions is not sufficient. There are other feasible mitigation measures that could reduce the impact of livestock feed emissions. For example, the County could require new and expanding dairies within the County to build enclosed barns with a biofilter or other pollution capturing mechanisms. This is a feasible mitigation measure that would not only decrease the emissions from dairies and feed lots, but it has been shown to improve milk production and increase breeding success in hot weather.⁸ In addition, the County should consider the potential for the Project to create or contribute to a toxic "hot spot."

In addition, we suggest the following additional considerations to the policies and implementation measures.

AQ-1.1: Cooperation with Other Agencies - The County commits to cooperating with other agencies in developing an implementing regional air quality plans. The Implementation Measures (Numbers 1 and 2) are very vague as to how this will be accomplished. Tulare County sits on the San Joaquin Valley Air Pollution Control Board and is already required to cooperate in regional efforts to reduce pollution. The County should create concrete policies that reduce pollution by creating an emissions cap for the

⁶ Howard, Cody J., Kumar, Anuj, et. al., Environ. Sci. & Technol.: *Reactive Organic Gas Emissions from Livestock Feed Contribute Significantly to Ozone Production in Central California*, Vol. 44, No. 7 (2010) 2309-2314.

⁷ *Id.*

⁸ Powers, William E., Expert Report (Dec. 2007).

County, specify particular uses, reducing energy production and consumption in the County, creating policies to retrofit buildings to be more energy efficient, etc.

AQ-1.3: Cumulative Air Quality Impacts - This policy merely reiterates requirements in the CEQA. In order to implement this policy the County should create policies that prioritize projects that reduce or do not increase local or regional pollution. The County could create Green Tape policies that expedite project approval that meet specific demonstrated environmental benefits. The County could also create emissions caps for areas of the County already overburdened with pollution sources.

AQ-1.6: Purchase of Low Emission/Alternative Fuel Vehicles - According to this policy the County will encourage departments to replace existing vehicles with low emission/alternative fuel vehicles. However, the County qualifies this commitment with a vague reference to “as appropriate.” Furthermore, under Implementation Measure 7 which deals with the policy, the County will only review the performance and maintenance records of its existing hybrid and alternative fuel vehicles fleet. The County should strengthen this policy by removing the “as appropriate” language. The County should also strengthen the implementation measure by requiring existing inefficient fleets to be replaced by hybrid or alternative fuel vehicles. The County should also create an implementation measure to encourage or incentivize the development of an alternative fuel infrastructure i.e. CNG filling stations. This would allow the County to increase its use of alternative fuel vehicles and make it more feasible for the County to require alternative fuel vehicle use as conditions of project approval. These policy and implementation measure changes would also help the County mitigate its greenhouse gas emission impacts.

AQ-2.3: Transportation and Air Quality - The County will work with TCAG to study methods of transportation which may contribute to a reduction in air pollution. The policy also suggests several public transportation alternatives. However, another aspect of transportation design includes using the County’s land use authority to require developers to build projects that reduce vehicles mile traveled (VMTs). Developments that encourage sprawl and create mazes of streets and cul de sacs increase VMTs and contribute to air pollution. The County could create policies to disallow this type of development as part of its transportation design policies.

AQ-3.6: Mix Land Uses - The County states that it will encourage the mixing of land uses. However, there is no implementation measure for this policy. The County is requiring mix zoning in hamlets which will require a change in the Zoning Ordinance. Also, the County could create an implementation measure which would give priority to the mixed use projects.

F. The RDEIR Fails to Analyze and Mitigate Project Energy Impacts Adequately

The California Natural Resources Agency recently reaffirmed that “CEQA’s requirement to analyze and mitigate energy impacts of a project is substantive, and is not merely procedural.”⁹ Pursuant to CEQA Greenhouse Gas Guidelines promulgated under SB 97, Appendix F of the Guidelines was revised to clarify that an EIR *shall* consider energy implications of the proposed project, and where applicable, items that should be

⁹ Resources Agency, Final Statement of Reasons for Regulatory Action at 71 (Dec. 2009).

considered include the energy supply and energy use patterns of the region, the effects of the project on local and regional energy supplies, and measures to reduce energy consumption. (CEQA Guidelines, Appendix F.)

The RDEIR fails to conform to Appendix F because its description of Project energy use is limited to noting the PG&E supplies the County with electricity and natural gas. To properly assess the Project's energy consumption, the County should provide information on the extent to which on-site renewable energy is being used in the County, and discuss whether the County currently has any programs or requirements relating to energy efficiency, renewable energy or green building requirements.

The RDEIR's conclusion that Project energy impacts are not significant fails because it is based entirely on a series of vague and aspirational measures aimed at reducing energy consumption. For example, in concluding that the Project would not result in the wasteful, inefficient, or unnecessary consumption of energy in the construction and operation of new buildings, the RDEIR references the following measures:

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

LU Implementation Measure #24: The County shall review LEED and LEED-ND certification requirements and develop an implementation program.

AQ-3.5: The County shall *encourage* all new development, including rehabilitation, renovation, and redevelopment, to incorporate energy conservation and green building practices to maximum extent feasible.

AQ Implementation Measure #12: The County shall *encourage* LEED and LEED-ND certification for new development or similar rating system....

PFS-5.9: The County shall *investigate* waste disposal and reuse needs for agricultural wastes for energy and other beneficial uses and shall change County plans accordingly.

ERM-4.1: The County shall *encourage* the use of solar energy, solar hot water panels, and other energy conservation and efficiency features in new construction and renovation of existing structures in accordance with State law.

ERM-4.2: The County shall *promote* the planting and maintenance of shade trees along streets and within parking areas of new urban development to reduce radiation heating.

ERM-4.3: The County shall *participate, to the extent feasible*, in local and State programs that strive to reduce the consumption of natural or man-made energy sources.

ERM-4.4: The County *should coordinate* with local utility providers to provide public education on energy conservation programs.

ERM-4.6: The County shall *support* efforts, when appropriately sited, for the development and use of alternative energy resources

(See RDEIR at 3.4-29-30.) Because each of these measures is framed in unenforceable, aspirational language, not a single one of the measures supporting the RDEIR's less than

significant determination provides any degree of certainty that they will ultimately function to reduce energy consumption. Additional measures identified in the RDEIR to purportedly “ensure that this impact remains less than significant” similarly provide no assurance that energy consumption will actually be reduced. (RDEIR at 3.4-30). Measure ERM-4.7 calls for the continued integration of “energy efficiency and conservation into all County facilities” but fails to provide any guiding standards or requirements. Similarly, ERM-4.8 simply calls on the County to “*encourage*” new development to exceed minimum state efficiency standards without setting any requirements.

In addition, while the County states it wants to attract energy resource development (ED-3.1: Diverse Economic Base), there are no criteria for what type of energy development. The County should encourage the development of renewable energies that provide a true reduction in fossil fuel dependence, such as solar and wind. The County also identifies ethanol as an industry to attract to the County (Economic Development Existing Conditions). Corn-based ethanol is bad public policy in terms of air quality, water supply, and for low income communities raising food security issues. Lastly, the County pledges to provide leadership in economic development with attention to attracting clean industries. (ED 1.1) However, there is no implementation measure for this. The County should examine opportunities for the County to participate in the truly green economy which is growing throughout the State and Country. There are several green jobs initiatives that have been taking place throughout California and throughout the Country. Organizations such as Green Jobs for All are providing support for public and private initiatives that advance green jobs for low income people and people of color as a sustainable pathway out of poverty. Tulare County should adopt building code standards, energy efficiency goals for new development and rehabilitating existing buildings to meet LEED standards. The County should also encourage and incentivize job training programs that build the skills necessary for low income residents and people of color in Tulare County to take advantage of the emerging green economy. The County should work with green jobs initiatives and the Economic Development Corporation to identify clean industries and work to create incentives to attract them to the County along with job training programs to allow local residents to fill these jobs. Jobs in green construction, maintenance and restoration, as well as solar and wind energy production provide a good pathway to higher income jobs as well as provide for a healthier environment. The County should prioritize those types of economic projects.

Given their vagueness, uncertainty and lack of enforceability, the RDEIR does not, and cannot, quantify or describe the actual energy conservation benefits that will result from these measures. As noted by the Attorney General in “Climate Change, the California Environmental Quality Act, and General Plan Updates: Straightforward Answers to Some Frequently Asked Questions, California Attorney General’s Office,” “[w]hile a menu of hortatory GHG policies is positive, it does not count as adequate mitigation because there is no certainty that the policies will be implemented.”¹⁰ Accordingly, there is no legitimate basis to conclude Project energy impacts are less than

¹⁰ California Attorney General, Climate Change, the California Environmental Quality Act, and General Plan Updates: Straightforward Answers to Some Frequently Asked Questions at 5 (2009).

significant. Indeed, it appears that the County does not have a single specific and enforceable policy to reduce non-renewable energy consumption.

There are numerous specific policies that the County can implement to ensure that energy consumption is not wasteful. Energy conservation not only reduces greenhouse gas emissions, but results in financial savings in reduced utility and fuel costs to the County, households, and businesses, thereby keeping money circulating in the local economy that otherwise would have been used to pay energy bills. Given the many benefits of energy conservation, local governments across the state have implemented policies to increase use of renewable energy and improve energy conservation. These measures, which the County should consider as mitigation for Project energy and climate impacts, include:¹¹

- Requiring that all new public buildings meet a minimum LEED silver standard. (See Alameda County Administrative Code Chapter 4.38, requiring all new County projects meet a minimum LEED Silver rating);
- Requiring that new residential and commercial development, as well as major remodels of homes and businesses, meet green building standards and are LEED certified and that all new buildings exceed Title 24 energy standards by 25 percent. (See Town of Windsor Building and Housing Code Article 13, establishing green building standards and ratings for commercial and residential buildings). Public Resources Code Section 25402.1(h)(2) and Section 10-106 of the Building Energy Efficiency Standards (Standards) establish a process which allows local adoption of energy standards that are more stringent than the statewide Standards. This process allows local governments to adopt and enforce energy standards before the statewide Standards effective date, require additional energy conservation measures, and/or set more stringent energy budgets. Local governments are required to apply to the Energy Commission for approval, documenting the supporting analysis for how the local government has determined that their proposed Standards will save more energy than the current statewide Standards and the basis of the local government's determination that the local standards are cost-effective. Once the Energy Commission staff has verified that the local standards will require buildings to use no more energy than the current statewide Standards and that the documentation requirements in Section 10-106 are met, the application is brought before the full Energy Commission for approval. Numerous local governments have taken advantage of this process. See http://www.energy.ca.gov/title24/2005standards/ordinances_exceeding_2005_building_standards.html

¹¹ Many of these measures were identified in CBD's April 15, 2008 comments on the General Plan Update, which are herein incorporated by reference.

- Requiring building projects to recycle or reuse a minimum of 50 percent of unused or leftover building materials (Alameda County Administrative Code § 4.38.030);
- Offering incentives to encourage green building standards and discourage business as usual construction;
- Requiring energy efficiency and water conservation upgrades to existing residential and non-residential buildings at the time of sale, remodel, or additions. Berkeley's Residential Energy Conservation Ordinance (RECO) is an example of such a measure. (Berkeley's RECO, Berkeley Municipal Code Chapter 19.16.) Under this ordinance, Berkeley establishes ten energy or water conservation measures that residential structures must incorporate. These include measures such as installing ceiling insulation, certain water efficiency technologies to shower fixtures and sink faucets and weatherstripping on all exterior doors. Berkeley Municipal Code Chapter § 19.16.050(B). The ordinance requires the seller to certify that some of these measures have been met prior to the sale or exchange of any residential structure or unit. Berkeley Municipal Code Chapter § 19.16.050(A). Similarly, Berkeley's Commercial Buildings – Energy Conservation Measures requires commercial building owners to conduct an energy audit of their building prior to the sale or major renovation of the building and certify(?) that they have installed energy conservation measures, regarding heating, cooling, water, and lighting systems, among others. Berkeley Municipal Code Chapter §19.72.
- Requiring new residential construction to meet specific energy efficiency standards that go beyond those mandated by California law. For example, the City of Rohnert Park recently enacted an ordinance establishing minimum energy efficiency standards for all new low-rise residential construction of any size, low-rise residential additions over a specific size threshold and all residential and non-residential swimming pools and water features. City of Rohnert Park Municipal Code Chapter 14 at § 14.01.010. The ordinance requires residential buildings to include Energy Star appliances and that new and expanded residential structures meet specific energy use standards City of Rohnert Park Municipal Code Chapter 14 at §§ 14.02.050(A); 14.02.060;
- Requiring that all new buildings be constructed to allow for future installation of solar energy systems. In its Community Greenhouse Gas Reduction Plan, the City of Arcata recommended that it adopt such requirements. City of Arcata, Community Greenhouse Gas Reduction Plan (Aug. 2006). Additionally, Chula Vista's Energy Conservation Regulations mandate that all new residential units include plumbing specifically designed to allow later installation of systems that will rely on

- Adopting and implementing a Heat Island Mitigation Plan that requires new residential buildings to have “cool roofs” with the highest commercially available solar reflectance and thermal emittance and adopt a program of building permit enforcement for re-roofing to ensure compliance with existing state building code “cool roof” requirements for non-residential buildings. Research shows that “cool roofs” can reduce air-conditioning energy use between 10 and 50 percent (Akbari 2000);
- Integrating renewable energy requirements into development and building standards, such as requiring onsite solar generation of electricity in new retail/commercial buildings and parking lots/garages (solar carports);
- Adopting a resolution or ordinance that will require sources of renewable energy, such as installing solar photovoltaic systems to generate electricity for public buildings and operations¹²; using methane to generate electricity at the wastewater treatment plants; and installing combined heat and power systems.
- Requiring new residential developments to participate in the California Energy Commission’s New Solar Homes Partnership and include onsite solar photovoltaic systems in at least 50% of the residential units (see <http://www.gosolarcalifornia.ca.gov/nshp/index.html>; See also California Public Utilities Commission, New Solar Homes Partnership Guidebook, Second Edition (July 2007);
- Using Geographical Information Systems (GIS) to map and assess local renewable resources, the electric and gas transmission and distribution system, community growth areas anticipated to require new energy services, and other data useful to deployment of renewable technologies;
- Identifying possible sites for production of energy using local renewable resources such as solar, wind, small hydro, biogas, and tidal and evaluating potential land use, environmental, economic, and other constraints affecting their development, and adopting measures to protect those resources, such as utility easements, rights-of-way, and land set-asides;
- Offering incentives and investing in developments in hamlets and underserved communities that would reduce vehicle miles traveled. For

¹² Under the California Solar Initiative, the California Public Utilities Commission offers different incentives to government agencies, as well as private businesses and residents, for installing certain types of solar power systems. See California Public Utilities Commission, California Solar Initiative Program Handbook (Jan. 2008), available at <http://www.cpuc.ca.gov/puc/energy/solar/> (last visited April 7, 2008).

- Require an energy audit for County owned buildings and require rehabilitation to make buildings more efficient, taking advantage of state and federal funding programs for assistance.

Additional policies that can form the basis for development of specific implementation measures are identified in CAPCOA's "Model Policies for Greenhouse Gases in General Plans" and the Institute for Local Government's Best Practices Framework.¹³

CEQA requires the County to adopt all feasible mitigation measures to reduce the Project's significant impacts on climate change and energy consumption. Accordingly, the RDEIR should be revised and recirculated to include specific and enforceable measures to reduce Project energy consumption and resulting greenhouse gas emissions, including the measures references above in the CAPCOA and Institute for Local Government's Best Practices Framework.

G. The RDEIR Fails to Properly Analyze and Mitigate Greenhouse Gas Impacts

As the future land-use planning document for the County, general plan policies and land use determinations have profound implications for global warming. The California Air Resources Board has accurately called local governments "essential partners" in implementing AB 32.¹⁴ Leadership by local governments in improving land use patterns and reducing greenhouse gases is a key component in solving the climate crisis. Supporting smart growth style compact development is one of the most important ways to achieve substantial reductions in greenhouse gas emissions. (Urban Land Institute 2008). Addressing climate change through local planning documents also provides other long term benefits to the local planning agency. Smart growth policies that discourage sprawl not only reduce greenhouse gas emissions but also reduce the cost of public services (Carruthers 2007), improve public health, allow for streamlining of future environmental review through the method of tiering to a Program EIR (CEQA Guidelines §§ 15064(h)(3), 15183.5), and facilitate compliance with state greenhouse gas reduction requirements under the Global Warming Solutions Act (AB32) and Executive Order S-03-05.¹⁵ Unfortunately, the General Plan does not appear to take its obligation to reduce greenhouse gas emissions seriously or seem to recognize the many fiscal and quality of life benefits that result from improved land-use planning. We urge the County

¹³ CAPCOA, Model Policies for Greenhouse Gases in General Plans (June 2009); Institute for Local Government, CCAN Best Practices Framework (Feb. 2010), available at <http://www.ca-ilg.org/node/1191>.

¹⁴ CARB, Climate Change Proposed Scoping Plan (Oct. 2008) 26-27.

¹⁵ See Anders et al, *Applying California's AB 32 Targets to the Regional Level: A Study of San Diego County Greenhouse Gases and Reduction Strategies*, 37 ENERGY POLICY 2831 (2009) ("Although the largest reductions are achieved through state mandates, all measures, including at the local level, will be required to achieve the AB 32 target.")

to revisit the RDEIR's greenhouse gas analysis and develop a climate action plan with a legitimate emissions target, specific and enforceable mitigation and a robust monitoring program.

1. The RDEIR Does Not Sufficiently Explain How Emission Estimates Are Derived

The RDEIR states that vehicular emissions were calculated using estimates by the Tulare County Association of Government's vehicle miles travelled estimates for 2030. However, it is unclear whether these estimates are tied to the actual land uses envisioned under the General Plan. If not, the RDEIR should be revised to estimate VMT based on the maximum allowable extent and location of growth permitted under the General Plan. Absent this analysis, Project impacts cannot be accurately described and alternatives accurately compared.

2. Proposed Mitigation for the Project's Greenhouse Gas Impacts is Vague, Unenforceable, and Improperly Deferred

While the RDEIR properly acknowledges that Project greenhouse gas impacts are significant, it fails to adopt all feasible mitigation and alternatives to minimize this impact as required under CEQA. Pub. Res. Code § 21002. Like its treatment of energy impacts, mitigation for the full range of Project's greenhouse gas impacts is improperly vague, unenforceable and deferred. As recently set forth by the Court of Appeal in *Communities for a Better Environment v. City of Richmond*, "the novelty of greenhouse gas mitigation measures is one of the most important reasons 'that mitigation measures timely be set forth, that environmental information be complete and relevant, and that environmental decisions be made in an accountable arena.'" 2010 Cal. App. LEXIS 571, 51-52 (Cal. App. 1st Dist. Apr. 26, 2010) (citation omitted).

Rather than propose meaningful mitigation for the Project's greenhouse gas impacts in the RDEIR, the General Plan simply provides a policy that the County will develop a climate action plan at some undetermined date that will inventory, mitigate and monitor the County's greenhouse gas emissions. (RDEIR at 3.4-38-39). No date is set for completion of this plan, no mitigation target set, and no specific measures are proposed. Notably, CBD raised this same concern over two years ago in comments on the DEIR, which similarly called for the future development of a climate action. The County had ample opportunity to develop and adopt a meaningful climate action plan within that time period but has failed to do so. In invalidating an EIR for improperly deferring mitigation of greenhouse gas impacts, the Court in *Communities For a Better Environment v. City of Richmond*, held that the "solution was not to defer the specification and adoption of mitigation measures until a year after Project approval; but, rather, to defer approval of the Project until proposed mitigation measures were fully developed, clearly defined, and made available to the public and interested agencies for review and comment." 2010 Cal. App. LEXIS 571 (Cal. App. 1st Dist. Apr. 26, 2010). Indeed, were the Climate Action Plan to be developed after general plan approval as currently contemplated, land uses would be locked in that could frustrate attainment of

emission reduction objectives. The time to analyze and commit to sustainable, low-carbon growth is when the General Plan is developed, not after.

Additionally, AQ-1.7 only states that the County will support statewide global warming solutions and monitor ARB's efforts to develop global warming mitigation for local governments to implement as part of AB 32. However, there is no implementation measure associated with this policy. Further, this policy overlooks the fact that independent of ARB, the County as a local lead agency has a duty under CEQA to mitigate direct and indirect impacts from projects in its jurisdiction.

3. The Proposed Climate Action Plan Sets an Improper Target and Fails to Contain Meaningful Policies and Mitigation

Documents released by the County include a Draft Climate Action Plan (CAP) wherein the County asserts it will adopt the CAP "in close proximity and subsequent to the adoption of the General Plan Update." As set forth above, the CAP must be developed and adopted concurrently with the General Plan to conform with CEQA. In addition, the CAP itself falls far short of a plan that could be used for streamlining CEQA review of project-level GHG impacts. (See Guidelines §§ 15064(h)(3), 15183.5.) In particular, the Plan's emission reduction target is not supported by substantial evidence and contrary to available guidance on this issue. Moreover, proposed mitigation measures are deferred and unenforceable. A revised CAP should be recirculated that meets the standards of new CEQA Guideline § 15183.5, which sets specific criteria for climate action plans, and available guidance. The County should also consider Climate Action Plan resources developed by the Bay Area Air Quality Management District (BAAQMD) that can be applied statewide.

a. The Proposed Greenhouse Gas Reduction Target is Fatally Flawed

The CAP states that its emission reduction objective "must be set at a level that demonstrates consistency with State targets, but should be feasible for the vast majority of projects to achieve." (CAP at 4.) As set forth in the CEQA Greenhouse Gas Guidelines adopted by the Resources Agency, the target for a greenhouse gas reduction plan is the "level, based on substantial evidence, below which the contribution to greenhouse gas emissions from activities covered by the plan would not be cumulatively considerable." (Guideline § 15183.5.) In other words, the relevant consideration in setting a greenhouse gas target is scientific evidence demonstrating that the target is sufficient to ensure projects compliant with the plan will not have a cumulative impact, not that the target is set at a level to allow the "vast majority" of projects to demonstrate consistency.

The CAP's proposed 29 percent below business as usual emissions reduction target is flawed on numerous grounds. (CAP at 12). First, the CAP's assertion that this target is based on guidance by SJVAPCD and BAAQMD is incorrect. Guidance proposed by SJVAPCD was limited to industrial, residential and commercial projects, not general plans. It also must be noted that the Attorney General opined that the 29% below

business as usual threshold proposed by SJVAPCD “will not withstand legal scrutiny.”¹⁶ The CAP also mistakenly asserts that BAAQMD developed a 28% below business as usual target for general plan. Emission reduction targets for climate action plans identified by BAAQMD for 2020 are 6.6 tons of emissions per capita, a 15 percent decrease from current levels, or reaching 1990 levels.¹⁷ Because the guidance is based on statewide objectives, it is applicable to the Tulare County General Plan Update. Here, the General Plan falls far short of all of these metrics. Emissions per capita for 2030 are 27.4 tons not 6.6 (a number based on 2020 goals, not 2030, which would be lower). Total County emissions by 2030 are 6,105,480 tons, a 20% *increase* from current levels. While the CAP claims that simply calling for a 6% reduction in emissions from new development from an undefined base case scenario is insufficient to ensure the County is consistent with California’s emission reduction objectives, the high per capita emissions and overall increase in emissions from current levels demonstrates otherwise and unmasks the inherent gamesmanship and illegitimacy of the County’s significance criteria.

b. The CAP Fails to Properly Identify and Analyze Emissions Resulting from Specific Actions or Categories of Actions

Not only is the use of a 29% below business as usual target without evidentiary support, but, in calculating the County’s role in meeting this target, it improperly takes credit for a range of state action that has not yet been realized. As set forth in BAAQMD guidance, a climate action plan “should identify and analyze GHG reductions from anticipated actions in order to understand the amount of reductions needed to meet its target.”¹⁸ Rather than do so, the CAP simply asserts that implementation of state measures will result in a 24.2 percent reduction in County emissions. As many of these state measures have not been adopted or specified, and their application to County activities is unclear, there is simply no evidence to support this blanket assertion. While it is appropriate for a CAP to account for state action, this should only be for measures, such as Pavely vehicle mile standards, where there a sufficient level of certainty that the measure will occur and specificity to understand its effect on local GHG emissions.¹⁹ Properly analyzing the extent to which state action will reduce emissions generated locally is critical to understanding additional action that will be needed by local government.

A clear understanding of the potential gap between the results of state action and the County’s emission reduction targets underscores the importance of analyzing climate impacts and alternative development scenarios in the General Plan itself, rather than defer this analysis to a later date. Because the climate action plan would be adopted *after*

¹⁶ Letter from Attorney General to SJVAPCD re: Final Draft Staff Report on Greenhouse Gas Emissions Under CEQA, Nov. 4, 2009.

¹⁷ BAAQMD, CEQA Guidelines Update, Proposed Thresholds of Significance, May 3, 2010.

¹⁸ BAAQMD, CEQA Air Quality Guidelines, May 2010 at 4-10.

¹⁹ BAAQMD, GHG Plan Level Quantification Guidance, April 15, 2010.

approval of the general plan, it is severely limited in its ability to reduce emissions from the transportation sector through better land use planning.

c. The CAP Does Not Contain Specific Measures That Would Collectively Achieve the Target Emissions Level

Because the CAP simply incorporates the same set of aspirational and non-binding measures listed in the General Plan, it fails to demonstrate that implementation will result in emissions reductions. Indeed, the CAP does not appear to have a single binding measure that would function to reduce community emissions. As set forth above, there is a vast array of potential measures, such as requiring on-site renewables for projects above a certain number of units, green building standards, and policies prohibiting leapfrog development that can significantly reduce community emissions. Many of these measures are incorporated in CBD's original comments on the DEIR for the General Plan and are herein incorporated by reference.

d. The CAP's Proposal to Monitor Progress is Inadequate

As set forth in Guideline § 15183.5, it is critical that a CAP establish a mechanism to monitor progress toward its emission target, and to require amendment if that target is not reached. While the CAP states it will develop benchmarks, the mitigation monitoring and reporting lacks specificity and any assurance that it will not be immediately disregarded. For example, BAAQMD Guidance recommends that a CAP should, among other things, identify the department and lead staff in charge of oversight and provide an integrated timeline of implementation of measures.²⁰ This level of specificity is entirely absent from the Tulare County CAP.

H. The RDEIR Fails to Analyze and Mitigate Project Noise Impacts Adequately

The County's policy to discourage the intrusion into existing urban areas of new incompatible land uses that produce significant noise, odors, or fumes (LU-1.3) does not include implementation measures designed to address the impact of development that occurs within city limits that intrudes upon county residential areas.

I. The RDEIR Fails to Analyze and Mitigate Project Hydrology, Water Quality and Drainage Impacts Adequately

1. Impact 3.6-1: Water Quality

The RDEIR wrongly concludes that adoption of the current draft Update to the General Plan will have a "less than significant" impact on water quality and compliance with water quality standards in the County.²¹ The RDEIR largely ignores the fact that extensive groundwater contamination problems already exist and even goes so far as to

²⁰ BAAQMD, GHG Plan Level Quantification Guidance, April 15, 2010 at 16.

²¹ RDEIR, § 3.6, pp.37-40.

downplay the significance of these problems, stating that “high TDS, nitrate, arsenic, and organic compounds such as herbicides, pesticides and fertilizers, as well as instances of radiological parameters such as uranium and radium 228 . . . *are not of significant concern* across most of the sub-basins” of the County.²² This is in direct contradiction to the Background Report, which documents substantial groundwater contamination in every major watershed in the County.²³ The current draft Update to the General Plan does little to address the fact that existing communities throughout the County already suffer from degraded groundwater resources, and it is substantially likely that ignoring this problem will only exacerbate it. If the County does not acknowledge and address existing groundwater contamination in its land use planning and land and water policymaking, these problems will only intensify, especially as new development places increasing strain on an ever-lowering water table, intensifying contaminant concentrations and competition for those aquifers that remain potable.²⁴ As the Background Report observes, many water purveyors solve their water contamination problems by “shifting to another area where water quality problems are absent.”²⁵ Another coping method used by many water providers in the County is to dig deeper wells, but frequently this just means a water system trades a nitrate contamination problem for an arsenic contamination problem.²⁶ Thus, a significant environmental impact of adopting the Update to the General Plan as drafted is the substantial likelihood that existing County residents will continue to suffer from degraded water quality, that more and more County residents will be negatively affected by contaminated groundwater as time progresses, and that water purveyors will continue to supply water that does not comply with federal and state safe drinking water standards.

²² RDEIR, p.3.6-27 (emphasis added).

²³ See Background Report, Appendix C, p.7 (observing that in the Kings River Watershed, “there are no communities which are not impacted” by contamination problems, including the residual effects of now-banned fertilizers, pesticides, and herbicides); p.10 (noting that portions of the central valley floor within the Kaweah River Watershed suffer from “man-induced contamination[,]” namely, “nematodecides such as DBCP, herbicides, pesticides and fertilizers . . . [and] industrial chemicals such as dry cleaning solvents and petroleum fuels” and that “petroleum hydrocarbon contamination . . . has further impacted the availability of groundwater for consumptive purposes *in numerous locations*”) (emphasis added); pp.13-14 (noting that “the Tule River Watershed contains the highest population of individuals impacted with lower quality groundwater of any area within the County” and that “[t]he number of wells constructed in [the Lindsay] area which have been successfully designed to avoid groundwater contamination containing [chlorides, nitrates and DBCP] are limited”); pp.17-18 (noting the “unacceptable conditions” of groundwater quality in various locations throughout the Deer Creek/White River Watershed, including nitrates, phenols, salts, arsenic, microsand, hydrogen sulfide, methane and natural gas, which “aggravate[e] the capability to deliver a potable water supply” in “many” wells); see also Background Report, Appendix C, p.7 (noting that Three Rivers in the Foothill Mountain Region currently experiences water quality problems that are “bacteriological, viral, and pathogenic in nature” and that consumption is only “tolerable” for “single family dwellings” that are “equipped with point of entry water treatment units”).

²⁴ Background Report, Appendix C, p.11.

²⁵ Background Report, Appendix C, p.10.

²⁶ See, e.g., Background Report, Appendix C, p.18 (noting that the “common approach” is to drill and develop new wells “with the design capability to select water from identified aquifers meeting current drinking water standards” but that “quantities . . . are limited under this paradigm, as taking water from too shallow of a zone, or too deep a zone, results in significant diminishment of the quality to be delivered”).

The County can take steps to mitigate these negative environmental impacts by amending existing plan policies and drafting additional new plan policies, as follows:

a. Protecting Public Health

As drafted, the Plan Update fails to articulate that access to clean, safe, and affordable drinking water is an important goal for the County. Safe drinking water is fundamental to human survival, and as the Background Report documents extensively, many County residents currently lack access to a potable water supply in their homes. For the most part, those same residents are among the County's most economically disadvantaged, and yet they pay disproportionately high water bills for water that is not safe to drink.²⁷ Although the County government is not directly responsible for serving water to most areas of the County, it should at minimum acknowledge in its General Plan that the provision of safe, affordable drinking water to every County resident is an important County goal. The Plan Update currently contains an implementation measure (Chapter 11, Water Resources, Implementation Measure 20) that serves as an excellent blueprint for a new policy emphasizing the importance of securing clean, safe, and affordable water for all County residents. Building on IM 20, the County should add a new policy to the Plan Update, as follows:

WR-__: Potable, Cost-Efficient Drinking Water

The County will support water purveyors, other public agencies, schools, IRWMPs, non-profit organizations and community-based groups in their efforts to secure an adequate, potable, and cost-efficient drinking water supply to sustain a high quality of life, especially in unincorporated areas.

WR-2.6: Degraded Water Resources – Widespread groundwater contamination throughout the County constitutes an immediate public health threat, especially in disadvantaged communities located in unincorporated areas, where some of the County's most vulnerable residents cannot afford to buy alternative sources of drinking water. As drafted, WR-2.6 does not demonstrate an affirmative desire by the County to help alleviate this public health crisis by developing both short-term and long-term solutions. WR-2.6 should therefore be amended as follows:

The County shall encourage and support the identification of degraded surface water and groundwater resources, facilitate interim solutions, and ~~promote~~ require restoration where ~~appropriate possible~~.

Implementation Measure 20 should also be expanded to implement this newly revised WR-2.6 (Degraded Water Resources), and the suggested new policy above, WR-__ (Potable, Cost-Efficient Drinking Water), as follows:

²⁷ Residents in many communities pay as much as 10% of their household income for water alone. The EPA recommends that 1-1.5% of household income is affordable. See U.S. Environmental Protection Agency, Information for States on Developing Affordability Criteria for Drinking Water, at <http://www.epa.gov/safewater/smallsystems/afforddh.html>.

The County will support TCAG's Regional Blueprint efforts to provide an adequate, potable, cost-efficient, and realizable water supply to sustain a high quality of life. In areas with degraded water quality, the County shall help facilitate interim safe drinking water solutions, especially in unincorporated areas and disadvantaged communities where contaminated water constitutes an immediate public health emergency.

WR-2.6 also needs a new implementation measure that provides a framework for restoring contaminated aquifers. The County should add the following new implementation measure for WR-2.6 to Chapter 11, Water Resources:

The County shall work with the Regional Board to develop programs to restore contaminated aquifers, such as treating water pumped from the aquifer and recharging aquifers with uncontaminated water to dilute contaminant levels.

b. Helping Unincorporated Areas

As the sole representative for unincorporated communities, the County has a particular responsibility to help address the needs of residents in these areas. The County should acknowledge this special responsibility in the General Plan Update in the following policies:

WR-1.8: Groundwater Basin Management – It is important not just that the County take an active role in groundwater basin management, but that it ensure that the needs of disadvantaged communities and hamlets are taken into account in these processes. WR-1.8 should be amended to reflect this responsibility as follows:

The County shall take an active role in cooperating in the management of the County's groundwater resources and shall ensure that these groundwater management efforts take into account the needs of unincorporated communities.

WR-3.2: Develop an Integrated Regional Water Management Plan – Pursuant to its special responsibility to residents of unincorporated areas, the County should ensure that local IRWMP efforts include and address the needs of disadvantaged communities and hamlets. Thus, WR-3.2 should be amended to include such language:

The County will participate with other agencies and organizations that share water management responsibilities in the County to enhance modeling, data collection, reporting and public outreach efforts to support the development and implementation of appropriate Integrated Regional Water Management Plans (IRWMPs) within the County. The County shall ensure that local IRWMP efforts include and address the needs of residential water users in unincorporated communities.

Likewise, Implementation Measure 18 should be amended as follows:

The County will participate in Integrated Regional Water Management Plans and ensure that all areas of the County are included.

c. Contamination Prevention

The current draft Update to the General Plan's policies and implementation measures retain a myopic focus on soil erosion as the sole source of water contamination, largely ignoring the primary sources of groundwater contamination in this County: the application of pesticides, herbicides, and fertilizers to agricultural crops, improper disposal of dairy waste and industrial chemicals such as petroleum fuels and dry cleaning solvents, and leaking septic systems.²⁸

WR-2.3: Best Management Practices (BMPs) – As written, this policy appears to apply a much more stringent standard to construction activities and urban runoff than WR-2.7 (Industrial and Agricultural Sources) applies to other potential sources of surface and groundwater contamination, such as dairies and food processing facilities. The County should ensure that *all* land uses that are significant sources of non-point source pollution are implementing best management practices and mitigation measures, not just construction and urban runoff. Therefore, WR-2.3 should be amended as follows:

The County shall, in coordination with the Water Quality Control Board, continue to require the use of feasible BMPs and other mitigation measures designed to protect surface water and groundwater from the adverse effects of ~~construction activities and urban runoff in coordination with the Water Quality Control Board~~ land uses that are potential sources of non-point source pollution, including construction activities, urban runoff, and agricultural and industrial concerns.

WR-2.1: Protect Water Quality – This policy is appropriately expansive, acknowledging the water contamination risks associated with the “discharge of potentially harmful substances” and “ground leaching from storage of . . . wastes[,]” but WR-2.1's implementing measures deal exclusively with soil erosion from new development. This is true of WR-2.6 (Best Management Practices) as well. WR-2.1 and WR-2.6 need additional implementation measures that will help protect groundwater from the discharge of harmful substances (*e.g.*, excessive fertilizer application) or the leaching of wastes (*e.g.*, dairies) through Best Management Practices and mitigation measures. Therefore, the County should add the following new implementation measure to Chapter 11, Water Resources, to implement WR-2.1 and WR-2.6:

The County shall work with the Regional Board to protect groundwater from the discharge of harmful substances or the leaching of wastes, such as by requiring Best Management Practices (BMPs) and mitigation measures from industrial and agricultural concerns.

The County should also clarify that Implementation Measure 24 also implements WR-2.1 (Protect Water Quality) explicitly. (IM 24 is currently listed as implementing only WR-3.9 (Critical Water Supply Areas).) This is a good implementation measure that opens the door to County regulation (prohibition) of land uses “with the potential to

²⁸ See Background Report, Appendix C, pp. 7, 10.

discharge harmful pollutants” or otherwise degrade water quality, so the Update to the General Plan should explicitly link it to WR-2.1.

d. Water Quality Monitoring, Data Collection, & Designation

More data on groundwater quality throughout the County are desperately needed in order to make informed water and land use policy decisions.

WR-1.2: Groundwater Monitoring – This is a good policy, as it will help ensure that potentially polluting entities identify possible sources of groundwater contamination before the problem becomes widespread, and the information generated by such monitoring will contribute toward and increase the County’s available groundwater quality data. WR-1.2 is weakened by the current language of Implementation Measure 5, however. Rather than just directing the County to “develop groundwater-monitoring partnerships with local groundwater users and developers[,]” IM 5 should also build on WR-1.2’s language regarding linking project approvals to the collection of groundwater monitoring data. For example, IM 5 could be amended to read as follows:

The County shall encourage active participation by local stakeholders, and develop groundwater-monitoring partnerships with local groundwater users and developers, and impose monitoring requirements, such as participation in county groundwater monitoring programs, as a permit condition for projects identified as potentially impacting groundwater or surface water.

WR-1.7: Collection of Additional Groundwater Information – This policy is important, because we need to develop more comprehensive data regarding both water supply *and* water quality for all regions of the County in order to make informed land use decisions. To this end, the County should require all new supply wells, for both residential and agricultural uses, to test for priority contaminants. Implementation Measure 8 should be amended as follows to include this requirement:

The County shall encourage responsible agencies and organizations to install and monitor additional groundwater monitoring wells in areas where data gaps exist. County staff shall also adopt an ordinance requiring, as a condition of permit approval, that all newly constructed private wells test for priority contaminants, as determined by the Environmental Health Department.

WR-2.9: Private Wells – This is a very good policy, but it needs additional implementation measures. First, even properly-constructed private wells need ongoing maintenance and monitoring, so Implementation Measure 9 should be amended as follows:

The County will research the development of an education program to inform homeowners in the Valley and Mountain areas regarding water quality concerns. The County shall also work with local community groups to provide assistance and guidance to private well owners on well construction, monitoring, treatment, protection, and rehabilitation.

Second, the Plan Update should also address proper abandonment of unused or “dry” wells, which are known vectors of groundwater contamination that threaten public health and both public and private groundwater supplies. To this end, Implementation Measure 17 should be amended as follows:

The County shall amend the well ordinance to require deeper seals in areas of known contaminants. The County shall also identify and direct the proper abandonment of unused wells.

WR-3.9: Establish Critical Water Supply Areas – This is a very good policy, as formal designation is an important precursor to protecting vulnerable areas and ultimately restoring them, where possible. However, the County should amend this policy to expand its coverage to include (or clarify that it does in fact already encompass) areas that have degraded groundwater quality, regardless of whether those areas do or do not currently supply a community or municipality with drinking water. Groundwater contamination is not static: contaminated areas are a threat to those areas that still contain good-quality groundwater, as human-induced groundwater contaminants are known to spread and drift. Furthermore, formal designation will contribute positively toward future water and land use planning, as regions with contaminated groundwater should not be targeted for land uses that must rely on clean water, such as residential development.

To the extent that the County has intended to create two separate regulatory regimes for vulnerable water *quantity* areas on the one hand (pursuant to WR-3.9), and vulnerable water *quality* areas on the other hand (pursuant to WR-2.6, Degraded Water Resources), this is a misguided approach. Issues related to water quality and water quantity are frequently intertwined, especially in the context of drinking water, and it does not make administrative or institutional sense for the County to bifurcate designation and regulation of vulnerable and compromised areas according to whether the vulnerability centers around quantity versus quality. Rather, pursuant to WR-3.9, the County should move forward with designating all areas that are “critical” to supplying a sufficient quantity of safe drinking water, including mapping and labeling areas of the County with known groundwater contamination and designating those areas for special treatment. Once such areas are designated, the County should institute protective measures for the health and safety of current water users and precautions against further contamination, such as restricting land uses and requiring best management practices in designated areas, particularly when communities rely on that aquifer for drinking water.

To clarify this, the County should amend WR-3.9 as follows:

The County shall designate Critical Water Supply Areas to include the specific areas used by a municipality or community for its water supply system, areas critical to groundwater recharge, and other areas possessing a vital role in the management of the water resources in the County, including areas suffering from degraded groundwater quality.

Implementation Measure 24 should likewise be amended to implement this expansive purpose of WR-3.9 designation (which is not just to protect and facilitate groundwater recharge, but also to protect the *quality* of drinking water supplies). Since we are recommending several amendments to IM 24 based on several different comments to

several different plan policies in this joint letter, for clarity, our recommended additions to IM 24 that are relevant to *this* comment are highlighted below in bold, in order to distinguish from our recommended additions to IM 24 discussed in later comments:

The County shall protect groundwater recharge areas in the County by carefully regulating the type of development within these areas, **and the County shall protect designated Critical Water Supply Areas in the County, especially where an aquifer is used to supply drinking water to residential users, by carefully regulating land uses within these areas to protect water quality.** Regulations may include, but are not limited to, the limitation of structural coverage and impervious surfaces, **imposition of Best Management Practices requirements,** and prohibition of uses with the potential to discharge harmful pollutants, increase erosion, or create other impacts degrading water quality or affecting groundwater supply. **The County shall also encourage the development of joint-use projects, where groundwater recharge areas serve a dual purpose as parks or recreation areas, especially in unincorporated communities and hamlets.**

2. Impact 3.6-2: Groundwater Supply

The RDEIR wrongly concludes that adoption of the current draft Update to the General Plan will have a “significant but unavoidable” impact on groundwater supply.²⁹ The current draft Update to the General Plan envisions new development in the County, including substantial conversion from agricultural to urban land use, and the RDEIR acknowledges that this will have a significant, detrimental environmental impact on current groundwater supply in the County. The RDEIR is wrong in concluding that this impact is unavoidable, however. The current draft Update to the General Plan does not include sufficient policies to mitigate these impacts, but such policies *are* possible. The County can better mitigate the significant impacts of future development and land use conversion by amending existing plan policies and drafting additional new plan policies, as follows:

a. Reversing Overdraft

Groundwater overdraft is a serious problem in Tulare County that we cannot afford to ignore, so the County’s policies on groundwater withdrawals (WR-1.1) and water conservation (WR-3.6) are extremely important. As currently drafted, however, these policies and their implementing measures are insufficient. The County needs to add an additional policy to the Plan Update specifically addressing conditions of overdraft, with corresponding implementation measures that will lead to meaningful regulation of all significant groundwater extraction in those areas of the County that are known to be experiencing overdraft.

At minimum, the County should develop an ordinance regulating all *new* development in overdraft areas, namely, imposing impact fees and requiring effective mitigation measures for groundwater extraction as a condition for permit approval. The County should especially impose such requirements where land is converted from

²⁹ RDEIR, § 3.6, pp.37, 40-47.

agricultural to urban use, as this conversion carries the risk of increasing groundwater overdraft. Section 16.54 of the City of Visalia's Municipal Code, namely, the City of Visalia Water Resource Management and Groundwater Overdraft Mitigation Fee Ordinance, can be used as a model for a similar ordinance by the County.

The County should also take the initiative to regulate *existing* groundwater users in overdraft areas, however, because even if groundwater overdraft were merely to continue at its current pace due to existing consumption patterns by existing users, the County is facing a severe water shortage crisis in the future and placing the future health and safety of County residents at risk. Specifically, the County should develop an ordinance requiring private well owners in overdraft areas to adopt water efficiency measures and/or pay a volumetric mitigation fee to fund water efficiency and recharge projects to help mitigate the impacts of groundwater overdraft in disadvantaged communities. Again, the City of Visalia's overdraft mitigation ordinance can serve as a useful starting point in drafting such an ordinance.

The County should thus adopt a new policy along the following lines:

WR-__ : Groundwater Overdraft

The County shall regulate those areas of the County where groundwater extraction exceeds groundwater recharge, with the goal of reducing and ultimately reversing groundwater overdraft conditions in these areas.

The County should also adopt a corresponding new implementation measure for this new policy to Chapter 11, Water Resources:

County staff shall develop an ordinance imposing impact fees and requiring effective groundwater extraction mitigation measures as a condition for project approval in areas of known overdraft. New land uses that result in increased groundwater extraction will be restricted unless there is a clear demonstration that these impacts can be mitigated. County staff shall also adopt an ordinance imposing a volumetric impact mitigation fee on existing private well owners in areas of known overdraft. Such fees could be reduced in exchange for the adoption of effective mitigation measures. Proceeds from impact fees for both ordinances shall be used to fund water efficiency and recharge projects in disadvantaged communities.

WR-3.6: Water Use Efficiency – With respect to those areas of the County that are not currently experiencing overdraft conditions, WR-3.6 and Implementation Measure 10 provide a solid framework for helping to prevent overdraft conditions from spreading through a combination of public education, regulation, and incentive-based programs to achieve water conservation. As currently drafted, however, IM 10's reference to incentives is confusing, if not meaningless, and it unnecessarily isolates incentive-based programs to new development, when existing groundwater users could clearly benefit from incentive-based programs as well. (Effective water conservation will require cooperation among all stakeholders, most of whom are existing water users.) Therefore, IM 10 should be amended to add the following language, which helps clarify that all categories of existing groundwater users are encouraged to engage in conservation measures:

The County shall incorporate provisions, ~~including evaluating incentives~~, for the use of reclaimed wastewater, water conserving appliances, drought tolerant landscaping, and other water conservation techniques into the County's building, zoning, and subdivision ordinances. The County shall also develop incentive-based programs and provide assistance to existing agricultural, industrial, and residential water users to implement conservation measures and technologies, such as water meters.

WR-1.1: Groundwater Withdrawal – We note that WR-1.1 appears to have a typographical error – “migrate” should be replaced with “mitigate”, as follows:

The County shall cooperate with water agencies and management agencies during land development processes to help promote an adequate, safe, and economically viable groundwater supply for existing and future development within the County. These actions shall be intended to help the County ~~migrate~~ mitigate the potential impact on ground water resources identified during planning and approval processes.

WR-3.1: Develop Additional Water Sources – We appreciate the modifications the County has made to this policy, which now acknowledges the importance of recharge and infiltration as a component of County-wide water conservation initiatives. This policy should be paired with a win-win implementation measure that encourages the development of joint-use projects, where recharge areas can serve a dual purpose as parks or recreation areas, especially in unincorporated communities and hamlets that currently lack such communal spaces for neighborhood children and families. This language can be added easily to the end of Implementation Measure 24. Since we are recommending several amendments to IM 24 based on several different comments to several different plan policies, for clarity, our recommended additions to IM 24 that are relevant to *this* comment are highlighted below in bold, in order to distinguish from our recommended additions to IM 24 discussed in preceding comments:

The County shall protect groundwater recharge areas in the County by carefully regulating the type of development within these areas, and the County shall protect designated Critical Water Supply Areas in the County, especially where an aquifer is used to supply drinking water to residential users, by carefully regulating land uses within these areas to protect water quality. Regulations may include, but are not limited to, the limitation of structural coverage and impervious surfaces, imposition of Best Management Practices requirements, and prohibition of uses with the potential to discharge harmful pollutants, increase erosion, or create other impacts degrading water quality or affecting groundwater supply. **The County shall also encourage the development of joint-use projects, where groundwater recharge areas serve a dual purpose as parks or recreation areas, especially in unincorporated communities and hamlets.**

WR-1.3: Water Export Outside County – This policy should be drafted as restrictively as possible, because Tulare County already suffers from water supply shortages. To this end, Implementation Measure 1, which implements WR-1.3, should remain obligatory for the County and should include a time limit on groundwater export contracts so that these contracts can be reviewed periodically:

County staff shall develop an ordinance that will regulate the permanent extraction and exportation of groundwater from Tulare County. The ordinance will set up a permit process for groundwater export, which permits shall be valid for no more than ten years and subject to de novo review prior to renewal. Conditions considered for this permit will include . . . [conditions omitted here to save space].

WR-3.12: Joint Water Projects with Neighboring Counties – New water contracts and new canals and pipelines are certainly necessary to develop supply, but joint initiatives with neighboring counties should also prioritize conservation and groundwater recharge, which are important aspects of matching supply with demand, especially as the population in the San Joaquin Valley grows. WR-3.12 should be amended to acknowledge this:

Tulare County will work with neighboring counties to promote development of joint water projects, such as a cross-valley canal, and other efforts to expand water supply, including conservation measures.

WR-1.4: Conversion of Agricultural Water Resources (& WR-3.3 Adequate Water Availability) – In its latest revisions to the Update to the General Plan, the County has made changes to WR-1.4 that muddle its meaning. WR-1.4 should be amended for greater strength and clarity, as follows:

For new urban development, the County shall ~~discourage~~ restrict the transfer of water used for agricultural purposes (within the prior ten years) for domestic consumption unless certain conditions are met, 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, and
- The reduction in infiltration from agricultural activities as a source of groundwater recharge will not significantly impact the groundwater basin.

Changing “discourage” to “restrict” will make this important policy much more effective and meaningful in terms of mitigating groundwater overdraft in the County.

Both WR-1.4 and WR-3.3 will help ensure that adequate water supplies are maintained for existing communities and land uses, first and foremost, and that our County remains agricultural, but they need an effective implementation measure. To achieve this purpose, Implementation Measure 19, which currently implements only WR-3.3, should be expanded to incorporate WR-1.4’s conditions (and implement WR-1.4), as follows:

The County shall adopt an ordinance to require new development proposals to provide a Will-Serve letter as part of the application process and suitable evidence of long-term water availability, namely, at least twenty years of supply, prior to approval of the tentative map or other entitlement. Water used for agricultural purposes within the prior ten years will not be considered available unless each of the following conditions are met: (1) the water remaining for the agricultural operation is sufficient to maintain the land as an economically viable agricultural use, and (2) the reduction in infiltration from agricultural activities as a source of groundwater recharge will not significantly impact the groundwater basin. For subdivisions proposing to use well water, the new ordinance shall evaluate current waiver provisions and evaluate well pump test requirements to demonstrate water supply capabilities.

This change will strengthen and better implement *both* policies (WR-1.4 and WR-3.3).

b. Public Education and Outreach

WR-3.8: Educational Programs – This is an important policy, but it should be clarified that these educational programs will be directed at agricultural and industrial water users in addition to residential water users, because all stakeholders in the county will need to engage in behavioral changes in order for efforts at water conservation and water quality restoration to be effective. Additionally, WR-3.8 conflicts with its implementation measure (#23), because the policy suggests the County will merely play a supportive role, encouraging other agencies to develop educational programs, while the implementing measure suggests the County itself will take the lead in developing such programs. The policy should be amended to resolve this inconsistency in favor of shared responsibility. Finally, although we appreciate the County’s efforts to expand this policy to incorporate public education on water quality issues in its latest revisions to the Plan Update, as currently drafted the policy is somewhat confusing on this point. Therefore, WR-3.8 should be amended as follows:

The County shall develop ~~encourage the development of~~ educational programs, in cooperation with both by water purveyors, other and public agencies, and community-based groups, in order to increase public awareness among residential, agricultural, and industrial water users regarding ~~of~~ water conservation and groundwater protection opportunities and the potential benefits of implementing conservation measures and ~~programs including~~ water quality protection measures.

Implementation Measure 23, which implements WR-3.8, is a great start but should be expanded slightly. There are feasible measures that can be taken to protect our water supplies in the County and ensure clean water into the future, and these should be articulated here. Furthermore, public education efforts are useless if the information is not conveyed in a language that the intended recipients can understand. Therefore, IM 23 should be amended as follows:

The County shall develop an education program to inform residents of water conservation and contamination prevention techniques, such as wellhead protection, proper fertilizer application, and septic maintenance, and the importance of water quality and adequate water supplies. Programs may include informational flyers, community workshops, technology transfer fairs, and other various means of education and information dissemination. Outreach and communications shall be conveyed in both English and Spanish, and other languages where appropriate.

3. Impact 3.6-4: Storm Water Drainage

The RDEIR wrongly concludes that adoption of the current draft Update to the General Plan will have a “less than significant” impact on the capacity of storm water drainage systems in the County.³⁰ The RDEIR largely ignores the fact, acknowledged in the Background Report, that many unincorporated communities currently suffer from

³⁰ RDEIR, § 3.6, pp.37, 50-52.

inadequate storm water drainage infrastructure that leads to extensive flooding in streets, parking lots, schools, homes and businesses during the rainy season.³¹ Given that existing runoff from existing development already exceeds the drainage capacity of these communities, new development pursuant to the Update to the General Plan cannot but further worsen this problem by contributing to runoff. Furthermore, the current draft Update to the General Plan does little to address the fact that existing communities throughout the County already suffer from storm water drainage problems, and it is substantially likely that ignoring this problem will only exacerbate it, even if no further development takes place within these drainage-troubled areas. Thus, a significant environmental impact of adopting the Update to the General Plan as drafted is the substantial likelihood that existing County residents will continue to suffer from flooding caused by insufficient storm water drainage infrastructure and that increasing numbers of County residents will be negatively affected by drainage problems as time progresses.

The County can take steps to mitigate this negative environmental impact by amending existing plan policies and drafting additional new implementation measures that address existing drainage problems, as follows:

PFS-4.1: Stormwater Management Plans – This is an important policy, but as drafted it lacks any real meaning or strength, so it should be revised as follows:

The County shall ~~consider the preparation and adoption of~~ prepare and adopt stormwater management plans for communities and hamlets to reduce flood risk, protect soils from erosion, control stormwater, and minimize impacts on existing drainage facilities, and develop funding mechanisms.

Furthermore, this policy lacks any implementation measures. The County should add the following new implementation measures to Chapter 14, Public Facilities and Services, to implement PFS-4.1:

The County Resource Management Agency shall identify flooding problems in unincorporated communities and hamlets and seek funding from federal and state agencies.

³¹ Background Report, Chapter 7, p.55 (noting that “[m]any of the unincorporated small communities have no underground drainage infrastructure, leaving only surface drainage which is more subject to flooding, and/or not properly functioning due to little or nonexistent facility maintenance”); p.62 (noting that “development that occurred prior to 1972 generally does not have storm drainage infrastructure installed, as is the case for most unincorporated areas of the County[.]” and that “[t]his has led to a need to improve such areas that lack drainage”) (emphasis added); see RDEIR, § 3.6, p. 33 (noting that “[l]ocalized drainage issues occur throughout the County,” that levees have been placed throughout the county to increase available land for agriculture and that these levees “rarely meet current standards for flood protection[.]” that there are “locations where homes or other urban development occurs behind agricultural levees,” that “those areas are likely to experience drainage issues as flood waters are held behind the levee, unable to drain to the river[.]” but concluding that “prevention of development in affected areas has been found to be more effective *than fixing such problems* through larger levees” – i.e., concluding that it’s more effective to prevent further development in those troubled areas than to solve the levee problem for existing communities in such areas); see also RDEIR, § 3.6, pp.28, 50-52.

The County shall prioritize existing communities and hamlets suffering from flooding and storm water drainage problems for Community Development Block Grant (CDBG) project development and funding, which is overseen by the Community Development and Redevelopment Division of the County Resource Management Agency.

The County shall cooperate with water and irrigation districts and unincorporated communities and hamlets that have storm water drainage problems to develop projects to address these issues.

J. The RDEIR Fails to Analyze and Mitigate Public Services and Utilities Impacts Adequately

1. Impact 3.9-1: Water Services Infrastructural Capacity

The RDEIR concludes in Impact 3.9-1 that a “significant but unavoidable” impact of adopting the current draft Update to the General Plan will be the necessity of constructing new or expanded water services infrastructure to meet *future development* needs.³² Specifically, the RDEIR states that:

Implementation of the proposed project would result in additional County-wide residential and non-residential land use development. *Additional land use development consistent with the proposed project* would . . . in some cases result in insufficient water . . . facilities available to serve some of the unincorporated areas designated for urban development. In other cases, insufficient water treatment and conveyance facilities or water quality issues could result [in an] inability of domestic water service providers to meet water demands.³³

The RDEIR focuses exclusively on new development, not on existing situations in existing communities.³⁴ Although the RDEIR incorporates a qualitative evaluation of the capacity of each unincorporated community’s water system (taken from LAFCO MSRs or interviews with individual water providers), that assessment only considers a system’s ability to service *projected growth* in the community.³⁵ The RDEIR does not consider or measure the adequacy of a domestic water system’s existing infrastructural capacity to serve current customers effectively and affordably, now and into the future. The RDEIR’s only acknowledgment that existing services are important is a throwaway statement that water providers “must not only maintain supplies and facilities to serve existing water users, but also must expand supplies and facilities needed to accommodate

³² RDEIR, § 3.9, pp. 35-38, 47-50.

³³ RDEIR, § 3.9, p.36 (emphasis added).

³⁴ The RDEIR makes it clear that the County sees its role with respect to water services to be solely as a coordinator and facilitator ensuring the adequate delivery of water services to *new development*. See, e.g., RDEIR, § 3.9, p.48 (“Current procedures and policies and programs contained in the proposed project would strive to secure adequate water supplies for unincorporated areas within the County *that are designated for urban development* . . .”) (emphasis added); p.49 (“[T]he County will continue to implement a variety of policies and programs designed to coordinate with local water service providers to ensure the provision of an adequate water supply that meets clean, safe water standards *prior to development*.”) (emphasis added); p.33 (“Adequate water supply and facilities are essential if the County is to sustain growth and serve projected increases in employment and population”).

³⁵ RDEIR, § 3.9, pp.17-18, 34, 37.

planned population growth within each service area.”³⁶ In other words, according to RDEIR, the standard for existing customers is to maintain the status quo. There is no acknowledgement that the status quo is inadequate, let alone that the Plan Update’s single-minded emphasis on new development and silence with respect to current problems in existing communities might affirmatively contribute toward worsening water service infrastructural problems in existing communities.

The County is obligated by CEQA to evaluate *every* potentially significant negative environmental impact associated with adoption of the current draft Update to the General Plan, and one such impact is the increasing deterioration and increasingly inadequate capacity of existing water services infrastructure to serve existing customers in existing communities effectively and affordably. The current draft Update to the General Plan does not include sufficient policies to mitigate these impacts, but such policies are possible. The County can take steps to mitigate this negative environmental impact by amending existing plan policies and drafting additional new implementation measures, as follows:

a. Prioritizing Existing Communities

PFS-1.1: Existing Development & PFS-1.2: Maintain Existing Levels of Services – These policies are a good start, but the draft Update to the General Plan should prioritize existing communities over new development in *all* areas of the County, not just those limited areas where the County is the water service provider. Therefore, these policies should be amended as follows:

The County shall ~~generally give priority~~ prioritize its resources for the maintenance and upgrading of ~~County-owned and operated~~ facilities and services to existing development in order to prevent the deterioration of existing levels-of-service. (PFS-1.1)

The County shall ensure new growth and developments do not create significant adverse impacts on existing ~~County-owned and operated~~ facilities. (PFS-1.2)

b. Affordability and Cost-Sharing

PFS-1.5: Funding for Public Facilities, PFS-1.6: Funding Mechanisms, & PFS-3.7: Financing – None of these policies mention affordability. Many County residents in unincorporated areas are paying as much as 10% of household income for drinking water alone, which does not even include payment for other services such as solid and liquid waste disposal. The EPA’s National Drinking Water Advisory Council suggests that water systems aim for 1% of median household income as an affordable rate.³⁷ This is not an easy target for smaller systems, but affordability should at least be included as an explicit goal, in all three of these policies, as follows:

³⁶ RDEIR, § 3.9, p.36.

³⁷ See U.S. Environmental Protection Agency, Information for States on Developing Affordability Criteria for Drinking Water, at <http://www.epa.gov/safewater/smallsystems/afforddh.html>.

The County shall implement programs and/or procedures to ensure that funding mechanisms necessary to adequately cover the costs related to planning, capital improvements, maintenance, and efficient, affordable operations of necessary public facilities and services are in place, whether provided by the County or another entity. (PFS-1.5)

The County shall use a wide range of funding mechanisms, such as the following, to adequately fund capital improvements, maintenance, and efficient, affordable on-going operations for publicly owned and/or operated facilities:

- Establishing appropriate development impact fees,
- Establishing assessment districts, and
- Pursuing grant funding. (PFS-1.6)

The County shall cooperate with special districts when applying for State and federal funding for major wastewater related expansions/upgrades when such plans promote the efficient, affordable solution to wastewater treatment needs for the area and County. (PFS-3.7)

Implementation Measure 2 is an excellent start for promoting affordable services as a County goal, but the County should also assist and strongly encourage *other* non-County-owned water purveyors within the County to conduct annual assessments to ensure that water services are affordable, adequate, and sustainable. Therefore, this measure should be amended as follows:

The County shall annually review fees related to County-owned and operated facilities and County-provided services to ensure funding levels are both affordable and adequate to sustain these facilities/services long-term, and the County shall assist and encourage other water purveyors to do the same.

IM 2 should be linked to PFS-3.7, as well. (It currently only implements PFS-1.5 and PFS-1.6.)

There are many implementation measures the County could include in the Update to the General Plan to further a policy of affordability, including developing alternative models for cost-sharing for small systems. We suggest that the County add the following new implementation measure to Chapter 14, Public Facilities and Services, to implement PFS-1.5, 1.6, 1.8, 1.16, and 3.7:

The County shall work with communities and hamlets to identify potential joint funding opportunities, joint management opportunities, and other means by which to join resources. The County shall support feasibility and other project design studies for infrastructure consolidation and take the lead in developing mechanisms to allow small systems to share costs in order to take advantage of economies of scale, thereby keeping rates affordable for basic services.

K. The RDEIR Fails to Analyze and Mitigate Project Impacts on Agricultural Resources Adequately

The mitigating policies and implementation measures listed by the County under this element are insufficient to address the potential adverse impacts created by the

Project. We suggest the following additional considerations to the policies and implementation measures.

AG-1.11: Agricultural Buffers - The County will examine the feasibility of buffers between agricultural and non-agricultural uses. In Implementation Measure #9, the County identifies interested stakeholders. There are other Tulare County groups interested in participating as well, such as Safe Air For Everyone (SAFE) who has collaborated with the Tulare County Agricultural Commissioner to impose buffer zones around schools for restricted pesticides, in fact over 1800 Tulare County residents have endorsed the concept of buffer zones to reduce pesticide drift.

ERM-1.13: Pesticides - The County commits to cooperating with state and federal agencies to evaluate side effects of pesticides. The County can also implement this policy by creating buffer zones between agricultural sources and non-agricultural sources to prevent exposure. The County has already taken positive steps in this direction by restricting the application of restricted pesticides near sensitive receptors. But, there might be additional ways to reduce exposure to pesticide drift. Groups such as Safe Air For Everyone are willing to engage with the County around these issues.

L. The RDEIR Fails to Analyze and Mitigate Project Impacts To Existing Underserved Communities

A number of community and hamlet residents have submitted a letter commenting on the General Plan and expressing some of their most pressing needs, and we incorporate by reference that letter here. Indeed, the RDEIR's failure to analyze and mitigate project impacts on existing, unincorporated communities implicates federal and state fair housing and civil rights laws because many of the unincorporated communities that suffer the most severe impact and infrastructure deficit are disproportionately latino, african-american and spanish speaking.

Below are some policies and implementation measures that investment should be targeted toward, along with suggested changes that could enhance quality of life for hamlets and existing communities:

PF 1.4: Available Infrastructure - Growth will be encouraged in communities and hamlets with available infrastructure. However, existing communities and hamlets do not have adequate infrastructure to meet current demands. How will the County assist communities and hamlets obtain necessary infrastructure to meet existing and future demands? The County should develop implementation measures that commit the County to assisting communities and hamlets evaluate means of creating management infrastructure and funding tools that allow for local accountability, but may share costs across a number of small communities. Such policies would allow small community service providers to keep costs affordable in low income areas by encouraging or incentivizing consolidation, joint management, revenue sharing, etc....

PF 2.5 & 3.5: Improvement Standards in Communities & Hamlets - These policies focus on new developments. The County should address the infrastructure needs of existing communities and hamlets. Implementation Measure 15 recognizes that curbs, gutters, sidewalks, parks, and sewer systems are important for residents' quality of life. The County should adopt policies for impact fees and revenue sharing with Cities which

could be used to improve existing conditions. The County could also prioritize underserved areas in establishing parks and in allocating funding for curb, gutter, sidewalks or sewer system improvements. Also the County should ensure that new developments within the UDB and HDB of existing communities and hamlets allow all residents to have access to parks and open space as well as any new commercial development. The County's transportation design policies should be linked to this policy as well.

PF 3.6: Becoming a Community – This policy should take into account places that do not meet the definition of a community or a hamlet, but are established and not planned for under city spheres of influence. For example, Tooleville, which is located within the Sphere of Influence for Exeter. However, Exeter's plans for growth do not encompass Tooleville. Therefore, the County is responsible for planning within Tooleville, but will have to co-ordinate with Exeter on growth in the area rather than the residents of Tooleville. This is untenable given the fact that Exeter has been singularly opposed to including Tooleville in the City or providing any services to the areas, including basic services it currently lacks, such as potable water. While Tooleville kids go to school in Exeter and help bring tax dollars to the City through sales tax and school funding, the City has made it clear that it does not want this area to be part of the City within the next 100 years, nor is it interested in helping provide any of the needed services in the area. Instead the City wants to develop in all other directions, including islands to the South and large swaths directly north of Tooleville. Leaving the planning of Tooleville's future to Exeter is not in Tooleville's best interest. The County should classify Tooleville as a Hamlet or a Community allowing it to develop its own plan for future growth, since the City clearly wants no part in its future.

Planning Framework Implementation Measures 18 & 19 delay the creation of Hamlet Plan guidelines and preparation of Hamlet Plans until 2015-2020. Many of these areas have been neglected for years and should not be made to wait longer.

Planning Framework Implementation Measure 22 - The County pledges to continue to support community/hamlet efforts to secure state and federal funding for projects. However, in some instances the County has not supported local efforts to obtain necessary funding. For example, the County did not support local community efforts to address Deer Creek flooding in Earlimart and Allensworth. The County did not support Alpaugh's efforts to secure state and federal funding to dig a new well to improve the quality of its drinking water. The County should assist local groups to identify potential funding sources, write letters on behalf of the community, and leverage the County's resources and connections to ensure those funding sources are secured.

TC-1.2: County Improvement Standards - While the County Improvement Standards is mentioned as the guide to road maintenance and construction, there needs to be a clear explanation as to how residents can advocate for their road needs.

TC-1.19: Balanced Funding - A balanced approach to the allocation of transportation funds in the county transportation system is critical, however, there also needs to be careful consideration and equitable investment particularly to the unincorporated communities that are geographically remote.

TC-4.2: Determine Transit Needs - We appreciate the desire to work with TCAG, Cities and communities to evaluate and respond to public transportation needs. However, there should be a specific ongoing strategy to evaluate and respond to the

needs of the rural, unincorporated communities adequately. One recommendation is to engage more effectively with community service providers and non-profits. Also, this must be ongoing, since traditionally the one “set” time to engage in transit needs is the unmet needs hearings, which traditionally have not been accessible to all working families and residents of the county.

TC-4.3: Support Tulare County Area Transit. - We applaud the explicit mentioning of providing intercommunity services between unincorporated communities and cities. However, there should be consideration given to implementing an outreach and education strategy to ensure these unincorporated communities have a way to voice their needs, and are adequately informed about county transit services. Similarly, there should be careful consideration to the inclusion of transit hubs that are accessible as transfer points in the rural areas of the county.

III. The RDEIR’s Alternatives Analysis is Fundamentally Flawed

A. The RDEIR Fails To Consider a Reasonable Range of Alternatives

Under CEQA, an EIR must consider and analyze a wide-range of alternatives to the project. “Without meaningful analysis of alternatives in the EIR, neither courts nor the public can fulfill their proper roles in the CEQA process.” *Laurel Heights Improvement Ass’n v. Regents of University of California*, 47 Cal.3d 376, 404 (1988). Accordingly, “[a] major function of an EIR ‘is to ensure that all reasonable alternatives to proposed projects are thoroughly assessed by the responsible official.’” *Save Round Valley Alliance v. County of Inyo*, 157 Cal.App.4th 1437, 1456 (2007) (citations omitted). Here, the RDEIR fails to present “a reasonable range of potentially feasible alternatives.” Guidelines § 15126.6(a). In addition, the RDEIR improperly rejects environmentally superior alternatives.

The County’s alternatives are hardly distinguishable. According to the RDEIR, 25 percent of growth will occur in unincorporated areas under the General Plan Update, 20 percent of growth will be placed in these areas under the city-centered alternative, 30 percent of growth will occur in these areas under both the rural communities and the transportation corridor alternative. (DEIR 7-3 to 7-4). The County must consider an alternative that will place almost all growth in incorporated cities and established communities and hamlets. This alternative should consider revenue sharing agreements with the cities in exchange for giving cities control over city-centered development. Additionally, the County must consider alternatives that incorporate strict energy and water conservation measures, require green building practices and mixed-use development and places development near alternative transportation nodes. Such alternatives would result in a significant reduction in greenhouse gas emissions resulting from VMTs and energy consumption. It would also result in fewer greenhouse gas emissions from construction and development, as the County would not have to build new infrastructure throughout the unincorporated areas. These alternatives would meet the County’s basic goals and objectives of its General Plan Update and, therefore, must be considered by the County.

The County must also explain its analysis of the alternatives in more detail so that the public and decision-makers can better determine how they would achieve the goals and objectives of the General Plan Update, lessen the environmental impacts resulting from growth and development and why the County eventually chose this General Plan Update, rather than more environmentally-friendly alternatives. Like its treatment of the Project, the alternatives analysis contains no maps or other detail that informs the public and decisionmakers how land use designations would change under the alternative as compared to the proposed Project and existing conditions.

B. The RDEIR Improperly Rejects the Environmentally Superior Alternative

The RDEIR also improperly rejects environmentally superior alternatives. The RDEIR acknowledges that the City-Centered Alternative “would meet all objectives related to the protection of existing open space and agricultural land use” but rejects the alternative on the grounds 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.” (RDEIR at 4-19.) However, reinvestment is a question of directing revenue, not simply allowing largely unregulated growth. City-centered growth would provide additional revenue for the County by sparing it the expense of uncontrolled sprawl growth and allowing to it direct needed revenue to hamlets and existing communities.

Hamlets and existing communities have long been ignored by the County and Cities alike. Although these hamlets and communities have been established for decades, many still lack basic infrastructure, such as potable water or adequate sewers. While these communities need some new developments, basic services and infrastructure, unregulated growth is not the solution. The County should consider a plan that places all growth in incorporated cities and established communities and hamlets, emphasizing investments in the most underserved areas.

IV. The RDEIR Must Be Redrafted and Recirculated

CEQA requires recirculation of a revised draft EIR “[w]hen significant new information is added to the environmental impact report” after public review and comment on the earlier draft DEIR. Pub. Res. Code § 21092.1. This includes the situation where, as here, “[t]he draft EIR was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded.” Guidelines § 15088.5(b)(4). The opportunity for meaningful public review of significant new information is essential “to test, assess, and evaluate the data and make an informed judgment as to the validity of the conclusions to be drawn therefrom.” *Sutter Sensible Planning, Inc. v. Sutter County Board of Supervisors*, 122 Cal.App.3d 813, 822 (1981); *City of San Jose v. Great Oaks Water Co.*, 192 Cal.App.3d 1005, 1017 (1987). An agency cannot simply release a draft report “that hedges on important environmental issues while deferring a more detailed analysis to the final [EIR] that is insulated from

public review.” *Mountain Lion Coalition v. California Fish and Game Comm’n*, 214 Cal.App.3d 1043, 1053 (1989).

In order to cure the panoply of defects identified in this letter, the County will need to obtain substantial new information to assess the proposed Project’s environmental impacts adequately, and identify effective mitigation capable of alleviating the Project’s significant negative environmental impacts. CEQA requires that the public have a meaningful opportunity to review and comment upon this significant new information in the form of a recirculated draft EIR.³⁸

CONCLUSION

Thank you for your consideration of these comments. We look forward to working with the County now and in the future to reach our shared goals of reducing greenhouse gas emissions and protecting biological diversity, public health, and our environment.

CBD, CRPE, CWC, and CRLAF wish to be placed on the mailing/notification list for all future environmental decisions regarding this Project. If you have any questions regarding these comments, please do not hesitate to contact Matthew Vespa at (415) 436-9682 x309 or mvespa@biologicaldiversity.org, Sofia Parino at (415) 346-4179 x301 or sparino@crpe-ej.org, or Rose Francis at (559) 733-0219 or info@communitywatercenter.org or Martha Guzman at mguzmanaceves@crlaf.org.

Sincerely,



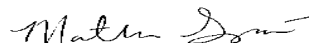
Matthew Vespa
Senior Attorney
Center for Biological Diversity



Sofia Parino
Senior Attorney
Center on Race, Poverty &
the Environment



Rose Francis
Attorney at Law



Martha Guzman
Policy Analyst

³⁸ Additionally, the County’s charge of \$500 to get a copy of the Draft Update to the General Plan and the RDEIR seems unreasonably and prohibitively high. Low income residents without internet access were prohibited from obtaining a copy for review. While copies were available at various public libraries, the cost for obtaining a hard copy should have been more reasonable. The County should remedy this when recirculating the revised RDEIR.

Enc: The following references are included for your review and inclusion in the administrative record.

ATTACHED REFERENCES

- Ex. A BAAQMD, CEQA Guidelines Update, Proposed Thresholds of Significance, May 3, 2010.
- Ex B BAAQMD, CEQA Air Quality Guidelines, May 2010 at 4-10.
- Ex C BAAQMD, GHG Plan Level Quantification Guidance, May , 2010.
- Ex D CARB, Climate Change Proposed Scoping Plan (Dec. 2008)
- Ex E California Attorney General, Climate Change, the California Environmental Quality Act, and General Plan Updates: Straightforward Answers to Some Frequently Asked Questions (2009).
- Ex F California Attorney General letter to SJVAPCD re: Final Draft Staff Report on Greenhouse Gas Emissions Under CEQA, Nov. 4, 2009.
- Ex G Carruthers, J., Ulfarsson, G. “Does ‘Smart Growth’ Matter to Public Finances?” 2007
- Ex H California Natural Resources Agency, Final Statement of Reasons for Regulatory Action (Dec. 2009).
- Ex I CAPCOA, Model Policies for Greenhouse Gases in General Plans (June 2009).
- Ex J Howard, Cody J., Kumar, Anuj, et. al., Environ. Sci. & Technol.: *Reactive Organic Gas Emissions from Livestock Feed Contribute Significantly to Ozone Production in Central California*, Vol. 44, No. 7 (2010) 2309-2314.
- Ex K Institute for Local Government, CCAN Best Practices Framework (Feb. 2010).
- Ex L Powers, William E., Expert Report (Dec. 2007).
- Ex M Urban Land Institute, Reid Ewing, Keith Bartholomew, Steve Winkelman, Jerry Walters, and Don Chen. “Growing Cooler: The Evidence on Urban Development and Climate Change.” 2008 (Executive Summary)
- Ex N Yolo County, 2030 General Plan Update, Land Use Element