

**From:** David Bryant  
**To:** Przybylski, Chuck  
**Date:** 06/02/2010 3:06 PM  
**Subject:** Fwd: Tulare County General Plan 2030 Update - February 2010 Comments on Recirculated Draft Environment Impact Report  
**Attachments:** Tulare County GPU - Comments on RDEIR 5-27-10 from Babak Naficy.docx

Chuck, Please date stamp and mark as late. Also include the e-mail to demonstrate the time we received it. Thanks, DB

>>> Fred Brusuelas 5/28/2010 11:36 AM >>>

>>> Susan Brunner <[suzbrunner@gmail.com](mailto:suzbrunner@gmail.com)> 05/27/2010 5:36 PM >>>

Mr. Brusuelas:

Please find attached hereto as a file Mr. Naficy's comments on the RDEIR (February 2010) prepared in connection with the Tulare County General Plan Update 2030.

Mr. Naficy is counsel for Sierra Club.

Thank you.

Susan Brunner  
Assistant to Babak Naficy

# **LAW OFFICES OF BABAK NAFICY**

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May 27, 2010

## **Via Regular U.S. Mail and Email**

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## **Re: Tulare County General Plan 2030 Update - February 2010 Comments on Recirculated Draft Environment Impact Report**

Dear Mr. Brusuelas:

I submit these comments on behalf of the Kern-Kaweah Chapter of the Sierra Club. The Sierra Club has already submitted extensive comments under separate cover. My comments supplement and incorporate by reference those separate comments.

Based on the legal inadequacies that are identified here and in Sierra Club's separate comments, I urge you to re-circulate the EIR before considering final approval of the GPU.

### **PROJECT DESCRIPTION IS FLAWED**

Although the 2030 General Plan Update (GPU) will aggressively promote residential and commercial growth within and adjacent to the urban boundaries of existing communities such as hamlets and cities, in addition to the mountain and foothill regions and Rural Land Use Plan and Corridors Framework Plan, the EIR fails to consistently and accurately identify the location of this growth or to explain the population increase that it will foster. These aggressive plans for fostering what essentially amounts to new communities are poorly explained in the Recirculated Draft EIR.

Figures 2-2 and 2-3, for example, purportedly depict areas slated for future development. Yet, these figures do not provide sufficient detail to aid in assessing the associated proposed project impacts. Moreover, the RDEIR itself does not include any meaningful analysis of the expected development potential, including the expected

population and commercial growth in the various areas slated for development. Likewise, the GPU does not include a meaningful projection of the increase in population and commercial/industrial development that would be expected in each of these areas. This information is vitally needed to permit a comprehensive environmental analysis of the GPU.

Although the GPU anticipates much urban growth within the so-called regional growth corridors, the locations of these corridors have not been established. The GPU defers the formulation of the location and the description of the corridors to "future amendments to the General Plan Land Use Designation Map." RDEIR at 2-13. Without knowing the location or size of the growth corridors, it would be impossible to analyze the potential environmental impacts of establishing such growth corridors. The Project's description, therefore, is flawed because it fails to describe the growth corridors.

Moreover, the policy of locating development along regional transportation corridors, or in other planned communities/new towns, appears to directly conflict with the GPU's stated goal of allowing development only adjacent to existing population centers. This goal is designed to promote smart growth, to reduce the overall number of vehicle miles travelled and to promote a strong and viable public transportation system. RDEIR 3.4-27. The only point of having a separate development district entitled "regional growth corridor," that is distinct from the urban growth boundaries of existing communities and population centers, would be to locate new and isolated development along the "growth corridor." Otherwise, there would be no need for this special and distinct designation. But if the goal of creating this new land use designation is to promote isolated growth, how can this objective be reconciled with the GPU's stated objective of permitting growth only in the vicinity of existing communities?

The GPU further calls for the future adoption of uniform community plans (PF-2.6) but, until such time, the GPU designates all the land within communities without a plan as "mixed use." This designation would essentially permit the construction of any type of development, be it residential, commercial, or "service and employment"

opportunities without regard to the character of the neighborhood or the adjacent land uses. It is not clear how many communities will be affected by this policy, or how much or what type of development will be fostered by this designation. The RDEIR fails as an informational document to the extent that it fails to describe the potential impacts of this designation.

Finally, the RDEIR explains that the County has already revised the Housing Element. It is not clear how the RDEIR relates to the already approved Housing Element, or the extent to which the impacts from the Housing Element were considered prior to approval.

**A. The GPU must be revised to include enforceable policies and implementation measures to direct and manage urban development and growth.**

Despite the EIR's claim to the contrary, the GPU does not include adequate tools or policies to meaningfully manage and direct uncontrolled growth to existing communities and hamlets. While the GPU and the RDEIR pay lip service to the idea of promoting orderly growth and protecting agriculture and open space, the County actually proposes policies that merely "encourage" urban development to be located within existing UDBs and HDBs (PF-1.3, 104). It is not clear how the County would encourage such policies, but what is clear is, that without mandatory language, the policy is destined to fail.

Moreover, the UDBs themselves are readily subject to modification and expansion provided only that sufficient infrastructure and water supplies are available. See, PF-2.2 (2). As we will explain below, it is clear that the County does not believe availability of water supplies is an environmental constraint that could slow down the rate of development. The County apparently believes that groundwater supplies are available for the taking, despite the declining groundwater levels and the increasing severity of the overdraft, not to mention the increasingly scarcity of imported surface water supplies. (Un)Availability of water supply, therefore, will not meaningfully limit expansion of UDBs.

For any developer prepared to pay for the cost of expansion of infrastructure, availability of infrastructure would likewise not be a realistic problem. Even if the developer is unable or unwilling to pay the full cost of the infrastructure, other mechanisms exist to finance such development. These mechanisms include the availability of Mello-Roose districts (approved by the City of Tulare in connection with the Tulare Motor Sports Complex), providing tax incentives or density bonuses, and joint public/private funding ventures, which would defray the cost of construction by imposing fees on future developments that would benefit from the availability of infrastructure. Therefore, by conditioning the expansion of UDB's on provision of infrastructure by developers, the County is in effect promoting regional growth outside urban boundaries and effectively discouraging infill development.

**B. The RDEIR/GPU does not include legally sufficient mitigation measures to address the GPU's adverse impact on farmlands.**

The RDEIR readily admits that the GPU will result in significant impacts on agricultural resources. These comments will focus on conversion of agricultural lands, which the RDEIR concludes will inevitably result from the implementation of the GPU. The RDEIR recognizes this to be a significant impact, but fails to include meaningful and enforceable mitigation measures.

The RDEIR concludes that the GPU will result in "substantial conversion of important farmlands to non-agricultural uses." Impact 3.10-1, RDEIR 3.10-11. To mitigate this loss, the RDEIR cites Policies AG-1.6 & 1.8 and Agricultural Implementation Measure #15. These measures, individually or collectively, do not constitute adequate or legally sufficient mitigation because they are unenforceable, lack an implementation time-line, and do not include measurable performance criteria.

A fundamental purpose of the EIR is to identify appropriate mitigation measures. Public Resource Code §210021.1(a). Mitigation measures must not be remote or speculative. *Federation of Hillside & Canyon Ass'n v. City of Los Angeles* (2000) 83 cal.App.4<sup>th</sup> 1252, 1260. Mitigation measures must be legally binding to ensure that they will actually be implemented. *Id.*, at 1261. A mitigation measure is legally inadequate if it is so undefined that is impossible to gauge its effectiveness. *San Franciscans for*

Reasonable Growth v. City and County of San Francisco (1984) 151 Cal Ca.App.3d 61, 79.

Deferral of the formulation of mitigation measures is generally forbidden unless the agency finds that, for specific reasons, formulation of mitigation measures before project approval is infeasible. Even then, the agency must adopt concrete performance criteria and explain how the mitigation measures can be feasibly implemented. San Joaquin Raptor Rescue Center v. County of Merced (2007) 149 Cal.App.4th 645, 670; CEQA Guidelines 15126.4(a).

The RDEIR's proposed mitigation measures do not pass legal muster for a host of reasons. To begin with, these measures are not legally binding on the County: AG-1.6 provides that the County "may" develop an Agricultural Conservation Easement Plan, which "may" require in-lieu fees. AG Element Implementation Measure 15 requires the County to "consider" the implementation of an Agricultural Conservation Easement Plan. None of these provisions are mandatory, meaning the County may decide never to implement a plan to mitigate the loss of farmlands or to impose fees for the same purpose.

The proposed mitigation is inadequate also because it is remote and lacks any implementation timeline. So, for example, the County may decide not to implement an Agricultural Conservation Easement Plan for decades. Without a timeline for implementation, the mitigation measures are illusory.

The proposed mitigation measures are illegal also because they are vague and lack any specificity. Even if the County were to adopt and implement an Agricultural Conservation Easement Plan, it is not at all clear that such a program would adequately mitigate the impact on agricultural resources because it is not clear how the program would promote the conservation of farmlands. The policy does not include any ratios for exacting an in-lieu fee or a formula for the number of acres of farmland that must be set aside to offset the loss of farmlands. Without any specificity or performance standards, this measure fails as a mitigation measures.

Finally, Policy PF-2.2(1) --which prohibits conversion of Prime Farmlands unless Farmland of Statewide or lesser quality is available -- does not appear to provide any meaningful protection against conversion of farmlands because the PF-2.2(1) uses the permissive "should" and not the restrictive "shall". Moreover, in some if not most areas, farmlands of lesser value may not be readily available.

### **CIRCULATION AND TRAFFIC**

Owing to the deteriorating state of the county rural roads, the County will be required to expend significant resources (\$250 million) to make the necessary repairs. Moreover, the background report admits that due to the significant increase in the number of dairies and CAFO's in the County, the volume of truck traffic has also substantially increased, further accelerating the rate of deterioration. Background Report at 5-39 to 5-43.

The EIR's prediction, therefore, that sufficient funding exists to mitigate the impact of additional traffic and growth does not appear to be tenable. The County must make a realistic assessment of the future availability of funds to support transportation improvements before assuming that proposed or identified traffic mitigation projects are feasible.

The EIR (at 3.2-26) states that some roadway facilities that currently operate at a level of service D or worse are not capable of improvement because of "local physical and environmental constraints." The EIR does not explain in any detail what the alleged physical or environmental constraints may be. Contrary to the assertion made in the EIR, these alleged constraints are not more fully explained in the Methodology section of the EIR. The EIR's conclusory claim that achieving a better level of service is impossible given the current circumstances must be better explained and supported by reference to evidence in the record. It should also be noted that the EIR's reference to "Policy TC-1.6" as the source of the County's Level of Service policy is incorrect. The correct reference is Policy TC-1.16.

After a discussion of the County's LOS objectives in the Analysis Section, the EIR purports to discuss the Project's potential impact on roadways and levels of service. The EIR claims that a "series of model runs were conducted to evaluate the effectiveness of the circulation plan." (EIR 3.2-24). The EIR goes on to claim that as a result of these "model runs" it was determined that several roadways will require future improvements. Besides identifying those intersections, however, the EIR fails to discuss the results of the model runs, or provide any reference to the data in the appendixes. The EIR also explains that interchanges were not analyzed quantitatively, but it would be important for the EIR to "address interchanges in Tulare County that should be considered for improvements within the life of the proposed project." (EIR-3.2-25). Without any quantitative analysis, the EIR concludes that a number of intersections will require Measure R moneys for improvement, and that the impacts from the proposed General Plan Revisions will be significant and unavoidable.

The trouble with the County's failure to provide any quantitative data or analysis is that it leaves the reader in the dark as to the GP Updates' impact on roadways. While identification of impacted roadway segments or interchanges may be "important" or useful, it is not a substitute for quantitative data. Without knowing the severity of the potential impact on roadways, the public and the County decision-makers are not in position to intelligently debate the merits of different growth patterns and strategies or have a real sense of the extent of the impact of the proposed project. Mere acknowledgment that the impact is significant is not sufficient.

### **AIR QUALITY**

The Air Quality section of the EIR begins with a discussion of the current state of the air quality in San Joaquin Valley. This discussion tends to understate the current woeful state of the Valley's air quality by emphasizing some of the improvements that have been accomplished in recent years. For example, with regards to PM<sub>10</sub>, the EIR explains only that in 2008, the EPA re-designated the San Joaquin Valley to "attainment" for PM<sub>10</sub>. What the EIR does not admit, however, is that the Valley is still



in nonattainment for PM<sub>10</sub> and PM<sub>2.5</sub> for State Standards. Moreover, the EIR fails to note that the Valley remains in “nonattainment” for PM<sub>2.5</sub> for Federal Standards. The EIR should be revised to honestly assess the area’s air quality and explain in narrative form the attainment status of the local air quality.

The EIR admits that implementation of the Project will result in the worsening of the local air quality. The EIR concludes that the GPU will result in a net increase in criteria pollutants thereby resulting in violation of air quality standards (Impact 2.3-2), would conflict with or obstruct the implementation of applicable air quality plans (Impact 2.3-3), and would expose sensitive receptors to substantial pollutant concentrations, thereby affecting public health (Impact 2.3-4). Yet in each instance, after merely reciting a number of largely toothless policies as potential mitigation measures, the EIR concludes that no additional feasible mitigation measures exist to further reduce the significant impacts. In this regard, the EIR suffers from two principle legal deficiencies: (1) most of the proposed mitigation measures are too vague and unenforceable to pass muster under CEQA, and (2) the conclusion that no additional feasible mitigations exist to reduce the GPU’s impact on air quality is not supported by any adequate analysis or evidence in the EIR or the Record.

1. **The proposed air quality mitigation measures are too vague and unenforceable to pass muster under CEQA.**

Some of the proposed policies designed to improve air quality are too vague and unenforceable to pass legal muster. Participation in local and regional plans (AG-1.2) is one such measure. Participation could mean nothing more than sending a representative to meetings. Likewise, cooperation with other agencies is vague and meaningless.

The mitigation measures that require development projects to comply with existing law, such as SJVAPCD Rule 9510, is essentially meaningless as these development projects are already required by a different agency to comply with rules within that agency’s purview. So to pretend that the County’s Policy (eg. AQ 2.2) is a mitigation measure at all is intellectually indefensible.

The County is not willing to adopt air quality policies that would bind its own actions to improve air quality. For example, AQ-1.6 requires the County merely to “encourage” County departments to replace existing vehicles with low emission/ alternative fuel vehicles as appropriate. Other policies likewise merely require the County to encourage infill development (AQ 3.2) or locate employee services near employment centers (AQ 3.1), etc. These typed of toothless policies cannot be considered a mitigation measure under CEQA.

**2. The conclusion that no additional feasible mitigation measures can be feasibly implemented is not supported by substantial evidence.**

The GPU is chock-full of empty gestures and promises. Although many of the proposed goals and policies may seem to be designed to benefit the health and welfare of the people and to serve as mitigation for the adverse impacts of future growth, after careful consideration, it becomes readily apparent that these goals and policies are essentially toothless and are incapable of effectively addressing either existing environmental problems or those that may result from future growth.

For example, many policies and goals appear to be designed to ensure orderly development, protection of air quality and reduction of GHG emissions. Pursuant to AQ-1.3, for example, the County is directed to “require development to be located, designed, and constructed in a manner that would minimize cumulative air quality impacts.” AQ-1.3 goes on to explain that “applicants shall be required to propose alternatives as part of the State CEQA process that reduce air emissions” . . . Yet, proposing “alternatives” in and of itself does nothing to reduce air emissions, if the environmentally superior alternatives are not implemented by the County. In addition to identifying onsite energy-saving measures, minimizing the number of miles travelled and paying air impact mitigation fees to offset emissions are the most effective means of addressing a project’s air quality impacts. Yet, as we explained above, the GPU does not require payment of air impact fees as mitigation for air emissions and does not contain any concrete policies to require development to be centrally located in the vicinity of existing population centers.

## WATER SUPPLIES

Adequacy of water supplies is a significant environmental issue and likely the most important limiting factor affecting the future growth of the County. Yet the EIR does not contain any sufficient analysis of adequacy of groundwater supplies to serve the future growth anticipated by the GPU. To the contrary, the EIR includes an extremely cursory “qualitative” analysis of existing conditions and future demands, without any community-by-community analysis of adequacy of groundwater supplies. We note the original draft EIR for the 2030 GPU did contain such a community-by-community analysis. The size and adequacy of water supplies and infrastructure, as well as expected future demand, varies tremendously across the County. To the extent that the GPU calls for and anticipates growth in each hamlet, community and in other urban areas, the RDEIR must be revised to include a thorough analysis of water supply availability for **each** affected community.

The EIR’s analysis of water supplies largely relies on the deficient June 2009 “Water Supply Evaluation” that appears in the EIR appendices. While it is infeasible to check every contention or claim in this document, the following is a list of the report’s inadequacies, false assumptions, and glaring omissions. Although the EIR does correctly conclude that the proposed GPU will adversely affect groundwater resources, the EIR’s methodology in assessing the impact is flawed and understates the impact. Moreover, we do not believe the County may legally approve the GPU and permit the substantial growth envisioned by the GPU without implementing adequate mitigation measures and, more significantly, without identifying reliable sources of water.

### **A. The Report fails to explain the basis for its assumptions and calculations.**

The Report assumes that future conversion of agricultural lands to urban uses (largely residential) will result in a reduction in groundwater demand. To calculate the expected future water demand, the Report estimates the number of acres of farmland that will be converted from farmland to non-agricultural use to predict the County’s future water demand (with GPU). See Page 6. To conduct this analysis, the Report assumes that

net water demand can be estimated by subtracting the total expected urban demand from the total quantity of water that will be saved by displacing farmlands with urban usage.

This approach is deeply flawed for two principle reasons: (1) it fails to take into account the water demand by urban projects that will not be built on existing farmlands, i.e. infill development, and (2) the Report fails to provide any analysis or justification for the assumptions that underlie the future water demand analysis contained in Figure 2.2.

1. **The Report fails to consider the water demand associated with urban growth (residential, commercial, industrial) that will occur on non-agricultural land.**

Without any discussion, the Report simply assumes that all future growth will occur by displacing existing agricultural operations. See Page 6. The Report never bothers to estimate the extent to which urban growth may occur on land that is either not in agriculture, such as land in existing hamlets or vicinity of towns and villages, or land that, although suitable for farming, is not or has not been in active cultivation. By assuming a 1:1 relationship between loss of farmland and future growth, the Report tends to underestimate the net future water demand generated by the adoption of the GPU.

Likewise, without any adequate explanation, the Report simply assumes that “all acres identified as farmland are assumed to have a water demand.” *Ibid.* But there is no evidence offered to suggest that some of the land that may be displaced by urban usage may not be on non-irrigated land such as orchard.

To predict future urban water demand, the Report apparently relied on “City of Fresno’s Urban Water Management Plan (UWMP) and professional judgment from other studies.” Report at 9. It is wholly unclear water “other” studies were referenced or why Fresno’s UWMP was used as a source. The Report does not attempt to explain why it was appropriate to use a large City’s water use portfolio in Tulare County, when much of the development is expected to be in smaller hamlets or other more rural communities.

Accordingly, it appears that unless the County can justify these assumptions, the Report's estimate of future water demand may be understated.

**2. The Report does not explain the basis for the assumptions regarding the amount of acreage it expects.**

Again, without any explanation, Table 2.5 (p. 10) of the Report "explains" the County's expected change in water demand in each community, hamlet or City UDBs. These predictions appear to be nothing more than pure speculation or guess work, rather than the kind of forecasting that is required by CEQA. In fact, the EIR itself seems to disavow these assumptions by explaining that "the nature and extent of agricultural water conversion . . . is not known." RDEIR 3.6-24. The EIR's admission that the extent of the agricultural conversion is unknown cannot be reconciled with Table 2.5, which speculates about the extent of agricultural conversion.

The EIR must explain the basis for Table 2.5, or disavow the Report altogether. Because of the inconsistencies between the EIR and the Report, because of the speculative and unexplained nature of the assumptions that inform the Report's analysis, we do not believe the County can appropriately rely on the 2009 Water Report. *City of Redlands v. County of San Bernardino (2002) 96 Cal.App.4th 398, 410 (fns. omitted.)* ("The following does not qualify as substantial evidence under CEQA: 'argument, speculation, unsubstantiated opinion or narrative, . . . . Substantial evidence, instead, consists of 'fact, a reasonable assumption predicated upon fact, or expert opinion supported by fact.' ") The EIR, therefore, must be revised to explain the basis for the assumptions that inform the County's calculation of future water demand. In particular, the County must explain the basis for predicting the number of acres of farmland it expects to be converted to urban use in each community.

**B. The EIR and the Water Report's analysis of future water demand understates the impact on groundwater and is legally indefensible.**

Although the EIR admits that the GPU will result in a significant impact on ground-water supplies, it tends to understate the impact. Despite admitting that the extent of agriculture to urban land use is not known, the EIR speculates that "increases in urban water demand resulting from population growth may be offset by decreases in

other forms of water use (i.e. agricultural water conversion) or increases in water use efficiency.” RDEIR at 3.6-42. Moreover, the 2009 Water Supply Report (despite the flaws outlined above) concludes that “there will be a slight reduction in water demand” based on the anticipated conversion of cultivated acreage to urban usage. This conclusion, however, is the product of a flawed analysis that fails to take into account the substantial agricultural surface water supplies that provide much of the water needed for agriculture.

As explained in the Water Report, water for urban use is provided by pumping groundwater, while agricultural water supplies include both groundwater and surface water flows. The surface water is supplied through various irrigation districts from two sources: local water sheds and imported water. The bulk of the imported water is delivered through the federally managed Central Valley Project (CVP) by way of the Friant-Kern Canal. Additional supplies are also delivered by the State Water Project (SWP) from the Sacramento Delta. See, Table 3.2 at p. 18.

The EIR’s suggestion that water demand from urban growth may be offset by decreases in agricultural water use is misleading and poorly explained. First, as hinted by the Water Report, “where cultivated] lands were previously served with surface water [there [would] be a likely increase in the total extraction of groundwater.” Report at 35. Because much of the water used for agriculture in Tulare County comes from surface water deliveries, it is unclear that groundwater extractions for urban use would be offset by conversion of farmlands.

Moreover, it is well known that using surface water deliveries (both imported and surface supplies) for cultivation for crops has the added benefit of recharging the groundwater basin. The Report does not include any analysis of the extent to which surface water deliveries beneficially affect the groundwater basin through seepage back down into the groundwater basin. The RDEIR must be revised to accurately predict the impact on groundwater supplies that may result from conversion of farmlands to urban use.

**C. The RFEIR must identify and analyze alternative water supplies.**

“[W]here, despite a full discussion, it is impossible to confidently determine that anticipated future water sources will be available, CEQA requires some discussion of possible replacement sources or alternatives to use of the anticipated water, and of the environmental consequences of those contingencies.” *Vineyard Area Citizens for Responsible Growth v. City of Rancho Cordova* (“*Vineyard*”) (2007) 40 Cal.4th 412, 430-32.

The US Geological Survey Report, Groundwater Availability of the Central California Aquifer (USGS Report) ([http://pubs.usgs.gov/pp/1766/PP\\_1766.pdf](http://pubs.usgs.gov/pp/1766/PP_1766.pdf)) explains that increased regulation of water and environmental concerns in the Delta have resulted in reduced surface water deliveries both for urban and agricultural needs. USGS Report, Page 60. Future surface water deliveries therefore may not be available. Moreover, sustained increases in groundwater extractions are likewise untenable because “increased reliance on groundwater is likely to lower ground-water levels, thereby increasing pumping costs, inducing further subsidence, and decreasing surface-water base flows.” *Ibid.* Despite the RDEIR’s failure to adequately analyze regional water supply issues, it is clear that many communities may not be able to rely on increased groundwater extractions as their sole water source to meet future demand. The County, therefore, must analyze the likelihood of identifying alternative supplies, and consider the environmental consequences of obtaining water from such alternative sources.

**D. The EIR’s conclusion that implementation of the GPU will not increase groundwater demand beyond historical rates is not supported by substantial evidence or legally defensible arguments.**

The EIR concludes that “actions contemplated in the proposed project are not anticipated to cause overall demand in the County to vary from within the range of demands seen historically and documented by DWR.” RDEIR 3.9-47. This contention is both irrelevant and misleading. It is misleading because it ignores the fact that the GPU will cause a significant increase in the overall population of the County, which will in turn increase the demand for drinking water. It is irrelevant because the aquifer is in

a state of overdraft. Adding more burden to an already overstretched aquifer will only result in more long-term deficits in the overdraft and the concomitant secondary impacts, such as subsidence and reduced pumping capabilities. As we will explain, the RDEIR must be revised to include an objective and honest evaluation of the expected increase in water demand and discuss whether and to what extent growth should be promoted in light of the deficiency in water supplies.

A fundamental flaw in the RDEIR's water supply analysis is the failure to include concrete population projections. As it is, it is impossible to gauge the accuracy of the RDEIR's so-called "future scenarios" because it is not clear what assumptions inform these calculations. To comply with CEQA's basic informational requirements, the RDEIR must be revised to include accurate population projections to enable the public to check the veracity of the RDEIR's calculations. The RDEIR does actually include population projections at 5-2, Table 5-1. It should be noted that the RDEIR does not distinguish between growth projections under current conditions and growth that is specifically authorized and anticipated under the GPU. This is a fundamental flaw, which must be corrected. Assuming for the present purposes that the information in the RDEIR can be used to predict future water demand, why does the RDEIR not include a projection of future water demand based on these projections?

The RDEIR makes an intellectually dishonest connection between future conservation measures and the implementation of conservation measures to address the County's water shortage. In this regard, the RDEIR states: "Land use changes contemplated by the General Plan Update provide an opportunity for the County to proactively implement available conservation measures." RDEIR at 3.9-45. As the EIR admits, the County is under a legal obligation to promote water conservation consistent with state law, as explained in the Water Report at page 12. The RDEIR fails to provide any explanation or analysis to show that without the land use changes contemplated by the GPU, the County could proactively implement the conservation measures required by law or otherwise available.

Although difficult to follow, the RDEIR appears to argue that substantial increases in urban water demand will result, regardless of the implementation of the GPU. This conclusion seems *a priori* untenable. Instead of sanctioning the rapid



conversion of farmlands and paving the way for substantial population growth, the County could take a conservative approach by adopting policies that limit growth until and unless alternative supplies, that do not exacerbate the overdraft of the aquifer, are identified. Actively limiting population growth will surely reduce drinking water demand. The RDEIR's argument that the GPU does not play a role in the increase in future drinking water demand, therefore, is incomprehensible.

If, as the RDEIR suggests, the projected growth will occur regardless of the GPU's land use policies and mitigation measures, why then does the County bother preparing an EIR at all? If the with and without project (i.e. with or without the 2030 GPU) that the same rate and pattern of growth will result, no environmental impacts can be attributed to the GPU and the County need only adopt a negative declaration, or perhaps even a notice of exemption, to explain this conclusion. But this is of course not the case, because the GPU's policies do direct the growth rate and pattern in the County.

Finally, the RDEIR's conclusion that "urban purveyors will be expanding water supply entitlements to the groundwater" is simplistic and has not been adequately explained. As the RDEIR notes, California is moving towards a statutory groundwater monitoring regime and it is unlikely and untenable to assume that water agencies may continue to expand groundwater extraction to meet urban needs, despite the worsening overdraft.

Moreover, as the RDEIR notes in passing, increased levels of overdraft may result in lowering of water levels, increase pumping costs and degrade water quality -- water quality which is already poor in many communities in Tulare County. We therefore question the RDEIR's glib suggestion that future water demand will simply be met by water purveyors expanding their groundwater entitlement.

**E. The RDEIR must analyze secondary impacts of the likely worsening of groundwater overdraft conditions.**

In cursory fashion, the RDEIR admits that groundwater overdraft may result in (1) increase in pumping expense [due to the lowering of groundwater levels], (2) impacts to water quality, and (3) subsidence that can permanently decrease aquifer storage capacity and affect private property or public facilities and infrastructure. Besides

noting the possibility that these impacts may result, the EIR does little to analyze the likelihood, extent or significance of these impacts.

According to the USGS Report (cited above), “the droughts of 1976–77 and 1987–92 led to reduced surface-water deliveries and increased groundwater pumpage, thereby reversing the overall trend of groundwater-level recovery and **re-initiating land subsidence** in the San Joaquin Valley.” As we explained above, the USGA Report explains that “increased reliance on groundwater is likely to lower groundwater levels, thereby increasing pumping costs, inducing further subsidence, and decreasing surface-water base flows<sup>1</sup>.” The RDEIR, however, fails to analyze these potential impacts. Will the subsidence require significant expenditures of public funds to maintain public infrastructures such as roads and bridges? Will the subsidence pose a potential threat of rupturing gas lines or damage to dikes or dams? Will the increased cost of pumping groundwater cause significant hardship or make future development infeasible? Will degradation of groundwater quality cause violations of state and federal standards? How long before groundwater quality is so degraded as to require treatment? These are but a few of the myriad of potential issues that must be analyzed by the EIR before the County can make an informed and intelligent decision regarding the impact of proposed development on groundwater.

### **Conclusion Regarding Water Supplies**

The RDEIR’s water supply analysis is inadequate as a matter of law. The County has failed to calculate future demand and has failed to identify existing supplies. There is no individualized analysis of groundwater conditions for the many communities where increased future development is anticipated under the GPU. The EIR has failed to analyze the secondary impacts of the increased groundwater pumping and has failed to identify alternative water supplies that could replace the depleted groundwater supplies or reduced future surface water deliveries. Moreover, it simply does not suffice for the RDEIR to conclude that “the hydrologic implications of increased localized

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<sup>1</sup> / Note that while the USGS Report states that these secondary impacts are “likely”, the RDEIR merely states that these impacts “may” occur.

pumping in groundwater basins (i.e. potential for cones of depression) is not known". The RDEIR's analysis of water supplies must be substantially revised.

### ALTERNATIVES

#### **The EIR does not consider a reasonable range of alternatives.**

Pursuant to CEQA, the RDEIR is required to identify a range of alternatives that could reduce or fully mitigate the Project's environmental impacts. An EIR must

"describe a range of reasonable alternatives to the project, or to the location of the project, which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives." (CEQA Guidelines, § 15126.6, subd. (a).)

It must contain

"sufficient information about each alternative to allow meaningful evaluation, analysis, and comparison with the proposed project." (CEQA Guidelines, § 15126.6, subd. (d).)

"The statutory requirements for consideration of alternatives must be judged against a rule of reason." Citations omitted.

Association of Irrigated Residents v. County of Madera (2003) 107 Cal.App.4th 1383, 1400 ("AIR")

An EIR "must explain in meaningful detail ... a range of alternatives to the proposed project and, if [the agency] finds them to be infeasible, the reasons and facts that [the agency] claims support its conclusion." Laurel Heights Improvement Assn. v. Regents of University of California (1988) 47 Cal.3d 373, 407.

The EIR must focus on alternatives that can avoid or substantially reduce a project's significant environmental impacts. Public Resource Code §21002.

The EIR must compare the merits of each feasible alternative and explain in some detail how the alternatives were selected. CEQA Guideline 15126.6.

In other words, the alternatives considered in the EIR must offer a substantial advantage over the proposed project. *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 566.

It is imperative that the discussion of alternatives include sufficient information about each alternative to allow evaluation and comparison of alternatives to the Project. CEQA Guideline 15126.6(d). *AIR*, supra.

The EIR's alternatives analysis must contain "sufficient information about each alternative to allow meaningful evaluation, analysis, and comparison with the proposed project." [Citation.]")

Moreover, the range of alternatives must be sufficiently varied to foster informed decision-making and public participation. CEQA Guidelines §15126.6(a)-(f); *Mann v. Community Redev. Agency* (1991) 233 Cal.App.3d 1143, 1151.

The alternatives considered in the EIR fail the CEQA standard. The alternatives proffered by the County fail to meaningfully reduce the GPU's myriad of significant environmental impacts. As evidenced by Table 4-1, at 4-4, all alternatives considered by the RDEIR will result in substantial increase in population growth. These alternatives fail to foster meaningful decision-making or public participation because they are too similar. Moreover, only one of the alternatives considered meets all of the County's stated goals for the GPU. The RDEIR, therefore, violates CEQA in that none of the alternatives appear to meaningfully reduce the Project's environmental impacts, and all but one of the alternatives are designed to meet the Project's stated objectives.

Moreover, the County has failed to explain why "The Healthy Growth Alternative," which was offered by Tulare County Citizens for Responsible Growth in comments on the 2008 DEIR, was never considered. The Healthy Growth Alternative meets the definition of a potentially feasible alternative in that it meets most of the County's stated objectives. Yet this alternative is "environmentally superior" because it would reduce many of the GPU's significant environmental impacts. The County must consider and discuss a range of alternatives, including the Healthy Growth Alternative

proposed by members of the public. At a minimum, the EIR must explain why this alternative should be considered infeasible or otherwise rejected.

The RDEIR's analysis of alternatives is further flawed because the analysis is often supported by conclusory statements intended to support the County's preferred alternative. For example, the RDEIR fails to include a discussion of the fire risk of each alternative, particularly at the wildland-urban interface. In places, the discussion of hydrology and water quality approaches not only the disingenuous, but nonsensical.

In many instances, the RDEIR fails to adequately explain and understates the difference between alternatives without any persuasive or adequate explanation. The EIR claims, for example, that the potential hydrology and water quality impacts that could result from the so-called "City-Centered Growth Alternative" would be similar to the impacts from more extensive development in the foothills and mountains. Clearly, more intensive development in the less-developed foothills and mountains would result in much more extensive impacts on water quality in rivers and creeks. Yet, without any explanation, the RDEIR concludes that the opposite is true. The RDEIR must be revised to provide more extensive and meaningful information in order to permit a genuine comparative analysis of the proposed alternatives. CEQA Guideline 15126.6(d).

Likewise, the RDEIR's conclusion that various alternatives would result in similar impacts on climate change and air quality is poorly explained. The RDEIR states that the confined growth alternative "may reduce the overall number of vehicle miles driven," and thereby reduce both the GHG and criteria and toxic emissions (RDEIR at 4-33-35). The RDEIR then goes on to conclude that these reductions would be essentially meaningless because, in each case, the Project would still result in significant adverse impacts on climate change and air quality. This "analysis" is misleading and inadequate in that fails to provide the reader with any sense of the magnitude of benefit that may be realized from the reduction in the overall vehicle miles travelled (VMTs). That the Project's overall impact may remain significant, even with reductions in the VMTs, is not determinative. The public and the County policy-makers must be able to meaningfully compare the environmental benefits of each alternative even if the overall impact may remain significant.

The RDEIR must be revised to include a legally sufficient alternatives analysis that includes a reasonable range of feasible alternatives that would meaningfully reduce the Project's environmental impacts.

### **CLIMATE CHANGE**

The RDEIR admits that the implementation of the GPU would result in a significant adverse impact on climate change and concludes that this impact must be mitigated as required by CEQA. For example, at 3.4-32, the RDEIR admits that Tulare County's CO<sub>2</sub> emissions will increase from 5.2 million tons per year in 2007 to 6.1 million tons per year in 2030, an increase of 897,420 metric tons per year or 17% increase greenhouse gas (GHG) emissions.

To meet the goals of AB 32, the State must reduce GHG emissions to 1990 levels by 2020. While it is becoming increasingly clear that even achieving the goals of AB 32 may not avoid a catastrophic climate change outcome, it is imperative for all land use agencies, such as Tulare County, to make a genuine effort at least meet the goals set by this state law. Unfortunately, Tulare County does not appear to be ready to meet this challenge as the RDEIR admits that GHG emissions that will result from the GPU "places the proposed project in conflict with the (2020) goal of the State to reduce up to 174 million metric tons CO<sub>2</sub>e/yr." Tulare County is therefore in violation of state law as there are many feasible mitigation measures that can help Tulare County meet its obligation to reduce GHG emissions. Sierra Club has submitted a comprehensive list of resources and mitigation measures to assist the County.

The RDEIR itself includes many sensible and established policies to address climate change. Unfortunately, as with other GPU policies, these proposed policies do not include mandatory terms such as "shall" and are therefore illusory and unenforceable. We suggest that these policies be revised to include mandatory terms. Moreover, we suggest that if the County intends to rely on the CAP as an implementation plan for climate change mitigation policies, the CAP must be finalized and adopted before or at the same time as the GUP itself.

Without any adequate explanation, the County's draft Climate Action Plan (CAP) sets a 26.2% target for reductions in Greenhouse Gas (GHG) emissions. It may be that the CAP assumes this target to be the maximum feasible mitigation target, but it is impossible to evaluate this implicit contention as the CAP does not provide any supporting evidence or arguments. If the County contends that full mitigation of the Project's GHG emissions requires only a 26.2% reduction from business as usual (BAU), this contention needs to be vetted and supported by evidence.

We suspect that the draft CAP adopts a target 26.2% CO<sub>2</sub> emission reduction from BAU as a means to comply with AB 32's 2020 emission reduction targets. This would be mistake, however, because (a) the most recent evidence shows that compliance with AB 32 would not avoid catastrophic outcomes of climate change and (2) AB 32's emission reduction goals mark only a first and interim step toward much more significant eventual GHG reductions. By myopically focusing on AB 32's 2020 goals, the County seems to ignore the long-term emission reductions necessary to stabilize the climate or even to meet the 2050 goals.

Moreover, the planning horizon for this project extends to 2030, 10 years beyond the 2020 goal for which the measure is tailored. Greenhouse gas emission reduction targets also extend beyond 2020 and are much larger than the 2020 target; Executive Order S-3-05 sets an 80% reduction of GHG from 1990 levels in 2050 as a goal. In order to achieve GHG emission reduction goals beyond 2020, the County should require feasible mitigation measures that would reduce development related GHG emissions beyond the 26.2% below BAU 2020 requirement.

CEQA defines "feasible" as "capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social and technological factors." PRC §21061.1. The fact that an alternative or mitigation may be expensive or make the project less profitable is insufficient to show financial infeasibility. Uphold Our Heritage v. Town of Woodside, (2007) 147 Cal.App.4<sup>th</sup> 587, 599. "What is required is evidence that the *additional* costs or lost profitability are sufficiently severe as to render it impractical to proceed with the project." Id. Here, if the County contends that full mitigation of GHG mitigation is

financially infeasible, it must support this contention with evidence to show that the additional costs of such mitigation would render it infeasible.

**CONCLUSION**

For all these reasons, we urge the County to revise and recirculate the RDEIR.

Sincerely,

**ORIGINAL SIGNED**

Babak Naficy  
Counsel for SIERRA CLUB

cc: Gordon Nipp, Sierra Club