Response to Comments Received After the Close of the CEQA Comment Period for the Tulare County 2030 General Plan Update

This document contains responses to comments received after the close of the California Environmental Quality Act (CEQA, Public Resources Code Section 21000 et seq.) public comment period for the Recirculated Draft Environmental Impact Report (RDEIR) on the General Plan 2030 Update. This document does not contain responses to *all* comments received after the close of the CEQA comment period, as this is not required by CEQA, but instead clarifies some issues raised in these letters.

Response to Comment (George Pilling, dated 10/4/11)

The comment states that the General Plan should (1) support creating pedestrian friendly environment with bikeways and trail linkages; (2) protect scenic corridors – Hwy 99 into Visalia, improve scenic corridor east and west of Visalia; (3) protect and enhance existing waterways, including creeks and ditches to create natural looking waterways through parks and scenic corridor areas, and; (4) consider closing Rocky Hill Road to through traffic.

These issues are addressed through policies included in the updated Tulare County 2030 General Plan, specifically the Transportation and Circulation (Chapter 13), Scenic Landscapes (Chapter 7), Environmental Resources Management (Chapter 8), and Water Resources (Chapter 11) Elements.

Response to Comment (Peck Planning and Development LLC, dated 10/12/11)

The comment includes a specific request for a parcel to be identified as a commercial land use in the updated land use map.

This is a project specific request related to the commenter's interpretation of how GPU Regional Growth Corridor policies should be interpreted and applied. The comment does not address the adequacy of the RDEIR or Final EIR (FEIR). No further response is required. (CEQA Guidelines Section 15204(a).)

Response to Comment (K. and L. Bluestein, dated 10/16/11)

The comment states the authors (1) support the Healthy Growth Alternative; (2) loss of open space/agricultural lands, and; (3) air quality.

Please see (1) Master Response #9 (FEIR, pages 4-36 through 4-38); (2) Responses to Comments A5-2 and I11-200 (FEIR, page 5-6 and pages 5-139 through 5-143), and; (3) Responses to Comment Letter A16 (FEIR, pages 5-43 and 5-44).

Response to Comment (California Native Plant Society, Joan Stewart, dated 10/14/11)

The comment states that it "repeat[s] some of the more general views about our concerns." Please see FEIR Response to Comment I5.

Response to Comment (Anne Marks dated 10/18/11)

The comment supports the Healthy Growth Alternative as proposed by TCCRG. Please see Master Response #9. (FEIR, see pages 4-36 through 4-38.)

Response to Comment AC-I11 (Sierra Club, Gordon L. Nipp, dated 10/18/11)

The commenter provides a number of responses to the County's FEIR Response to Comments on the Sierra Club letter (RDEIR Comment I11). The County's responses below mirror the titles of the comment letter and reference the original Response to Comment contained in the FEIR with the added prefix "AC", "after the comment period," (e.g., "Response to Comment AC-I11-190"). These responses should also supplement the underlying Response to Comments.

Numerous comments on the RDEIR suggested additional changes to policies, mitigation measures and/or project alternatives. For example, well over a thousand individual comments were identified in the comment letters and a large number of these individual comments suggested General Plan Policy changes. In many instances commenters did not explain how their suggestions would reduce or avoid an environmental impact and should not be considered mitigation measures or alternatives under CEQA. (See FEIR Master Response #1.)

As discussed in *Santa Clarita Organization for Planning the Environment v. City of Santa Clarita* (2011) 197 Cal.App.4th 1042, "Considering the large number of possible mitigation measures set forth in the letter [50 suggestions], as well as the letter's indication that not all measures would be appropriate for every project, it is unreasonable to impose on the city an obligation to explore each and every one." Nevertheless, the County has reviewed all the comment letters, provided responses, and incorporated appropriate language into the "As Modified" draft of the General Plan included in the Board Report for the Board of Supervisors.

To the extent the suggestions have not been included in the "As Modified" draft of the General Plan, they have been determined to be infeasible, based in part upon being "undesirable from a policy standpoint." (See *California Native Plant Society v. City of Santa Cruz* (2009) 177 Cal.App.4th 957.) Such suggestions also failed to meet the project objectives, as they would be beyond the scope of the project See Master Response #3, #4, and #9). Such measures could not be completed within a reasonable period of time, as it would not be feasible to provide an ordinance level of detail or to implement the General Plan instantaneously, as discussed under Government Code Section 65400.[1]

The prevailing theme among the commenter's suggestions is that every policy must be mandatory. As discussed under CEQA Guidelines Section 15041, mitigation measures must be "consistent with applicable constitutional requirements such as the 'nexus' and 'rough proportionality' standards established by case law." In their aggregate, the commenter's suggestions potentially exceed constitutional nexus requirements to the extent that every policy is made applicable to every project

[1] In *Sondermann Ring Partners-Ventura Harbor v. City of San Buena Ventura* 2008 WL 1822452, petitioner alleged "that he City violated CEQA because the EIR it approved for its general plan update did not include review of a yet to-be adopted zoning code amendment." The Court denied the petition noting that (1) "the zoning ordinance shall be amended within a reasonable time," and (2) "that a court has no authority to compel a public agency to enact legislation." (*Id.* at 3).

(particularly where there are already existing regulations such as the Renewable Portfolio Standard, San Joaquin Valley Air Pollution Control District (SJVAPCD or Valley Air District) Rule 9410, California Building Code requirements for energy efficiency, etc.).

For example, a few of the commenter's suggestions request the, (1) creation of Transportation Management Associations (TMAs) (I11-207); (2) mandatory ridesharing programs (I11-207; (3) requiring construction of ancillary employee service facilities (child care, restaurants, banking facilities, and convenience markets) (I11-207); (4) requiring new development to incorporate solar PV and solar heating (I11-207, I11-229), (5) requiring LEED certification (I11-210, I11-229); (6) requiring a project to exceed Title 24 energy efficiency standards by 35% (I11-229), (7) requiring a transfer fee at each sale of a building (I11-229); (8) new project partial funding for off-site energy efficiency programs; (9) new project partial funding of public transportation (I11-229); (10) new project fees for area solar PV incentives (I11-229), and; (11) new project payment of GHG fees (I11-229). Implementing all of these requirements on a project-specific basis may exceed a project's contribution to an environmental impact and may make numerous projects economically infeasible. In their aggregate, such suggestions would not fully satisfy the objectives associated with the proposed project (i.e., would preclude development as discussed above, and would not "promote reinvestment") and are "undesirable from a policy standpoint." (*California Native Plant Society v. City of Santa Cruz* (2009) 177 Cal.App.4th 957).

As discussed in FEIR Master Response #3, #4, and #9, the General Plan is a broad policy document which must provide sufficient flexibility to account for peculiarities of specific parcels and projects.

Response to Comment AC-I11-190, AC-I11-191 (Sierra Club, Gordon L. Nipp, dated 10/18/11)

Please see previous Response to AC-I11 above. The commenter suggests that Policy AQ-1.6 and AQ Implementation Measure #15 should include performance standards.

As discussed in FEIR Response to Comment I11-221 and Master Response #3, individual policies cannot be reviewed in a vacuum, but will be interpreted in the context of the General Plan as a whole. For each General Plan policy, there is also a goal. For example, Goal AG-1 for Policy AG-1.6, which provides "To promote the long-term preservation of productive and potentially-productive agricultural lands and to accommodate agricultural-support services and agriculturally-related activities that supports the viability of agriculture and further the County's economic development goals." (General Plan 2030 Update, Part I, page 3-4.)

There is abundant General Plan language which further clarifies Policy AG-1.6: (1) "The General Plan identifies agriculture not only as an economic asset to the County but also as a cultural, scenic, and environmental element to be protected and to insure that the utilization of these resources may continue to economically succeed" (General Plan 2030 Update, Part I, page A-1); (2) "Protect valuable agricultural uses from urban encroachment" (General Plan 2030 Update, Part I, page B-1); (3) "Protect the County's important agricultural resources and scenic natural lands from urban encroachment through the implementation of Goals and Policies of the General Plan" (General Plan 2030 Update, Part I, page A-2); (4) "the principal objective of an agricultural conservation easement

is to safeguard the productivity of farmland and the integrity of the agricultural operation" (General Plan 2030 Update, Part I, page 3-2); (5) "Preservation of productive agricultural lands shall be the highest priority..." (General Plan 2030 Update, Part I, Policy PF-2.2), and; (6) "AG-1 to promote the long-term preservation of productive and potentially-productive agricultural lands and to accommodate agricultural-support services and agriculturally-related activities that supports the viability of agriculture and further the County's economic development goals." (General Plan 2030 Update, Part I, page 3-4.) (See also Implementation Measure Agriculture #1, #5, #13.)

As discussed in CEQA case law, "where practical considerations prohibit devising such measures early in the planning process..., the agency can commit itself to eventually devising measures that will satisfy specific performance criteria articulated at the time of project approval." (*Oakland Heritage Alliance v. City of Oakland* (2011) 195 Cal.App.4th 884.) The language provided in the General Plan 2030 Update provides appropriate performance standards for a programmatic policy document, with additional more specific measures considered at the project level. As discussed in Master Response #3, "a first-tier EIR may contain generalized mitigation criteria and policy-level alternatives."

The commenter also suggests that the County provide a "performance standard that specifies the quality of the preserved replacement mitigation land...[and] a policy that requires that a need for the project be demonstrated." Comment I11-190 cites Attachments 44 and 45 to its comment letter of proof of feasibility. However, the comment letter cites to a *project specific* mitigation measure for Beech Avenue Industrial Park Project in Attachment 44, not a mitigation measures appropriate for a policy level document. The commenter also cites to Attachment 45, which is a Settlement Agreement for the entitlements for the development of a *specific parcel.* The commenter is referred to Master Response #4. The level of detail requested by the commenter is essentially on par with an ordinance in the County Code. It is not possible or appropriate to provide this level of detail for every goal, policy, and implementation measure and be able to complete the General Plan within a "reasonable period of time." (See CEQA Guidelines Section 15364.) As discussed in a *Lesher Communications, Inc. v. City of Walnut Creek* (1990) 52 Cal.3d 531, a zoning ordinance "regulates land use" whereas a general plan is "simply a statement of policy to govern future regulations." The Government Code recognizes that implementation of the General Plan will be an ongoing process over the life of the plan. (See Government Code Section 65400.)

The commenter repeatedly suggests that the General Plan policies, such as AG-1.6 are unenforceable. Please see FEIR Master Response #3. While the commenter suggests that the policy requires the County to make development of an Agricultural Conservation Easement Program mandatory, such mandatory language ignores the basic tenant that "one legislative body cannot restrict the powers of its successors..." and mandate adoption of a future ordinance or resolution. (See *County Mobilehome Positive Action Com. V. County of San Diego* (1998) 62 Cal.App.4th 727.) While the County strives to implement the General Plan, the County has limited resources and will need to be able to change priorities for implementation of the General Plan as times change. As discussed on General 2030 Update, Part I, page 1-11, implementation of the General plan is subject to:

> available staff, financial resources, and other considerations...implementation can take time, especially when resources are limited and required for more than one implementation measure...because implementation will take time and will be costly, the County will need to prioritize implementation measures. It is contemplated that this ongoing process is part of the County's annual general policy making function and budget cycle.

It would also be undesirable from a policy perspective to mandate specific implementation programs, which may result in other more important programs being ignored. For all of these reasons, these suggestions are considered to be infeasible.

Response to Comment AC-I11-192 (Sierra Club, Gordon L. Nipp, dated 10/18/11)

Please see FEIR Response to Comment I11-192.

Response to Comment AC-I11-193 (Sierra Club, Gordon L. Nipp, dated 10/18/11)

Regarding the suggestion to "strengthen[] polices," the County disagrees with the commenter's interpretation that Policies PF-2.2 and PF-3.2 "make it fairly easy to expand UDB's and HDBs...and would emasculate LU-2.1." As noted above, the individual General Plan policies should not be reviewed in a vacuum, or ignore other relevant portions of the policy. For example, Policy PF-2.2 also provides that "Preservation of productive agricultural lands shall be the highest priority when considering modifications. Expansion of a UDB to include additional agricultural lands shall only be allowed when other non-agricultural lands are not reasonably available to the community or are not suitable for expansion." As also noted in Response I11-193, it would be speculative at this time to consider future unknown UDB expansions which are not known and not reasonably foreseeable.

The commenter also suggests that "internal consistency is a well litigated CEQA issue." While a number of published decisions address internal consistency under the *Government Code* Section 65300 et seq., along with other claims under CEQA (Public Resources Code Section 21000 et seq.), these claims are separate and distinct. As discussed in a leading CEQA treatise, "An inconsistency between a proposed project and an applicable plan is a legal determination, not a physical impact." (See Kostka & Zischke, *Practice Under the California Environmental Quality Act*, (CEB, 2012), p. 612, § 12.34.) Furthermore, the County does not believe the cited policies are internally inconsistent. The commenter should also be aware the consistency is not as strictly construed as suggested in their letter, as discussed in *Sierra Club v. County of Napa* (2004) 121 Cal.App.4th 1490,

> [G]eneral and specific plans attempt to balance a range of competing interests. It follows that it is nearly, if not absolutely, impossible for a project to be in perfect conformity with each and every policy set forth in the applicable plan. An agency, therefore, has the discretion to approve a plan even though the plan is not consistent with all of a specific plan's policies. It is enough that the proposed project will be compatible with the objectives, policies, general land uses and programs specified in the applicable plan.

Response to Comment AC- I11-196 (Sierra Club, Gordon L. Nipp, dated 10/18/11)

Please see FEIR Response to Comment I11-196. Please also see Response AC-I11-193 above.

Response to Comment AC-I11-198 (Sierra Club, Gordon L. Nipp, dated 10/18/11)

The comment states that Policy FGMP is so vague as to be meaningless. Please see FEIR Response to Comment I11-198. While agricultural conservation is an important issue, the County will have to balance other competing planning and environmental considerations, such as fire risks, flood risks, geologic hazards, hazardous materials, biological impacts, aesthetic impacts, hydrology and water quality, and noise. The suggested revisions would place agricultural conservation above consideration of other resource areas and planning concerns and would result in increased impacts to other resources areas.

The comment suggests elimination of the language "whenever possible" from Policy FGMP-5.1. The suggested elimination of this language is not feasible. As discussed under CEQA Guidelines Section 15126.4 "An EIR shall describe *feasible* measures which could minimize significant adverse impacts." Elimination of "whenever possible" from this policy would place restrictions on project specific development even more stringent than those required by CEQA itself. For all of these reasons, the suggestion is considered infeasible.

Response to Comment AC-I11-204 (Sierra Club, Gordon L. Nipp, dated 10/18/11)

Comment letter I11-204 suggests that:

> ...emission reduction program above and beyond Rule 9510...[t]he General Plan should include an implementation measure for Policy AQ-1.5 that would require new development to sign an agreement with SJVAPCD to completely offset the air pollution associated with their project....such a program has been shown to be clearly feasible and effective in reducing air quality impacts to zero...

Incorporation of these types of project specific measures in a general plan is infeasible. For example, it may not always be economically feasible to require affordable housing to fully offset their air quality impacts. Similarly, it may not be possible to reduce all air quality emissions levels to zero for new commercial or industrial development, which will depend upon the specific nature of the project and parcel; a fact recognized by SJVAPCD Rule 9510 which contains a number of exceptions.

While the County includes a number of policies in the General Plan to improve air quality, and will implement project specific measures for future discretionary actions, the County believes it to be undesirable from a policy standpoint to essentially redraft SJVAPCD Rule 9510 [emissions reduction program] as suggested in the comment letter. As discussed by SJVAPCD:

> Local air pollution control districts, such as the San Joaquin Valley Air Pollution Control District (Valley Air District), develop plans and implement control measures in their areas. These controls primarily affect stationary sources such as factories and plants. Local air

districts also conduct public education and outreach efforts such as the Valley Air District's Healthy Air Living, Wood Burning, and Smoking Vehicle voluntary programs.[2]

SJVAPCD is the agency charged with the development of basin wide programs and determining the current feasibility of various emission reduction programs such as SJVAPCD Rule 9510. The County will continue to aid in implementation of Rule 9510, consistent with Policy AQ-2.2. While the commenter cites specific development project mitigation measures as being feasible, the County is not proposing a specific development project at this time. The County will consider project specific mitigation measures at the time specific projects are proposed, consistent with Policy AQ-4.1.

Because such a suggestion has the potential to ban future projects without consideration of the specific projects or parcels, the suggestion would not fully satisfy the objectives associated with the proposed project (i.e., would preclude development as discussed above, and would not "promote reinvestment") and is undesirable from a policy standpoint.

Response to Comment AC-I11-206 (Sierra Club, Gordon L. Nipp, dated 10/18/11)

The comment states that SJVAPCD rules should be baseline for the significant impact of the General Plan on air quality. As discussed in the *Environmental Planning & Info. Council v County of El Dorado* (1982) 131 Cal.App.3d 350:

> [T]he dispositive issue on this appeal is whether the requirements of CEQA are satisfied when the EIRs prepared for use in considering amendments to the county general plan compare the environmental impacts of the proposed amendments to the existing plan rather than to the existing environment. We hold that the EIRs must report on the impact of the proposed plans *on the existing environment*.

The commenter is also directed to Response to Comments AC-I11-190, AC-I11-191 above regarding suggested air quality policy revisions.

Response to Comment AC-I11-207 (Sierra Club, Gordon L. Nipp, dated 10/18/11)

The commenter disagrees with the FEIR's reference in Response to Comment I11-207 to Master Response #1. The commenter also suggests that because the County "does not take quantitative emission reduction credit for the measures that use of the term 'encourage'...is admitting that the EIR should not consider these policies to be effective..."

As described in greater detail below, some of the recommendations contained in Comment I11-207 did not relate to environmental issues (e.g., policy recommendation AQ-4.5), and the commenter was, therefore, referred to Master Response #1. The commenter however, was also provided additional language in the response which addressed the other potential environmental issues raised in the remainder of the comment.

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[2] http://www.valleyair.org/General_info/aboutdist.htm#Mission

The commenter is incorrect in asserting that the General Plan policies will be ineffective (see Master Response #3, #4, and #7). While the General Plan RDEIR did not take quantitative credit for emission reductions, such measures would be effective. As discussed in case law in which Sierra Club was a party, not all policies or measures must be quantified. (See *Watsonville Pilots Association v. City of Watsonville* (2010) 183 Cal.App.4th 1059 [an EIR did not need to "predict with precision exactly how much each water conservation measure would reduce water usage" due in part to "uncertainties inherent in such long-term forecasts."].) The commenter's suggestions are also considered infeasible for the reasons described below.

The commenter recommends eliminating the words "encourage," "study," "promote," and replacing them with the term "require" in Policies AQ-1.6, AQ-2.3, AQ-2.4, AQ-2.5, AQ-3.1, AQ-3.3, AQ-3.4, AQ-3.6, and AQ-4.5. See FEIR Response to Comment I11-207 and Master Response #3, as well as Responses to Comment AC-I11, AC-I11-204 and AC-I11-198.

The commenter therefore suggests revising **Policy AQ-1.6** to read as follows:

> The County shall ~~encourage~~ require County departments and agencies to replace existing vehicles with low emission/alternative fuel vehicles as appropriate.

It is necessary for the County to maintain discretion regarding its vehicle replacement policy based on economic availability and available vehicle technology (e.g. fire engines, police cars, etc...). The County cannot commit at this time to replacing all of its existing vehicle fleet with low emission vehicles.[3]

It would also be undesirable from a policy perspective to mandate specific implementation programs, which may result in other more important programs, planning, and environmental concerns being ignored. For these reasons the commenter's suggestion is considered infeasible.

The commenter also asks that the County revise **Policy AQ-2.3** to read as follows:

> When developing the regional transportation system, the County shall work with TCAG to comprehensively ~~study~~ require methods of transportation which may contribute to a reduction in air pollution in Tulare County. Some possible alternatives that should be required ~~studied~~ are:...Commuter trains...public transportation such as busses and light rail...

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[3] Suggestions similar to the commenters have arisen is other EIRs for specific projects. As discussed in *Natural Resources Defense Council v. California Department of Transportation* (2nd App Dist., 2011, Case No. B228048) [Unpublished]:

> SCAQMD also recommended the addition of a mitigation measure requiring trucks used for Project construction to meet, at a minimum, 2007 EPA emissions standards. Caltrans addressed the suggestion at length and explained that, to require construction vehicles to have 2007 or newer engines from the beginning of the construction would be a restriction greater than imposed by law on the contractors, and it would not be economically feasible for them to replace their existing trucks before starting construction. Caltrans also made clear, however, that eventually the suggested mitigation goal would be met due to the expected incremental phase-in of relevant CARB standards, which would encompass the EPA standards... Thus, we conclude that Caltrans' responses to the comments raised by appellants were sufficient for CEQA compliance.

The County cannot require the Tulare County Association of Governments (TCAG) or its member agencies to adopt or pay for commuter trains, buses, light rail, etc. The County is a member of TCAG and will participate in the regional transportation planning process. The County has no legal authority to require another agency, such as TCAG, to adopt the transportation improvements discussed in the Policy, therefore the suggestion is considered legally infeasible. Regional transportation funding is limited by federal restrictions; therefore, it is not economically or legally feasible to require specific types of transportation improvements, which are constrained by federal funding requirements.

The commenter also asks the County to revise **Policy AQ-2.4** to read as follows:

> the County shall require ~~encourage~~ commercial, retail, and residential developments to participate in or create Transportation Management Associations (TMAs) that may assist in the reduction of pollutants through strategies that support carpooling or other alternative transportation modes.

TMAs are defined in the General Plan as, "Groups of employers uniting together to work collectively to manage transportation demand in a particular area." The County does not believe it feasible or appropriate to force all employers to participate in or create TMAs. There are thousands of individual employers located within the County, not all employers, particularly smaller employers, have additional time to devote to participation in TMAs. Requiring participation in these groups would disrupt the business of some employers and be inconsistent with project objectives to "create and facilitate opportunities to improve the lives of all county residents," "protect its agricultural economy while diversifying employment opportunities," "have the opportunity to prosper from economic growth." For all these reasons the suggestion is considered infeasible, including but not limited to legal infeasibility, social infeasibility, failure to meet project objectives, and being undesirable from a policy standpoint.

The commenter recommends that the County revise **Policy AQ-2.5** to read as follows:

> The County shall continue to require ~~encourage~~ ridesharing programs such as employer-based rideshare programs.

Employers are already required to comply with SJVAPCD Rule 9410 "Employer Based Trip Reduction." This Rule provides a number of methods for reducing vehicular trip generation, including carpooling and vanpooling; however it is not feasible to require ridesharing in all scenarios. Small employers may have insufficient number of people, and may not be located in close proximity to other employers making ridesharing/carpooling/vanpooling infeasible for that particular employer. Employees, particularly in smaller companies, may elect to take non-vehicular forms of transportation (bicycling, walking, bus, transit, etc.), thereby making vehicular ridesharing infeasible. As discussed under AC-I11-204, it is undesirable from a policy standpoint to essentially redraft SJVAPCD Rule 9410 to be more restrictive, as suggested in the comment letter. Such a recommendation is socially infeasible and infeasible as it is "undesirable from a policy standpoint." (See *California Native Plant Society v. City of Santa Cruz* (2009) 177 Cal.App.4th 957.) CEQA also requires identification of impacts in comparison to existing conditions. (CEQA Guidelines Sections

15041, 15125, 15126.2.) In many instances such a policy would require reduction of existing trip generation. While reduction in trip generation is an important issue for the County, fixing/mitigating existing problems is beyond the scope of the CEQA analysis. (See *Watsonville Pilots Association v. City of Watsonville* (2010) 183 Cal.App.4th 1059 ["The FEIR was not required to resolve the [existing] overdraft problem, a feat that was far beyond its scope"]; See also *Cherry Valley Pass Acres and Neighbors v. City of Beaumont* (2010) 190 Cal.App.4th 316.) For these reasons, the suggestion is considered infeasible.

The commenter recommends that the County revise **Policy AQ-3.1** to read as follows:

> The County shall require ~~encourage~~ the location of ancillary employee services (including, but not limited to, child care, restaurants, banking facilities, convenience markets) near major employment centers for the purpose of reducing midday vehicle trips.

The County does not own many of the parcels throughout its jurisdiction. The decision to build projects, such as child care, restaurants, banking facilities, convenience markets is largely at the will of individual property owners. In many instances it may be financially infeasible for an individual developer/business owner to also be required to construct child care, restaurants, banking facilities and convenience markets. There may also be insufficient demand to warrant construction of such facilities in smaller commercial/industrial areas, which may make such facilities economically infeasible. Mandating such facilities may also result in increased environmental impacts and is also environmentally infeasible. To the extent there is insufficient demand for these facilities near a specific employer, construction of these facilities may result in duplicative construction and the impacts associated with that construction and operations (air quality, greenhouse gases, etc.). The County, however, has not ignored the issue of encouraging mixed use development, as discussed in AQ-3.1, and other similar policies through the proposed General Plan. (See PF-2.6, PF Implementation Measure #21, LU-1.2, LU-1.4, LU-1.9, AQ-2.2, AQ-3.2, AQ-3.6.) As discussed in FEIR Master Response #3 and #4, the commenter's suggestion would provide the County insufficient flexibility to account for the needs of all projects, parcels, and employers and is considered undesirable from a policy standpoint.

Requiring construction of these ancillary facilities for all of projects would disrupt the business of some employers and be inconsistent with project objectives to "create and facilitate opportunities to improve the lives of all county residents," "protect its agricultural economy while diversifying employment opportunities," "have the opportunity to prosper from economic growth." For all these reasons the suggestion is considered infeasible, including but not limited to legal infeasibility, social infeasibility, failure to meet project objectives, and being undesirable from a policy standpoint.

The commenter recommends that the County revise **Policy AQ-3.3** to read as follows:

> The County shall ~~promote~~ require street design that provides an environment which ~~encourages~~ requires transit use, biking, and pedestrian movement.

While the County seeks to promote street design for transit, biking, and pedestrian movement, it is not appropriate from a planning or environmental perspective to design every street for transit, biking, and pedestrian movement. When providing specific street designs the County may wish to separate different modes of transportation or to focus upon one specific modes of transportation. Furthermore, it will not always be safe to site transit facilities next to a pedestrian or bicycle facilities. Additionally, designing all streets to cater to all modes of transportation may result in an inefficient transportation system, where multiple modes of transportation are competing for physical space, and timing at each intersection. It is economically infeasible to design every street in the County to include bicycle paths, walkways, and transit lines and would waste the County's limited resources in potential facilities that are not needed. The commenter's suggestion would therefore also fail to meet the project objective of providing "the opportunity to prosper from economic growth."

As explained to the commenter in FEIR Response to Comment I11-219, the County does not have control of the selection of transportation options (vehicle use, transit use, walking, or bicycling), which is controlled by the will of individual citizens, and does not have the ability to "...require transit use, biking and pedestrian movement." For all these reasons the suggestion is considered infeasible, including but not limited to legal infeasibility, social infeasibility, environmental infeasibility, economic infeasibility, would fail to meet project objectives, and being "undesirable from a policy standpoint."

The commenter recommends that the County revise **Policy AQ-3.4** to read as follows:

> The County shall ~~encourage~~ require the use of ecologically based landscape design principles that can improve local air quality by absorbing CO_2, producing oxygen, providing shade that reduces energy required for cooling, and filtering particulates. These principles include, but are not limited to, the incorporation of parks, landscaped medians, and landscaping within development.

As discussed in Master Response #3, individual policies should not be reviewed in a vacuum. There are other existing regulations within the County which will shape the way development occurs. As discussed in Response to Comment I11-86, the County has a water efficient landscaping ordinance. The County has also adopted a new "Water Efficient Landscaping" Ordinance which is applicable to the following with limited exceptions: (a) All new and rehabilitated landscaping in conjunction with public agency projects and private development projects that require a building permit; (b) Developer- or builder-installed landscaping in multi-family projects, whether installed prior to or after occupancy and; (c) Developer or builder-installed landscaping of common open space areas of single family residential projects. (See Tulare County Code Section 7-31-1000 et seq.)

It may not always be feasible to include landscaping for a project that "shades" a project (i.e., trees) or absorbs CO_2 in large amounts, or filters particulates in large amounts. As discussed on page 3.4-12 of the RDEIR, and Climate Action Plan page 11, water use normally results in electricity use (i.e., water pumping), which may result in increased generation of CO_2 depending upon the source of

electricity. Requiring landscaping that includes shade trees may result in increased levels of CO_2, due to water consumption, depending upon the proximity to water source and the water demands of those shade trees. It is infeasible to provide shade trees for all projects. Whether it is feasible for a particular project will depend upon a number of factors as discussed above, including the climate at the specific parcel (i.e., rain fall, average temperatures, humidity, etc...). Requiring specific types of landscaping for all parcels may result in increased levels of CO_2 and thus result in increased environmental impacts. Existing Building Code regulations[4] already require implementation of cool roofs, thereby reducing absorption of solar radiation and reducing the need for energy consumption (i.e., air conditioning). The commenter's suggestion is considered repetitive of existing regulations (i.e., would not reduce or avoid impacts), environmentally infeasible (i.e., potential to increase impacts), and "undesirable from a policy standpoint."

The commenter recommends that the County revise **Policy AQ-3.5** to read as follows (similar comments are made under Comment I11-209):

> The County shall ~~encourage~~ require all new development, including rehabilitation, renovation, and redevelopment, to incorporate energy conservation and green building practices ~~to maximum extent feasible~~. Such practices include, but are not limited to: building orientation and shading, landscaping, and the use of active and passive solar heating and water systems.

Proposed development is already required to comply with Title 24, California Building Code, which incorporates numerous energy conservation measures[5] into new development. (See also FEIR Response to Comment I14-35 and I14-36.) The suggested elimination of "to the maximum extent feasible" is not considered feasible. As discussed in CEQA Guidelines Section 15126.4, "An EIR shall describe *feasible* measures which could minimize significant adverse impacts." Elimination of "to the maximum extent feasible" would place restrictions on project specific development even more stringent than those required by CEQA itself. Such language would potentially result in bans to development which may not be able to implement infeasible energy conservation measures and would thus be inconsistent with the project objectives of providing "opportunity to prosper from economic growth." It may not always be feasible to implement "active and passive solar heating and water systems," where specific parcels and projects are shaded by their surroundings (i.e., mountains, neighboring structures, trees, etc.). As the commenters' organization acknowledges, under Comment I11-229, even the project specific example only provided for solar PV in 25% of the new residences for the Rio Bravo Project. The commenter's suggestion is repetitive of existing regulations (i.e., would not reduce or avoid impacts), and to the extent it goes beyond existing requirements is considered "undesirable from a policy standpoint," and thus, infeasible.

The commenter recommends that the County revise **Policy AQ-3.6** to read as follows:

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[4] See http://www.energy.ca.gov/title24/coolroofs/

[5] See http://www.energy.ca.gov/2008publications/CEC-400-2008-001/CEC-400-2008-001-CMF.PDF

The County shall ~~encourage~~ require the clustering of land uses that generate high trip volumes, especially when such uses can be mixed with support services and where they can be served by public transportation.

As noted in Master Response #3, individual policies cannot be reviewed in a vacuum. As discussed in FEIR Response to Comment A8-9, the General Plan contains a number of policies to promote infill. To the extent the commenter recommends more restrictive language, the comment is considered infeasible, based upon environmental, social, technological, economic reasons, and an inability to meet project objectives and being "undesirable from a policy standpoint." While the County will promote infill, it is not possible to *require* all land uses with high trip generation to be clustered in every circumstance. Some facilities, such as industrial uses with high trip generation may have environmental impacts on their surrounding uses, or may need to be buffered from surrounding uses due to potential health or safety concerns. To the extent such a policy was implemented, it could have the effect of banning certain types of industrial uses that could not be safely clustered adjacent to other unrelated uses and would be inconsistent with the project objectives (i.e., "the opportunity to prosper from economic growth") and "undesirable from a policy standpoint."

The commenter recommends that the County revise **Policy AQ-4.5** to read as follows:

The County shall ~~promote~~ require public awareness of the seriousness and extent of the existing air quality problems.

CEQA Guidelines already require public notices of proposed discretionary projects with potential environmental impacts (such as air quality). (See CEQA Guidelines Sections 15072, 15073, 15082, 15087, and 15105.) While the County strives to promote additional public awareness aimed at reducing trips and improving air quality (see proposed AQ Implementation Measure #1), the County has no authority to force individual members of the public to read the public notices or to force members of the public to participate in the public review process. The comment does not explain how such a policy would reduce or avoid impacts, and is considered socially and legally infeasible.

Response to Comment AC-I11-209 (Sierra Club, Gordon L. Nipp, dated 10/18/11)

Please see Response to Comment AC-I11-207 which addresses the commenter's recommendations to Policy AQ-3.5. The commenter is also directed to FEIR Master Response #3 and #4.

Response to Comment AC-I11-210 (Sierra Club, Gordon L. Nipp, dated 10/18/11)

The Commenter suggests that the County revise **Air Quality Implementation Measure #12** to read as follows:

The County shall ~~encourage~~ require LEED and LEED-ND certification for new development or similar rating system that promotes energy conservation and sustainability.

The commenter suggests similar revisions for Land Use Implementation Measure #24. As evidence of feasibility the commenter cites to project specific mitigation measures (i.e., the Rio Bravo Ranch mixed use project).

While such suggestions may be appropriate for a specific development project, it is not appropriate for a project of such large geographic such as Tulare County's General Plan. The County supports the concept of energy efficiency and LEED certification (or equivalent) for new development as evidenced the General Plan policies and implementation measures. However, a policy or implementation measure to require all new buildings to meet LEED standards is not appropriate at the programmatic level and does not retain the flexibility needed to address the variety of project specific differences that will arise under the General Plan.

In many instances LEED certification requires a reduction of energy consumption or other resources below existing conditions. As discussed above, mitigating existing problems is beyond the scope of the CEQA analysis. (See *Watsonville Pilots Association v. City of Watsonville* (2010) 183 Cal.App.4th 1059 ["The FEIR was not required to resolve the [existing] overdraft problem, a feat that was far beyond its scope"]; See also *Cherry Valley Pass Acres and Neighbors v. City of Beaumont* (2010) 190 Cal.App.4th 316.) For these reasons, the suggestion is considered infeasible.

As discussed under Responses AC-I11 and AC-I11-204 above, such suggestions would fail to meet the project objectives, as they would be far beyond the scope of the project (i.e., at an inappropriate level of detail for a General Plan). (See Master Response #3, #4, and #9.) Such measures could not be completed within a reasonable period of time as it would not be feasible to provide an ordinance level of detail or to implement the General Plan instantaneously, as discussed under Government Code Section 65400. Please also see Response to Comment AC-I11-207 for discussion of existing Building Code requirements related to energy conservation.

The commenter also suggests that this policy defers mitigation. Please see Master Responses #3, #4, and #7 regarding the appropriate level of detail for the General Plan. As noted in Master Response #3, individual policies should not be reviewed in a vacuum, but must be reviewed in the context of the General Plan as a whole. In this instance, energy consumption in and of itself is not an environmental impact, rather it is an indicator of other secondary effects, such as air quality. Such a policy should also be read in conjunction with the other policies in the General Plan related to Air Quality emissions. As discussed under Policy AQ-1.1, "The County shall cooperate with other local, regional, Federal, and State agencies in developing and implementing air quality plans to achieve State and federal Ambient Air Quality Standards..."

Response to Comment AC-I11-211 (Sierra Club, Gordon L. Nipp, dated 10/18/11)

Please see FEIR Response to Comment I11-211. The comment suggests that all of the project's impacts must be quantified. Contrary to this comment, CEQA Guidelines Section 15064.7 recognizes that impacts do not need to be quantified. "A threshold of significance is an identifiable quantitative, *qualitative* or performance level of a particular environmental impact, non-compliance with which means the effect will normally be determined to be significant by the agency..."

Response to Comment AC-I11-212 (Sierra Club, Gordon L. Nipp, dated 10/18/11)

Please see Master Responses #3 and #4. The approach to the programmatic analysis taken in this RDEIR is consistent with recent CEQA case law. (See *In re Bay-Delta Programmatic Environmental Impact Report Coordinated Proceedings* (2008) 43 Cal.4th 1143, 1174 - 1175 additional detail on a second tier project, an Environmental Water Account (EWA), was not required in the first tier EIR.]; see *also Al Larson Boat Shop, Inc. v. Board of Harbor Commissioners of the City of Long Beach* (1993) 18 Cal.App.4th 729, 746 ["deferral of more detailed analysis to a project EIR is legitimate" even though some of those project level EIRs were certified concurrently with the Port Master Plan first-tier EIR].) The court in *Al Larson* also noted that this approach is consistent with allowing the Port to consider "a broad range of policy alternatives for the overall development of the Port to permit the Board to consider alternative directions for the Port independent of particular projects." (*Id.* at 744.)

Response to Comment AC-I11-213 (Sierra Club, Gordon L. Nipp, dated 10/18/11)

The commenter suggests that the RDEIR is evasive in Response to Comment I11-213 and "new research indicates that dairies are responsible for a far greater portion of zone production than previously thought. The EIR should use the new information in the referenced article to incorporate ROG emissions from livestock feed into Tulare County emissions totals, or it should give substantial evidence that this is unnecessary."

Please note that the commenter does not actually provide the article or a link to an article, but just a link to the abstract (the full article requires payment of a fee of at least $35). Contrary to the paraphrasing of the comment, the abstract of the article concludes that "[F]uture work should be conducted to reduce the uncertainty of ROG emissions from animal feeds in the SJV and include this significant source of ozone formation in regional airshed models."

FEIR Response to Comment I11-73 indicates that the County is not updating the Animal Confinement Facilities Plan (ACFP) as part of this General Plan update. As discussed in Master Response #5, where an existing Plan is amended "the agency will not be required to assess the environmental effects of the entire plan or preexisting land use designations. Instead, the question is the potential impact on the existing environment of *changes* in the plan which are embodied in the amendment." (*Black Property Owners Assoc. v. City of Berkeley* (1994) 22 Cal.App.4th 974, emphasis in the original.) The discussion of dairy Air Quality emissions is provided on RDEIR page 3.3-20 for the purposes of the *Cumulative Impact analysis.* The CEQA Guideline Section 15130(b) states that, for the purposes of the cumulative analysis, "the discussion need not provide as great detail as is provided for the effects attributable to the project alone." The RDEIR made a reasonable assumption of approximately 30.8 pounds of ROG per year per head of cattle per year, which were based upon average emissions from three different dairies. These average emission rates obtained for working dairies in the County were used to develop regional-average emission factors and included all aspects of diary operations including the tilling and harvesting operations to grow silage

for dairies and other Concentrated Animal Feeding Operations (CAFO). The commenter and the abstract do not state how these assumptions would be altered, if at all, by the study.

Response to Comment AC-I11-214, AC-I11-215, and AC-I11-216 (Sierra Club, Gordon L. Nipp, dated 10/18/11)

The comment suggests that there are a number of "additional feasible measures the Plan could adopt..." and referenced Comments I11-204, I11-207, I11-215, and I11-216.

Please see Responses to Comments AC-I11-204 and AC-I11-207 which address the suggestions provided in these comments.

Response to Comment AC-I11-218 (Sierra Club, Gordon L. Nipp, dated 10/18/11)

Please see FEIR Response to Comment I11-218 and Master Response #10. The proposed Climate Action Plan was made available for public review[6] along with the RDEIR and the proposed General Plan (as noted on RDEIR pages ES-7 and 1-3).

Response to Comment AC-I11-219 (Sierra Club, Gordon L. Nipp, dated 10/18/11)

Please see Response to Comment I11-219, as discussed therein, the commenter's suggestion is considered legally infeasible.

Response to Comment AC-I11-220 (Sierra Club, Gordon L. Nipp, dated 10/18/11)

The Commenter suggests that "the word 'encourage' should be replaced by the word 'require.'" Only one of the six referenced policies contained the word encourage:

> **Policy ERM-4.1** Energy Conservation and Efficiency Measures. The County shall ~~encourage~~ require 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.

Proposed development is already required to comply with Title 24, California Building Code, which incorporates numerous energy conservation measures[7] into new development. (See also FEIR Response to Comment I14-35 and I14-36). It may not always be feasible to implement solar panels, where specific parcels and projects are shaded by their surroundings (i.e., mountains, neighboring structures, trees, etc).It may not be economically feasible for all projects, such as affordable housing projects. Existing regulations also require existing energy production to come from renewable energy sources; this requirement was recently updated to require 33% electricity to come from renewable resources (previously at 20%). (See PUC Code Sections 399.11 through 3911.311). As discussed in FEIR Response to Comment I14-34 and updated here:

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[6] The proposed Climate Action Plan was also made available online at: http://generalplan.co.tulare.ca.us/

[7] See http://www.energy.ca.gov/2008publications/CEC-400-2008-001/CEC-400-2008-001-CMF.PDF

SCE, the primary electricity provider for Tulare served 21.07% of their energy in 2011 from renewable sources, and PG&E served 20.09%.[8]

The commenter's suggestion is, repetitive of existing regulations, technologically infeasible to the extent the recommendation exceeds existing regulations, economically infeasible and undesirable from a policy standpoint and therefore infeasible.

Response to Comment AC-I11-221 (Sierra Club, Gordon L. Nipp, dated 10/18/11)

Please see FEIR Response to Comment I11-221.

Response to Comment AC-I11-223 (Sierra Club, Gordon L. Nipp, dated 10/18/11)

Please see FEIR Response to Comment I11-223. The commenter suggests that "any potential adverse air quality or other impacts [associated with traffic] would still have to be addressed." Air Quality impacts associated with traffic are addressed in the air quality chapter. (See discussion of "mobile sources" on RDEIR page 3.3-20.)

Response to Comment AC-I11-224 (Sierra Club, Gordon L. Nipp, dated 10/18/11)

The commenter suggests "reword[ing}", "strengthen[ing]", and "effectively implement[ing]" policies LU-1.1, LU-1.4, LU-1.8 and AG-1-6, AG-1.7, AQ-1.7, Traffic Implementation Measure #2.

the commenter provides no examples of how these policies could feasibly be revised. The commenter is directed to FEIR Response to Comment I11-224 and Response to Comment AC-I11-190 which addresses their previous recommendations to Policy AG-1.6.

Response to Comment AC-I11-225, AC-I11-226 (Sierra Club, Gordon L. Nipp, dated 10/18/11)

Comment I11-225 simply restates Policy TC-1.18 without further discussion.

To the extent the commenter is referring to the comments under Comment I11-226, responses were prepared and provided in FEIR Response to Comment I11-226. Comment I11-226 suggests that:

> Specific the balance in these balanced approaches. What percentage of transportation funding will be allocated to alternatives to the automobile.
>
> Give funding preference to investment in public transit over investment in infrastructure or private automobile traffic.
>
> Request that the General Plan provide "specific performance standards."

As discussed in Response to Comment AC-I11-207, the County cannot require TCAG or its member agencies to adopt or pay for commuter trains, buses, light rail, etc. The County has no legal

[8] http://www.cpuc.ca.gov/PUC/energy/Renewables/index.htm

authority to require another agency, such as TCAG, to adopt the transportation improvements discussed in the Policy, therefore, the suggestion is considered legally infeasible. Regional transportation funding is typically limited by restrictions placed upon it by the Federal government (i.e., certain amount allocated to roadway improvements, mass transit, bicycle and pedestrian facilities, etc.

Therefore, it is also not economically feasible to allocate specific amounts of funding to specific types of transportation improvements, which will depend, in part, upon the funding limitations/allocations provided.

Mandating preference to public transit over private automobiles, may preclude certain other activities that may be immediately necessary (maintenance, repair, emergencies, planned improvements), or may preclude construction of relatively minor changes to roadways that have low costs and large benefits. Such a policy revision lacks sufficient flexibility and could result in the creation of additional impacts by precluding consideration of the circulation system as a whole.

Response to Comment AC-I11-228, 229, 230 (Sierra Club, Gordon L. Nipp, dated 10/18/11)

Please see FEIR Response to Comment I11-228 and I11-229. The commenter suggests:

> A requirement that buildings be at least 35% more energy efficient than Title 24 standards current when permits are pulled.

The County supports the concept of energy efficiency certification for development. However, a policy or implementation measure requiring all buildings to exceed Title 24 standards is not appropriate at the programmatic level and does not retain the flexibility needed to address the variety of project specific differences that will arise within the County. The County supports the increased energy efficiency requirements including a full spectrum of LEED certification programs and understands that individual projects will conform to their own unique set of issues (including financial and technological) to ensure that the appropriate degree of energy efficiency design is incorporated into individual building construction. For example, it may not be economically feasible for all projects, such as affordable housing projects, to include such increased efficiency standards. While the County will consider increased energy efficiency and Building Code requirements for specific projects, the County believes it to be undesirable from a policy standpoint to essentially redraft the California Building Code (Title 24), and believes that California Building Standards Commission[9] is in a better position to determine the feasibility of setting state wide energy efficiency standards contained in Title 24.

Furthermore, the commenter suggests that increased energy efficiency standards apply "when permits are pulled" which would include renovations to existing facilities and structures. However, as discussed in recent case law in which Sierra Club was a party, mitigating existing conditions is beyond the scope of the CEQA analysis. (See *Watsonville Pilots Association v. City of Watsonville*

[9] The California Building Standards Commission is responsible for the administration and implementation of the California Building Code.

(2010) 183 Cal.App.4th 1059 ["The FEIR was not required to resolve the [existing] overdraft problem, a feat that was far beyond its scope"]; See also *Cherry Valley Pass Acres and Neighbors v. City of Beaumont* (2010) 190 Cal.App.4th 316.) For these reasons, the suggestion is considered infeasible.

The commenter again suggests that:

> A requirement that new commercial and industrial buildings satisfy LEED standards. The Rio Bravo Ranch project in Bakersfield has agreed to LEED Silver Standards...A requirement that new residential buildings achieve at least 90 points on the BuilltGreen checklist.

Please see Response to Comment AC-I11-210 for discussion of requiring LEED standards.

The commenter suggests:

> design features to reduce Vehicle Miles Traveled (VMT)...might include transit-oriented development such as adjacent bus stops and/or other public transportation.
>
> A requirement that new projects partially subsidize public transportation in order to reduce area VMT.

Please see Response to Comment AC-I11-207 under discussion of the infeasibility of "requiring" a reduction to VMT. As discussed in Master Responses, the General Plan does not stand alone. There are existing regulations such as SJVAPCD Rule 9410 which shape the way development occurs within the County. This includes VMT reduction measures, such as Bicycle Subsidy, Bicycle Racks, Carpools, Compressed Work Weeks, Discounted Free Meals, onsite Dry Cleaning pickup, Ridesharing, Vanpooling, Discount Transit passes, Transit Subsidy, and Vanpool Subsidy.[10] The General Plan already contains Policy TC-4.7 to reserve potential locations for transit stops. However, to the extent the commenter is suggesting requiring bus stops with every development, the County believes it to be undesirable from a policy standpoint to select bus stop locations based upon individual projects. Siting bus stops based upon individual development projects may lead to an inefficient transportation system by creating excessive and unnecessary stop locations. The County and related agencies locate bus stops based on regional need. For these reasons the commenter's suggestion is considered repetitive of existing requirements, and to the extent the suggestion goes beyond those requirements, is considered infeasible for legal, social, technological, environmental reasons, and "undesirable from a policy standpoint."

The commenter again recommends:

> A requirement that solar photovoltaics (PV) and solar water heating be built into new structures.
>
> A condition that new parking lots be covered and that parking lot roofs contain solar PV.

[10] See http://www.valleyair.org/rules/currntrules/r9410.pdf

> A requirement that the developer of a new project contribute funding for area solar PV incentives.

Please see Responses to Comment AC-I11-220 and AC-I11-207 in response to recommended revisions to Policy AQ-3.5.

The commenter recommends:

> A transfer fee requirement of new projects that would be applied at each sale of a building or business in the future.

As discussed under CEQA Guidelines Section 15041, mitigation measures must be "consistent with applicable constitutional requirements such as the 'nexus' and 'rough proportionality' standards established by case law..." The commenter does not explain how the "transfer" of a property would result in or be related to an environmental impact.

The commenter recommends:

> A requirement of new projects for partial funding of an area energy efficiency program creating equivalent reductions in carbon emissions.

Mitigating existing problems is beyond the scope of the CEQA analysis. (See *Watsonville Pilots Association v. City of Watsonville* (2010) 183 Cal.App.4th 1059 ["The FEIR was not required to resolve the [existing] overdraft problem, a feat that was far beyond its scope"]; See also *Cherry Valley Pass Acres and Neighbors v. City of Beaumont* (2010) 190 Cal.App.4th 316.) Please see Response AC-I11-228 for discussion of existing energy efficiency regulations. Please also see AC-I11 for discussion of the infeasibility of this policy suggestion relating to constitutional nexus requirements, economic infeasibility, inconsistency with project objectives, and being undesirable from a policy standpoint.

The commenter recommends:

> A requirement that the developer of a new project contribute a GHG fee to the San Joaquin Valley Air Pollution Control District...
>
> A requirement that the developer of a new project purchase high quality, reliable carbon offsets...

While such suggestions might be appropriate for a specific development project, Tulare County's General Plan project applies County-wide, and such a measure is it not appropriate for such a broad geographic scope. A policy or implementation measure to require all new projects to pay for carbon offsets is not appropriate at the programmatic level and does not retain the flexibility needed to address the variety of project specific differences that will arise under the General Plan.

Furthermore, new projects may include renovation to existing structures. Implementation of such a policy in combination with other regulatory requirements may exceed a projects individual

contribution to an impact. (See Response to Comment AC-I11.) As discussed above, mitigating existing problems is beyond the scope of the CEQA analysis. (See *Watsonville Pilots Association v. City of Watsonville* (2010) 183 Cal.App.4th 1059 ["The FEIR was not required to resolve the [existing] overdraft problem, a feat that was far beyond its scope"]; See also *Cherry Valley Pass Acres and Neighbors v. City of Beaumont* (2010) 190 Cal.App.4th 316.)

The California Air Resources Board Scoping Plan includes a cap and trade program associated with implementation of AB 32, which was recently upheld in the decision *Association of Irritated Residents v. California Air Resources Board* (June 19, 2012, 1st Dist., Case No A132165) ___ Cal.App.4th___. The County finds that incorporating the suggested revisions at a programmatic level to be undesirable from a policy perspective and repetitive of existing requirements.

The commenter recommends:

> A requirement that dairies construct anaerobic digesters to capture methane emissions from manure.
>
> An aerobic composting of manure requirement for dairies.

As discussed in FEIR Response to Comment I11-73, the County is not updating the ACFP as part of this General Plan Update. As discussed in Master Response #5, where an existing plan is amended "the agency will not be required to assess the environmental effects of the entire plan or preexisting land use designations. Instead, the question is the potential impact on the existing environment of *changes* in the plan which are embodied in the amendment." (*Black Property Owners Assoc. v. City of Berkeley* (1994) 22 Cal.App.4th 974, emphasis in the original.)

The commenter suggestions apply to existing dairies. Mitigating existing problems is beyond the scope of the CEQA analysis. (See *Watsonville Pilots Association v. City of Watsonville* (2010) 183 Cal.App.4th 1059 ["The FEIR was not required to resolve the [existing] overdraft problem, a feat that was far beyond its scope"]; See also *Cherry Valley Pass Acres and Neighbors v. City of Beaumont* (2010) 190 Cal.App.4th 316.)

Response to Comment AC-I11-231 (Sierra Club, Gordon L. Nipp, dated 10/18/11)

The commenter faults the FEIR for failing to "implement the California Solar Initiative and the Million Solar Roofs Bill." As discussed in Master Responses, the General Plan does not stand alone from a regulatory perspective. Existing Federal, State and local requirements will shape the way development occurs within the County. The California Solar Initiative/Million Solar Roof Program is currently being implemented the California Public Utilities Commission[11] and by investor owned utilities,[12] such as PG&E, SCE, SDG&E, and publicly owned utilities. It is not necessary to repeat existing statewide regulations in the General Plan or the Climate Action Plan.

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[11] http://www.cpuc.ca.gov/PUC/energy/Solar/

[12] http://www.gosolarcalifornia.org/about/csi.php

Response to Comment AC-I11-232, 233 (Sierra Club, Gordon L. Nipp, dated 10/18/11)

Please see Responses to Comment I11-232, A8-11, Master Responses #3, #4, #7, and #10, and Responses to Comment AC-I11-228, 229, 230 for discussion of the commenter's suggestions.

Response to Comment AC-I11-235 (Sierra Club, Gordon L. Nipp, dated 10/18/11)

Please see Response to Comment I11-235 and AC-I11-213.

Response to Comment AC-I11-240, 241, 242 (Sierra Club, Gordon L. Nipp, dated 10/18/11)

Please see Master Response #10.

Response to Comment AC-I11-243 (Sierra Club, Gordon L. Nipp, dated 10/18/11)

Please see Response to Comment I11-243, I14-35, I14-36, and AC-I11-207 for discussion of existing Title 24 building code requirements. Please also see Master Response #3 and 4.

Response to Comment AC-TCCC (Shute, Mihaly & Weinberger submitted on behalf of Tulare County Council of Cities, dated 10/18/11)

The commenter provides a number of responses to the County's FEIR Response to Comments. The following provide additional responses to this comment letter received after the CEQA comment period. Responses below mirror the headings and subheadings of the letter.

Response to Comment AC-TCCC-Section I

The comment suggests that:

> the County has refused to provide the document that describes the changes made in the proposed General Plan policies, even though that document was 'incorporated by reference' into the FEIR. This obscures the changes in the project, making meaningful review by the public exceedingly difficult and thereby undermining one of CEQA's primary information objectives.

The comment appears to be referring to the language referencing the "General Plan 2030 Update Correctory Table" and the "Summary of Changes" matrix, included on page 2-1 of the FEIR released in September 2011. As noted on page 1-1 of the FEIR, "certification of the Final EIR rests with the Board of Supervisors; therefore additional materials may be added or modified by the County prior to the time of certification. (CEQA Guidelines § 15090.)"

At the time of the release of the FEIR (before certification), these tables were not finalized. The County was to provide these documents at a later date. However, the revisions in these documents were largely discussed in the individual response to comments. For example, Responses to Comment A3-2, A5-2, I14-58, I14-71, I17-897, I19-42, I19-107, I19-210, I22-16, I28-23, list some of the revisions, many of which were clerical in nature. Drafts of these tables were made accessible to the commenter as acknowledged in Section III of this letter, additionally these tables were provided

and made available to the Public at the Planning Commission hearing on October 16, 2011, and included in the agenda materials. Page 2-1 of the FEIR has also been revised as follows:

> The County has made minor revisions to the Staff recommended goals, policies, and implementation measures contained in the 2010 draft of the General Plan 2030 Update as outlined in the "As Modified" Draft of the General Plan included in the Board of Supervisors Staff Report for the General Plan 2030 Update proposed adoption on or about August 2012. In many instances these revisions have been made to incorporate the mitigation measures provided in the RDEIR/FEIR ("Required Additional Mitigating Policies and Implementation Measures"), to correct clerical errors, and in other instances the General Plan has been updated in response to comments. ~~The County has made minor revisions to the goals, policies, and implementation measures contained in the 2010 draft of the General Plan 2030 Update as outlined in the "General Plan 2030 Update Correctory Table" and the "Summary of Changes" matrix. These documents are herein incorporated by reference, and any references in the RDEIR to these goals and policies shall be read to refer to the revised goal/policy changes recommended by County staff in these documents (i.e. "Staff Recommended Changes" and "Staff Recommendation")~~

The comment also suggests the General Plan "still lacks a land use map that complies with the California Planning and Zoning Law....the FEIR offers up an excuse for the confusion: the County is just too big."

Contrary to the comment, the County provided a more detailed response in FEIR Response to Comment I21-2 and I21-12, including the following excerpts:

> While the General Plan does incorporate some existing planning documents, this approach is consistent with Government Code [Section] 65301(a) ["The General Plan may be adopted in any format deemed appropriate or convenient by the legislative body, including the combining of elements. The legislative body may adopt all or part of a plan of another public agency in satisfaction of all or part of the requirements of Section 65302..."]. The General Plan (also provided in the RDEIR) provides a number of figures to demonstrate the boundaries for most growth within the County (see Figure 4-1 which shows the UDBs, UABs, and Hamlet Boundaries; see also Figure 2.2-1, Figure 2.3-1, and Figure 2.4-1). See Master Response #5 for greater detail. While the General Plan contains a number of more specific planning documents, this is appropriate given the expansive nature of the County, which covers approximately 4,840 square miles and 3 distinct geographical areas...
>
> Here, the various plans in Part III of the General Plan 2030 Update, provide more tailored policies to specified portions of the County, as would the additional plans when adopted.

Part III of the General Plan, which is not being amended at this time,[13] is available for review on the County's website and includes additional information on the land the land use designations.[14]

The commenter suggests that the Yolo County General Plan did not find it necessary to rely upon "...separate subplans to plan for growth within their boundaries..." Contrary to the comment, the Yolo County General Plan contains a Land Use Element which designates and relies upon several "Specific Plans" (See Yolo County Figure LU-1, LU-4, LU-1B, etc.) and numerous other Community Plans and Area Plans which were retained as Area Plans or converted to Specific Plans, including:

- 1974 Madison Community Plan-"Retain and update as Madison Specific Plan"
- 1982 Energy Plan-"Retain and update as Greenhouse Gas Emissions Reduction Plan/Climate Action Plan
- 1983 Capay Valley Area Plan-"Retain and Update"
- 1984 Monument Hills Specific Plan-"Retain as applies to the Wild Wings subdivision"
- 1996 Cache Creek Area Plan-"Retain"
- 1996 Dunnigan Community Plan-"Retain and update as Dunnigan Specific Plan"
- 1998 Delta Land Use and Resource Management Plan-"Retain"
- 1999 Knights Landing Community Plan-"Retain and update as Knights Landing Specific Plan"
- 2001 Clarksburg Community Plan-"retain and update"
- 2007 Esparto General Plan-"Retain and update"

(see Yolo County General Plan, Chapter 1, Table IN-5).

Response to Comment AC-TCCC -Section II(A)

The commenter cites information in several tables of the FEIR (FEIR Master Response #4, Tables 4-4 through 4-7) and suggests that the General Plan would permit "millions of new residential units and thousands of acres of commercial and industrial development."

The cited tables discuss "maximum theoretical build-out (i.e., land use designations built to their maximum dwelling units per acre (DU/Acre), and maximum floor area ratios (FAR)." (FEIR Master Response #5.) As discussed further in Master Response #5, (see also FEIR Response to Comment A8-10), maximum theoretical build-out is considered highly speculative and unrealistic.[15] The rationale

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[13] These existing plans in Part III of the General Plan are not being amended or revised at this time, with two limited exceptions: By reason of the new diagrams to be adopted as part of the Planning Framework chapter or Element of the General Plan Update, the Urban Development boundaries of the (1) the County adopted City General Plan for Dinuba will be modified to reflect the Dinuba Golf Course, residential and wastewater treatment area annexed to the City, and (2) the Pixley Community Plan boundary will be modified to include Harmon Field (a closed airfield).

[14] Available at: http://generalplan.co.tulare.ca.us/gpPlans.asp

[15] FEIR, Master Response #5, page 4-26 contains several minor clerical errors which have been corrected: Table **4-3** ~~5-1 through 5-7~~, below, **is** ~~are~~ based on data developed for the County's 2009 Housing Element. "Build-out" Tables **4-4 through 4-9** ~~5-2 through 5-7~~ mathematically project theoretical maximum build out in various ways. No adjustments are made in these tables for "fixed" constraints (such as setback, slope,

for this methodology is discussed in Master Response #5. As discussed, total growth is only partially controlled by the General Plan 2030 Update. Much of this growth is market driven and dependent upon the intent of the property owners, environmental constraints, non-quantifiable development standards,[16] policies and regulations, infrastructure constraints, birth rates, death rates, and immigration rates. The County believes the TCAG and Department of Finance projections accurately reflect population growth for the County as a whole.

As discussed in Response to Comment I21-44, maximum theoretical buildout, which could theoretically occur in approximately the year 2123 if existing growth trends continued, is a highly speculative and unrealistic number. The maximum theoretical residential buildout numbers in FEIR Master Response #5 Tables 4-4 through 4-9 are large due to unrealistic assumptions associated with residential development on existing agriculturally designated parcels.[17] These numbers assumed a residence on every parcel within existing agricultural land use designations. Such an assumption is not realistic because there are numerous other land uses allowed under these agricultural land use designations. For example, the existing Valley Agricultural designation allows:

> Irrigated crop production, orchards and vineyards; livestock; resource extraction activities and facilities that directly support agricultural operations, such as processing; and other necessary public utility and safety facilities. Allowable residential development includes one principal and one secondary dwelling unit per parcel for relative, caretaker/employee, or farm worker housing. (General Plan, Part I, page 4-15.)

The commenter's suggestion appears even more speculative given that the County had an unincorporated population of 144,090 in 2007, which is projected to increase to 222,580 by the year 2030. (See RDEIR Table 2-11.) To suggest that millions of homes, and similar levels of industrial and commercial space, would be developed, is highly unlikely, as this would lead to well over 10 homes per person in the County's jurisdiction (i.e., approximately 0.1 persons per household or less).[18] Table AC-1 below provides an approximation of reasonably foreseeable buildout at the 2030 horizon year (including existing/un-amended land use designations).

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terrain, water availability, roads, wastewater, zoning, and other physical limitations) or constraints that can be remedied (infrastructure capacity and market availability of land parcels). Please note that the amount of development presented in these tables is not expected to occur by the planning horizon year (2030). The information presented in Tables 5-2 through 5-7 illustrates how much development is theoretically possible.

[16] While the County can provide maximum theoretical build-out numbers based upon acreage and Floor to Area Ratios or dwelling units per acre, it is no possible to quantitatively account for parcel specific limitations, such as setbacks, slope limitations, historic resource limitations, wetland delineations, riparian areas, protected habitats, presence of endangered species etc..., which will serve to further reduce maximum theoretical buildout.

[17] As noted in Master Response #5, the County is not creating new agricultural land use designations.

[18] The County currently has a ratio of approximately 3.27 persons per household. (See General Plan, Part 1, page 4-4)

Table AC-1: Reasonably Foreseeable Buildout at the 2030 Horizon Year for the Unincorporated County

Projected Residential Units	Projected Commercial Development acreage	Projected Industrial Development acreage	Projected Other Development acreage
24,003 dwelling units	2,267 acres	3,123.6 acres	2,099.2 acres

Table AC-1 is based upon the Department of Finance Population numbers included in the RDEIR, which project the County to grow by 78,490 additional persons by the year 2030, as discussed on RDEIR page 2-24. The DOF calculated a population density of 3.27 persons per residential unit, as discussed on page 4-4 of the General Plan 2030 Update. Dividing the projected growth of 78,490 persons by the persons per residential unit (3.27) results in approximately 24,003 residential units for the unincorporated County at the 2030 horizon year.

To determine reasonably foreseeable commercial, industrial and other acreage at the 2030 horizon year, the total number of developed acres must be calculated. As discussed in Master Response #5, residential uses accounted for 55.4% of the existing developed land within the county's communities, commercial uses accounted 13.5%, industrial uses accounted for 18.6% and other uses (such as roads, canals, railroads, etc accounted for 12.5%).[19] The density of residential units per acre in the County is 2.58, as discussed in Master Response #5 of the FEIR. Dividing the projected residential units (24,003 units) by 2.58 results in a projection of 9,303.5 residential acres at the horizon year in 2030.

By dividing the projected residential acres by the percentage of developed residential land (55.4%), a total number of developed acres is obtained; approximately 16,793.3 acres. Multiplying the total number of developed acres (16,793.3) by the existing percent acreage by land use, the number of acres for each land use is obtained (i.e. Commercial use 13.5% * total number of developed acres = 2,267 acres of commercial uses projected to be developed in the County by the year 2030). These values are provided in Table AC-1 above.

Case law also holds that maximum theoretical buildout for planning documents need not be assumed in an environmental analysis. (See *Ross v. California Coastal Commission* (2011) 199 Cal.App.4th 900, 944; *Save Round Valley Alliance v. County of Inyo* (2007) 157 Cal.App.4th 1437.) As also discussed in FEIR Master Response #5, the *Sondermann Ring Partners-Ventura Harbor v. City of San Buena Ventura* 2008 WL 1822452 case also addresses the issue raised by the commenter:

> Sondermann asserts the EIR does not comply with CEQA because it does not analyze impacts of full build - out under the updated general plan, "but instead analyzed a different 'project' based on an un-founded assumption that ... the maximum development of non-

[19] These percentages are considered reasonable assumptions for the purposes of calculating reasonably foreseeable development for these uses at the 2030 horizon year.

residential uses permitted ... would be limited to a 'reasonable' 'worse case.' " In rejecting this contention, the trial court stated: " Given the 20-year lifespan of the General Plan , and the statutory, political and geographical realities enumerated therein, substantial evidence supports the propriety of the growth rates utilized in the Plan and analyzed in the EIR.

We review the adequacy of an environmental impact for substantial evidence. (Pub. Resources Code, § 21168; L*ong Beach Sav. & Loan Assn. v. Long Beach Redevelopment Agency* (1986) 188 Cal.App.3d 249, 259-260.) We do not pass upon the correctness of the EIR's environmental conclusions but only upon its sufficiency as an environmental document. We may not set aside an agency's approval of an EIR on the ground that an opposite conclusion would have been equally or more reasonable. (*Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564.) We may not reconsider or reevaluate the evidence presented to the administrative agency. All conflicts in the evidence and any reasonable doubts must be resolved in favor of the agency's findings and decision. (Ibid.)

'The EIR is an informational document with the stated purpose of providing public agencies and the public with "detailed information about the effect which a proposed project is likely to have on the environment; to list ways in which the significant effects of such a project might be minimized; and to indicate alternatives to such a project." [Citations.]' ... 'An EIR should be prepared with a sufficient degree of analysis to provide decision-makers with information which enables them to make a decision which intelligently takes account of environmental consequences.... An evaluation of the environmental effects of a proposed project need not be exhaustive, but the sufficiency of an EIR is to be reviewed in the light of what is reasonably feasible....' " (*Rio Vista Farm Bureau Center v. County of Solano* (1992) 5 Cal.App.4th 351, 368; CEQA Guidelines, § 15151; *Browning-Ferris Industries v. City Council* (1986) 181 Cal.App.3d 852, 862.) "Technical perfection is not required; the courts have looked not for an exhaustive analysis but for adequacy, completeness and a good-faith effort at full disclosure." (*Rio Vista Farm Bureau Center*, at p. 368.)

The discussion of alternatives is governed by a rule of reason. (*Citizens of Goleta Valley v. Board of Supervisors*, supra, 52 Cal.3d 553.) The analysis need not contain every conceivable scenario. (*Towards Responsibility In Planning v. City Council* (1988) 200 Cal.App.3d 671.) The EIR discusses six projected growth scenarios through 2025. The scenarios range from a potential growth of non-residential development between 4,890,724 and 6,330,484 square feet of development. Sondermann argues these projected growth scenarios are inadequate because "the City *actually* believes that the 2005 General Plan could permit up to 57,869,859 [square feet] of non-residential development- *approximately ten times the amount of growth analyzed in the EIR*."

Sondermann's argument fails to acknowledge that this figure appears in a chart entitled "Development Projections Based on the So-Called Carrying Capacity of All the Land in Ventura. "This is a hypothetical projection of what could occur if every available square inch of land were developed over the next century. The updated general plan analyzes growth

potential over the 20-year life of the plan. "[A]n EIR is not required to engage in speculation in order to analyze a 'worst case scenario.'" (*Napa Citizens for Honest Government v. Napa County Bd. of Supervisors* (2001) 91 Cal.App.4th 342, 373; see also *Village Laguna of Laguna Beach, Inc. v. Board of Supervisors* (1982) 134 Cal.App.3d 1022, 1028 ["there are literally thousands of 'reasonable alternatives' to the proposed project"].) Here, as in *Village Laguna*, "It is significant that no claims of deficiencies are made concerning the discussions of the [six] alternatives that were considered in the EIR. Therefore, it must be assumed that decision-makers and the public could make an informed comparison of the environmental effects of those various plans. It is not then unreasonable to conclude that an alternative not discussed in the EIR could be intelligently considered by studying the adequate descriptions of the plans that are discussed. [Fn. omitted.] This EIR should 'not become vulnerable because it fails to consider in detail each and every conceivable variation of the alternatives stated.'" (Id. at p. 1029.) The trial court did not abuse its discretion in finding the discussion of alternatives to be adequate.

Response to Comment AC-TCCC -Section II(B)

The commenter cites to language out of context and suggests the County "conced[es]...that the General Plan will in fact result in conflicts with the Cities' plans, the FEIR further suggests that the County will ultimately update its zoning to be consistent with the proposed General Plan and to 'incorporate measures into the zoning code to eliminate the potential for incompatible development.'"

The County disagrees with the commenters' characterization of the response, and believes the response speaks for itself. Furthermore, consistency or inconsistency with a plan alone does not result in an environmental impact. As discussed in a leading CEQA treatise "[a]n inconsistency between a proposed project and an applicable plan is a legal determination, not a physical impact on the environment." (Kostka & Zischke, *Practice Under the California Environmental Quality Act*, (2d ed. Cal CEB, January 2011), p. 612, § 12.34.) As discussed in FEIR Response to Comment I21-72, the County does not believe there is an inconsistency that results in a significant environmental impact.

Response to Comment AC-TCCC -Section II(C)

Please see discussion in FEIR Response to Comment A8-7 and I21-59 regarding New Towns and Planned Communities.

Please see Response to Comment AC-I21-Section II(A) above regarding maximum theoretical buildout.

Please see Responses to Comment AC-I11-190, AC-I11-191 (Sierra Club, Gordon L. Nipp, dated 10/18/11) for discussion of Policy AG-1.6.

Response to Comment AC-TCCC -Section II(D)

The commenter states that:

> We further explained that rather than use a land use-based approach to transportation impact analysis, the RDEIR relies on a regional travel demand forecast model created by the Tulare County Association of Governments ("TCAG") and that the RDEIR lacked any evidence that the model actually analyzed the impacts of the General Plan rather than some other scenario...other land use agencies have demonstrated that it is feasible to: (1) modify regional travel demand model to reflect a jurisdiction's land use plan...

Please see FEIR Responses to Comment I21-48, I21-92, I21-130.The RDEIR noted that "The future roadway system has been developed and is assumed in the TCAG model." (RDEIR page 3.2-21.) As further explained in FEIR Response to Comment I21-48, "[the TCAG travel demand model] is calibrated based on existing traffic conditions developed from information contained in the 2010 Background Report...[t]he model was used to determine the projected impacts of the proposed circulation network...Mixed use designations, such as shopping centers, were taken into account by the TCAG model using Land Use Code 820."

The TCAG model is useful in that it contains information on cumulative development in the neighboring jurisdictions. However, the TCAG model *also* incorporated projected growth based upon socioeconomic data, i.e., households and employment, infrastructure constraints, which were consistent with the proposed General Plan and the associated land use designations for the various Community areas (i.e., Hamlets, etc.) within the County; the model therefore did in fact "modify regional travel demand...to reflect [Tulare County's] land use plan.[20]

The comment also suggests that:

> ...the FEIR also fails to analyze the effect that the proposed General Plan would have on vehicle mils traveled ("VMT"), despite our request for this analysis...the EIR must actually analyze the relevance of and environmental impacts associated with this substantial increase.

The environmental impacts associated with an increase in VMT were assessed in the Air Quality and GHG chapters. As noted in FEIR Response to Comment I21-48 and I21-130:

> Regional and local travel demand forecast models are also considered in evaluating emission-related impacts such as air quality and climate change...VMT data from TCAG, and emission factors from CARB's EMFAC2007 model, are used as an analytic tool to evaluate on

[20] This approach was also recently upheld in the unpublished portion of *Rialto Citizens for Responsible Growth v. City of Rialto* (4th App. Dist, July 31, 2012, Case No. E052253). As discussed therein "Rialto Citizens argues that —using the standards || or the same computer model used in the CMP to project countywide traffic conditions —is not the same as relying on a summary of projections' || contained in the CMP. (Guidelines, § 15130, subd. (b)(1)(B).) We disagree. Effectively, the CTP travel demand model included —a summary of projections || of traffic conditions in San Bernardino County. SANBAG, the agency responsible for developing, adopting, and updating the CMP, was required to —develop a uniform data base on traffic impacts for use in a countywide transportation computer model . . . . || (§ 65089, subds. (a), (c).)..."

road emissions from all motor vehicle classifications. The RDEIR appropriately summarizes the technical data from these model runs, and includes the data in Appendix D ["Air Quality Modeling Data"] of the RDEIR.

The commenter recommends Yolo County General Plan measures CI-1a and C-I-1b. These measures include a number of provisions which are already included in the General Plan or existing regulations. The suggested measure discusses:

> "promote ride sharing programs..."

This type of policy is already included in the General Plan. For example, see Policy AQ-2.5. As discussed in the Master Responses, the General Plan does not stand alone. There are existing regulations such as SJVAPCD Rule 9410 which will shape the way development occurs within the County. This includes a number of trip reduction VMT reduction features, including Bicycle Subsidy, Bicycle Racks, *Carpools,* Compressed Work Weeks, Discounted Free Meals, onsite Dry Cleaning pickup, *Ridesharing, Vanpooling*, Discount Transit passes, Transit Subsidy, Vanpool Subsidy, etc.[21] The next suggested measure reccomends:

> ...provid[ing] the necessary facilities and infrastructure to encourage the use of low or zero emission vehicles... provid[ing] shuttle service to public transit...provid[ing] public transit incentives...a telecommute work program...transportation incentives such as free bikes, re-charging stations for electric vehicles...imposing parking fees.

Policy PFS-9.1 provides that the County shall coordinate with gas and electricity service providers to plan the expansion of gas and electrical facilities to meet the future needs of the County residences." This includes potential future needs associated with compressed natural gas vehicles, electric vehicles, and plug in hybrids. SJVAPCD Rule 9410, already provides for "electric vehicle recharging" facilities,[22] "shuttles",[23] monetary incentives for alternative transportation,[24] a telecommuting program,[25] "preferential parking",[26] and numerous other options for employers to reduce trip generation. The County will also consider additional parking limitations based upon area and project specific planning. As discussed on page 4-25 and 13-18 the County will consider project specific "parking and loading standards...parking restrictions along facilities in unincorporated urban areas shall be determined from roadway classification policies described herein, or in situations where variations are desired, as determined by the RMA and Development Services Department." The next suggested measure discusses:

> ...build[ing] or fund[ing] public transportation center...

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[21] See http://www.valleyair.org/rules/currntrules/r9410.pdf
[22] See SJVAPCD Rule 9410, Section 5.0, Table 1
[23] See SJVAPCD Rule 9410, Section 3.67 and Section 5.0, Table 2, Phase III.
[24] See SJVAPCD Rule 9410, Section 3.46 and Section 5.0, Table 2, Phase III.
[25] See SJVAPCD Rule 9410, Section 3.71 and Section 5.0, Table 2, Phase III.
[26] See SJVAPCD Rule 9410, Section 3.58 and Section 5.0, Table 2, Phase III.

The County will continue to coordinate regional transportation planning, include transportation centers, as discussed under Policies TC-4.1, TC-4.5, and ED-1.5 and ED Implementation Measure #3. The next suggested measure discusses:

> . . . incorporate[ing] bicycle lanes and routes into street systems...incorporate[ing] bicycle-friendly intersections intro street design...for commercial projects, provide bicycle parking...encourage bicycle commuting...creat[ing] bicycle lanes and walking paths directed to the location of schools, parks...

Policies are already included in the General Plan to address these types of concerns. Please see FEIR Response to Comment A7-22, which discuses General Plan Policies, including Policy TC-5.1 [Bicycle/Pedestrian Trail System], TC-5.2 [non-motorized facilities in new development], TC-5.5 [bicycle support facilities with new commercial facilities], TC-5.7 [designated bike paths], TC-5.8 [multi-use trails]. See also FEIR Response to Comment A8-11 (Table 3.4-5) which summarizes additional policies and implementation measures associated with bicycle facilities. The next suggested measure discusses:

> . . . provid[ing] education and information about public transportation . . .

SJVAPCD Rule 9410 already provides for numerous public awareness programs including "employer rideshare event," "Employer rideshare and alternative transportation meetings," "Employer rideshare and alternative transportation focus group(s) ," "Onsite transit information center," "Rideshare and alternative transportation bulletin boards," "Attendance at a marketing class/focus group," "Employer rideshare newsletter," "'Best Workplaces for Commuters' Recognition," "Rideshare flyer," "CEO communication," "Employer-adopted policy statement supporting employee ridesharing," and "alternative transportation," "Rideshare orientation for new employees," "Register with a local rideshare agency."[27] The General Plan also contains Policy AQ-4.5 which addresses air quality issues related to public awareness and public transportation, which may include educational information on public transportation. Please also see FEIR Response to Comment I21-110.

The commenter asserts that "the RDEIR may understate the Project's traffic impacts because it assumes the implementation of twelve roadway projects that may not be built..."

The commenter is referring to the 12 improvements discussed on RDEIR page 3.2-24 under the heading "Analysis results." Contrary to the commenter's assertions, and as explained in FEIR Response to Comment I21-93, the RDEIR did not take credit for these improvements. As noted on RDEIR page 3.2-31:

> As discussed above under the "Methodology" section, a number of roadway improvements are identified that would improve roadway level of service conditions resulting from implementation of development anticipated under the proposed project. However, most of

[27] See SJVAPCD Rule 9410, Section 3.71 and Section 5.0, Table 2, Phase I.

> the roadway infrastructure improvements identified are on facilities under the jurisdiction of entities outside the County (such as Caltrans or the City of Visalia, etc.). Therefore, implementation of the proposed improvements would be subject to approval by other agencies, as well as to funding programs that are not fully developed at this time. Timely construction of the proposed improvements would require substantial coordination and cooperation between the County and other agencies. In summary, the proposed project addresses its traffic effects through a combination of policies and the physical improvements identified above. Despite the policies identified above, proposed deterioration in the traffic LOS as compared to current conditions is unavoidable mostly due to city growth not directly controlled by this plan. The physical improvements would require cooperation and funding from a variety of entities inside and outside the County, so implementation of these improvements cannot be guaranteed solely through the County's actions. As a result, this impact remains significant.

The General Plan, however, contains a number of policies to participate in regional transportation planning (Policy TC-1.3), with the goal of implementing roadway improvements such as those identified in the RDEIR and the comment letter. (See Policies TC1.4, TC-1.14, TC-1.15 for identifying funding sources for such improvements.) This level of detail is consistent with programmatic analysis and deferring implementation of site specific roadway improvements until such time as actual development is proposed. As discussed in *City of Hayward v. Board of Trustees* (1st Dist., June 28, 2012, Case No. 2012A131412) __Cal.App.4th__:

> [Respondents] made clear that "[i]n the event that at some future date the University does consider development of this site, additional project-level studies and CEQA review will be conducted, which would require a more detailed analysis of the effect of project traffic on the narrow residential streets in the Grandview neighborhood, and would also require an evaluation as to the feasibility of providing access to this site from the roadway serving the [student housing] area. Any impacts deemed significant would be identified and the appropriate mitigation required as part of the detailed analysis.
>
> Respondents objected to this analysis, arguing that the EIR should have evaluated potential impacts to additional roads in the immediate neighborhood.
>
> ... Although locating housing at this site may cause impacts to the neighborhood, there are many variables to be considered in connection with such a project, such as the location of entrances and placement of parking spaces, that will affect where in the surrounding neighborhood the impacts will be most felt and the measures that can mitigate those impacts. These specifics cannot meaningfully be evaluated at this point. There is no suggestion that deferring consideration of site specific impacts will disguise cumulative impacts or preclude proper consideration of mitigation measures if and when construction of such housing is proposed.

While the County has suggested various roadway improvements to address forecasted growth, the County cannot force other jurisdictions to implement these measures, nor should these measures be implemented until such a time as site specific growth can be ascertained. For impacts associated with buildout of the General Plan including roadway improvements, the commenter is referred to the other resources chapters in the RDEIR. For example, the Air Quality analysis on RDEIR page 3.3-18 notes that buildout of the project would include "grading and excavation, infrastructure construction...," this review includes construction of future roadway improvements. This level of detail is consistent with CEQA case law. (See *In re Bay-Delta Programmatic Environmental Impact Report Coordinated Proceedings* (2008) 43 Cal.4th 1143, 1174 - 1175 [Additional detail on a second tier project, an Environmental Water Account (EWA), was not required in the first tier EIR.]; see also *Al Larson Boat Shop, Inc. v. Board of Harbor Commissioners of the City of Long Beach* (1993) 18 Cal.App.4th 729, 746 ["deferral of more detailed analysis to a project EIR is legitimate" even though some of those project level EIRs were certified concurrently with the PMP first-tier EIR.].) Additional CEQA review will be provided at the time a specific roadway improvement is proposed for construction.

For discussion of freeway interchanges, please see FEIR Response to Comment I21-99. For discussion of "peak period" analysis please see FEIR Response to Comment I21-100. For discussion of pavement conditions, please see FEIR Response to Comment I11-65 and I21-104.

Response to Comment AC-TCCC - Section II(E)

Please see Responses to Comment I21-112 and 113. Contrary to the comment, the RDEIR's air quality impact analysis does not rely upon or discuss AB 170. Discussion of AB 170 was included in Response to Comment I8-4 to address that commenter's concerns that the County was avoiding the issue of air quality in the General Plan.

The commenter also suggests that the RDEIR did not address "health effects" associated with air quality. As discussed in FEIR Response to Comment I17-660, "A description of the health effects associated with air quality contaminants in Table 3.3-1 of the RDEIR."

Response to Comment AC-TCCC - Section II(F)

Please see FEIR Responses to Comment I21-130 and 131 for GHG methodology. Please see FEIR Responses to Comment A8-1 through A8-18 for responses to comments from the Attorney General's office.

Response to Comment AC-TCCC - Section II(G)

Please see FEIR Responses to Comments I21-137 through I21-142 for discussion of water supply impacts.

Response to Comment AC-TCCC - Section II(H)

Please see FEIR Responses to Comments I21-143 through 148; included in these responses was a cross reference to Response to Comment I11-35 which addresses the commenter's wastewater concerns.

Response to Comment AC-TCCC - Section II(I)

Please see FEIR Responses to Comments I21-151 through I21-153.

Response to Comment AC-TCCC - Section II(J)

Please see FEIR Responses to Comments I21-164 through 165.

Response to Comment AC-TCCC - Section III

Please see FEIR Responses to Comments I21-166 and I14-113. Please also see Response to Comment AC-I21-Section I.

Response to Comment (Greg Schwaller, dated 10/19/11)

Please see FEIR Responses to Comments I17-1 through I17-1,093.

Response to Comment (Laurie Schwaller, dated 10/19/11)

Please see FEIR Responses to Comments I17-1 through I17-1,093.

Response to Comment (Leon Ooley)

Thank you for your comment.

Response to Comment (California Rural Legal Assistance, dated 10/19/11)

Comment noted. Issues specific to the County's Housing Element are addressed in the response to Comment I10-1 (FEIR, page 5-59). A revised Housing Element was submitted to, the State Department of Housing and Community Development ("HCD") in November 2011, and received HCD written findings in January 2012 stating the revised Housing Element is in compliance with State Housing Element law when these revisions are adopted and submitted to HCD pursuant to Government Code Section 65585(g).

Response to Comment (Peter Clum, dated 10/19/11)

Please see FEIR Response to Comment I19-72 for discussion of OPR's General Plan Guidelines.

Consistent with Planning Commission's recommendations, staff prepared an "As Modified" draft of the General Plan which complies with AB 162.

The commenter recommends a "Water Demand Offset Ordinance" which would "accomplish the offset requirements in a variety of ways such as low flow fixture retrofits." As discussed in FEIR Response to Comment I11-117, the General Plan does not stand alone from a regulatory

perspective. Development within the County will be shaped by other existing regulations. In this instance, the County has adopted the California Plumbing Code and the California Green Building Code (See County Code Sections 7-15-1000(e) and (j).) These regulations already include requirements pertaining to low flow fixtures, such as toilets, urinals, showerheads, faucets, etc. (See Title 24 Cal. Code Regs., Part 11, Chapter 4). The commenter's suggestion is, therefore, repetitive of existing regulations. Please also see Response to Comment AC-I11-207 (discussion of Policy AQ-3.4) for discussion of additional water conservation measures.

Response to Comment (Carole Clum, dated 10/19/11)

Please see Response to Comment I11-33 for discussion of water quality impacts. As noted therein:

> existing conditions, such as existing groundwater overdraft and existing water quality issues, are not impacts of the proposed project (see *Watsonville Pilots Association v. City of Watsonville* (2010) 183 Cal.App.4th 1059 ["The FEIR was not required to resolve the [existing] overdraft problem, a feat that was far beyond its scope"]; See also *Cherry Valley Pass Acres and Neighbors v. City of Beaumont* (4th Appellate Dist. November 22, 2010) 2010 S.O.S. 6565 (pages 31-42).)

Hazardous waste is addressed in RDEIR Section 3.8. Impact 3.8-3 addresses the impacts related to whether development could be located on a hazardous waste site. Sites known to contain hazardous materials would be addressed through Phase I or Phase II hazardous materials studies as part of the design phase for a project. (See response to Comment I17-719.)

Response to Comment (A.G.U.A. ,dated 11/15/11)

Water contamination issues are addressed through policy in the updated Tulare County 2030 General Plan, including the Environmental Resources Management (Chapter 8), and Water Resources (Chapter 11) Elements. See the Response to Comment I14-102 (FEIR, page 5-199) for information regarding the reclassification of Tooleville. The General Plan 2030 Update policies and implementation measures should not be reviewed individually. They were designed to be part of a comprehensive system (i.e., the entire General Plan 2030 Update) and function in relation to other goals, policies, land use designations, and implementation measures in the General Plan 2030 Update. For example, the land use policies along with those policies identified in other elements (i.e., Public Health and Safety) work in tandem to address industrial land use impacts to sensitive receptors within the County's Planning Area.

Response to Comment (Carole A and J. Peter Clum, dated 11/15/11)

The comment states that the General Plan relies upon the floodplain management ordinance for compliance with the Government Code Safety Element requirements, citing language on RDEIR page 3.6-53. The language contained in the RDEIR regarding Government code compliance was in error. The General Plan does not rely upon the floodplain management ordinance to comply with the informational Safety element requirements, nor was any such discussion included in the actual text

of the proposed General Plan 2030 Update (i.e., does not rely upon Government Code Section 65302(g)(4)). Consistent with Planning Commission's recommendations, Staff prepared an "As Modified" draft of the General Plan which including in the Board of Supervisors Staff Report which complies with AB 162. The language on RDEIR page 3.6-53 is revised as follows:

> Recent State legislation related to flood protection and risk management is described above under "Regulatory Setting". **There are numerous polices in the proposed General Plan designed to reduce or avoid impacts associated with development in flood areas. However, some development may occur in such flood zones. An outright ban on development in a 100-year flood zone is considered infeasible for legal, environmental and policies reasons. Furthermore, the County will need to balance other environmental and policy considerations in determining whether to approve development. For example, an outright ban might result in a reduction in impacts associated with flood zones, but negatively impact other resource areas by forcing development into areas associated with fire or geologic hazards. There will also be instances where development in flood area can be performed safely. (See County Code 7-27-1005 ("Methods of Reducing Flood Losses")) Requirements in the California Building Code, Title 24, Part 2, Section 1612 also help to safely construct development in flood zones.** ~~the County of Tulare already has a flood management ordinance (Ordinance Code of Tulare County, Part VII, Chapter 27) that has been approved by FEMA and that substantially complies with the new requirements, the County is able to use that information to comply with new Safety Element requirements (APA, page 12, 2008 –). However, the new laws do require updating emergency response programs based upon new FEMA and DWR flood maps, flood data and flood management requirements. Until the County has implemented needed updates of its land use maps with current flood information, and met Safety Element provisions as now defined in Government Code 65302(g), flood related impacts of the proposed project will be significant.~~

Response to Comment (Carole A and J. Peter Clum, dated 02/24/12)

The comment asserts that the County has been unwilling to respond to "the FEIR's failure to comply with Assembly Bill No. 162, to adequately describe the environmental setting for and to adequately analyze and to mitigate for the General Plan 2030 Update's flood hazard impacts." The commenter also suggests that AB 162 creates a "statutorily imposed determination of baseline conditions."

Consistent with Planning Commission's recommendations, staff prepared an "As Modified" draft of the General Plan which complies with AB 162. The General Plan does not rely upon the Flood Control Master Plan ("FCMP") to comply with AB 162 as suggested by the comment letter, with the exception of providing historic data on flooding. Furthermore, the FCMP is not relied upon to establish a baseline for the RDEIR. The baseline/environmental setting related to flood hazards was provided in the RDEIR, starting on page 3.6-14. The commenter provides no explanation as to why the information in the RDEIR was insufficient for the purposes of CEQA. As discussed under CEQA Guidelines Section 15125, "the description shall be no longer than is necessary to an understanding

of the significant effects of the proposed project and its alternatives." Furthermore, it is incorrect to assume that the requirements of AB 162, which are applicable to the General Plan, and CEQA requirements, related to baseline (CEQA Guidelines Section 15125), are interchangeable. These statutes and regulations are separate and distinct.

The FCMP is not relied upon to comply with the requirements of AB 162, with the exception of providing historic data on flooding, and is also included in the General Plan because it provides policy direction which is still considered appropriate. (See *Chawanakee Unified School District v. County of Madera* (2011) 196 Cal.App.4th 1016 (Unpublished portion of Opinion) [Petitioners alleged "stale information about schools districted...rendered the General Plan legally inadequate...," the Court disagreed and concluded "Consequently, because School District has not demonstrated that the General Plan's description of the local school districts was required by statute, it has failed to show that any obsolescence in that description violates a statutory requirement and renders the General Plan inadequate."].) See also Responses to Comments I11-18 and I11-117 (FEIR, pages 5-68 and 5-118 through 5-119) and Responses to Comments I17-705 and I17-721.

The commenter also suggests that the Flood Control Master Plan is inadequate because it does not comply with CEQA Guidelines Section 15150.

CEQA Guidelines Section 15150 is applicable *to the EIR*, not the FCMP as a part of the General Plan. The Flood Control Master Plan is a previously adopted part of the General Plan, but was nevertheless made available to the public during the draft RDEIR review period and thereafter.[28]

Response to Comment (Carole A and J. Peter Clum, dated 03/27/12 and 4/9/12)

The comment letter suggests that Public Resources Code Section 21081.6(a)(2) "requires the record of proceedings upon which the decision of the Board of Supervisors is based be in existence at the time of their findings."

Public Resources Code Section 21081.6(a)(2) and CEQA Guidelines Section 15091(e) provide that "The public agency shall specify the location and custodian of documents or other materials which constitute the record of the proceedings upon which the decision is based." However, the Record of Proceedings is not compiled until after initiation of CEQA litigation, and a request is filed by petitioners. (See Public Resources Code Section 21167.6.)

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[28] See http://generalplan.co.tulare.ca.us/gpPlans.asp. More specifically the Flood Control Master Plan is available at http://generalplan.co.tulare.ca.us/documents/GeneralPlan2010/Plans/001Voluntary%20Elements%20Chapters%2012%20and%2015/002CHP%2015%20Flood%20Control%20Master%20Plan%201972/FLOOD%20CONTROL%20MASTER%20PLAN%20FOR%20C.pdf and http://generalplan.co.tulare.ca.us/documents/GeneralPlan2010/Plans/001Voluntary%20Elements%20Chapters%2012%20and%2015/002CHP%2015%20Flood%20Control%20Master%20Plan%201972/FLOOD%20CONTROL%20MASTER%20PLAN%20HYDRO.pdf