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January 30, 2015

Amador County Planning Department  
Attn: Susan Grijalva, Planning Director  
810 Court Street  
Jackson, CA 95642-2132  
([planning@amadorgov.org](mailto:planning@amadorgov.org))

RE: Foothill Conservancy Comments on the Amador County General Plan Draft EIR

Dear Ms. Grijalva:

My name is Tom Infusino, and I am submitting these comments on behalf of the Foothill Conservancy. Thank you for providing the opportunity to comment on the Amador County General Plan DEIR. We have made every effort to provide constructive comments to assist the County in improving the EIR. In particular, we have tried to identify additional feasible mitigation measures to reduce impacts that would otherwise be more severe.

**We strongly encourage you to review the Matrix of Recommended Mitigation Measures provided by Terrell Watt.** We believe that this matrix presents an opportunity to resolve differences between the Foothill Conservancy and the County regarding the general plan. More importantly, we believe that the mitigation measures and programs in the matrix provide great hope for future economic and environmental prosperity in Amador County. We hope that you and other County leaders will take the time to review this matrix, and to discuss it with us.

Our comments are divided into sections as is the DEIR. Our comments include specific page references to the parts of the DEIR on which we comment. In addition, many comments refer to additional information that is provided in a separate folder of exhibits. Please retain a copy of these comments for the administrative record.

Our comment note a number of weaknesses in the EIR. In our 2009 scoping comment, we encouraged the County to avoid making a list of common mistakes when preparing the DEIR. It is very disappointing that, after over five years of work, the DEIR still encompasses the very weaknesses it was warned to avoid.

We expect the County's written responses to our comments will conform to CEQA Guidelines section 15088. Specifically, we expect the response to describe the disposition of the environmental issue raised. We expect the response to be at the same level of detail as the comment. We expect a reasoned explanations of why any of our suggestions were not accepted. We expect a good faith effort at full disclosure, based upon factual information.

Every citizen has a responsibility to contribute to the preservation and enhancement of the environment. (Public Resources Code, sec. 21000.) Some who value the human and natural environment of Amador County embrace participation in the environmental review of the Draft General Plan as a noble part of their duty as citizens. Others, more concerned about issues other than our environment, begrudgingly participate in government planning and environmental review, as one of the less than noble duties of citizenship. Ultimately, we will all benefit or pay the price for the general plan decisions made by the County. We hope that an improved Final EIR will provide a more informed basis for all members of the public and for all government decisionmakers, as we move toward approval of a new general plan.

Sincerely,

A handwritten signature in cursive script that reads "Thomas P. Infusino".

Thomas P. Infusino, Esq. for

The Foothill Conservancy

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Population & Housing Exhibits

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## SECTION 1 INTRODUCTION

### 1.4 NOTICE OF PREPARATION

On Pages 1-8 and 1-9 the DEIR states:

California Senate Bill (SB) 18 requires that local governments conduct consultations with California Native American tribes for the purpose of preserving or mitigating impacts to Cultural Places prior to adoption of any general plan. The County has provided the opportunity for SB 18 consultation to the Native American Heritage Center's list of contacts.

On September 27, 2005, the County sent letters to the Buena Vista Rancheria of Mewuk Indians, the Ione Band of Miwuk Indians, and the Jackson Band of Mi-Wuk Indians offering consultation pursuant to SB 18. The County received a response from the Ione Band and scheduled a consultation meeting for December 05, 2005. However, no Ione Band representatives attended the scheduled meeting.

On April 04, 2006, the County sent letters, signed by the Chairman of the Board of Supervisors, to the Buena Vista Rancheria of Mewuk Indians, the Ione Band of Miwuk Indians, the Jackson Band of Mi-Wuk Indians, and the Calaveras Band of Mi-Wuk Indians offering pre-consultation.

On April 26, 2006, Amador County planning staff and the Chairman of the Board of Supervisors met with Rhonda Morningstar Pope and John Tang of the Buena Vista Rancheria for a pre-consultation meeting. During the meeting, an SB 18 Consultation Protocol was developed, however, there was no discussion specific to the General Plan Update.

On December 01, 2006 the County sent letters, signed by Chairman of the Board of Supervisors, to the same distribution as the April 04, 2006 pre-consultation letters offering another consultation opportunity. The County received no response to these letters.

On November 06, 2007, the County received a letter from Billie Blue Elliston with the Ione Band of Miwuk Indians Heritage Cultural Committee. The letter indicates the project (i.e., the General Plan Update) is within the ancestral territory and the tribe would like to be kept informed of the project. There was no request for consultation.

On February 06, 2008, the County received an email from Debra Grimes, Tribal Cultural Resources Specialist for the Calaveras Band of Mi-Wuk Indians. The letter requested she be kept informed of the General Plan Update as well as any other projects.

On July 01, 2008, the County sent letters, signed by the Chairman of the Board of Supervisors, offering consultation for a 3rd time. No response was received as a result of these letters.

As a result of the consultation offers, meetings, and discussions, none of the Native American contacts requested changes to the Draft General Plan to preserve or mitigate impacts to cultural places.

The County started consultation efforts in 2005 through 2008. The information provided by the County indicates that the Ione Band of Miwuk Indians responded within the 90 day requirement of 2005 Supplement to *General Plan Guidelines*. On page 11 the Guidelines state, “No statutory limit on the duration of the consultation.” The draft general plan is dated October, 2014. Please provide a description of the ongoing efforts that the county took to consult with Native American tribes between July 2008 and October 2014 regarding this general plan update.

## **2 EXECUTIVE SUMMARY**

### **SECTION 2.5 AREAS OF CONTROVERSY AND ISSUES TO BE RESOLVED**

An EIR shall contain a brief summary that identifies the areas of controversy, and the issues to be resolved. (CEQA Guidelines, sec. 15123.)

On page 2- 6, the entire description of the area of controversy and issues to be resolved states:

“Based on public input received on the Draft General Plan and EIR, areas of controversy related to the Draft General Plan EIR include loss of agricultural land, loss of wildlife habitat, residential growth rates, and locations of land use change, including Special Planning Areas. This EIR addresses a full range of impact topics related to agricultural land, biological resources, land use, and growth inducement.

Issues to be resolved include selection of a project alternative and selection of mitigation measures.”

There are areas of controversy and issues to be resolved by the general plan that the County is aware of from the General Plan Advisory Committee (GPAC) meetings and from public comments. These areas of controversy and issues are relevant to the impacts of the plan, their mitigation, and alternatives, but that are not listed in this section. This section of the EIR has an important informational function to members of the public and to decisionmakers. This section should provide a handy checklist of issues for use when reviewing the completeness of the EIR and the General Plan Update. By not providing this list, the County avoids accountability for overlooking issues of great concern to the community. In addition, it disrespects those many citizens who spent hours attending meetings and making comments to try to ensure that critical issues were not overlooked.

We encourage the County to review the GPAC background documents, the GPAC notes, the public survey, the responses to the NOP, and the public input provided during the many Board of Supervisors’ hearings and workshops on the General Plan Update to develop a more complete list of the controversies and issues to be resolved by the General Plan that relate to this environmental review. Please include this list in the Final EIR.

For starters, controversies and issues to be resolved noted in the Foothill Conservancy’s scoping comments include:

What impact will the General Plan have on “aspects of Amador County that residents value most, including our scenic beauty, natural places, cultural and historical resources, ability to travel freely and safely, rural quality of life, rivers and creeks, dark night skies, small towns, agriculture, schools?” (Foothill Conservancy Scoping Comment, Cover Letter, p.1)

Will the County “develop a general plan that is primarily grounded in vague goal and policy platitudes rather than clear directions toward a diversified economy, a caring society, and a sustainable environment?” (Foothill Conservancy Scoping Comment, Cover Letter, p 2.)



Will the County “embrace programs to protect agricultural land from needless conversion, and to strengthen economic viability of ongoing agricultural operations?” (Foothill Conservancy Scoping Comment, Cover Letter, p 2.)

Will the County adopt “practical mitigation measures on the subjects of agricultural land protection, air quality, biological resources, child care, conservation and open space, fire hazards, global climate change, governance and economic development, historic preservation, public services, and water?” (Foothill Conservancy Scoping Comment, Cover Letter, p 2.)

Will the County come to “acknowledge that there are divergent points of view on the general plan, and to separately engage these interests in crafting separate general plan alternatives, that would be comparatively and quantitatively evaluated in the EIR, along with the general plan project description?” (Foothill Conservancy Scoping Comment, Cover Letter, p 3.)

The General Plan survey suggests that the General Plan EIR should address the following environmental issues and controversies:

Which cultural and historic properties should be preserved? Should the County participate in such preservation or should it be funded by private sources?

What design characteristics of new development do not fit in with existing communities, and which do?

Where should tourism be encouraged and where not?

Should we retain the current proportion of commuters, or should we develop more local job sources to reduce adverse impacts of commuting on roads, air quality, and families?

What rate of population growth is optimal for the County?

Where should population and business growth be directed, and where should it be avoided?

What type of recreation development is needed?

What natural resources need protection?

What roads are the most and least useful?

Is additional transit needed, and will it be provided?

Does infrastructure (water, sewer, telephone, internet, cable T.V., gas, etc.) need improvement, and will it improve?

What schools need improvement, and will they be improved?

Is there a need for improved law enforcement and emergency services, and will they be improved?

In addition, a number of upcountry general plan issues were raised:

Which communities upcountry are prepared for more commercial and industrial development, and which are more prepared for additional residential development?

How will the county address development beyond the “Dew Drop Line?”

Will upcountry areas receive an equitable distribution of future public services and infrastructure, or will the focus be on the 49 corridor and westward?

Will the upcountry get representation on important County government bodies?

What will be done to address high and very high fire danger upcountry? How will the infrastructure to support development be funded?

What are our options when local institutions (CSD, Road Committees, etc.) stop functioning to implement mitigation?

## 4.3 AIR QUALITY

### 4.3.1 Regulatory Setting

#### **Amador Air District Rules and Regulations**

Page 4.3-2

On page 4.3-2, the DEIR states,

“The Air District’s Rules and Regulations most relevant to the Draft General Plan include, but are not limited to:

- ▶ Rule 202-Visible emissions,
- ▶ Rule 205 - Nuisance,
- ▶ Rule 207 - Particulate Matter,
- ▶ Rule 210-Specific Contaminants (sulfur compounds, combustion contaminants),
- ▶ Rule 218 - Fugitive Dust Emissions,
- ▶ Regulation IV – Authority to Construct, and
- ▶ Regulation V – Permit to Operate.”

- Please explain why the above rules and regulations are the most relevant and why others are not to the Draft General Plan?
- Please provide information about where the Amador County Air District’s Rules and Regulations can be found.

### 4.3.2 ENVIRONMENTAL SETTING

#### **Amador County Emissions Sources**

Page 4.3-7

On page 4.3-7, Exhibit 4.3-1 is the graph titled, “Amador County 2008 - Emissions Inventory”.

- Is 2008 the most recent emissions inventory? If not, please provide the most recent inventory. This will help to inform decisionmaking and public participation, by assuring all that analysis based on the 2008 inventory does not underestimate potential impacts.
- Was the 2008 inventory used in the analysis because it was the most recent complete data set at the time the NOP was issued in July of 2009?
- How often is an emissions inventory taken?
- Please provide the quantities shown in this bar graph for each of the emissions.
- Are these levels significant?
- Why is Ozone not in the table?

On page 4.3-7, the DEIR states,

“Figure 4.3-1 summarizes emissions of criteria air pollutants and precursors within Amador County for various source categories.”

- What are “precursors”? Please explain the role they play in air quality.

## **AMBIENT AIR QUALITY**

Page 4.3-7 to 4.3-9

In our scoping comments we explained the importance of the environmental setting sections of an EIR. “An EIR must contain an accurate description of the project’s environmental setting. An EIR ‘must include a description of the physical environmental conditions in the vicinity of the project ... from both a local and regional perspective. This environmental setting will normally constitute the baseline physical conditions by which a lead agency determines whether an impact is significant.’ (Guidelines, § 15125, subd. (a).) There is good reason for this requirement: ‘Knowledge of the regional setting is critical to the assessment of environmental impacts.... The EIR must demonstrate that the significant environmental impacts of the proposed project were adequately investigated and discussed and it must permit the significant effects of the project to be considered in the full environmental context.’ (Guidelines, § 15125, subd. (c).) We interpret this Guideline broadly in order to ‘afford the fullest possible protection to the environment.’ (*Kings County Farm Bureau, supra*, 221 Cal.App.3d 692, 720.) In so doing, we ensure that the EIR’s analysis of significant effects, which is generated from this description of the environmental context, is as accurate as possible.” (*Friends of the Eel River v. Sonoma County Water Agency* (2003) 108 Cal.App.4th 859, 874; quoted in Foothill Conservancy Scoping Comments, Chapter 1, p. 5.)

The Amador County monitoring station is sited at approximately 1,250’ elevation, on Shopping Drive, less than ¼ mile from SR Highway 49, a busy highway, in the city of Jackson. Amador County is approximately 605 square miles, with elevations from 100’ to 9000’. Elevations in Amador County range from over 9,000 feet at the Sierra crest down to several hundred feet above sea level at the County’s boundary with Sacramento County.

On page 4.3-7, in the third paragraph, the DEIR states that the city of Jackson

“...is the only monitoring station in Amador County that can provide “sufficient data to meet EPA and ARB criteria for quality assurance. The San Andreas air quality monitoring station on Gold Strike Road in Calaveras County is located 15 miles south of Jackson. In general, the ambient air quality measurements from these monitoring stations are representative of the air quality in the County.”

On page 4.3-2, in the first paragraph, ENVIRONMENTAL SETTING, the DEIR states,

“Natural factors that affect pollutant transport and dispersion include terrain, wind, atmospheric stability, and sunlight. Therefore, ambient air quality conditions within the local air basin are influenced by such natural factors as topography, meteorology, and climate, in addition to the amount of air pollutant emissions released by existing air pollutant sources.”

On page 4.3-2, in the second paragraph, Topography, Climate, and Meteorology, the DEIR states,

“Topography is highly variable throughout the County and includes rugged mountain peaks and valleys with extreme slopes and elevation variations in the Sierra range, as well as rolling foothills to the west.”

On page 4.3-3, at the end of the first paragraph, the DEIR says,

“From an air quality perspective, the topography and meteorology of the MCAB [Mountain Counties Air Basin] combine such that local conditions are the predominate factor in determining the effect of emissions in the MCAB.”

- Considering the significance of topography, climate and meteorology on air quality, please explain why there is only one monitoring station for the county.
- Please explain what criteria were used to select the site in Jackson to monitor data for the county?
- Explain why the air quality measurements from this one monitoring station are accepted as providing “representative” ambient air quality measurements in Amador County and are sufficient for determining level of significance, impacts and mitigations measures.
- Explain why the test results from the one monitoring station are acceptable and sufficient to determine levels of significance for the entire county and to establish air quality standards, rules and regulations, impacts and mitigations measures for the entire county.

As we noted in our scoping comments, “Among the most relevant aspects of the environmental setting that must be disclosed in an EIR, is that the agency must divulge harm to the environment caused by current and past mismanagement, and any efforts being made to remedy that harm that might affect the proposed project. (Friends of the Eel River v. Sonoma County Water Agency (2003) 108 Cal.App.4<sup>th</sup> 859, 874.)” (Foothill Conservancy Scoping Comments, Chapter 1, p. 6.)

- Provide the number of days for the years 2010, 2011, 2012, and 2013, when the standards of criteria pollutants were exceeded.
- During the last ten years, in which years have the county met the attainment requirements?

On page 4.3-8 is Table 4.3-2 titled Ambient Air Quality Summary.

Correct the title on Table 4.3-2 to read:

**“Amador County’s Ambient Air Quality Summary.”**

- Why is some data “unavailable” in the Table?
- In the last paragraph on the page, the DEIR says there are “three basic designation categories”. Why is there an “unclassified” status? What that does that status does it mean?
- Can an emissions inventory be created from the “Ambient Air Quality” data in Table 4.3-2?
- How many years of previous data for emissions and air quality are needed to plan and implement air quality programs and to meet air quality standards for the next 20-30 years? Please provide data and analysis sufficient to plan and implement air quality programs for the next 20-30 years.

**TOXIC AIR CONTAMINANTS**

Page 4.3-9

On page 4.3-9, in paragraph 4, correct the highlighted sentence.

“In 2000, ARB approved a comprehensive diesel risk reduction plan to reduce emissions from both new and existing diesel-fueled vehicles and engines. **ARB estimated that an average statewide concentration of 1.8ug/m and an associated health risk of 540 excess cancer cases per million people (ARB 2009).** The regulation is anticipated to result in an 85% decrease in statewide diesel health risk in 2020 relative to the year 2000 diesel risk (ARB 2009).

- The italicized sentence needs to be corrected. Note the period between the word “million” and “people”.

On page 4.3-9, in paragraph 2, the DEIR says,

“TAC emissions from individual facilities are quantified and prioritized. “High-priority” facilities must perform a health risk assessment and, if specific thresholds are violated, must communicate the results to the public in the form of notices and public meetings. The regulation of TACs is generally through statutes and rules that require the use of the maximum or best available technology (MAC or BACT) to limit TAC emissions.”

- Provide a list of Amador County’s high priority facilities, their locations, and a list of the threshold violations that have occurred in each during the past five years.
- Explain how the county and the facilities resolved the violations and what steps were implemented to avoid future violations.
- How and by whom are these emissions monitored?

### 4.3.3 IMPACTS AND MITIGATIONS MEASURES

#### Analysis Methodology

As we explained in our scoping comment, “The environmental effects that must be considered in an EIR include, direct and indirect effects, short and long-term effects, *physical changes* in an area, *potential health and safety problems*, changes in ecological systems, changes in population distribution and concentration, changes in land use, effects on public services, and *effects on natural resources* including water, scenic beauty, etc. (CEQA Guidelines, sec. 15126.2, subd. (a).)” (Foothill Conservancy Scoping Comment, Chapter 1, p. 7, emphasis added.) It is insufficient to disclose only the primary project impact without correlating it to the ultimate impacts on the human environment. (*Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4<sup>th</sup> 1184.)

- On the Air Resources Board website, it says:

***“What is ozone?”***

Ozone, an important ingredient of smog, is a highly reactive and unstable gas capable of damaging the linings of the respiratory tract. This pollutant forms in the atmosphere through complex reactions between chemicals directly emitted from vehicles, industrial plants, and many other sources. Key pollutants involved in ozone formation are hydrocarbon and nitrogen oxide gases.”

***“Health and Welfare Effects from Exposure to Ambient Levels of Ozone***

Exposure to levels of ozone above the current ambient air quality standard can lead to human health effects such as lung inflammation and tissue damage and impaired lung functioning. Ozone exposure is also associated with symptoms such as coughing, chest tightness, shortness of breath, and the worsening of asthma symptoms. The greatest risk for harmful health effects belongs to outdoor workers, athletes, children and others who spend greater amounts of time outdoors during smoggy periods. Elevated ozone levels can reduce crop and timber yields, as well as damage native plants. Ozone can also damage materials such as rubber, fabrics and plastics.”

<http://www.arb.ca.gov/research/aaqs/caaqs/ozone/ozone.htm>

Amador County has a small population but because air pollution blows in from the Sacramento Valley and the Bay region, air pollution gets trapped in our foothills and the mountains contributing to increased ozone levels. ROG and NOx are precursors of ozone and the county also generates particulate matter (PM) levels in the winter, mainly from older wood burning stoves, burning of wet yard waste, and fireplaces.

As noted above, the Air Resources Board states “elevated ozone levels can reduce crop and timber yields, as well as damage native plants”. In Amador County, we have two crops that are known to be especially ozone sensitive - pines and grapes.

That National Aeronautics and Space Administration states on their website,

***“Ozone Affects Plants and Causes Economic Loss***

Ozone air pollution has been known since the late 1950s to cause significant injury and economic losses to many agricultural crops, herbaceous ornamentals, native plants and numerous forest tree species throughout many regions of the U.S., Canada, and Mexico. First discoveries of direct effects included confirmation of ozone-caused symptoms on grapes in California followed by similar confirmations of symptoms on certain varieties of tobacco, potato, beans, and eastern white pine in eastern U.S. (Karnosky et al., 2007). Many agricultural, forest, and native plant species are continuing to be identified as sensitive to ozone air pollution with confirmation of field symptoms being successfully duplicated under controlled ozone exposures within laboratory and field chamber investigations (Burkey et al., 2005; Innes et al., 2001; Lee et al., 2008; Orendovici et al., 2003). Foliar symptoms and related productivity effects have been documented on ozone sensitive plant species in many European and Asiatic countries. Given projected trends in populations, economic outputs, and the associated increased demands for required energy supplies, the impacts of ozone air pollution are very likely to increase.” (<http://science-edu.larc.nasa.gov/ozonegarden/detect-indicators.php>)

A study presented by the USDA states,

“In California, ozone-caused yield losses were highest in cantaloupe, grape, cotton, orange, onion, and bean, where losses were projected to range from 12 to 31%.” ([http://www.nrcs.usda.gov/Internet/FSE\\_DOCUMENTS/nrcs143\\_008861.pdf](http://www.nrcs.usda.gov/Internet/FSE_DOCUMENTS/nrcs143_008861.pdf))

There has been ongoing research and study of the impacts of ozone (and other contaminants) to pines in the Western Sierra and they all concur that,

“The major pollutants causing ecological harm in the Sierra Nevada are ozone, which can be toxic to plants, and nitrogen deposition, which can induce undesirable effects on terrestrial and aquatic ecosystems. Other airborne pollutants of concern include black carbon, particulate matter (PM), pesticides, and heavy metals, including mercury. Atmospheric pollutants that are delivered in wet and dry forms cause deposition of nitrogen to forests and other land areas. The highest potential for ozone to injure plants occurs on western, low-elevation slopes that have elevated daytime levels that coincide with the highest physiological activity of plants. However, recent evaluations of ozone injury in the Sierra Nevada are lacking. Ozone and nitrogen deposition interact with other environmental stressors, especially drought and climate change, to predispose forests to impacts of pests and diseases.” ([http://www.fs.fed.us/psw/publications/documents/psw\\_gtr247/chapters/psw\\_gtr247\\_chapter8\\_1.pdf](http://www.fs.fed.us/psw/publications/documents/psw_gtr247/chapters/psw_gtr247_chapter8_1.pdf))

Other counties all over the nation are addressing ozone problems. Ozone affects not only sensitive receptors, like people with asthma and children, but healthy adults as well. Considering that Amador County is a nonattainment area for ozone, and that ozone is a



serious quality of life issue, why hasn't the DEIR properly addressed the impacts of ozone? Please address these deficiencies.

As noted in our scoping comment, “[T]he EIR should provide a sufficient degree of analysis to allow decisionmakers to make an intelligent judgment. In addition, it must reflect a good faith effort at full disclosure. (CEQA Guidelines, sec. 15151.) "A prejudicial abuse of discretion occurs if the failure to include relevant information precludes informed decisionmaking and informed public participation, thereby thwarting the statutory goals of the EIR process." (Kings County Farm Bureau et al. v. City of Hanford (5th Dist. 1990) 221 Cal.App.3d 692, 712 [270 Cal.Rptr. 650]; quoted in Foothill Conservancy Scoping Comments, Chapter 1, p. 3.) Furthermore, EIRs must be "organized and written in a manner that will be meaningful and useful to decisionmakers and to the public." (Pub. Resources Code, sec. 21003, sub. (b).)

- Regarding Appendix B, the tables are not easy to use and understand and limiting to determine the analysis, assumptions and conclusions presented in the DEIR. It is not clearly identifiable which tables are applied to which impacts, mitigations measures, and significance after mitigation. There are abbreviations with no explanations. For example, what is meant on page 7 of 18, 4.3 “Trip Type Info”? There are tables with default values and new values but how were those values arrived at? Why are some of the tables filled with nothing but zeros? How am I to know if these are accurate, flawed assumptions, or even applicable? As a layperson, these tables are confusing and difficult, if not impossible, to interpret. Please correct these problems.

On Page 4.3-11, in the second paragraph, the DEIR states,

“Modeling was based on plan-specific data, when available. However, when information was not available (e.g., amount of land to be disturbed/graded per day, types of equipment to be used, number of construction employees), reasonable assumptions and default settings were used to estimate air pollutant emissions.”

- It is not clear how much “plan-specific data” is available. What amount of the modeling was able to use plan-specific data and what amount used reasonable assumptions and default settings?
- The DEIR for the Air Quality section does not provide data on population for the “existing” conditions and population projections for 2030 used in your analyses.
- Comments cannot be made on the analyses and mistakes can't be corrected because the DEIR has failed to explain what are their “reasonable assumptions and default settings”. Please add the “reasonable assumptions” and the “default settings” and explain why they are “reasonable” and what are the “default settings.”
- Please note that the Amador County Long Range Transit Development Plan (February 2013), adopted by the Amador County Transportation Commission, on page 42, Demographic and Development Forecasts, states,

“Table 20 also presents population projections by age. These forecasts are useful in considering future trends in demand for transit services:

- Countywide total population is forecast to increase by 14,451 or 36 percent between 2010 and 2030. This represents an annual growth rate of 1.5 percent.
  - Over a third (37 percent) of this future growth in population by 2030 will consist of elderly residents (defined by age 60 and above), which are forecast to increase by a full 7,024 persons. Within this elderly population increase, more than half (57 percent) will consist of older seniors age 75 and above that are more likely to need “door to door” transportation services.
  - Reflecting the aging of the Baby Boom generation, the greatest increase in younger seniors will occur between 2010 and 2020, followed by the greatest increase in older seniors between 2020 and 2030.
  - The number of children (less than 10 years of age) and youth (age 10 to 19) is forecast to increase very slowly in the next decade, followed by a consistent increase. Any appreciable increase in youth population (a group with a relatively high demand for transit service) does not occur until after 2020.”
  - On page 43, Table 20 lists the total population in 2010 as 40,337 and projects the 2030 population to be 54,788. Their source is the California Department of Finance, Demographic Research Unit.”
- The increase in elderly residents and aging Baby Boomers is probably not consistent with the “reasonable assumptions and default settings” used in the methodology.
  - Considering the projection of increased elderly residents, are your assumptions accurate regarding the increased workforce in the county and jobs?
  - Considering mobile operational emissions and the projected growth in jobs, did you take into account non-residential traffic (i.e. commuters and tourism)? If not, please include that information.
  - You make the assumption that advancements in engine technology, retrofits, and turnover in the equipment fleet will result in lower levels of emissions. However, in Amador County, used vehicles that are still operational are sold for reuse, whether personal or commercial, and probably very few of these used vehicles are scrapped and taken off the roads. Is there data to account for the number of vehicles that would be scrapped justifying the assumption of lower levels of emissions because of turnover? Please include the data.

## **THRESHOLDS OF SIGNIFICANCE**

On page 4.3-11, the DEIR states,

“Based on Appendix G of the State CEQA Guidelines, an impact on air quality is considered significant if implementation of the Draft General Plan would do any of the following:” Following that is a list of four points.

- Include the fifth point in Appendix G, III. AIR QUALITY, that states,

*“Conflict with or obstruct implementation of the applicable air quality plan?”*

Page 4.3-11, in the last paragraph, the DEIR states,

“As stated in Appendix G, the significance criteria established by the applicable air quality management district may be relied on to make the above determinations. The Amador Air District does not have adopted thresholds of significance to determine significant increases in levels of criteria air pollutant emissions. Therefore, any net increase in emissions would be considered a significant impact for the purposes of the air quality impact analysis in this section. This approach is for the Draft General Plan EIR only and does not imply that future projects developed as a result of the Draft General Plan would be required to use this threshold.”

- Please explain the legal justification for the County changing the threshold of significance from one EIR to the next. If the County can randomly raise or lower the threshold from project to project, then impacts previously considered significant and requiring mitigation, could subsequently be deemed insignificant, and trigger no mitigation. This calls into great question efficacy of the County’s proposals to defer general plan impact mitigation until later project-level environmental reviews. This also seems inconsistent with the goal to interpret CEQA “to afford the fullest possible protection to the environment within the reasonable scope of the statutory language.” (Communities for a Better Environment v. California Resources Agency (2002) 103 Cal.App.4<sup>th</sup> 98, 110; citing Laurel Heights Improvement Association v. Regents of University of California (1988) 47 Cal.3d 376, 390.)
- How is this approach useful? It makes an assumption that “*any net* increase in emissions” can result in a significant impact. This assumption could be incorrect. This analysis can result in a significant impact when there may be no significance. Or there could be an increase in one pollutant that does not raise the net result and causes the conclusion to be less significant. However, that one increased pollutant can be of significance.
- The assumption that “any net increase in emissions would be considered a significant impact for the purposes of the air quality impact analysis” is misleading. If the Amador Air District established an Air Quality Plan to implement policies and procedures to mitigate criteria air pollutants significant impacts could be avoided or reduced. Establishing a plan would provide the Air District with the ability to determine if conditions were approaching a level of significance and the Air District could address the issues before the emissions reach high levels or exceed thresholds. Adopting an Air Quality Plan with thresholds of significance will allow for planning and management to reduce impacts to less than significant.
- As a mitigation measure, the county should require new development to pay for its full long term impacts to air quality based on assessment of the actual impacts of the development. Those air quality fees should be used for monitoring equipment, public transit, sidewalks, bike lanes and other programs that reduce emissions and impacts to less than significant.

## IMPACT ANALYSIS

On page 4.3-12, the DEIR states,

### **“IMPACT 4.3-1, Construction-Related Emissions.**

Implementation of the Draft General Plan would lead to project-generated construction activities that would result in emissions of ROG, NO, PM10, and PM2.5 with the potential to substantially contribute to emissions concentrations that exceed the NAAQS and CAAQS (Table 4.3-1). Construction-related emissions of these criteria air pollutants and precursors could violate or contribute substantially to an existing or projected air quality violation, result in a cumulatively considerable net increase in non-attainment criteria pollutants, and/or expose sensitive receptors to substantial pollutant concentrations. This impact would be **significant**. “

In paragraph 2, it states,

“Given that exhaust emission rates of the construction equipment fleet in the state are expected to decrease over time as stricter standards take effect and older equipment is retired, maximum daily construction emissions were estimated using the earliest calendar year when construction could begin to generate conservative estimates. In later years, advancements in engine technology, retrofits, and turnover in the equipment fleet are anticipated to result in lower levels of emissions.”

- This is unclear. What years are you talking about for “earliest” and “later” for your estimations and what data did you use for your assumptions?
- When were the standards and laws requiring the retrofits, retirement, turnovers and cleaner equipment implemented and were there goals set for the desired outcomes? If so, please provide them.

In paragraph 4, it states,

“Construction under the Draft General Plan would occur from 2013 through 2030 (assuming a baseline year of 2013), but the timing of construction activities each year is unknown. Therefore, it was assumed that construction under the Draft General Plan would occur evenly between 2013 and 2030, and approximately 6 percent of the construction activity would occur during any given year. It is likely that the different types of construction activities (i.e. site grading, trenching, asphalt paving, building construction, and application of architectural coatings) would occur simultaneously at various locations within the planning area. Modeling of construction emissions was conducted for the year 2013, as this is assumed to be the earliest year during which construction would occur.”

- Using an average is not a very good method to establish substantial results for determining quantities and concentrations of emissions and their adverse health impacts. If the assumption is that construction activities are occurring evenly and simultaneously from 2013 to 2030, why not model for the entire period? Aren't there better examples of how to determine significance and mitigations for construction?

On page 4.3-13 is Mitigation Measure 4.3-1a: Implement Measures to Control Particulate Matter Emissions Generated by Construction Activities) and on page 4.3-14 is Mitigation Measure 4.3-1b: Reduce Exhaust Emissions from Construction Equipment. These comments refer to **Impact 4.3-1** and both mitigation measures proposed.

- If the conditions of the permit are not met, what actions will the county take?
- Implementation measures should be required that will address any and all construction-related emissions and pollutants. In addition to the examples of mitigation measures provided in the DEIR, the implementation of the following mitigations can result in less than significant impacts and result in fewer “unavoidable” outcomes than the optional examples provided.
  1. The Amador Air District will review new development projects for the potential to cause adverse air quality impacts.
  2. The Amador County Air District should create a handbook for all discretionary construction projects. It would include monitoring and mitigation programs to ensure compliance with the conditions of the permit. It would require applicants to use the most current best management practices feasible to reduce all criteria air pollutant emissions. The handbook can be used to establish a partnership between the applicant and the county and the applicant is provided with clear information about the Air Quality plan, permit requirements, expectations, and consequences if conditions are not met. The program requirements could reduce emissions to less than significant.
  3. Require new development to pay for its full impacts to long-term air quality impacts. Fees will be based on an assessment of the actual impacts and will be used for monitoring equipment, public transit, sidewalks, bike lanes and other measures to reduce emissions and create a healthy environment.
  4. Permit conditions for discretionary projects shall include the following:
    - a) Development projects shall incorporate all economically feasible and most current Best Management Practices and control technology to reduce emissions from construction, grading, excavation, and demolition activities to avoid, minimize, and/or offset their impacts consistent with the Amador Air District requirements.
    - b) Require construction plans to show how the project will implement the economically feasible and most current Best Management Practices.
    - c) All access roads, driveways, and parking areas serving commercial and industrial development are constructed with materials that will minimize particulate emissions and are appropriate to the scale and intensity of use.
  5. The Amador Air District will review new development projects for potential causes of adverse air quality impacts. The review will be coordinated with other interested parties, such as Health and Human Services and the public, and will incorporate

assessment of impacts in relationship to other proposed or existing projects to avoid cumulative impacts.

On page 4.3-14, the DEIR states,

**“IMPACT 4.3-2: Generation of Long-term Operational (Regional) Emissions of ROG, NO<sub>x</sub>, PM<sub>10</sub> and PM<sub>2.5</sub>.** Operational area-and mobile-source emissions from implementation of the Draft General Plan would lead to long-term operational emissions of ROG, NO<sub>x</sub> PM<sub>10</sub> and PM<sub>2.5</sub> that could violate or contribute substantially to an existing or projected air quality violation, result in a cumulatively considerable net increase in non-attainment criteria pollutants, and/or expose sensitive receptors to substantial pollutant concentrations. This impact would be **significant.**”

- Define “Regional”.
- The importance of the DEIR is about means for mitigating impacts to local air quality, not regional. Please revise to reflect local air quality instead of regional air quality.

On page 4.3-15, in the second paragraph, the DEIR refers to Table 3-1 in Chapter 3 “Project Description” of the Draft General Plan.

- To make it easier to find Table 3-1, please include the page number it is on, which is 3-9 of the Draft General Plan.

On page 4.3-15 is “Table 4.3-4, Summary of Modeled Long-Term Operational Emissions Under the Draft General Plan”. The DEIR says the detailed summary of the modeling assumptions inputs and outputs of this table are in Appendix B.

- On what page(s) in Appendix B are the models and summaries?
- In the discussion for IMPACT 4.3-2, there is no reference about the emission source “Energy”, shown in Table 4.3-4. What is “Energy” in this context? Please define “Energy”.
- The table lists data in tons/year and the table providing pollutant standards, Table 4.3-2, page 4.3-8, provides standards in parts per million and micrograms per cubic meter. How can we compare the information to know which emissions in Table 4.3-4 meet or do not meet the pollutant standards provided in 4.3-2? Which sources in Table 4.3-4 meet and exceed the standards?
- Are these models and summaries only from Amador County?
- In the table the results show that mobile sources of ROG and NO<sub>x</sub> are reduced by 54.98% for ROG and 60.37% for NO<sub>x</sub>. You say that it is the net decrease from the state and federal regulations reducing vehicle emissions from advancements in engine technology and fleet turnover, even with operational emissions, the ROG and NO<sub>x</sub> emissions will be less than significant. These are big changes just from mobile sources – how were those numbers reached? Provide the data used to reach this conclusion.

In paragraph 2 on page 4.3-16 is a formula provided to indicate whether the “plan” is successful in addressing motor vehicle emissions (“whether VMT increases at a slower rate than population growth”). The conclusion from the formula is, “Therefore, implementation of the Draft General Plan would reduce VMT per service population for the region compared to existing conditions.”

- Define “Regional” in the Final EIR.
- The importance of the DEIR is about local air quality and means for mitigating impacts, not regional. Please revise to reflect local air quality instead of regional air quality.
- Table 4.12-, page 4.12-2, of the Population and Housing Document of the DEIR states there are 37,911 residents in 2011. The number of residents in your formula state there are 22,123. In the Final EIR, please provide the source used for the existing number of residents in your formula and why it is different from the number provided in the Population and Housing Document.
- Table 4.12-1, page 4.12-2, of the Population and Housing Document states there will be 42,036 residents in 2030. The number of residents in your formula is 25,241. In the Final EIR, please provide the source used for your 2030 number of residents in this formula and why it is different from the number provided in the Population and Housing Document.
- In the Final EIR, please provide the source used for the 2030 number of jobs (17,586) in this formula. Based on your figures, the population increase is about 3,118 for 2030 and the increase in jobs is 11,121 (approximately 270%) in approximately 17 years. These numbers seems unrealistic and skew the data to come to the assumption of significant and unavoidable impacts.
- There are inconsistencies in the population data in this section of the DEIR with the data in the Population and Housing Document and the Amador County Long Range Transit Development Plan. Please resolve inconsistencies in the Final EIR.
- At the end of the third paragraph, the DEIR says reductions would be “...in the region”. What region? Why is “region” being used sometimes and not others? Again, the DEIR is about local air quality.
- I appreciate that you included the detailed summaries of the modeling assumptions, inputs and outputs in Appendix B. It is quite a challenge to determine which ones apply to the tables, assumptions and conclusions in the DEIR. For example, using the results in Table 4.3-4, you come to the conclusion that even with implementation of policies recommended in the Draft General Plan, the operational and mobile emissions would result in a significant impact. I don’t understand how you reach that conclusion. Please explain in the final EIR.

On page 4.3-17 is “**Mitigation Measure 4.3-2a: Implement Reduction Measures for Discretionary Projects.**”

- In the Final EIR, require fees be paid to the Amador County Transit system for vehicles and equipment to meet increased capacity and operational costs resulting from the projects.

**“Mitigation Measure 4.3-2b: Implement Program D-7, Air Emissions and Sensitive Receptors”**

- In the Final EIR, please reference the location of “**Program D-7**”.
- Add Program D-7, point number 2, page P-23:
  - “In the review of the development proposals, the County will use reference the guidelines presented in the California Air Resources Board’s Air Quality and Land Use Handbook: A community Health Perspective, or the Amador Air District guidelines and recommendations available at the time, when established buffers around existing or proposed sources of toxic air contaminants or odorous emissions. During future environmental CEQA review for individual projects, projects that would result in substantial TAC emissions directly or indirectly (e.g., industrial sources), or for land use projects that would expose sensitive receptors to substantial TAC concentrations (e.g. residential land uses located near existing TAC sources, the County will require an HRA to be performed by project applicants to determine whether existing or proposed on-site sensitive receptors will be exposed to significant levels of TAC emissions. An HRA would only be required for those projects that would be anticipated to expose sensitive receptors to substantial TAC concentrations based on the project description or other relevant characteristics as determined by County Planning staff during the environmental review process. If the results of the HRA indicate a significant impact, the individual project applicant shall employ measures (e.g., air filters, project redesign) to reduce exposure below acceptable limits.

As noted in our scoping comments, “When approving projects that are general in nature (e.g. general plan amendment), agencies must develop and approve whatever general mitigation measures are feasible, and cannot merely defer the obligation to develop mitigation measures until a specific project is proposed. (Citizens for Quality Growth v. City of Mount Shasta (3 Dist. 1988) 198 Cal.App.3d 433, 442 [243 Cal.Rptr. 727]).” (Foothill Conservancy Scoping Comment, Chapter 1, p. 9.)

For both mitigation measures 4.3-2a and b:

- In addition to the mitigation measures described on page 4.3-16 from the Conservation Element and Circulation Element of the Draft General Plan, and those listed on page 4.3-17, there are other mitigation measures not listed in the DEIR, including those provided in my responses elsewhere in this document, with the feasibility of changing the conclusion in the DEIR that there will be significant and unavoidable impacts. These include, but are not limited to:
  1. Implementation of an Amador Air Quality Plan and establishment of thresholds of significance.



2. Make the best efforts possible to minimize motor vehicle emissions through the promotion of alternative fuels.
3. Require local government to take the lead and set an example by initiating energy efficiency and emissions reduction programs. Common and feasible examples include controlled lighting in all buildings and grounds; timed irrigation systems for water parks and landscapes; energy efficient “bulbs”; more solar panels in county-owned buildings and on county-owned parking lots.
4. It is not hard to find many energy efficient programs. The state and federal government web pages, as well as local governments have long lists of examples.
5. The county can set purchasing requirements for low or zero emission vehicles and alternative fuels for its fleets. Those requirements should include transit vehicles and vehicles used by county contracted businesses, such as those used for the collection of waste, recycling and green waste.
6. The County can require access roads, driveways, and parking areas (including their own) for commercial and industrial sites be constructed using materials that minimize particulate emissions, that are permeable, and are appropriate for the scale and intensity of use. This can apply to new or remodeled projects.
7. It can require through the Amador Air Quality plan that industrial facilities incorporate feasible Best Management Practices and control technology to reduce PM<sub>10</sub> and PM<sub>2.5</sub> emissions so they are consistent with all regulations.
8. It can require new housing projects to reduce air quality impacts from energy consumption.
9. The county can provide residential and commercial users with rebates, discounts, and other incentives for replacement of the following with the most current low emission and EPA certified products: polluting wood stoves, fireplaces, generators, HVAC units, fossil fuel burning landscaping equipment, and appliances.
10. Require curbside collection and drop-off programs for all green waste (including but not restricted to grass, pine needles, leaves, woody debris) to be sent to composting and biomass facilities. This would reduce the use of chipping equipment and debris burning.
11. It can encourage and promote implementation of Best Management Practices for agricultural and industrial operations. For example, to the maximum extent possible and feasible, pave roads, use windbreaks, and reduce the use of pesticides and tilling on high-wind days.
12. The county can pave and maintain its roads to reduce PM<sub>10</sub> and PM<sub>2.5</sub> emissions.
13. The county can institute smog checking.
14. The county can work with neighboring jurisdictions to partner on air quality issues and programs to reduce emissions.
15. In addition to saying, “Promote ‘least polluting’ ways to connect people and goods to their destinations”, include implementation of ways to connect people and goods to their destinations.

On page 4.3-18 the DEIR states,

**“IMPACT 4.3-3, Generation of Long-Term Operational and Local Mobile-Source Emissions of CO. Emissions of CO from local mobile sources and generated by long-term operations would not result in or substantially contribute to emissions concentrations that exceed the 1-hour ambient air quality standard of 20 ppm or the 8-hour standard of 9 ppm, respectively. As a result, this impact would be less than significant.”**

- This section lists eight “intersections” and provides the highway/road names. Provide the names of the intersecting streets for the eight intersections. There is more than one intersection on some of these roads and highways so we cannot determine which of them would operate at LOS E or F.

On page 4.3-19, the first paragraph, the DEIR states,

“Implementation of the Draft General Plan would also not contribute traffic to a location where horizontal or vertical mixing of air would be substantially limited, and the mix of vehicle types at these intersections is not anticipated to have a greater percentage of heavy-duty vehicles and would not be substantially different from the County average. “

- What is the data that supports the conclusion of having no anticipation of a greater percentage of heavy-duty vehicles at intersections? With the DEIRs estimation of population increases and an increase to 17,586 jobs in 2030, why wouldn't there be more heavy-duty vehicles? Some industries use a high percentage of very heavy-duty vehicles, like propane trucks and garbage trucks. Wouldn't they change the percentage of heavy-duty vehicles at intersections?
- On page 4.3-18, the DEIR says,

“Under specific meteorological conditions, CO concentrations near roadways and/or intersections may reach unhealthy levels for local sensitive land uses such as residential units, hospitals, schools, and childcare facilities.”

- Sacramento is a metropolitan area in the valley and we have a wide variety of elevations and meteorological conditions in the County. Are the Sacramento Metropolitan Air Quality District (SMAQMD) guidelines appropriate to use and if so, please explain why?
- The Sacramento guidelines only address CO from mobile emissions and not long term and operational emissions. Carbon monoxide does primarily come from vehicular exhaust but it is not the only source for outdoor emissions.
- Burning wood, oil, natural gas, propane, kerosene and coal also produces CO, and other criteria air pollutant. In Amador County, we typically don't use coal, but we do use the other fuels. For example, wood stoves are very commonly used for heating, even in some commercial sites. For some people, wood stoves are their only source of heat in the winter. Wood smoke is a source of particulate matter, hydrocarbons, nitrogen oxides, toxic air contaminants and odors. Older woodstoves and fireplaces, along with the burning of residential yard waste, are important contributors to particulate matter (PM) air pollution. Woodstoves routinely produce several times more air pollutants than promoted by

manufacturers because of improper operation (including use for burning residential refuse. Burn barrels are banned.), maintenance, and normal equipment degradation with use. Residential yard debris burning smoke generated by yard waste significantly worsens air quality. In the final EIR, please address the outdoor and indoor long term and operational emissions, impacts, levels of significance and mitigation measures.

On page 4.3-19 the DEIR states,

**“IMPACT 4.3-4, Exposure of Sensitive Receptors to Short-and Long-Term emissions of Toxic Air Contaminants. Implementation of the Draft General Plan would result in exposure of sensitive receptors to short- and long-term emissions of TACs from on-site stationary and mobile sources, or from off-site mobile sources. This impact would be significant.”**

In the first paragraph under **“Construction”**

- Define a “short period of time” in this paragraph. What is the basis for the assumption that the individual projects will last for that time period? Some projects occur for many years; for example, Castle Oaks in Ione and Martell Plaza in Martell.
- In the second paragraph of this section on page 4.3-19, the DEIR states that they anticipate individual projects to last about 6 months to a year and “Thus, if the duration of potentially harmful construction activities near a sensitive receptor was 1 year, the exposure would be approximately one percent of the total exposure period used for typical health risk calculations. Considering this information, the highly dispersive nature of diesel PM, and the fact that construction activities would occur intermittently and at various locations over approximately 17 years (i.e., 2013 to 2030), it is not anticipated that the implementation of the Draft General Plan would expose sensitive receptors to substantial construction-related TAC concentrations. Therefore, this impact would be **less than significant.**”
- I don’t understand how can the impacts can be seen as “less than significant” when on page 4.3-9 in the DEIR, it states, “For regulatory purposes, carcinogens such as diesel PM are assumed to have no safe threshold below which health impacts would not occur. Any exposure to a carcinogen poses some risk of contracting cancer.”
- What quantity of TACS is harmful to sensitive receptors?
- If there are on-going projects in the area of sensitive receptors, when does it become cumulatively significant?

On page 4.3-20 of the DEIR,

- Please provide the location of **“Mitigation Measure 4.3-2b”** and **“Program D-7 (2)”**.

On page 4.3-19 the DEIR states,

**“IMPACT 4.3-6: Exposure of Sensitive Receptors to Odors. Long-term project operation would result in siting sensitive receptors near existing sources of odorous emissions. This impact would be significant.”**

- On page 4.3-10 of the DEIR, the section on **ODORS**, says odors are generally an annoyance and not a health problem. Examples of odors we experience indoors and outdoors include architectural coatings, gasoline, formaldehyde, auto and truck exhaust, VOCs in buildings, solvents used in paints, and equipment with 2-cycle engines. We know that vehicles not fitted with current or effective emission controls emit toxic pollutants. We not only see it, we smell it. Some toxic emissions are not visible, but they do emit odors. They do affect people with allergies and respiratory problems. Odors may be seen as an annoyance but they are also indicators of potential air quality problems, including those that affect the health of individuals and the natural environment.

On page 4.3-22, the DEIR states,

“The Amador Air District does not provide guidelines for analysis of odor impacts. Rule 205, “Nuisance,” prohibits sources from discharging air contaminants or other material which can cause injury, detriment, nuisance, or annoyance to any considerable number of persons. However, this rule does not apply to odors emanating from agricultural operations.”

- The DEIR states in paragraph 3 that, “screening distances have been used based on the *broadly similar* air conditions in the SMAQMD region and Amador County.” What are their air conditions and do they really apply to all areas of Amador County? All areas are affected by odors.
- The Amador Air District should establish its own guidelines for analysis of odor impacts.
- The discussion of odors focuses primarily on impacts as a result of land uses, and especially in relationship to construction, vehicles, and commercial/industrial sources of odors. It seems as though this section is dismissive of the importance of odors and health and safety. Odors and healthy air quality need more attention and analysis in the Final EIR.

## 4.4 BIOLOGICAL RESOURCES

### 4.4. 1. Regulatory Setting

As noted in our scoping comment, “The setting section of the DEIR must discuss any inconsistencies between the proposed project and existing general plans and regional plans. (CEQA Guidelines, sec. 15125.) This requirement is especially critical in a General Plan EIR. The General Plan Guidelines encourage cities and counties to review the plans of other neighboring areas, and of other agencies with jurisdiction; and to tailor general plans to conform, so that all the government agencies are pulling in the same direction, toward the same goals, as citizens and taxpayers prefer.” (Foothill Conservancy Scoping Comment, Chapter 1, p. 7.)

On page 4.4-2, the DEIR includes a list of State Plans, Programs, and Policies that would inform decisions on biological resources. An important statewide program was omitted - California Essential Habitat Connectivity Project: A Strategy for Conserving a Connected California (Exhibit 4.4.1-1). As noted on the website (<https://www.wildlife.ca.gov/Conservation/Planning/Connectivity>), this program is valuable in guiding local general plans. Quoting,

“The California Department of Fish and Wildlife and the California Department of Transportation (CalTrans) commissioned a team of consultants to produce a statewide assessment of essential habitat connectivity by February of 2010, using the best available science, data sets, spatial analyses and modeling techniques.

“The goal was to identify large remaining blocks of intact habitat or natural landscape and model linkages between them that need to be maintained, particularly as corridors for wildlife.”

Along with this statewide effort, a regional project was undertaken in the Northern Sierras – the Sierra Nevada Foothills Wildlife Connectivity Modeling Project (Exhibit 4.4.1-2) that provided more detailed habitat connectivity modeling for our region. Maps of natural landscape blocks and critical linkage areas are readily accessible from the California Department of Fish and Wildlife’s BIOS. These maps should be included in the Final EIR and used to determine critical habitat corridors for biological resources.

The DEIR eliminates an informative section on Regional Habitat Conservation Planning that was included in the Biological Resources General Plan Update Working Paper (Exhibit 4.4.1-3). The use of Habitat Conservation Plans or Natural Community Conservation Plans are valuable tools for preserving and protecting biological resources. Large conservation planning in neighboring counties could increase the value of conservation acquisitions and easements in Amador County.

The final EIR should include an updated description of “Regional Habitat Conservation Planning Efforts” as provided in the Working Paper (ibid, p.9-10),

“Many counties in California are undergoing conservation planning efforts at a regional scale through the development of habitat conservation plans (HCPs) and natural community conservation plans (NCCPs). HCPs are authorized by Congress under Section 10(a) of the ESA and allow issuance of incidental-take permits upon approval of a conservation plan developed by the permit applicants. Early HCPs addressed one or two listed species in small areas, often in response to individual development projects. Recent efforts have shifted toward large-scale, multispecies plans, often covering hundreds of thousands of acres and involving multiple jurisdictions or planning partners.

“In 1991 the State of California passed the Natural Community Conservation Planning Act, which established the natural community planning program. NCCPs are carried out under state law and can be even broader than HCPs. This landscape-level approach is typically a more effective means of protecting substantial areas than HCPs; protecting a more substantial area, in turn, has a higher likelihood of conserving special-status species over the long term. Large-scale conservation planning offers several benefits to stakeholders: It accelerates and integrates the permitting process; it reduces applicants’ permitting costs, while improving regulatory certainty; and it facilitates needed public infrastructure projects. The program provides economic incentives for willing private landowners to conserve and steward valuable resources. In addition, it enables local governments to play a leadership role in natural resource conservation and permitting within a framework established in partnership with regulatory agencies. Appendix A provides a brief overview of the HCP and NCCP processes.

“Many local jurisdictions surrounding Amador County are undergoing regional conservation planning efforts on a county and subcounty scale. The following paragraphs briefly describe comprehensive conservation planning efforts currently under way in south Sacramento County, San Joaquin County, and El Dorado County. Calaveras County is also in the preliminary phase of regional conservation planning.

“In Sacramento County the proposed South Sacramento Habitat Conservation Plan (SSHCP) is intended to provide a regional approach to issues related to urban development, habitat conservation, agricultural production, and open-space planning. It would serve as a multispecies, multihabitat conservation plan

addressing the biological impacts of future urban development within the Urban Services Boundary (USB) in the southern portion of the county. The SSHCP emphasizes securing large, interconnected blocks of habitat that focus on protecting intact subwatersheds while minimizing edge effects and maximizing heterogeneity of habitat types. The SSHCP is scheduled for completion and implementation sometime in 2007.

“In San Joaquin County, the San Joaquin County Multi-species Conservation and Open Space Plan (SJMSCP) provides a strategy for balancing the desires to conserve open space, maintain the agricultural economy, and allow development in San Joaquin County. It was developed to avoid, minimize, and mitigate impacts on plant and wildlife habitat projected to occur in San Joaquin County between 2001 and 2051. Ninety-seven species are covered by the SJMSCP, which is intended to provide comprehensive mitigation, in accordance with federal, state, and local regulations, for impacts on these species from SJMSCP-permitted activities. The approach of the SJMSCP is to minimize the potential for take by implementing take avoidance and minimization measures and compensating for incidental take and habitat conversion through payment of fees (or in-lieu land dedication) for conversion of open-space lands. These fees are used to preserve and create natural habitats to be managed in perpetuity through the establishment of habitat preserves. Participation in the SJMSCP is voluntary for local jurisdictions and project proponents. The SJMSCP was adopted in 2001 and is currently being implemented.

“In El Dorado County, the development of an Integrated Natural Resources Management Plan (INRMP) was a condition of the adoption of the 2004 El Dorado County General Plan. The INRMP is in its early stages of development. Once completed, it will identify important habitat in the county and establish a program for effective habitat preservation and management. The INRMP will include an inventory of all habitats present in the county, strategies for protecting important habitats based on coordinated land acquisitions, programs to facilitate mitigation of impacts on biological resources resulting from projects approved by El Dorado County, a list of habitat acquisition opportunities, and descriptions of potential opportunities for restoration and management of selected properties or easements. An oak woodland mitigation plan is an important component of the INRMP and is currently under development. The plan is expected to be completed in early 2007.”

#### 4.4.2 Environmental Setting

In our scoping comments we explained the importance of the environmental setting sections of an EIR. “An EIR must contain an accurate description of the project's environmental setting. An EIR ‘must include a description of the physical environmental conditions in the vicinity of the project ... from both a local and regional perspective. This environmental setting will normally constitute the baseline physical conditions by which a lead agency determines whether an impact is significant.’ (Guidelines, § 15125, subd. (a).) There is good reason for this requirement: ‘Knowledge of the regional setting is critical to the assessment of environmental impacts.... The EIR must demonstrate that the significant environmental impacts of the proposed project were adequately investigated and discussed and it must permit the significant effects of the project to be considered in the full environmental context.’ (Guidelines, § 15125, subd. (c).) We interpret this Guideline broadly in order to ‘afford the fullest possible protection to the environment.’ (*Kings County Farm Bureau, supra*, 221 Cal.App.3d 692, 720.) In so doing, we ensure that the EIR's analysis of significant effects, which is generated from this description of the environmental context, is as accurate as possible.” (*Friends of the Eel River v. Sonoma County Water Agency* (2003) 108 Cal.App.4<sup>th</sup> 859, 874; quoted in Foothill Conservancy Scoping Comments, Chapter 1, p. 5.)

As we noted in our scoping comments, “Among the most relevant aspects of the environmental setting that must be disclosed in an EIR, is that the agency must divulge harm to the environment caused by current and past mismanagement, and any efforts being made to remedy that harm that might affect the proposed project. (*Friends of the Eel River v. Sonoma County Water Agency* (2003) 108 Cal.App.4<sup>th</sup> 859, 874.)” (Foothill Conservancy Scoping Comments, Chapter 1, p. 6.)

On page 4.4-5 of the DEIR, Table 4.4.-1 indicates the major habitat types in Amador County. The table indicates that over 16,000 acres in the county have not yet been mapped for habitat type. The table uses CalFire and USFS data from 2005, nearly a decade ago. Is there recent information to determine the habitat type for this unmapped area? This unmapped area also seems to include geographical areas that are identified as critical habitat for vernal pool ecosystems and tiger salamander habitat, as indicated in Exhibit 4.4.-1. Is the vernal pool ecosystem acreage included in Table 4.4.-1? If not, the acreage of Vernal Pool Complexes should be included and identified as sensitive habitat. Why does the table not include acreage for Freshwater Emergent Wetlands which are mapped on Exhibit 4.4-5?

#### Vegetation and Wildlife

In the subsection, Vegetation and Wildlife, the DEIR (pages 4.4-7 to 4.4-10) contains descriptive paragraphs on the natural habitat communities found in Amador County. The descriptions for wet meadows and freshwater emergent wetlands are missing and need to be added, especially



since these resources are uncommon and provide unique natural resources. While the descriptions of the diverse habitats within the County make for enjoyable reading, they fall short of informing the reader of important planning decisions. Existing conditions must be determined in the EIR. Impacts of the project must be measured against real conditions on the ground. Baseline determinations are the first rather than the last step in the environmental review process. (*Save our Peninsula Committee v. Monterey County Board of Supervisors* (App. 6 Dist. 2001) 87 Cal.App.4<sup>th</sup> 99.)

Basic data that would aid planning efforts are not discussed. These data gaps include:

- 1) What is the extent and type of habitat protected under conservation easements?
- 2) What conversions in habitat type have occurred since the last General Plan? For example, how much oak woodland acreage has been converted to intense agriculture such as vineyards?
- 3) Were past efforts by the County in protecting these natural habitats successful?
- 4) Are habitats that are not deemed ‘sensitive’ in jeopardy of significant reductions in size or quality?
- 5) What critical changes are likely to occur in these habitats due to climate change?

The description needs to identify critical changes that could occur in these habitats in the foreseeable future. With climate change, there is a high likelihood that the Sierra Nevada region will see higher temperatures, lower snowpack, and shifting distributions of plants and animals (Exhibit 4.4.2-1). Furthermore, some natural systems are more vulnerable to climate change than others. In a relevant vulnerability assessment of the Sierra Nevada (Exhibit 4.4.2-2), the vulnerability of seven Sierra Nevada ecosystems and twelve Sierra Nevada species were evaluated. In a companion effort, adaptation strategies for these vulnerable resources were enumerated (Exhibit 4.4.2-3). Some of these strategies are suited for public forest lands; however, many are also applicable to private forest lands and could be used as mitigation for environmental impacts associated with the General Plan. Numerous approaches to climate change vulnerability assessment are available and have been used to provide for the protection of natural resources (Exhibit 4.4.2-4). The DEIR falls short of a reasonable analysis of the environmental setting without assessing the vulnerability of habitats and focal species within those habitats to climate change. The Final EIR should evaluate the vulnerability of the dominant habitat types and sensitive resource communities to climate change in Amador County.

Models of current vegetation versus projected vegetation under different climate change models (e.g. National Center for Atmospheric Research Community Climate System Model or Geophysical Fluid Dynamics Laboratory Coupled Climate Model) are readily available online (e.g. at the California Avian Data Center, <http://data.prbo.org/cadc2/index.php?page=climate-change-distribution>). What will be the likely changes in vegetative cover in Amador County with climate change? What impacts will the General Plan have on natural habitat and sensitive

habitats given changes in these habitats due to climate change? Please include this discussion in the Final EIR.

It is critical to evaluate these “cumulative impacts” of climate change and development. “Cumulative impacts’ refer to two or more individual effects which, when considered together, are considerable or which compound or increase other environmental impacts.” (CEQA Guidelines, sec. 15355.)

### **Woodland Habitats**

On page 4.4-8 of the DEIR, blue oak woodland’s extent and plant community are described. Several species of oaks, particularly Blue Oak and Valley Oak, may not be naturally regenerating at rates that would maintain oak woodlands (Exhibit 4.4.2-5). In this study, eighty-six percent of the studied plots showed tree mortality outpaced sapling recruitment enough to suggest future net loss in canopy cover and tree density. The authors conclude,

“We believe that the stands we sampled represent a typical range of conditions in blue oak woodlands, and therefore our results indicate that poor regeneration rates may exist over large portions of the blue oak range. If such poor rates of regeneration persist over an extended period, the stand density and extent of blue oak woodlands are likely to decline over large portions of the existing range.”

Factors negatively affecting the natural regeneration of blue oaks have also been studied (Exhibit 4.4.2-6). In light of these factors, the authors list several management decisions that would support the natural regeneration of blue oaks. The DEIR fails to describe whether blue oaks in Amador County are regenerating at a sufficient rate to maintain stands. It also does not address factors that might inhibit the recruitment of oak saplings to mature trees. The final EIR should address natural blue oak regeneration, identify impacts to natural regeneration, and recommend mitigation that would improve natural regeneration.

While the DEIR notes the requirements of California Public Resources Code Section 21083.4 in the preservation of Oak Woodland (page 4.4-3), the effectiveness of past mitigation measures in Amador County is not discussed. Without an understanding of whether past measures have successfully avoided or reduced impacts to oak woodlands, it is uncertain that proposed mitigation (Mitigation Measures 4.4-4a, 4.4-4b on page 4.4-41) will avoid significant impacts. The Final EIR should address the effectiveness of past actions. In particular, the Final EIR should answer the following questions:

- 1) How many conservation easements for the protection of oak woodland have been enacted in Amador County? What is the acreage of those easements?

- 2) What is the success of oaks planted as part of mitigation on past projects? Have trees that have died been replaced as required by Section 21083.4? Does Amador County ensure that mitigation is successful by requiring appropriate maintenance?
  - a. What is the success of oaks planted as part of the Caltrans Hwy 49 bypass project? This mitigation project is clearly visible to most Amador residents and visitors. Has Caltrans maintained this mitigation effectively by replacing dead and diseased trees? Did Caltrans follow through on its mitigation obligations? This project is within the jurisdiction of the City of Sutter Creek but may act as an indicator of how successful mitigation is in Amador County.
- 3) Have any projects attempted restoration of oak woodlands? Were they successful? Did Amador County ensure that restoration met appropriate goals?
- 4) How much money has been contributed to the Oak Woodland Conservation Fund as part of mitigation for oak woodland impacts in Amador County? Has that money been used to purchase oak woodlands conservation easements in Amador County?
- 5) Has Amador County approved any Natural Community Conservation Plans that include oaks as a covered species? If so, please locate these on a map and evaluate their success with respect to compliance with Section 21083.4.
- 6) Has Amador County implemented any other mitigation measures to address the conservation of oak woodlands?
- 7) Has the County engaged with University of Cooperative Extension in educational outreach to promote actions by private landowners that will protect oak woodlands and encourage regeneration?

Oak are not only a species-rich ecosystem. Oaks also provide visual appeal and shade that can increase property value and reduce home energy costs. With over 50,000 acres of oak woodland in the county (DEIR, p.4.4-40), the health of oak woodlands is one of our most significant aesthetic and biological resources.

### **Wildlife**

In the subsection Wildlife of the DEIR starting on page 4.4-10, the DEIR states, “The complex array of habitats in Amador County supports an abundant and diverse fauna because large tracts of land are covered by habitats known to have outstanding value for wildlife, such as mixed coniferous forests and oak woodlands.” The subsequent paragraphs provide examples of species occurring in different habitats in Amador County. A more rigorous data gathering effort is necessary to inform county planning. The discussion lacks important information on the status and trends of wildlife species, and on the habitat value and connectivity for wildlife. The Final EIR needs to evaluate current data, determine data gaps, and provide the best available information on wildlife status and trends and habitat connectivity. CEQA guidelines require an evaluation of impacts to biological resources that would substantially reduce habitat for fish or

wildlife species or interfere with movement of native resident or migratory fish or wildlife species.

On page 4.4-13, the DEIR describes annual grasslands as supporting lower wildlife diversity than woodland and shrub-dominated habitats. Grasslands bird species have been in decline across America for many years. Across the Great Plains, conservation easements have been important in avoiding further declines of these bird species. Loss of grassland habitat is significant (Exhibit 4.4.2-7). Amador County supports large expanses of grasslands, once common in the Central Valley, but now replaced by urban environments and intense agriculture. Rangeland can provide critical habitat to wildlife while supporting cattle production. Has Amador County promoted conservation easements in grasslands as beneficial to wildlife and to ranchers? Has the County engaged with University of Cooperative Extension in educational outreach to promote ranching and wildlife protection? Does the County participate in the California Rangeland Conservation Coalition's efforts to provide payment for environmental services to ranchers?

### **Fisheries Resources**

On page 4.4-13, the DEIR discusses fisheries resources, but neglects to mention the National Marine Fisheries Services' recovery plan for salmonids in the Central Valley (Exhibit 4.4.2-8) which identifies the Mokelumne River above Pardee as a candidate for possible reintroduction of spring-run Chinook salmon and steelhead. The plan provides specific actions for recovery of steelhead and Chinook salmon runs in the Mokelumne River that should be included in the FEIR. Participation in landowner education, outreach, and restoration actions could be used as mitigation measures for significant environmental impacts. Please add these mitigation measures in the final EIR.

The DEIR (page 4.4-14) identifies several fish assemblages that are likely the most abundant in different streams in Amador County. The DEIR lacks any information on the status or trends in those fish assemblages. What is the condition of the four fish assemblages that occur in Amador County? Are rivers, streams and lakes in the county meeting water quality standards that protect cold and warm water fishes per Porter-Cologne Water Quality Control Act and the Clean Water Act? What land uses are impacting water quality? Are the fisheries sufficient to provide recreational opportunities in the county? Most of the foothill creeks dry up in the summer months. Have fish populations been eliminated or substantially reduced because of reduced flows and/or water diversions? The Mokelumne River has numerous diversions, dams, and hydroelectric facilities. What impacts have they had on fish populations? What is the status of fish assemblages in the Cosumnes River?

### **Ione Chaparral Plants**

The Ione chaparral, ‘one of Amador’s most unique biological resources’ (p.4.4-17) is impacted by numerous factors, including loss of habitat, surface mining, plant disease, road widening, illegal OHV use, residential development, utility maintenance and fire suppression (Appendix C of the DEIR). The DEIR notes that Ione chaparral is mapped on 1,196 acres in Amador County. However, Appendix of C of the DEIR states, “The distribution of Ione manzanita was mapped in GIS by consultant Tiffany Meyer using aerial photographs at a minimum mapping unit of 100 acres. Her mapping identified 17 patches that total 4,700 acres.” Please explain the discrepancy in acreage estimates. The DEIR does not indicate how much Ione chaparral would be potentially threatened by incompatible land uses. Please provide current and proposed acreage in Ione chaparral that is designated as Mineral Resource Zone, Residential, Agricultural, Industrial, and Commercial. Within this analysis, acreage designated as Tier One and Tier Two Ione Chaparral (as defined in Appendix C of the DEIR) should be noted. An EIR must describe the physical conditions and environmental resources within the project site and in the project vicinity, and evaluate all potential effects on those physical conditions and resources. (*County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931, 952 [91 Cal.Rptr.2d 66].)

### **Special-Status Wildlife**

Six federally listed threatened or endangered animal species are listed in the DEIR (p.4.4-18). No discussion of the status of Valley Elderberry longhorn beetle, California red-legged frog or Central Valley steelhead is provided. Please identify the status and distribution of these species. What is being done to protect these species in Amador County? What is the success of current mitigation measures in avoiding the incidental take of these listed species and in the protection of their habitat? Without accurate and complete information pertaining to the setting of the project and surrounding uses, it cannot be found that the EIR adequately investigated and discussed the environmental impacts of the project. (See *Cadiz Land Co., Inc. v. Rail Cycle, L.P.* (2000) 83 Cal.App.4th 74, 92, 99.)

### **California Tiger Salamander and Northern Hardpan Vernal Pools**

The DEIR (p.4.4-18) notes that the California Tiger Salamander inhabits vernal pools and adjacent upland areas in western Amador County. The USFWS (70 FR 49379-49458, August 23, 2005) designated 1,506 acres of critical habitat within Amador County that is part of a larger unit that extends into Sacramento County where jurisdictions are working on the South Sacramento Habitat Conservation Plan. This Plan includes significant effort in mapping special status species, including the California Tiger Salamander. Amador County could benefit from these planning efforts. Did Amador County contact the municipalities involved in this Conservation Plan to coordinate and enhance conservation measures across the county line? What measures are currently being undertaken to avoid taking of this federally-listed species?

Has the County worked with landowners, resource agencies, or environmental organizations to acquire and preserve critical habitat for the California Tiger Salamander? Will increased traffic on Highway 88 affect migration of juvenile California Tiger Salamander? Has CalTrans been consulted on possible mitigation for effects of the Highway which transects critical habitat for the California Tiger Salamander? Please address these issues in the Final EIR.

To what extent will activities in the General Plan Update impact California Tiger Salamander and vernal pools? Tiger Salamanders have been documented in Vernal Pool grasslands in areas of the community slated for mixed-use development in the Camanche Village SPA, along the western county line, and in areas immediately north of Highway 104 proposed for industrial and mining land uses (DEIR, p. 4.4-34). The DEIR goes on to comment on the significance of this impact, “Because implementation of the Draft General Plan would result in industrial development and mining in high quality vernal pool habitat, vernal pool species such as vernal pool fairy shrimp, vernal pool tadpole shrimp, California tiger salamander, Tuolumne button celery, and pincushion navarretia that are at moderate to high risk of extinction due to a restricted range, low numbers of existing populations statewide, and widespread habitat declines, would be especially vulnerable to the threats of habitat loss that would result from implementation of the Draft General Plan.” How many acres of vernal pool grassland will be impacted from mining, industrial activities, or mixed-used development in the Camanche Village SPA? Vernal pools are also lost when grazing rangeland is converted to intensive agriculture such as orchards or vineyards. To what extent will the conversion of rangeland to intensive agriculture affect vernal pool habitat? How will these impacts be mitigated?

It appears that the County has not evaluated an alternative that would acquire vernal pool acres and provide permanent protection in a vernal pool preserve. As noted below, the USFWS annually provides grant funds, under the Cooperative Endangered Species Conservation Fund, for the acquisition of lands that would protect federally-listed species. Please provide more detailed information on impacts and include an alternative in the final EIR that creates Vernal Pool preserves or provides a mechanism for the creation of vernal pool preserves. (See also in these DEIR comments, Terrell Watt, *Matrix of Recommended Mitigation Measures*.)

On page 4.4-21, Table 4.4-3 provides a list of Special-Status wildlife species known to occur or potentially occur in Amador County. This list needs to include additional species that are on the CDFW’s list of state and federally listed threatened and endangered animals of California (Exhibit 4.4.2-9) and California Bird Species of Special Concern (Exhibit 4.4.2-10). These species have been observed in Amador County. Observations of bird species by amateur birders or professional ornithologists have been added to Cornell’s public access database called eBird (ebird.org) which is accessible online. USFS and Sierra Pacific Industries assess and map PACs for threatened and endangered species on their lands. Please work with them to determine the

status and distribution of listed species in the montane sections of Amador County. Are current land use practices, BMPs, and mitigation measures protecting special-status species on private forest lands?

The Final EIR should include these special status species and address impacts to them:

- 1) Barrow's Goldeneye – known to winter in small numbers along with Common Goldeneyes at the Lone Wastewater Treatment Plant
- 2) Common Loon – known to winter on lakes, particularly Camanche and Pardee Reservoirs
- 3) American White Pelican – observed year around at various locations
- 4) California Spotted Owl - present in conifer forests and PACs identified by the USFS in Amador county
- 5) Vaux's Swift – uncommon throughout the county with observations at higher elevations suggesting possible breeding
- 6) Olive-sided Flycatcher – nesting species in conifer forests
- 7) Yellow Warbler – Neotropical migrant nesting along major drainages like the Mokelumne River
- 8) Northern Goshawk – present in conifer forests and PACs identified by the USFS in Amador County
- 9) Yellow-breasted Chat – Neotropical migrant nesting along major drainages like the Mokelumne River
- 10) Yellow-headed Blackbird – individuals have been uncommonly observed in flocks of other blackbirds.
- 11) Willow Flycatcher – migrates through Amador County. Breeding populations in the Sierra have seriously declined despite efforts to restore montane meadow habitat

One additional secretive species, the Grasshopper Sparrow, has not been reported in Amador County, but has been observed in rangeland of Sacramento and Calaveras counties. This species could occur in Amador County and should be added to the list.

### **Deer Migration Corridors**

The DEIR (p.4.4-29) suggests that 'no established migration corridors have been identified in Amador County.' It goes on to note that deer range in eastern Amador County has been identified by the USFS. This higher elevation range occurs at elevations of 4,000-9,000 feet and is critical summer range and fawning areas. However, critical winter range is at lower elevations of 2,000-4,000 feet. This information indicates a significant upslope and downslope migration through corridors in Amador County. The CDFW modeled habitat connectivity for focal species in the Sierra Nevada as part of the Sierra Nevada Foothills Wildlife Habitat Connectivity Modeling Project (Exhibit 4.4.1-2). Mule deer was one of the focal species and the connectivity

model is online at CDFW’s BIOS. This report notes that, “The foothills ecoregion represents an important movement corridor between the low elevations of the Central Valley and the mountains of the Sierra Nevada. The foothills provide key habitat areas for species such as mule deer that migrate seasonally between high elevations in the Sierra’s during the summer and lower elevations in the foothills during the winter. (p. 1).” Least-cost corridors for wildlife movement between intact natural landscape blocks were determined. The mule deer corridors appear to follow stream drainages throughout Amador County. If so, protection of the riparian habitat could benefit mule deer as well. The Final EIR should evaluate adverse effects on these corridors. Mitigation measures that avoid significant impacts to riparian habitat and mule deer corridors should be developed.

The DEIR fails to assess the status and distribution of mule deer on private forest land since it assumes that critical summer range and critical fawning areas ‘would largely occur on National Forest lands managed by USFS’ (p.4.4-29). Since these areas are not mapped, no evidence is provided to justify this statement. Please determine if private forest landowners have programs to protect these critical areas. In addition, it is important that the Final EIR determines appropriate mitigation measures for protection of these areas on privately-owned lands.

#### 4.4.3 IMPACTS AND MITIGATION MEASURES

##### **Thresholds of Significance**

The DEIR’s thresholds of significance (p. 4.4-33) are so broad that they provide no meaningful measure for determining what impacts would be substantial or significant. The DEIR merely quotes the Thresholds of Significance from Appendix G of the State CEQA Guidelines. No quantitative thresholds of ‘substantial adverse effects’ or ‘significant effect’ are provided. No performance-based thresholds are described. This is not protective of the county’s rich biological resources. It also provides little guidance to project applicants that are required to comply with the General Plan.

For sensitive species, the EIR needs to provide identifiable quantitative, qualitative or performance level measures of substantial adverse effects. (See CEQA Guidelines, Section 15064.7, subd. (a).) Is the substantial adverse effect based on a certain percent loss of habitat? Is it based on degradation of habitat? Is it based on maintaining a certain number of populations of sensitive species? Will the level of significance depend on which sensitive species is being addressed? Examples of planning efforts that have tackled the quantification of sensitive species thresholds include the Tahoe Regional Planning Agency’s (TRPA) development of Environmental Threshold Carrying Capacities (Exhibit 4.4.3-1). The numerical standard for sensitive species states, ‘Provide a minimum number of population sites and disturbance zones



for the following species’ and then lists the sensitive species, the number of population centers and the disturbance and influence zones around those population centers.

The threshold of significance for sensitive plant communities, riparian habitat, wetlands and meadows should be a nondegradation standard. This would ensure compliance with the Clean Water Act and policies and regulations of the CDFW and/or USFWS. An example of a nondegradation standard is, “A nondegradation standard shall apply to significant wildlife habitat consisting of deciduous trees, wetlands, and meadows while providing for opportunities to increase the acreage of such riparian associations (Exhibit 4.4.3-1, p. 15).

The DEIR does not include quantitative thresholds of significance for oak woodlands (p. 4.4-33) even though conservation organizations and resource agencies have developed qualitative and quantitative standards for the protection of oak woodlands. The California Oak Foundation’s Oak Woodland Conservation Ordinance (<http://www.californiaoaks.org/ordinance.html>) recommends:

“A project's disturbance of oak woodland habitat or dependent species would be considered significant if any of the following occur:

- Reduce or eliminate species diversity or abundance;
- Reduce or eliminate quantity or quality of nesting areas;
- Fragment, eliminate or otherwise disrupt foraging areas or access to food sources;
- Limit or fragment range or movement of species; or
- Result in a loss of 25 percent or more of the existing tree canopy cover on the project site. For example, if a project site had 32 percent existing canopy cover the removal of more than 8 percent of the canopy cover would be considered significant.”

Additional guidance on determining thresholds of significance and appropriate mitigation measures is readily available but not used in development of the DEIR. A decision matrix, Oak Woodland Impact Decision Matrix (Exhibit 4.4.3-2) should be used to develop a more quantifiable threshold and more appropriate mitigation measures in the Final EIR. The goal of this matrix is stated,

“The University of California (UC) Integrated Hardwood Range Management Program (IHRMP) convened a working group comprised of the California Department of Fish and Game, the California Department of Forestry and Fire Protection and the Wildlife Conservation Board (WCB). The purpose of the working group was to develop information to assist county planners with the process of determining project significance including, what types of projects fall under the purview of the law, what constitutes a “significant impact,” compliance standards,

effective strategies to conserve oak woodlands and how to determine suitable, appropriate mitigation.”

## IMPACT ANALYSIS

### **Impact. 4.4-1 Adverse effect on special-status species**

As we explained in our scoping comment, “The environmental effects that must be considered in an EIR include, direct and indirect effects, short and long-term effects, *physical changes* in an area, potential health and safety problems, *changes in ecological systems*, changes in population distribution and concentration, changes in land use, effects on public services, and *effects on natural resources* including water, scenic beauty, etc. (CEQA Guidelines, sec. 15126.2, subd. (a).)” (Foothill Conservancy Scoping Comment, Chapter 1, p. 7, emphasis added.)

The DEIR does not indicate an environmentally superior alternative that would protect a greater portion of special-status species in Amador County from incompatible land uses. The DEIR fails to address impacts to numerous special-status species, including but not limited to the following federally and state endangered, threatened or candidate species that are listed in Table 4.4-3:

- 1) Valley elderberry longhorn beetle,
- 2) Central Valley steelhead
- 3) Chinook Salmon
- 4) Sacramento-San Joaquin roach
- 5) Sacramento splittail
- 6) Hardhead
- 7) California red-legged frog
- 8) Mountain yellow-legged frog
- 9) Foothill yellow-legged frog
- 10) Yosemite toad
- 11) Western spadefoot
- 12) Tricolored Blackbird
- 13) Golden Eagle
- 14) Burrowing Owl
- 15) Swainson’s Hawk
- 16) Northern Harrier
- 17) White-tailed Kite
- 18) Loggerhead Shrike
- 19) Peregrine Falcon
- 20) Bald Eagle

- 21) Bank Swallow
- 22) Pallid bat
- 23) Sierra Nevada mountain beaver
- 24) Wolverine
- 25) Pacific fisher
- 26) Sierra Nevada red fox.

The DEIR does not address impacts to the Tricolored Blackbird (*Agelaius tricolor*) which was emergency listed by the California Fish and Game Commission in December 2014. Tricolored Blackbirds' primary geographical range is the Central Valley and surrounding foothills. The species requires open water, a protected nesting site in cattails, marshes, blackberry bushes, triticale fields, or stinging nettle patches, and a foraging habitat with high densities of insects (Exhibit 4.4.3-3). Significant habitat loss has resulted in a substantial reduction in its population and its reproductive success.

Amador County hosts several locations where Tricolored Blackbirds have nested, and two locations are mapped on Exhibit 4.4-4 of the DEIR. One large colony of Tricolored Blackbirds in western Amador County is not mapped. The colony location near Dave Brubeck Road, surveyed during the statewide efforts conducted by the Tricolored Blackbird Portal (<http://tricolor.ice.ucdavis.edu>), has not been made available to the public because of its location on private property (Robert Meese, Tricolored Blackbird Portal, personal communication). Colony size is significant and may be valuable to the recovery of this endangered species. Please determine the location of this Tricolored Blackbird colony by contacting staff at the Tricolored Blackbird Portal. This location should be included in the final EIR.

Impacts regarding the land use designations where Tricolored Blackbird colonies exist have not been addressed in the DEIR. These designations should be consistent with the species protection as required by the California Endangered Species Act (CESA). The DEIR indicates that the colony near Dave Brubeck Road may be adjacent to or within a Mineral Resource Zone, a land designation that would likely imperil the colony if nesting habitat, open water, and appropriate foraging habitat are disturbed. Every effort should be made to avoid the taking of Tricolored Blackbirds in Amador County. Possible mitigation measures to protect this species should be worked out with the CDFW and Tricolored Blackbird Portal biologists. Possible mitigation measures are conservation easements, agreements with the landowner regarding protection measures, funding landowners for costs incurred in species protection, or implementation of regulatory protective measures developed by CDFW under the CESA. (See also in these DEIR comments, Terrell Watt, *Matrix of Recommended Mitigation Measures*.)

Significant impacts to biological resources and sensitive species are expected after implementation of Mitigation Measures 4.4-1a and 4.4-1b (page 4.4-36). Both these measures rely on proposal-specific mitigation measures. This piecemeal approach is likely to promote cumulative degradation to habitat protection. The DEIR (p. 4.4-36) notes this problem and concludes that, “Implementation of Mitigation Measures 4.4-1a and 4.4-1b would reduce impacts on special-status species resulting from implementation of the Draft General Plan by requiring the consideration of special-status species habitat in site selection, and by implementing mitigation in accordance with regulatory guidance and the best available science. Complete avoidance of all impacts would not be possible because special-status species are expected to occur on land which would transition to developed land uses under the Draft General Plan. Similarly, although these mitigation measures would lessen reduction in wildlife habitat and help prevent substantial reductions in the number or restrictions to the range of endangered and threatened species, substantial reductions in habitat could still occur. This impact would be **significant and unavoidable**. No additional feasible mitigation measures are available.”

This conclusion is surprising since the Biological Resources General Plan Update Working Paper (Exhibit 4.4.1-3, p.44) suggested that regional habitat conservation planning might be particularly efficient at conserving sensitive species, “The County may wish to explore the option of regional habitat conservation planning, which has proven to be a more efficient means of addressing the conservation needs of several listed species while still providing opportunities for growth and economic development.” We agree with recommendations from the Working Paper for the protection of wetlands, riparian habitat, and other sensitive communities. It notes (p. 44),

“Future residential, commercial, and infrastructure development and expansion of agricultural or mining activities have the potential to directly remove, degrade, or fragment sensitive habitats. These habitats can be protected and preserved by establishing preserves and protecting areas that are particularly environmentally sensitive.

“The County may wish to consider adopting goals and policies to:

- protect sensitive habitats and preserve areas that could be enhanced or restored, and therefore serve as mitigation sites for projects that are unable to accommodate on-site preservation;
- establish buffers and special setbacks that protect wetland and riparian areas; and
- integrate rivers, streams, lakes, ponds, and wetlands within new development to enhance the aesthetic and natural character of project sites while avoiding or minimizing disturbance of resources and limiting fragmentation.”

Please consider mitigation measures that address the three bulleted points above and include them in the final EIR.

As noted in our scoping comments, “When approving projects that are general in nature (e.g. general plan amendment), agencies must develop and approve whatever general mitigation measures are feasible, and cannot merely defer the obligation to develop mitigation measures until a specific project is proposed. (Citizens for Quality Growth v. City of Mount Shasta (3 Dist. 1988) 198 Cal.App.3d 433, 442 [243 Cal.Rptr. 727]).” (Foothill Conservancy Scoping Comment, Chapter 1, p. 9.) “A program EIR is supposed to, ‘Allow a Lead Agency to consider broad policy alternatives and program-wide mitigation measures at an early time when the agency has greater flexibility to deal with basic problems or cumulative impacts.’ (CEQA Guidelines, sec. 15168.)” (Foothill Conservancy Scoping Comment, Chapter 1, p. 16.)

To avoid significant impacts to biological resources, the County should develop a countywide Biological Resource Plan that provides for the management and preservation of biological resources in the county. The Plan should integrate Habitat Conservation Plan/Natural Community Conservation Plan for sensitive communities that harbor threatened or endangered species. Appropriate Habitat Conservation Plan/Natural Community Conservation Plan would address federal or state-listed biological resources including 1) Vernal Pool Ecosystems, 2) Ione Chaparral, 3) Tricolored Blackbirds, and 4) other special status-species habitats.

The Biological Resource Plan should center on providing habitat in quantity and quality sufficient to ensure long-term viability of key biological resources. The Plan would need to:

- Assess, map, manage and monitor critical habitat for sensitive species (threatened, endangered, and special status) and sensitive natural communities
- Assess, map, manage, and monitor habitat connectivity for key biological resources using available resources like the Sierra Nevada Foothills Wildlife Connectivity Modeling Project (Exhibit 4.4.1-2)
- Provide a process for acquiring funds for the purchase of land from willing sellers for critical habitat
- Develop educational programs to promote resource protection and promote conservation easements
- Provide appropriate frameworks for working with resource agencies (e.g. USFWS, CDFW, and USFS) and neighboring counties (e.g. El Dorado, Sacramento, Calaveras, San Joaquin) on the regional protection of biological resources and connectivity patterns.

Since sensitive-species and other wildlife move between different habitat types to meet their needs for food and reproduction, connecting important habitat is critical to their survival. It is important that critical biological corridors (or habitat connectivity) are identified, mapped and prioritized. As previously mentioned, the Sierra Nevada Foothills Wildlife Connectivity Modeling Project has developed maps within Amador County of natural landscape blocks and least-cost corridors for wildlife movement. Another planning effort could also be used as a model for prioritizing key habitats and connectivity between those habitats. In *Safe Passages: Local and Regional Wildlife Habitat Connectivity Planning* (Exhibit 4.4.3-4), local planners, academics, and resource agency staff developed and prioritized habitat connectivity areas around the city of Riverbank along the Stanislaus River. The methodology uses available GIS data and is readily transferrable to other planning efforts. We recommend that this type of effort is feasible mitigation when combined with conservation easements. Habitat connectivity modeling should be required as part of the Biological Resources Plan.

The DEIR does not contain mitigation measures that would provide the infrastructure within the county government to protect biological resources and avoid significant impacts to biological resources. The County should establish a Biological Resources Technical Advisory Committee to advise the Planning Commission and Board of Supervisors on planning issues with regards to plant and wildlife protection, mitigation and monitoring, and funding for conservation and habitat protection and acquisition measures. The Biological Resources Technical Advisory Committee would develop and implement the countywide Biological Resource Plan and specific Habitat Conservation Plans. This committee should develop and provide landowners with educational information and guidance on protecting natural resources on their property. The County needs to use plan amendments and zoning ordinances to retain the most contiguous blocks of significant plant and wildlife habitat. Habitat connectivity should be protected in the land-use planning decision process through consultation with CDFW, USFS, BLM, USFWS, SWRCB, and the County Biological Resources Technical Advisory Committee. Habitat Conservation Plans and the Biological Resources Technical Advisory Committee should be included in the Final General Plan.

Funding for habitat conservation planning and land acquisition to protect federally-listed species is available through the USFWS's Cooperative Endangered Species Conservation Fund (CESCF). In its press release for 2015 grant proposals (<http://www.fws.gov/news/ShowNews.cfm?ID=629E5E63-C13A-DD96-B20310FAD3490D2F>), the USFWS noted that it "is seeking proposals in three categories: *Recovery Land Acquisition Grants*, which provide funds for the acquisition of habitat in support of approved and draft species recovery plans; *Habitat Conservation Planning Assistance Grants*, which provide funds to support the development of Habitat Conservation Plans (HCPs) that protect habitat for listed species while providing for economic growth and development; and *HCP Land Acquisition*

*Grants*, which provide funds to acquire habitat for listed species associated with approved HCPs.”

In 2011 the South Sacramento Habitat Conservation Plan (<http://www.per.saccounty.net/PLANSANDPROJECTSIN-PROGRESS/Pages/SSHCPPlan.aspx>) was awarded \$994,500 to support ongoing planning to protect high-quality species habitat adjacent to western Amador County. Congressman Dan Lundgren was quoted at the time, “The SSHCP is an important planning document for the Sacramento region; one that will protect and enhance Sacramento County’s unique natural resources while allowing the region to achieve carefully planned economic development. I am pleased that our region was awarded this grant to continue its work on this important project” (See <http://sacramentoexpress.com/2011/08/29/south-sacramento-habitat-conservation-plan-receives-994500-federal-grant/>).

The draft South Sacramento Habitat Conservation Plan is particularly useful to Amador County planning as it covers land types, several sensitive natural communities, and sensitive species that are also present in western Amador County. A significant effort was undertaken to map sensitive resources, determine priority conservation areas, develop appropriate mitigation ratio multipliers, and appropriate setbacks from conservation areas (see Chapter 7 of the plan, Exhibit 4.4.3-5). It also identified land uses and activities that might benefit sensitive species. This effort could provide a valuable jump-start to Amador County in reducing impacts to less-than-significant for many special-status species.

#### **IMPACT 4.4-2 Substantial adverse effect on riparian habitat, a sensitive natural community**

Riparian habitat losses are expected to occur in the Drytown Area along Dry Creek, in the River Pines Town Center along the Cosumnes River, and in the Pine Grove Town Center along Jackson Creek (DEIR, p. 4.4-37). If new Town Centers are developed, they should completely avoid riparian areas and a sufficient buffer should be developed to protect the riparian corridor and its vegetation (see below). Additional impacts to riparian habitat that are noted in the DEIR include “infrastructure and road improvements, development of roads, water diversions, and other projects” (DEIR p. 4.4-37). Please indicate in the Final EIR what and where these new roads and water diversions would take place and define the impact they might have on riparian habitat. The locational details regarding this infrastructure should be in the Circulation Element of the Draft General Plan. If these cumulative impacts are not addressed in this EIR, they may never be addressed. Without including the impacts of the related infrastructure, the severity and significance of the cumulative impacts on wildlife will be inadequate. (See *Friends of the Eel River v. Sonoma County Water Agency* (2003) 108 Cal.App.4<sup>th</sup> 859, 869; *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 723.) Irrigated agriculture and ranching

may also impact riparian habitat if riparian vegetation is removed by grazing or mechanical means. New homes on rural lots could also affect riparian corridors. Since riparian habitat can be impacted by numerous activities, it seems appropriate and feasible to provide countywide guidance on protecting riparian habitat. Setbacks and buffers for wetlands and riparian habitat, developed with the assistance of CDFW, could be incorporated into County ordinance. This mitigation would be feasible and provide clear and consistent guidance to developers and landowners.

County policies or ordinances on riparian setbacks have been adopted by several counties in California, including San Joaquin, San Luis Obispo, Marin, and Santa Cruz counties. For example, San Joaquin County provides clear language in county ordinance regarding an appropriate setback (Exhibit 4.4.3-6, p.5),

“9-1510.5 NATURAL BANK BUFFER.

Parallel to any natural bank of a waterway, a natural open space for riparian habitat and waterway protection shall be maintained to provide nesting and foraging habitat and the protection of waterway quality. The minimum width of said open space shall be one-hundred (100) feet, measured from the mean high water level of the natural bank or fifty (50) feet back from the existing riparian habitat, whichever is greater. Water-dependent uses may be permitted in this buffer. (Ord. 3675)”.

Avoiding riparian habitat loss is preferable to compensation as the DEIR provides no assessment of the success of riparian habitat compensation in Amador County. Riparian habitat lost in Amador County should not be mitigated by mitigation banking outside the county. The Cosumnes Floodplain Mitigation Bank (DEIR, p. 4.4-38) lies in Sacramento County and provides little or no protection to wildlife using riparian habitat in Amador County. Is the County recommending that a mitigation bank be established in Amador County?

The DEIR should assess potential riparian habitat loss from the land use designations of Mineral Resource Zones. Since mining may lower the water table, riparian habitat could be lost and streambeds downcut when the groundwater table is lowered. This impact may not be mitigated by riparian setbacks or buffer zones. Please evaluate the potential impact and identify appropriate mitigation.

The DEIR does not assess riparian habitat loss from agricultural lands. While land use designations may not have changed since the last General Plan, the nature of agriculture and the increase in vineyards clearly has. How has agriculture affected riparian corridors? How has the County encouraged agribusiness to protect riparian habitat? Measures that provide financial



incentives for riparian habitat protection should be evaluated. Solano County's General Plan provides a policy that requires the development of an "agricultural riparian incentive program that encourages farmers and ranchers and other landowners to maintain or create riparian habitat along streams, creeks, canals, and wetlands." (Exhibit 4.4.3-7, p. 20). Funding mechanisms, including grant funds, could be pursued with the support of resource agencies, conservation groups, and land trusts. These organizations could also help developing strategies (e.g. payment for ecological services, purchase of conservation easements or riparian areas) to pay farmers and ranchers for habitat protection. Please address this mitigation option in the Final EIR.

#### **IMPACT 4.4-3 Substantial adverse effects on Ione Chaparral**

The DEIR notes that, "Impacts to Ione chaparral would result primarily from mining of the Ione formation, but could also result from incremental loss of this community due to industrial and urban development and infrastructure projects" (p.4.4-39). The DEIR does not indicate an environmentally superior alternative that would protect a greater portion of the Ione chaparral from incompatible land uses. Please evaluate the feasibility of modifying land uses in Ione chaparral. As the DEIR notes, the most incompatible land uses would be Industrial, Commercial, and Mineral Resource Zone. Resource agencies (BLM, CDFW) and non-profit organizations (The Nature Conservancy, Amador Land Trust) have shown interest in protecting Ione chaparral. What is the current status of efforts to acquire Ione chaparral for protection? Is it feasible for the County to participate in future efforts to acquire land for the protection of Ione chaparral?

Since this resource is sensitive and threatened, it is even more important to evaluate if past project-specific mitigation measures have been successful. Did the county require mitigation measures protecting Ione chaparral when approving residential development, mining operations, road widening or utility development since the focus plan was adopted in 2003? Has any Ione chaparral on private property been placed in conservation easements? Did the county require 2:1 or greater compensation to prevent cumulative loss of habitat? And if so, what acreage has been protected and what acreage has been destroyed? What BMPs were developed and were they successful? Has the county successfully developed educational materials for landowners that would help protect Ione chaparral on private land? What track record does the county have in protecting this sensitive plant community? "Because an EIR cannot be meaningfully considered in a vacuum devoid of reality, a project proponent's prior environmental record is properly a subject of close consideration in determining the sufficiency of the proponent's promises in an EIR." (*Laurel Heights Improvement Association of San Francisco v. Regents of the University of California* (1988) 47 Cal.3d 376, 420 [253 Cal.Rptr. 426.]).

The DEIR suggests that project applicants submit mitigation plans for unavoidable impacts to Ione chaparral (page 4.4-39). We believe that the preferred mitigation would be avoidance. Since so little habitat currently exists, all Ione chaparral needs to be protected. As noted in the Ione Chaparral Focus Plan (see Appendix C of the DEIR),

“The minimum viable size patch for Ione chaparral is unknown. Roy Woodward suggests that at least 75% of existing Ione manzanita and all remaining Ione and Irish Hill buckwheat occurrences need to be protected in order to attempt to ensure the species’ long-term viability. Because of the root fungus that is affecting Ione manzanita, it will be important to protect an assemblage of unconnected sites. Those sites located farther from roads and less accessible to people have so far proven to be less susceptible to the fungus.”

The DEIR does not analyze the feasibility of avoiding mining on Ione chaparral. This feasibility study should be included in the final EIR. Please evaluate an environmentally superior alternative that would modify the land uses in Ione chaparral to ensure its protection.

The DEIR goes on to note that, “Mitigation may include replanting and enhancement of degraded stands of Ione chaparral. However, because it is difficult to rehabilitate land to support Ione chaparral once it has been mined, planting and enhancement will be combined with preservation to help ensure the loss of habitat is compensated (p. 4.4-39)”. Please provide the research that indicates that replanting and enhancement of degraded stands of Ione chaparral is a viable alternative. If planting and enhancement are not known to be effective, then preservation is the only feasible mitigation. The administrative record must contain substantial evidence supporting the agency's view that the measures will mitigate the impacts. "A clearly inadequate or unsupported study is entitled to no judicial deference." (*Laurel Heights Improvement Association of San Francisco v. Regents of the University of California*, (1988) 47 Cal.3d 376, 422 & 409 fn. 12 [253 Cal.Rptr. 426.]).

The impact to Ione chaparral even after implementation of mitigation measures is expected to be significant and unavoidable (p. 4.4-40). This significant impact is justified because ‘mining activities directly depend on the same substrates where this plant community grows’. Ione chaparral includes several federally-listed threatened and endangered species. It seems clear that the significant and unavoidable impacts to Ione chaparral result in the taking of these species. No information is provided in the DEIR to indicate that the USFWS was consulted and that they permitted the incidental taking of these listed species. Section 10 of the ESA requires the submission of a habitat conservation plan prior to taking of listed species. The DEIR does not contain a Habitat Conservation Plan or recommendations for developing a countywide Habitat Conservation Plan for Ione chaparral. Development of this plan seems feasible and may ensure

that cumulative adverse impacts to lone chaparral are avoided. Consultation with CDFW and USFWS would ensure standardized BMPs are available to project applicants.

**Impact 4.4-4 Substantial adverse effect on oak woodland, a sensitive natural community**

Fragmented oak woodlands have less biological richness than large connected woodlands. Fragmentation and loss of species diversity cannot be addressed by project-specific mitigation. Mitigation measures identified in the DEIR are project-specific, will result in fragmentation, and do not reduce the impacts to less-than-significant levels. To mitigate against fragmentation of oaks, the County needs to develop an Oak Woodland Conservation Plan that provides for the long-term conservation of oak woodlands. A similar conclusion was drawn in the Biological Resources General Plan Update Working Paper (Exhibit 4.4.1-3, p.43),

“Goals to achieve oak woodland conservation can be tied to successful preservation of habitat for wildlife through countywide conservation planning such as habitat conservation planning and natural community conservation planning strategies or through nonregulatory frameworks such as County policy. Under these strategies, oak woodlands can be preserved as open space and habitat for wildlife, while also being managed as working landscapes for livestock grazing and limited firewood harvesting. Ranchers and landowners of large tracts of land who are willing to conserve natural and agricultural resources can be compensated for participating in this type of planning.

“The County may wish to consider adopting goals and policies that prioritize conservation of oak woodlands as the most effective strategy for preserving wildlife habitat. The County may also consider applying for funding from the WCB to develop and implement a countywide oak woodland management and conservation plan, obtain funding to purchase conservation easements, and conduct outreach and education efforts.”

El Dorado County required the development of an oak woodland conservation plan in its General Plan and the draft plan is available for review (Exhibit 4.4.3-8). The goals set forth in their plan helped El Dorado County mitigate adverse significant impacts to oak woodlands. These goals are:

- Mitigate oak canopy removal by providing flexibility through a range of on-site and off-site mitigation alternatives;
- Establish a Conservation Fund In-Lieu Fee that is sufficient to fully fund the mitigation program;

- Identify Priority Conservation Areas (PCAs) within large expanses of contiguous oak woodland habitat where conservation easements may be acquired from willing sellers to offset the effects of increased habitat loss and fragmentation elsewhere;
- Focus conservation easement acquisition efforts within areas not currently fragmented and which are unlikely to become fragmented through implementation of the General Plan;
- When weighing acquisition opportunities for conservation easements, generally maintain the relative acreages of all five oak woodland California Wildlife Habitat Relationship (CWHR) types (Valley Oak Woodland, Blue Oak Woodland, Blue Oak-Foothill Pine, Montane Hardwood Woodland, and Montane Hardwood-Conifer Woodland), but emphasize conservation of Valley Oak Woodlands, considered a “sensitive habitat” due to its relative rarity in the county;
- Encourage voluntary conservation and management of oak woodlands, including sustainable ranching and farming operations within working landscapes;
- Provide incentives (e.g., grants or cost-sharing for fuels/fire risk management) for the voluntary protection of oak woodlands providing superior wildlife values on private land
- Provide oak woodland conservation guidance to private landowners and County planners through education and outreach
- Enhance oak woodland conservation by connecting acquisitions from willing sellers with existing open space, including publicly-owned lands that are managed for oak woodland habitat values (e.g., ecological preserves, recreation lands, rangelands, or natural resource areas) consistent with the County’s open space conservation goals
- Establish a database inventory of interested buyers and willing landowners wishing to participate in oak woodland acquisition and management mitigation options.”

We provide these goals as a framework for developing feasible and effective mitigation measures in the Final EIR.

CEQA requires agencies to adopt feasible mitigation measures in order to substantially lessen or avoid otherwise significant environmental effects. (Pub. Resources Code, secs. 21002, 21081, subd. (a); CEQA Guidelines, secs. 15002, subd. (a)(3), 15021, subd. (a)(2), 15091, subd. (a)(1).) As noted in our scoping comments, “When approving projects that are general in nature (e.g. general plan amendment), agencies must develop and approve whatever general mitigation measures are feasible, and cannot merely defer the obligation to develop mitigation measures until a specific project is proposed. (Citizens for Quality Growth v. City of Mount Shasta (3 Dist. 1988) 198 Cal.App.3d 433, 442 [243 Cal.Rptr. 727]).” (Foothill Conservancy Scoping Comment, Chapter 1, p. 9.) “A

program EIR is supposed to, ‘Allow a Lead Agency to consider broad policy alternatives and program-wide mitigation measures at an early time when the agency has greater flexibility to deal with basic problems or cumulative impacts.’ (CEQA Guidelines, sec. 15168.)” (Foothill Conservancy Scoping Comment, Chapter 1, p. 16.) Certification of EIR without adoption of a feasible mitigation measure is an abuse of discretion under CEQA. Adopting a statement of overriding considerations does not justify certification of the EIR absent adoption of the mitigation measure. (*City of Marina v. Board of Trustees* (2006) 39 Cal.4<sup>th</sup> 341.)

Since El Dorado County is mapping Oak Woodland Priority Conservation Areas (Exhibit 4.4.3-9), coordinating oak woodland conservation in Amador County with El Dorado County would ensure greater habitat value for contiguous oak woodland on the northern border of Amador County.

#### **Impact 4.4-5 Substantial adverse effect on federally protected wetlands**

Mitigating the impacts to wetlands is based on project-specific measures and project compliance with regulations under the Clean Water Act.

The DEIR notes that the County will require project applicants to commit to replace, restore, or enhance on a ‘no-net-loss’ basis the acreage of all wetlands that would be removed.

The administrative record must contain substantial evidence supporting the agency's view that the measures will mitigate the impacts. "A clearly inadequate or unsupported study is entitled to no judicial deference." (*Laurel Heights Improvement Association of San Francisco v. Regents of the University of California* (1988) 47 Cal.3d 376, 422 & 409 fn. 12 [253 Cal.Rptr. 426.]).

For vernal pool habitat, the DEIR provides no scientific justification that vernal pool habitat has been or could be “replaced, restored, or enhanced” in Amador County. Has any vernal pool habitat been successfully replace, restored or enhanced in the County? Is there a vernal pool ‘mitigation bank’ in Amador County? Where would this be? Would the County require replacement of adjacent upland grassland habitat that is important to California Tiger Salamanders? Is the Army Corp of Engineers 404 permitting process successful in addressing cumulative impacts or meeting the CWA requirement of ‘no-net-loss’? How will the County follow-up on mitigation requirements to ensure their success? Cumulative impacts from vernal pool mitigation and lack of monitoring success hamper the effectiveness of mitigation banking (Exhibit 4.4.3-10). "Because an EIR cannot be meaningfully considered in a vacuum devoid of reality, a project proponent's prior environmental record is properly a subject of close consideration in determining the sufficiency of the proponent's promises in an EIR." (*Laurel Heights Improvement Association of San Francisco v. Regents of the University of California* (1988) 47 Cal.3d 376, 420 [253 Cal.Rptr. 426.]).

The uncertainty associated with losses from replacement of vernal pools indicates that avoiding vernal pool loss is preferred. If vernal pools are present in rangeland, then conversion of that rangeland to intensive agriculture should trigger mitigation requirements under the ESA, CESA, and the Clean Water Act. The final EIR should provide an alternative that avoids conversions of vernal pools.

The DEIR notes that mitigation banking for wetlands should occur first at locations that have demonstrated functionality. While we agree that this is critical to mitigation success, the example provided, the Cosumnes Floodplain Mitigation Bank is in Sacramento County. The County should pursue wetland preserves within its boundaries. Has the County identified any landowners, land managers, or land trusts that provide mitigation for wetlands? These efforts should precede and functional wetlands demonstrated prior to approving wetland mitigation in the County.

## SECTION 4.5 CULTURAL RESOURCES

### 4.5.1 REGULATORY SETTING

#### STATE PLANS, POLICIES, REGULATIONS AND LAWS

##### CEQA and CRHR Resource Significance

On page 4.5-1, the DEIR states, “Per the Public Resources Code, section 15064.5, ‘historical resources’ includes:” There is no Public Resources Code, section 15064.5. The code that is correct is the California Code of Regulations, Title 14, Chapter 3, Article 5, Section 15064.5. Please replace with the proper citation of code.

This section of the DEIR starts with five bulleted items, essentially providing the text of a portion of the code. The bullets create the perception that these are all paragraphs of the code. That is not the case. Please change this section to use the formatting of the code and cite the entirety of paragraph (a):

For purposes of this section, the term “historical resources” shall include the following:

- (1) A resource listed in, or determined to be eligible by the State Historical Resources Commission, for listing in the California Register of Historical Resources (Pub. Res. Code §5024.1, Title 14 CCR, Section 4850 et seq.).
- (2) A resource included in a local register of historical resources, as defined in section 5020.1(k) of the Public Resources Code or identified as significant in an historical resource survey meeting the requirements section 5024.1(g) of the Public Resources Code, shall be presumed to be historically or culturally significant. Public agencies must treat any such resource as significant unless the preponderance of evidence demonstrates that it is not historically or culturally significant.
- (3) Any object, building, structure, site, area, place, record, or manuscript which a lead agency determines to be historically significant or significant in the architectural, engineering, scientific, economic, agricultural, educational, social, political, military, or cultural annals of California may be considered to be an historical resource, provided the lead agency's determination is supported by substantial evidence in light of the whole record. Generally, a resource shall be considered by the lead agency to be “historically significant” if the resource meets the criteria for listing on the California Register of Historical Resources (Pub. Res. Code, § 5024.1, Title 14 CCR, Section 4852) including the following:
  - (A) Is associated with events that have made a significant contribution to the broad patterns of California's history and cultural heritage;
  - (B) Is associated with the lives of persons important in our past;
  - (C) Embodies the distinctive characteristics of a type, period, region, or method of construction, or represents the work of an important creative individual, or possesses high artistic values; or
  - (D) Has yielded, or may be likely to yield, information important in prehistory or history.

(4) The fact that a resource is not listed in, or determined to be eligible for listing in the California Register of Historical Resources, not included in a local register of historical resources (pursuant to section 5020.1(k) of the Public Resources Code), or identified in an historical resources survey (meeting the criteria in section 5024.1(g) of the Public Resources Code) does not preclude a lead agency from determining that the resource may be an historical resource as defined in Public Resources Code sections 5020.1(j) or 5024.1.

On page 4.5-2, the DEIR states under the Public Resources Code Section, “3. It is directly associated with a scientifically recognized important prehistoric or historic event.” This portion of the code states, “It is directly associated with a scientifically recognized important prehistoric or historic event or person.” Please correct the text of the DEIR to reflect the code.

#### 4.5.2 ENVIRONMENTAL SETTING

In our scoping comments we explained the importance of the environmental setting sections of an EIR. “An EIR must contain an accurate description of the project's environmental setting. An EIR ‘must include a description of the physical environmental conditions in the vicinity of the project ... from both a local and regional perspective. This environmental setting will normally constitute the baseline physical conditions by which a lead agency determines whether an impact is significant.’ (Guidelines, § 15125, subd. (a).) There is good reason for this requirement: ‘Knowledge of the regional setting is critical to the assessment of environmental impacts.... The EIR must demonstrate that the significant environmental impacts of the proposed project were adequately investigated and discussed and it must permit the significant effects of the project to be considered in the full environmental context.’ (Guidelines, § 15125, subd. (c).) We interpret this Guideline broadly in order to ‘afford the fullest possible protection to the environment.’ (*Kings County Farm Bureau, supra*, 221 Cal.App.3d 692, 720.) In so doing, we ensure that the EIR's analysis of significant effects, which is generated from this description of the environmental context, is as accurate as possible.” (*Friends of the Eel River v. Sonoma County Water Agency* (2003) 108 Cal.App.4th 859, 874; quoted in Foothill Conservancy Scoping Comments, Chapter 1, p. 5.)

On page 4.5-3, the DEIR states, “ The NCIC was asked to provide information regarding documented cultural resource sites within Amador County, excluding federal lands as properties owned or operated by the U.S. Forest Service or the bureau of Land Management, and excluding the incorporated cities of Plymouth, Amador City, Sutter Creek, Jackson, and Lone.” The record search was limited, excluding federally owned land and land within the jurisdiction of the cities within the county. In some cases cultural resources extend from one land owner to another. A few examples of cultural resources that cross jurisdictional boundaries are shown in Exhibit 4.5-1: Known Cultural Resources. By limiting the record search to exclude federal land and the incorporated cities, resources may be known and recorded that extend onto land over which the General Plan applies. Also, knowing the density of recorded resources on the excluded lands may help in the development of the Cultural Resource Sensitivity map. Thus, the record search is inadequate because of the restrictions. The background information for this section may be lacking in full disclosure and an adequate description of the existing condition because of the



limited search. Please extend the record search of cultural resources to include those located on land adjacent to the boundaries of the excluded lands.

On page 4.5-3, the DEIR states, “Additional background research was conducted at the Amador County Archives, where historic maps from the mid-19<sup>th</sup> century to the early 20<sup>th</sup> century were examined. In addition, the County Archivist provided location information for sites which have been noted at the archives but not officially recorded with the NCIC.” Typically background research includes requesting information about cultural resources from local historical societies, preservation societies, libraries, history museums, and the Native American Heritage Commission because of the knowledge base of those institutions and their members. One example of a resource that the Amador County Historical Society is aware of is the Volcano Ditch. The ditch is documented in History of Amador County by Thompson and West (1881). Again, the background research is deficient by not requesting easy to acquire information from other well known sources. Please extend the background research to include the additional information sources.

Contact with the Native American Heritage Commission requesting a search of their Sacred Land files is particularly important in identifying traditional tribal cultural places. The Sacred Lands files contain information about significant places in Amador County (personal communication with Debbie Treadway, NAHC, on January 20, 2015). Please include information regarding traditional tribal cultural places that is relevant to the Environmental Setting while complying with the confidentiality of these records.

#### **PREHISTORIC SITES**

On page 4.5-7, the DEIR states, “Prehistoric sites have been grouped into three separate categories for ease of analysis, but frequently are found in combination.” This description does not provide clarity on why the three categories are used for analysis. There are additional types of sites that could be present within the county and are commonly found in all parts of California. A frequently used site type is a “lithic scatter” (personal communication with Miranda Gavalis, USFS, January 26, 2015). Please expand the categories to include lithic scatters, temporary camps and other commonly used categories for prehistoric site types.

On page 4.5-7, the DEIR states, “Bedrock mortars are deliberately produced holes made by pecking into granitic bedrock outcrops.” This description is limited to granitic bedrock outcrops. Indian Grinding Rock is listed on the National Register of Historic Places. This significant bedrock mortar site in Amador County would not meet with the requirements of this description. Likewise, many other mortar sites in this county would not meet the requirements of this definition. Please revise to reflect a definition appropriate to Amador County.

On page 4.5-7, the DEIR lists one category of prehistoric sites as Traditional Cultural Properties. “Traditional Cultural Properties” is a term used for National Register properties and is not a term used under state codes. Under state law, “traditional tribal cultural place” is the appropriate term. Please correct the text to include the state defined term.

On page 4.5-7, the DEIR states, “A TCP is generally eligible for the National Register of Historic Places because of its association with cultural practices or beliefs of a living community that are rooted in that community’s history and are important in maintaining the continuing cultural identity of the community.” In the Final EIR, please add a description of traditional tribal cultural places that would be considered under state codes.

### **4.5.3 IMPACTS AND MITIGATION MEASURES**

#### **THRESHOLDS OF SIGNIFICANCE**

On page 4.5-11, the DEIR states, “Section 15064.5 of the State CEQA Guidelines defines “substantial adverse change” as physical demolition, destruction, relocation, or alteration of the resources or its immediate surroundings.” The code section is more specific and states, “...physical demolition, destruction, relocation, or alteration of the resources or its immediate surroundings such that the significance of an historical resource would be materially impaired.” In the Final EIR, please correct this to include the entire citation of the definition of “substantial adverse change”.

#### **IMPACT ANALYSIS**

On page 4.5-11, the DEIR has no explanation of what is required in the impact analysis section. Public Resources Code 15126.4 (b) provides the requirements for “Consideration and Discussion of Mitigation Measures Proposed to minimize Significant Effects” when there are impacts to historical resources:

- (1) Where maintenance, repair, stabilization, rehabilitation, restoration, preservation, conservation or reconstruction of the historical resource will be conducted in a manner consistent with the Secretary of the Interior’s Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring, and Reconstructing Historic Buildings (1995), Weeks and Grimmer, the project’s impact on the historical resource shall generally be considered mitigated below a level of significance and thus is not significant.
- (2) In some circumstances, documentation of an historical resource, by way of historic narrative, photographs or architectural drawings, as mitigation for the effects of demolition of the resource will not mitigate the effects to a point where clearly no significant effect on the environment would occur.
- (3) Public agencies should, whenever feasible, seek to avoid damaging effects on any historical resource of an archaeological nature. The following factors shall be considered and discussed in an EIR for a project involving such an archaeological site:
  - (A) Preservation in place is the preferred manner of mitigating impacts to archaeological sites. Preservation in place maintains the relationship between artifacts and the archaeological context. Preservation may also avoid conflict with religious or cultural values of groups associated with the site.

- (B) Preservation in place may be accomplished by, but is not limited to, the following:
  - 1. Planning construction to avoid archaeological sites;
  - 2. Incorporation of sites within parks, greenspace, or other open space;
  - 3. Covering the archaeological sites with a layer of chemically stable soil before building tennis courts, parking lots, or similar facilities on the site.
  - 4. Deeding the site into a permanent conservation easement.
- (C) When data recovery through excavation is the only feasible mitigation, a data recovery plan, which makes provision for adequately recovering the scientifically consequential information from and about the historical resource, shall be prepared and adopted prior to any excavation being undertaken. Such studies shall be deposited with the California Historical Resources Regional Information Center. Archaeological sites known to contain human remains shall be treated in accordance with the provisions of Section 7050.5 Health and Safety Code. If an artifact must be removed during project excavation or testing, curation may be an appropriate mitigation.
- (D) Data recovery shall not be required for an historical resource if the lead agency determines that testing or studies already completed have adequately recovered the scientifically consequential information from and about the archaeological or historical resource, provided that the determination is documented in the EIR and that the studies are deposited with the California Historical Resources Regional Information Center.

In the Final EIR, please insert these requirements so it is clear what is required to mitigate to less than significant.

#### **IMPACT 4.5-1**

On page 4.5-11, the DEIR states, “As illustrated in Exhibit 4.5-1 and described in Section 4.5.2, “Environmental Setting,” known cultural resources are located throughout the county, but are concentrated in the western portion of the County...” The record search which is the basis of Exhibit 4.5-1 did not include federally owned lands which are mostly in the eastern portion of the county. This would mean that little information is available in the exhibit regarding the quantity of cultural resources in the eastern portion of the county. Please explain how the conclusion was made that cultural resources are concentrated in the western portion of the county when much of the information was excluded. There are 344 sites located within the national forest property in Amador County, many more than shown in Exhibit 4.5-1 (personal communication with Miranda Gavalis, USFS, January 26, 2015). Please change the text so appropriately describe the concentrations of sites within Amador County.

On page 4.5-11, the DEIR states, “Lot splits and development of individual residential uses would also be possible throughout the planning area.” Lot splits are a discretionary process. However, the grading and building permits are ministerial. Lot splits do not cause an impact to resources, but the development of the lot is “reasonably foreseeable” under CEQA and impacts need to be analyzed as part of the discretionary process. Typically the County allows lot splits with conditions for reducing impacts rather than identifying cultural resources prior to the

discretionary action. This procedure may allow impacts to significant resources that can not be mitigated. On page CR-17 in Appendix D of the DEIR is the statement, “Archeological sites frequently are not visible to the untrained eye and are less prominent on the landscape than standing historic resources.” This statement acknowledges that cultural resources are not as notable to an untrained person. Please indicate that impacts caused by lot splits and the subsequent development will be analyzed prior to approval of the discretionary action.

#### **Mitigation Measure 4.5-1a: Implementation Program D-6, Cultural Resources**

“Mitigation measures must be fully enforceable through permit conditions, agreements, or other legally binding instruments.” (CEQA Guidelines, sec. 15126.4, subd. (a)(2).) On page 4.5-11, the DEIR states in mitigation measure 4.5-1a, “The objective of this program is to substantially reduce or avoid impacts to cultural resources. The County will work with applicants to comply with state and federal laws that preserve and protect cultural resources, including historic resources and archeological sites.” The term “work with” does not require the applicant to comply with any laws, regulations or standards. Please indicate what measures will be required, e.g. permit conditions, to ensure that cultural resources are preserved and protected. Also, please indicate that individuals that meet the Secretary of Interior’s Standards for the appropriate profession will be used to determine that the impact on the historical resource shall generally be considered mitigated below a level of significance.

On page CR-1 of Appendix D the DEIR states, “County residents have established a vision of enhancing the County’s unique character, including the historic built environment, natural beauty, agriculture, and scenic vistas.” “The identification, interpretation, and protection of cultural resources is a key contributor to the County’s history and character.” And on page CR-23 in Appendix D the DEIR states, “The development of historic districts could enhance the interpretive value of these unique landscapes, promoting preservation and enhancement of the resources as part of the landscape.” In the Final EIR, please include a description of the actions the County will take to minimize impacts while implementing these goals.

The administrative record must contain substantial evidence supporting the agency's view that the measures will mitigate the impacts. "A clearly inadequate or unsupported study is entitled to no judicial deference." (Laurel Heights Improvement Association of San Francisco v. Regents of the University of California (1988) 47 Cal.3d 376, 422 & 409 fn. 12 [253 Cal.Rptr. 426.]).

On page 4.5-11, the DEIR states in mitigation measure 4.5-1b, “When evaluating discretionary projects, the County will use its review process to guide the applicant toward the retention of as many key character-giving features as possible in the protection, preservation, restoration, or renovation of cultural resources such as historic buildings, structures, objects, landscapes, or sites, where feasible.” This mitigation indicates that the county will encourage retention of character defining elements of a historic property, where feasible. To successfully mitigate the impact, sufficient character defining elements would have to remain so that the eligibility of the building, structure, object, landscape or site would not be materially impaired. In the Final EIR, please indicate what measures will be used, e.g. permit conditions, to ensure the retention of character defining elements. Also, please indicate that individuals that meet the Secretary of

Interior's Standards for the appropriate profession will be used to determine that the impact on the historical resource shall generally be considered mitigated below a level of significance.

On page 4.5-11 and 4.5-12, the DEIR states in mitigation measure 4.5-1b, "When possible, project applicants shall also strive to maintain or restore original proportions, dimensions, and elements of historic buildings or structures and preserve or restore features of historic objects, landscapes, or sites." In the Final EIR, please indicate that individuals that meet the Secretary of Interior's Standards for the appropriate profession will be used to determine that the impact on the historical resource shall generally be considered mitigated below a level of significance.

On page 4.5-12, the DEIR states in mitigation measure 4.5-1b, "Applicants may be required to use historic preservation techniques and standards to maintain the historical integrity of historic buildings or structures (including the Historic Building Code [Title 24, Part 8]) where mandated. Where restoration or renovation is undertaken to meet the proposed use of the owner, upgrades to plumbing, electrical, HVAC, and interior arrangements will be allowed." In some cases where the interior of the building or structure is integral to the eligibility of the building or structure, the interior alterations being allowed may materially impair the resources eligibility. In the Final EIR, please indicate that individuals that meet the Secretary of Interior's Standards for the appropriate profession will be used to determine whether allowing these upgrades will mitigate to below a level of significance.

Where maintenance, repair, stabilization, rehabilitation, restoration, preservation, conservation or reconstruction of the historical resource is undertaken, CEQA is very specific in the requirements to mitigate below a level of significance. Public Resources Code 15126.4 (b)(1) states "Where maintenance, repair, stabilization, rehabilitation, restoration, preservation, conservation or reconstruction of the historical resource will be conducted in a manner consistent with the Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring, and Reconstructing Historic Buildings (1995), Weeks and Grimmer, the project's impact on the historical resource shall generally be considered mitigated below a level of significance and thus is not significant." The mitigation measure proposed by the County does not require the specified conditions as in the Public Resources Code, possibly allowing significant impacts. In the Final EIR, please change the County proposed mitigation measure to match the requirements of the Public Resources Code 15126.4 or indicate that the impact will be significant.

On page 4.5-12, the DEIR states in mitigation measure 4.5-1a, "An expansion that meets building code guidelines will be permitted so long as the style of the expansion matches the original structure." In some cases a proposed expansion may be of sufficient scale that the eligibility of the building or structure would be materially impaired. This sentence may allow a significant impact. In the Final EIR, please indicate that individuals that meet the Secretary of Interior's Standards for the appropriate profession will be used to determine that the impact on the historical resource shall be considered mitigated below a level of significance.

In several locations there is a need to identify individuals that meet the Secretary of Interior's Standards for the appropriate profession to be used to determine that the impact on the historical resource shall be considered mitigated below a level of significance. This could be more easily

accomplished by the County becoming a Certified Local Government and having qualified members as part of a commission that would review the environmental documents.

One page 4.5-12, the DEIR states, “Where restoration or preservation of a cultural resource is not feasible, applicants shall document the resource and retain the information in a secure, but publicly accessible location.” In some cases the documentation of an archeological site may result in a collection of relevant materials. In the Final EIR, please indicate how the collection will be managed, how the management will be funded, and how the ownership of the collection will be handled. Without identifying these aspects of recordation, the impact could still be significant. Some information about cultural resources is confidential under state law. In the Final EIR, please indicate how the confidential information will be addressed rather than being publicly accessible.

Please be aware that Public Resources Code 15126.4 (b) states “In some circumstances, documentation of an historical resource, by way of historic narrative, photographs or architectural drawings, as mitigation for the effects of demolition of the resource will not mitigate the effects to a point where clearly no significant effect on the environment would occur.” In these cases, there will be a significant impact even with recordation. In the Final EIR, please indicate that there may be a significant impact in some cases.

#### **Mitigation Measure 4.5-1b: Implement CEQA Review of Discretionary Projects**

On page 4.5-12, the DEIR states, “The County will require applicants for discretionary projects that could have significant adverse impacts to prehistoric or historic resources to assess impacts and provide mitigation as part of the CEQA process, and consistent with the requirements of CEQA Guidelines Section 15126.4(b)(3) and Public Resources Code Section 21083.2, or equivalent County regulation. These regulations generally require consultation with appropriate agencies and Native American groups, record search, significance determination by qualified professional, and avoidance of resources if feasible. If avoidance is not feasible, recovery, documentation and recordation of resources is required. In the event human remains are discovered, the project proponent and landowner will comply with California Health and Safety Code Section 7050.5 and California Public Resources Code Section 7050.5.” The specific codes noted in this section only apply to resources of an archeological nature. In the Final EIR, please note under these mitigation measures that the recordation of a resource is to be done prior to an environmental document for the specific project. The data recovery and related documentation are generally completed prior to the implementation of a project. The data recovery reports are to be kept at the NCIC. Please require a report or document for public consumption to be provided to the Amador County Library and the Amador County Archives.

This mitigation measure indicates that the County may have an equivalent regulation to the requirements of CEQA Guidelines Section 15126.4(b)(3) and Public Resources Code Section 21083.2. In order to meet the environmental assessment contained in this document, any equivalent County regulation would have to ensure less of an impact to cultural resources than the stated state codes.

On page 4.5-12, the DEIR states, “In the event human remains are discovered, the project proponent and landowner will comply with California Health and Safety Code Section 7050.5 and California Public Resources Code Section 7050.5. There is no PRC 7050.5. Please replace this with the proper Public Resources Code that deals with Native American remains and associated grave goods.

On pages 4.5-11 and 4.5-12, the DEIR refers to the “Applicant”. In some cases the County is the project proponent. In the Final EIR, please provide the procedures the County will use when they are the “Applicant”.

### **Significance after Mitigation**

On page 4.5-12, the DEIR states, “Mitigation Measures 4.5-1a and 4.5-1b would require development projects that implement the Draft General Plan to identify resources, avoid resources where feasible, and substantially reduce impacts to resources under the direction of an archaeologist, where avoidance would not be feasible. Because these mitigation measures would avoid substantial adverse changes in the significance of known cultural resources, the impact would be reduced to **less than significant**.” An archeologist may be one of the appropriate specialists to ensure the impacts are reduced under these two mitigation measures. In the Final EIR, please indicate that individuals that meet the Secretary of Interior’s Standards for the appropriate profession will be used to determine whether the impact on the historical resource shall be considered mitigated below a level of significance. Also please require an archeologist specializing in historic archeology be used when historic archeological resources are found and an archeologist that specializes in prehistoric archeology be used when prehistoric archeological resources are found.

On page 4.5-12, the DEIR states, “Where restoration or preservation of a cultural resource is not feasible, applicants shall document the resource and retain the information in a secure, but publicly accessible location.” Public Resources Code 15126.4 (b)(2) states, “In some circumstances, documentation of an historical resource, by way of historic narrative, photographs or architectural drawings, as mitigation for the effects of demolition of the resource will not mitigate the effects to a point where clearly no significant effect on the environment would occur.” In the case where demolition of a building or structure is part of the proposed project, recording the historical resource may not reduce the impact to less than significant. In the Final EIR, please revisit this mitigation measure and assess what may be done to reduce the impact and provide a mitigation measure that does reduce the impact, or indicate that the impact will be significant.

On page 4.5-7, the DEIR lists one category of prehistoric sites as Traditional Cultural Properties. Neither of these mitigation measures clearly identifies methods that could be utilized to reduce the impact to identified traditional tribal cultural places. In the Final EIR, please clearly articulate impacts as they apply to traditional tribal cultural places and mitigation measures that would be applied if there is an impact to one of those places. Also indicate whether the measure would reduce the impact to less than significant. If measures can not be identified that would reduce the impact to less than significant, then clearly state that the impact would be significant.

### **IMPACT 4.5-2**



**Mitigation Measure: Implement Mitigation Measures 4.5-1a and 4.5-1b.**

**Mitigation Measure 4.5-2: Impose Standard Conditions on Development**

On page 4.5-13, the DEIR states, “During ground-disturbing activity, if paleontological, historic or pre-historic resources such as chipped or ground stone, fossil-bearing rock, large quantities of shell, historic debris, building foundations, or human bone are inadvertently discovered, the operator/permittee shall immediately cease all such activities within 100 feet of the find and notify the Amador County Technical Advisory Committee.” Although this condition lists some examples of materials that if found need to be reported to the Technical Advisory Committee, there are more intangible features and resources that can be encountered during project development. On page CR-17 in Appendix D of the DEIR a box contains the statement, “Archeological sites frequently are not visible to the untrained eye and are less prominent on the landscape than standing historic resources.” This statement acknowledges that cultural resources are not as notable to an untrained person. Where projects take place in high sensitivity areas it would be more appropriate to have an archeologist monitor ground disturbing activities in order to assure that a resource is not adversely impacted during project development. In the Final EIR, please add the following as one of the standard conditions:

When a discretionary project is allowed in a high sensitivity area an archeologist will monitor ground disturbing activities. The archeologist will have authority to stop construction where a resource is discovered until the cultural resource can be evaluated and any additional mitigation is completed.

On page 4.5-13, the DEIR states, “In the event of discovery or recognition of any human remains anywhere within the work area, the operator/permittee shall comply with the following protocol:

1. Immediately cease any disturbance of the area where such suspected remains are discovered and any nearby areas reasonably suspected to overlie adjacent remains until the Amador County Coroner is contacted, per Section 7050.5 of the California Health and Safety Code, who shall:
2. Determine if an investigation of cause of death is required;
3. Determine if the remains are most likely that of Native American origin, and if so suspected:”

The listed items suggest that the operator/permittee is required to determine if an investigation of cause of death is required or to determine if the remains are most likely of Native American origin. California codes do not require this. California code requires the coroner to make the determinations listed in number 2 and 3. In the Final EIR, please rephrase the conditions to be consistent with state laws and so it is clear to the reader that the coroner is required to make these determinations.

One page 4.5-13, the DEIR states, “If the NAHC is unable to identify a descendant, or the descendant fails to make a recommendation within 24 hours after being contacted by the NAHC, operations may continue.” This is technically correct, however anyone reading this section may believe they can resume construction in 24 hours after the discovery of Native American human



remains. This is not the case. California Health and Safety Code 7050.5(b) gives the Coroner two working days to determine if remains are “...not subject to the provisions of Section 27491 of the Government Code or any other related provisions of law concerning investigation of the circumstances, manner and cause of any death...”. The Health and Safety Code 7050.5(c) requires the Coroner to contact the NAHC within 24 hours of his determination if the Coroner believes the remains do not fall under their authority and are those of Native Americans. Only at this point does the 24 hour period start. Construction could be delayed by six days depending on when the first notification is made. In the Final EIR, please add language indicating that construction could be delayed by several days.

The City of San Diego has perhaps the most thorough mitigation measures that would minimize impacts to cultural resources. Please consider using measures such as these (City of San Diego Draft General Plan Final PEIR pages 3.6-9 through 3.6-25 (September 2007)):

### **3.6.4 Mitigation Framework**

Goals, policies, and recommendations enacted by the City combined with the federal, state and local regulations described above provide a framework for developing project level historical resources mitigation measures for future discretionary projects. All future project submittals will be subject to site specific review in accordance with the Historical Resources Regulation and Guidelines. The City’s process for the evaluation of discretionary projects includes environmental review and documentation pursuant to CEQA as well as an analysis of those projects for consistency with the goals, policies and recommendations of the General Plan. Historical resource evaluations are required when new resources are identified as a result of a survey, when previously recorded resources that have not been previously evaluated are relocated during a survey, and when previously recorded sites are not relocated during the survey and there is a likelihood that the resource still exists. Evaluations will not be required if the resource has been evaluated for CEQA significance or for National Register eligibility within the last five years if there has been no change in the conditions which contributed to the determination of significance or eligibility. A property should be re-evaluated if its condition or setting has either improved or deteriorated, if new information is available, or if the resource is becoming increasingly rare due to the loss of other similar resources. Once it has been determined that a historical resource is present and could be impacted as a result of project implementation, recommendations for mitigation consistent with the Historical Resources Guidelines must be adopted.

Included here are measures that are currently applied to projects that could result in impacts to historical resources. It should be noted that at the time of this writing, these measures are generally considered to be adequate mitigation. However, in the future, mitigation measures may be periodically updated. Future projects would be subject to site-specific measures in effect at the time the projects are processed.

Prior to issuance of any permit that would directly or indirectly affect a building/structure in excess of 45 years of age, the City shall determine whether the affected building/structure meets any of the following criteria: (1) National Register-Listed or formally determined eligible, (2) California Register-Listed or formally determined eligible, (3) San Diego Register-Listed or formally determined eligible, or (4) meets the CEQA criteria for a historical resource. The evaluation of historic architectural resources would be based on criteria such as: age, location,

context, association with an important person or event, uniqueness or structural integrity as indicated in the Historical Resources Guidelines.

Preferred mitigation for historic buildings or structures is to avoid the resource through project redesign. If the resource cannot be entirely avoided, all prudent and feasible measures to minimize harm to the resource shall be taken. Depending upon project impacts, measures can include, but is not limited to:

- a. Preparing a historic resource management plan;
- b. Designing new construction which is compatible in size, scale, materials, color and workmanship to the historic resource (such additions, whether portions of existing buildings or additions to historic districts, shall be clearly distinguishable from historic fabric);
- c. Repairing damage according to the Secretary of the Interior's Standards for Rehabilitation;
- d. Screening incompatible new construction from view through the use of berms, walls and landscaping in keeping with the historic period and character of the resource;
- e. Shielding historic properties from noise generators through the use of sound walls, double glazing and air conditioning; and
- f. Removing industrial pollution at the source of production.

For resources that have been determined eligible or have been designated under federal, state or local criteria, and the potential exists for direct and/or indirect impacts associated with building alteration, demolition, restoration or relocation, the following measures shall be implemented:

#### **I. Prior to Permit Issuance**

##### **A. Construction Plan Check**

1. Prior to Notice to Proceed (NTP) for ANY construction permits, including but not limited to, any demolition permit, the first Grading Permit and Building Permits, but prior to the first preconstruction meeting, whichever is applicable, the Assistant Deputy Director (ADD) Environmental Designee shall verify that the requirements for historical monitoring during stabilization have been noted on the appropriate construction documents.
  - a. Stabilization work can not begin until a Precon Meeting has been held at least one week prior to issuance of appropriate permits.
  - b. Physical description, including the year and type of structure, and extent of stabilization shall be noted on the plans.

##### **B. Submittal of Treatment Plan for Retained Historic Resources**

1. Prior to Notice to Proceed (NTP) for any construction permits, including but not limited to, the first Grading Permit and Building Permits, but prior to the first preconstruction meeting, whichever is applicable, the Applicant shall submit a Treatment Plan to the ADD Environmental Designee for review and approval that includes measures for protecting any historic buildings and/or building components during construction related activities (e.g. removal of non-historic features, demolition of adjacent structures, subsurface structural support, etc.). The Treatment Plan shall be shown as notes on all construction documents (i.e. Grading and/or Building Plans).

##### **C. Letters of Qualification have been submitted to the ADD**

1. The applicant shall submit a letter of verification to the City Mitigation Monitoring Coordination Section (MMC) identifying the Principal Investigator (PI) for the project and the names of all persons involved in the historical monitoring program (i.e.,

Architectural Historian, Historic Architect and/or Historian), as defined in the City of San Diego Historical Resources Guidelines (HRG).

2. MMC will provide a letter to the applicant confirming the qualifications of the PI and all persons involved in the historical monitoring of the project.
  3. Prior to the start of work, the applicant must obtain approval from the ADD for any personnel changes associated with the monitoring program.
- D. In addition to the following Historical Mitigation Program, the Applicant shall comply with any other conditions for designated historical resources, when applicable that are contained in the Site Development Permit identified under the heading Historical Resources Requirements.

## II. Prior to Start of Construction

### A. Documentation Program (DP)

1. Prior to the first Precon Meeting and/or issuance of any construction permit, the DP shall be submitted to MMC for review and approval and shall include the following:
  - a. Photo Documentation
    - (1) Documentation shall include professional quality photo documentation of the structure prior to any construction related activities with 35mm black and white photographs, 4x6 standard format, taken of all four elevations and close-ups of select architectural elements, such as, but not limited to, roof/wall junctions, window treatments, decorative hardware. Photographs shall be of archival quality and easily reproducible.
    - (2) Xerox and/or digital copies (CD/DVD) of the photographs shall be submitted for archival storage with the City of San Diego Historical Resources Board and the City of San Diego Project file and Historical Resources Library. One set of original photographs and negatives shall be submitted for archival storage with the California Room of the City of San Diego Public Library, the San Diego Historical Society and/or other relative historical society or group(s).
  - b. Required drawings
    - (1) Measured drawings of the building's exterior elevations depicting existing conditions or other relevant features shall be produced from recorded, accurate measurements. If portions of the building are not accessible for measurement, or cannot be reproduced from historic sources, they should not be drawn, but clearly labeled as not accessible. Drawings produced in ink on translucent material or archivally stable material (blue-line drawings are acceptable). Standard drawing sizes are 19" x 24" or 24" x 36", standard scale is 1/4" = 1 foot.
    - (2) One set of measured drawings shall be submitted for archival storage with the City of San Diego Historical Resources Board, the City of San Diego Project file and Historical Resources Library, the South Coastal Information Center, the California Room of the City of San Diego Public Library, the San Diego Historical Society and/or other historical society or group(s).
2. Prior to the first Precon Meeting, MMC shall verify that the DP has been approved.

### B. PI Shall Attend Precon Meetings

1. Prior to beginning any work that requires monitoring, the Applicant shall arrange a Precon Meeting that shall include the PI, Construction Manager (CM) and/or Grading Contractor, Resident Engineer (RE), Building Inspector (BI), if appropriate, and MMC. The qualified Historian and/or Architectural Historian shall attend any

grading/excavation related Precon Meetings to make comments and/or suggestions concerning the Historical Monitoring program with the Construction Manager and/or Grading Contractor.

a. If the PI is unable to attend the Precon Meeting, the Applicant shall schedule a focused Precon Meeting with MMC, the PI, RE, CM or BI, if appropriate, prior to the start of any work that requires monitoring.

2. Historical Monitoring Plan (HMP)

a. Prior to the start of any work that requires monitoring; the PI shall submit a Historical Monitoring Program which describes how the monitoring would be accomplished for approval by the MMC. The HMP shall include a Historical Monitoring Exhibit (HME) based on the appropriate construction documents (reduced to 11x17) to MMC identifying the areas to be monitored including the delineation of grading/excavation limits.

b. The HME shall be based on the results of a site-specific records search as well as information regarding existing known soil conditions (native or formation).

c. Prior to the start of any work, the PI shall also submit a construction schedule to MMC through the RE indicating when and where monitoring will occur.

d. The PI may submit a detailed letter to MMC prior to the start of work or during construction requesting a modification to the monitoring program. This request shall be based on relevant information such as review of final construction documents which indicate site conditions such as depth of excavation and/or site graded to bedrock, etc., which may reduce or increase the potential for resources to be present.

3. Prior to beginning any work that requires monitoring, the Applicant shall submit a preliminary research plan to indicate how the significant historical resources will be handled should they be encountered during the monitoring. The preliminary research plan must be approved by the MMC before work begins.

C. Implementation of Approved Treatment Plan for Historic Resources

1. Implementation of the approved Treatment Plan for the protection of Historic Resources within the project site may not begin prior to the completion of the Documentation Program as defined above.

2. The Historian and/or Architectural Historian shall attend weekly jobsite meetings and be on-site daily during the stabilization phase for any retained or adjacent historic resource to photo document the Treatment Plan process.

3. The Historian and/or Architectural Historian shall document activity via the Consultant Site Visit Record (CSVSR). The CSVSR's shall be faxed by the CM to the RE the first day and last day (Notification of Monitoring Completion) of the Treatment Plan process and in the case of ANY unanticipated incidents. The RE shall forward copies to MMC.

4. Prior to the start of any construction related activities, the applicant shall provide verification to MMC that all historic resources on-site have been adequately stabilized in accordance with the approved Treatment Plan. This may include a site visit with MMC, the CM, RE or BI, but may also be accomplished through submittal of the draft Treatment Plan photo documentation report.

5. MMC will provide written verification to the RE or BI after the site visit or upon approval of draft Treatment Plan report indicating that construction related activities can proceed.

- D. Verification of approval of a Historical Commemorative Program (HCP), if applicable
  - 1. The applicant shall submit documentation to MMC for concurrent review and approval by HRB for a site-specific HCP, if mitigation for impacts to a designated resource is based on association with an important person, event or community history and the building would not be retained on-site.
  - 2. MMC in consultation with HRB staff shall provide a letter to the applicant approving or denying the proposal prior to the first preconstruction meeting and/or issuance of any construction permit. However, should conditional approval of the proposal be granted, construction may be allowed to proceed, but the Certificate of Occupancy may not be issued until the historical commemorative program is approved.
  - 3. Prior to the issuance of any Certificate of Occupancy, the applicant shall provide verification to MMC that the HCP has been implemented in accordance with the approved program. This may include a site visit with MMC, HRB, the ADD Environmental Designee, the CM, RE or BI, but may also be accomplished through submittal of photo documentation or appropriate reporting program.
  - 4. MMC will provide written verification to the RE or BI after the site visit indicating that the Certificate of Occupancy can be issued.

### **III. During Construction**

- A. Monitor Shall be Present During Grading/Excavation/Trenching
  - 1. The monitor shall be present full-time during grading/excavation/trenching activities which could result in impacts to historical resources as identified on the HME. The Construction Manager is responsible for notifying the RE, PI, and MMC of changes to any construction activities.
  - 2. The monitor shall document field activity via the Consultant Site Visit Record (CSVSR). The CSVSR's shall be faxed by the CM to the RE the first day of monitoring, the last day of monitoring, monthly (Notification of Monitoring Completion), and in the case of ANY incidents involving the historical resource. The RE shall forward copies to MMC.
  - 3. The PI may submit a detailed letter to MMC during construction requesting a modification to the monitoring program when a field condition arises which could effect the historical resource being retained on-site or adjacent to the construction site.
- B. Notification Process
  - 1. In the event of damage to a historical resource retained on-site or adjacent to the project site, the Historical Monitor shall direct the contractor to temporarily divert construction activities in the area of historical resource and immediately notify the RE or BI, as appropriate, and the PI (unless Monitor is the PI) .
  - 2. The PI shall immediately notify MMC by phone of the incident, and shall also submit written documentation to MMC within 24 hours by fax or email with photos of the resource in context, if possible.
- C. Determination/Evaluation of Impacts to a Historical Resource
  - 1. The PI shall evaluate the incident relative to the historical resource.
    - a. The PI shall immediately notify MMC by phone to discuss the incident and shall also submit a letter to MMC indicating whether additional mitigation is required.
    - b. If impacts to the historical resource are significant, the PI shall submit a proposal for mitigation and obtain written approval from MMC in consultation with HRB and the ADD Environmental Designee. Direct and/or indirect impacts to historical resources

from construction activities must be mitigated before work will be allowed to resume.

- c. If impacts to the historical resource are not considered significant, the PI shall submit a letter to MMC indicating that the incident will be documented in the Final Monitoring Report. The letter shall also indicate that that no further work is required.

#### **IV. Night and/or Weekend Work**

- A. If night and/or weekend work is included in the contract
  1. When night and/or weekend work is included in the contract package, the extent and timing shall be presented and discussed at the precon meeting.
  2. The following procedures shall be followed.
    - a. No Impacts/Incidents  
In the event that no historical resources were impacted during night work, the PI shall record the information on the CSVR and submit to MMC via fax by 9am of the next business day.
    - b. Potentially Significant Impacts  
If the PI determines that a potentially significant impact has occurred to a historical resource, the procedures detailed under Section III – During Construction shall be followed.
    - c. The PI shall immediately contact MMC, or by 8AM the following morning to report and discuss the findings as indicated in Section III-B, unless other specific arrangements have been made.
- B. If night and/or weekend work becomes necessary during the course of construction
  1. The Construction Manager shall notify the RE, or BI, as appropriate, a minimum of 24 hours before the work is to begin.
  2. The RE, or BI, as appropriate, shall notify MMC immediately.
- C. All other procedures described above shall apply, as appropriate.

#### **V. Post Construction**

- A. Submittal of Draft Monitoring Report
  1. The PI shall submit two copies of the Draft Monitoring Report (even if negative) which describes the results, analysis, and conclusions of all phases of the Historical Monitoring Program (with appropriate graphics) to MMC for review and approval within 90 days following the completion of monitoring,
    - a. The preconstruction Treatment Plan and Documentation Plan (photos and measured drawings) and Historical Commemorative Program, if applicable, shall be included and/or incorporated into the Draft Monitoring Report.
    - b. The PI shall be responsible for updating (on the appropriate State of California Department of Park and Recreation forms-DPR 523 A/B) any existing site forms to document the partial and/or complete demolition of the resource. Updated forms shall be submitted to the South Coastal Information Center with the Final Monitoring Report.
  2. MMC shall return the Draft Monitoring Report to the PI for revision or, for preparation of the Final Report.
  3. The PI shall submit revised Draft Monitoring Report to MMC for approval.
  4. MMC shall provide written verification to the PI of the approved report.
  5. MMC shall notify the RE or BI, as appropriate, of receipt of all Draft Monitoring Report submittals and approvals.

**B. Final Monitoring Report(s)**

1. The PI shall submit one copy of the approved Final Monitoring Report to the RE or BI as appropriate, and one copy to MMC (even if negative), within 90 days after notification from MMC that the draft report has been approved.
2. The RE shall, in no case, issue the Notice of Completion until receiving a copy of the approved Final Monitoring Report from MMC.

Prior to issuance of any permit that could directly affect an archaeological resource; the City shall require the following steps be taken to determine: (1) the presence of archaeological resources and (2) the appropriate mitigation for any significant resources which may be impacted by a development activity. Sites may include but are not limited to, residential and commercial properties, privies, trash pits, building foundations, and industrial features representing the contributions of people from diverse socio-economic and ethnic backgrounds. Sites may also include resources associated with pre-historic Native American activities.

**INITIAL DETERMINATION**

The environmental analyst will determine the likelihood for the project site to contain historical resources by reviewing site photographs and existing historic information (e.g. Archaeological Sensitivity Maps, the Archaeological Map Book, and the City of San Diego’s “Historical Inventory of Important Architects, Structures, and People in San Diego”) and conducting a site visit. If there is any evidence that the site contains archaeological resources, then a historic evaluation consistent with the City of San Diego’s Historical Resources Guidelines would be required. All individuals conducting any phase of the archaeological evaluation program must meet professional qualifications in accordance with the City’s Historical Resources Guidelines.

**STEP 1:**

Based on the results of the Initial Determination, if there is evidence that the site contains historical resources, preparation of a historic evaluation is required. The evaluation report would generally include background research, field survey, archeological testing and analysis. Before actual field reconnaissance would occur, background research is required which includes a record search at the South Coastal Information Center (SCIC) at San Diego State University and the San Diego Museum of Man. A review of the Sacred Lands File maintained by the Native American Heritage Commission (NAHC) must also be conducted at this time. Information about existing archaeological collections should also be obtained from the San Diego Archaeology Center and any tribal repositories or museums.

In addition to the record searches mentioned above, background information may include, but is not limited to: examining primary sources of historical information (e.g., deeds and wills), secondary sources (e.g., local histories and genealogies), Sanborn Fire Maps, and historic cartographic and aerial photograph sources; reviewing previous archeological research in similar areas, models that predict site distribution, and archeological, architectural, and historical site inventory files; and conducting informant interviews. The results of the background information would be included in the evaluation report.

Once the background research is complete a field reconnaissance must be conducted by individuals whose qualifications meet the standards outlined in the City of San Diego’s historical Resources Guidelines. Consultants are encouraged to employ innovative survey techniques when



conducting enhanced reconnaissance including but not limited to, remote sensing, ground penetrating radar and other soil resistivity techniques as determined on a case by case basis. Native American participation is required for field surveys when there is likelihood that the project site contains prehistoric archaeological resources or traditional cultural properties. If through background research and field surveys historic resources are identified, then an evaluation of significance must be performed by a qualified archaeologist or historian, as applicable.

**STEP 2:**

Once a historic resource has been identified, a significance determination must be made. It should be noted, that tribal representatives and/or Native American monitors will be involved in making recommendations regarding the significance of prehistoric archaeological sites during this phase of the process. The testing program may require reevaluation of the proposed project in consultation with the Native American representative which could result in a combination of project redesign to avoid and/or preserve significant resources as well as mitigation in the form of data recovery and monitoring (as recommended by the qualified archaeologist and Native American representative). An archaeological testing program will be required which includes evaluating the horizontal and vertical dimensions of a site, the chronological placement, site function, artifact/ecofact density and variability, presence/absence of subsurface features and research potential. A thorough discussion of testing methodologies including, surface and subsurface investigations can be found in the City of San Diego's Historical Resources Guidelines.

The results from the testing program will be evaluated against the Significance Thresholds found in the Historical Resources Guidelines. If significant historical resources are identified within the Area of Potential Effect, the site may be eligible for local designation. At this time, the final testing report must be submitted to Historical Resources Board staff for eligibility determination and possible designation. An agreement on the appropriate form of mitigation is required prior to distribution of a draft environmental document. If no significant resources are found, and site conditions are such that there is no potential for further discoveries, then no further action is required. Resources found to be non-significant as a result of a survey and/or assessment will require no further work beyond documentation of the resources on the appropriate DPR site forms and inclusion of results in the survey and/or assessment report. If no significant resources are found but results of the initial evaluation and testing phase indicates there is still a potential for resources to be present in portions of the property that could not be tested, then mitigation monitoring is required.

**STEP 3:**

Preferred mitigation for historic resources is to avoid the resource through project redesign. If the resource cannot be entirely avoided, all prudent and feasible measures to minimize harm shall be taken. For archaeological resources where preservation is not an option, a Research Design and Data Recovery Program (RDDRP) is required which includes a Collections Management Plan for review and approval. The data recovery program shall be based on a written research design and is subject to the provisions as outlined in CEQA, Section 21083.2. The data recovery program must be reviewed and approved by the City's Environmental Analyst prior to draft



CEQA document distribution. Archaeological monitoring may be required during building demolition and/or construction grading when significant resources are known or suspected to be present on a site, but cannot be recovered prior to grading due to obstructions such as but not limited to, existing development or dense vegetation.

A Native American observer must be retained for all subsurface investigations, including geotechnical testing and other ground disturbing activities whenever a Native American Traditional Cultural Property or any archaeological site located on City property or within the APE of a City project would be impacted. In the event that human remains are encountered during data recovery and/or monitoring program, the provisions of Public Resources Code Section 5097 must be followed. These provisions are outlined in the Mitigation Monitoring and Reporting Program included in the environmental document. The Native American monitor shall be consulted during the preparation of the written report, at which time they may express concerns about the treatment of sensitive resources. If the Native American community requests participation of an observer for subsurface investigations on private property, the request shall be honored.

#### **STEP 4:**

Historic resource reports shall be prepared by qualified professionals as determined by the criteria set forth in Appendix B of the Historical Resources Guidelines. The discipline shall be tailored to the resource under evaluation. In cases involving complex resources, such as traditional cultural properties, rural landscape districts, or sites involving a combination of prehistoric and historic archaeology, or historic districts, a team of experts will be necessary for a complete evaluation.

Specific types of historical resource reports are required to document the methods (see Section III of the Historical Resources Guidelines) used to determine the presence or absence of historical resources; to identify the potential impacts from proposed development and evaluate the significance of any identified historical resources; to document the appropriate curation of archaeological collections (e.g. collected materials and the associated records); in the case of potentially significant impacts to historical resources, to recommend appropriate mitigation measures that would reduce the impacts to below a level of significance; and to document the results of mitigation and monitoring programs, if required.

Archaeological Resource Management reports shall be prepared in conformance with the California Office of Historic Preservation (OHP) "Archaeological Resource Management Reports (ARMR): Recommended Contents and Format" (see Appendix C of the Historical Resources Guidelines), which will be used by Environmental Analysis Section staff in the review of archaeological resource reports. Consultants must ensure that archaeological resource reports are prepared consistent with this checklist. This requirement will standardize the content and format of all archaeological technical reports submitted to the City. A confidential appendix must be submitted (under separate cover), along with historical resources reports for archaeological sites and traditional cultural properties, containing the confidential resource maps and records search information gathered during the background study. In addition, a Collections

Management Plan shall be prepared for projects which result in a substantial collection of artifacts and must address the management and research goals of the project, the types of materials to be collected and curated based on a sampling strategy that is acceptable to the City

of San Diego. Appendix D (Historical Resources Report Form) may be used when no archaeological resources were identified within the project boundaries.

**STEP 5:**

For Archaeological Resources: All cultural materials, including original maps, field notes, nonburial related artifacts, catalog information and final reports recovered during public and/or private development projects must be permanently curated with an appropriate institution, one which has the proper facilities and staffing for insuring research access to the collections consistent with state and federal standards. In the event that a prehistoric and/or historical deposit is encountered during construction monitoring, a Collections Management Plan would be required in accordance with the project Mitigation, Monitoring and Reporting Program (MMRP).

The disposition of human remains and burial related artifacts that cannot be avoided or are inadvertently discovered is governed by state (i.e., AB 2641 and California Native American Graves Protection and Repatriation Act (CALNAGPRA) of 2001 and federal (i.e., Federal NAGPRA) law, and must be treated in a dignified and culturally appropriate manner with respect for the deceased individual(s) and their descendants. Any human bones and associated grave goods of Native American origin shall be turned over to the appropriate Native American group for repatriation.

Arrangements for long-term curation must be established between the applicant/property owner and the consultant prior to the initiation of the field reconnaissance, and must be included in the archaeological survey, testing and/or data recovery report submitted to the City for review and approval. Curation must be accomplished in accordance with the California State Historic Resources Commission's Guidelines for the Curation of Archaeological Collection (dated May 7, 1993) and, if federal funding is involved, 36CFR79 of the Federal Register. Additional information regarding curation is provided in Section II of the Historical Resources Guidelines.

**I. Prior to Permit Issuance**

**A. Land Development Review (LDR) Plan Check.**

1. Prior to Notice to Proceed (NTP) for any construction permits, including but not limited to, the first Grading Permit, Demolition Plans/Permits and Building Plans/Permits, but prior to the first preconstruction meeting, whichever is applicable, the Assistant Deputy Director (ADD) Environmental designee shall verify that the requirements for Archaeological Monitoring and Native American monitoring have been noted on the appropriate construction documents.

**B. Letters of Qualification have been submitted to ADD.**

1. The applicant shall submit a letter of verification to Mitigation Monitoring Coordination (MMC) identifying the Principal Investigator (PI) for the project and the names of all persons involved in the archaeological monitoring program, as defined in the City of San Diego Historical Resources Guidelines (HRG). If applicable, individuals involved in the archaeological monitoring program must have completed the 40-hour HAZWOPER training with certification documentation.
2. MMC will provide a letter to the applicant confirming the qualifications of the PI and all persons involved in the archaeological monitoring of the project.
3. Prior to the start of work, the applicant must obtain approval from MMC for any personnel changes associated with the monitoring program.

## II. Prior to Start of Construction

### A. Verification of Records Search.

1. The PI shall provide verification to MMC that a site specific records search (1/4 mile radius) has been completed. Verification includes, but is not limited to a copy of a confirmation letter from South Coast Information Center, or, if the search was inhouse, a letter of verification from the PI stating that the search was completed.
2. The letter shall introduce any pertinent information concerning expectations and probabilities of discovery during trenching and/or grading activities.
3. The PI may submit a detailed letter to MMC requesting a reduction to the ¼ mile radius.

### B. PI Shall Attend Precon Meetings

1. Prior to beginning any work that requires monitoring, the Applicant shall arrange a Precon Meeting that shall include the PI, Construction Manager (CM) and/or Grading Contractor, Resident Engineer (RE), Building Inspector (BI), if appropriate, and MMC. The qualified Archaeologist and Native American monitor shall attend any grading/excavation related Precon Meetings to make comments and/or suggestions concerning the Archaeological Monitoring program with the Construction Manager and/or Grading Contractor.
  - a. If the PI is unable to attend the Precon Meeting, the Applicant shall schedule a focused Precon Meeting with MMC, the PI, RE, CM or BI, if appropriate, prior to the start of any work that requires monitoring.
2. Identify Areas to be Monitored  
Prior to the start of any work that requires monitoring, the PI shall submit an Archaeological Monitoring Exhibit (AME) based on the appropriate construction documents (reduced to 11x17) to MMC identifying the areas to be monitored including the delineation of grading/excavation limits. The AME shall be based on the results of a site specific records search as well as information regarding existing known soil conditions (native or formation).
3. When Monitoring Will Occur
  - a. Prior to the start of any work, the PI shall also submit a construction schedule to MMC through the RE indicating when and where monitoring will occur.
  - b. The PI may submit a detailed letter to MMC prior to the start of work or during construction requesting a modification to the monitoring program. This request shall be based on relevant information such as review of final construction documents which indicate site conditions such as depth of excavation and/or site graded to bedrock, etc., which may reduce or increase the potential for resources to be present.

## III. During Construction

### A. Monitor(s) Shall be Present During Grading/Excavation/Trenching.

1. The Archaeological monitor shall be present full-time during grading/excavation/trenching activities which could result in impacts to archaeological resources as identified on the AME. The Native American monitor shall determine the extent of their presence during construction related activities based on the AME and provide that information to the PI and MMC. **The Construction Manager is responsible for notifying the RE, PI, and MMC of changes to any construction activities.**

2. The monitor shall document field activity via the Consultant Site Visit Record (CSVSR). The CSVSR's shall be faxed by the CM to the RE the first day of monitoring, the last day of monitoring, monthly (**Notification of Monitoring Completion**), and in the case of ANY discoveries. The RE shall forward copies to MMC.
3. The PI may submit a detailed letter to MMC during construction requesting a modification to the monitoring program when a field condition such as modern disturbance post-dating the previous grading/trenching activities, presence of fossil formations, or when native soils are encountered may reduce or increase the potential for resources to be present.

**B. Discovery Notification Process**

1. In the event of a discovery, the Archaeological Monitor shall direct the contractor to temporarily divert trenching activities in the area of discovery and immediately notify the RE or BI, as appropriate.
2. The Monitor shall immediately notify the PI (unless Monitor is the PI) of the discovery.
3. The PI shall immediately notify MMC by phone of the discovery, and shall also submit written documentation to MMC within 24 hours by fax or email with photos of the resource in context, if possible.

**C. Determination of Significance**

1. The PI and Native American representative, shall evaluate the significance of the resource. If Human Remains are involved, follow protocol in Section IV below:
  - a. The PI shall immediately notify MMC by phone to discuss significance determination and shall also submit a letter to MMC indicating whether additional mitigation is required.
  - b. If the resource is significant, the PI shall submit an Archaeological Data Recovery Program (ADRP) and obtain written approval from MMC. Impacts to significant resources must be mitigated before ground disturbing activities in the area of discovery will be allowed to resume.
  - c. If resource is not significant, the PI shall submit a letter to MMC indicating that artifacts will be collected, curated, and documented in the Final Monitoring Report. The letter shall also indicate that that no further work is required.

**IV. Discovery of Human Remains**

If human remains are discovered, work shall halt in that area and the following procedures as set forth in the California Public Resources Code (Sec. 5097.98) and State Health and Safety Code (Sec. 7050.5) shall be undertaken:

**A. Notification**

1. Archaeological Monitor shall notify the RE or BI as appropriate, MMC, and the PI, if the Monitor is not qualified as a PI. MMC will notify the appropriate Senior Planner in the Environmental Analysis Section (EAS).
2. The PI shall notify the Medical Examiner after consultation with the RE, either in person or via telephone.

**B. Isolate discovery site**

1. Work shall be directed away from the location of the discovery and any nearby area reasonably suspected to overlay adjacent human remains until a determination can be made by the Medical Examiner in consultation with the PI concerning the provenience of the remains.

2. The Medical Examiner, in consultation with the PI, will determine the need for a field examination to determine the provenience.
  3. If a field examination is not warranted, the Medical Examiner will determine with input from the PI, if the remains are or are most likely to be of Native American origin.
- C. If Human Remains ARE determined to be Native American**
1. The Medical Examiner will notify the Native American Heritage Commission (NAHC) within 24 hours. By law, **ONLY** the Medical Examiner can make this call.
  2. The NAHC will contact the PI within 24 hours or sooner, after Medical Examiner has completed coordination.
  3. NAHC will immediately identify the person or persons determined to be the Most Likely Descendent (MLD) and provide contact information.
  4. The PI shall coordinate with the MLD for additional consultation.
  5. The MLD will have 48 hours to make recommendations to the property owner or representative, for the treatment or disposition with proper dignity, of the human remains and associated grave goods.
  6. Disposition of Native American Human Remains shall be determined between the MLD and the PI, IF:
    - a. The NAHC is unable to identify the MLD, OR the MLD failed to make a recommendation within 48 hours after being notified by the Commission; OR;
    - b. The landowner or authorized representative rejects the recommendation of the MLD and mediation in accordance with PRC 5097.94 (k) by the NAHC fails to provide measures acceptable to the landowner.
    - c. In order to protect these sites, the Landowner shall do one or more of the following:
      - (1) Record the site with the NAHC;
      - (2) Record an open space or conservation easement on the site;
      - (3) Record a document with the County.
    - d. Upon the discovery of multiple Native American human remains during a ground disturbing land development activity, the landowner may agree that additional conferral with descendants is necessary to consider culturally appropriate treatment of multiple Native American human remains. Culturally appropriate treatment of such a discovery may be ascertained from review of the site utilizing cultural and archaeological standards. Where the parties are unable to agree on the appropriate treatment measures the human remains and buried with Native American human remains shall be reinterred with appropriate dignity, pursuant to Section 6.c., above.
- D. If Human Remains are NOT Native American**
1. The PI shall contact the Medical Examiner and notify them of the historic era context of the burial.
  2. The Medical Examiner will determine the appropriate course of action with the PI and City staff (PRC 5097.98).
  3. If the remains are of historic origin, they shall be appropriately removed and conveyed to the Museum of Man for analysis. The decision for internment of the human remains shall be made in consultation with MMC, EAS, the applicant/landowner and the Museum of Man.

## **V. Night and/or Weekend Work**

- A. If night and/or weekend work is included in the contract**

1. When night and/or weekend work is included in the contract package, the extent and timing shall be presented and discussed at the precon meeting.
2. The following procedures shall be followed.
  - a. No Discoveries  
In the event that no discoveries were encountered during night and/or weekend work, The PI shall record the information on the CSVR and submit to MMC via fax by 9am the following morning of the next business day.
  - b. Discoveries  
All discoveries shall be processed and documented using the existing procedures detailed in Sections III - During Construction, and IV – Discovery of Human Remains.
  - c. Potentially Significant Discoveries  
If the PI determines that a potentially significant discovery has been made, the procedures detailed under Section III - During Construction shall be followed.
  - d. The PI shall immediately contact MMC, or by 8AM the following morning to report and discuss the findings as indicated in Section III-B, unless other specific arrangements have been made.
- B. If night and/or weekend work becomes necessary during the course of construction
  1. The Construction Manager shall notify the RE, or BI, as appropriate, a minimum of 24 hours before the work is to begin.
  2. The RE, or BI, as appropriate, shall notify MMC immediately.
- C. All other procedures described above shall apply, as appropriate.

## **VI. Post Construction**

- A. Submittal of Draft Monitoring Report
  1. The PI shall submit two copies of the Draft Monitoring Report (even if negative) which describes the results, analysis, and conclusions of all phases of the Archaeological Monitoring Program (with appropriate graphics) to MMC for review and approval within 90 days following the completion of monitoring,
    - a. For significant archaeological resources encountered during monitoring, the Archaeological Data Recovery Program shall be included in the Draft Monitoring Report.
    - b. Recording Sites with State of California Department of Parks and Recreation  
The PI shall be responsible for recording (on the appropriate State of California Department of Park and Recreation forms-DPR 523 A/B) any significant or potentially significant resources encountered during the Archaeological Monitoring Program in accordance with the City’s Historical Resources Guidelines, and submittal of such forms to the South Coastal Information Center with the Final Monitoring Report.
  2. MMC shall return the Draft Monitoring Report to the PI for revision or, for preparation of the Final Report.
  3. The PI shall submit revised Draft Monitoring Report to MMC for approval.
  4. MMC shall provide written verification to the PI of the approved report.
  5. MMC shall notify the RE or BI, as appropriate, of receipt of all Draft Monitoring Report submittals and approvals.
- B. Handling of Artifacts

1. The PI shall be responsible for ensuring that all cultural remains collected are cleaned and catalogued.
  2. The PI shall be responsible for ensuring that all artifacts are analyzed to identify function and chronology as they relate to the history of the area; that faunal material is identified as to species; and that specialty studies are completed, as appropriate.
  3. The cost for curation is the responsibility of the property owner.
- C. Curation of artifacts: Accession Agreement and Acceptance Verification
1. The PI shall be responsible for ensuring that all artifacts associated with the survey, testing and/or data recovery for this project are permanently curated with an appropriate institution. This shall be completed in consultation with MMC and the Native American representative, as applicable.
  2. The PI shall include the Acceptance Verification from the curation institution in the Final Monitoring Report submitted to the RE or BI and MMC.
- D. Final Monitoring Report(s)
1. The PI shall submit one copy of the approved Final Monitoring Report to the RE or BI as appropriate, and one copy to MMC (even if negative), within 90 days after notification from MMC that the draft report has been approved.
  2. The RE shall, in no case, issue the Notice of Completion and/or release of the Performance Bond for grading until receiving a copy of the approved Final Monitoring Report from MMC which includes the Acceptance Verification from the curation institution.

### **3.6.5 Significance of Impact with Mitigation Framework**

Although significant impacts to historical resources may be mitigated through review of discretionary projects, specific mitigation at the program EIR level is not available since specific development projects are not known. Therefore, the impact to historical resources is considered significant and unavoidable.

## **SECTION 4.6 GEOLOGY, SOILS, MINERAL RESOURCES, AND PALEONTOLOGICAL RESOURCES**

### **Paleontological Resource Assessment Criteria**

On page 4.6-12 the DEIR states, “The potential paleontological importance of the project site can be assessed by identifying the paleontological importance of exposed rock units within the project site.” The Society of Vertebrate Paleontology (SVP) provides “Conformable Impact Mitigation Guidelines” (<http://vertpaleo.org/The-Society/Governance-Documents/Conformable-Impact-Mitigation-Guidelines-Committee.aspx>, 2014) which assigns importance by designating the potential as: high, undetermined and low. Please follow the SVP guidelines and provide a designation for each of the rock units in the analysis.

On page 4.6-12 the DEIR states, “Because the areal distribution of a rock unit can be easily delineated on a topographic map, this method is conducive to delineating parts of the project site that are of higher and lower sensitivity for paleontological resources and to delineating parts of the project site that may require monitoring during construction.” Please provide a map of the project area that clearly delineates the rock and the rock units potential.

### **Paleontological Resource Assessment Results**

On pages 4.6-12 and 13 the DEIR lists four formations that are known to contain paleontological deposits: Modesto Formation, Riverbank Formation, Mehrten Foundation, and the Ione Foundation. Exhibit 4.6-3 Geologic Map and its accompanying legend only list the Mehrten and Ione Formations. There is no information as to the location of the Modesto and Riverbank Formations. In the Final EIR, please provide a map that clearly delineates all of the formations that contain paleontological materials.

In our scoping comments we explained the importance of the environmental setting sections of an EIR. “An EIR must contain an accurate description of the project’s environmental setting. An EIR ‘must include a description of the physical environmental conditions in the vicinity of the project ... from both a local and regional perspective. This environmental setting will normally constitute the baseline physical conditions by which a lead agency determines whether an impact is significant.’ (Guidelines, § 15125, subd. (a).) There is good reason for this requirement: ‘Knowledge of the regional setting is critical to the assessment of environmental impacts.... The EIR must demonstrate that the significant environmental impacts of the proposed project were adequately investigated and discussed and it must permit the significant effects of the project to be considered in the full environmental context.’ (Guidelines, § 15125, subd. (c).) We interpret this Guideline broadly in order to ‘afford the fullest possible protection to the environment.’ (*Kings County Farm Bureau, supra*, 221 Cal.App.3d 692, 720.) In so doing, we ensure that the EIR’s analysis of significant effects, which is generated from this description of the environmental context, is as accurate as possible.” (*Friends of the Eel River v. Sonoma County Water Agency* (2003) 108 Cal.App.4<sup>th</sup> 859, 874; quoted in Foothill Conservancy Scoping Comments, Chapter 1, p. 5.)



On pages 4.6-12 and 13 the DEIR notes that the Mehrten Formation and the Ione Formation are “considered a paleontologically sensitive rock unit under the Society of Vertebrate Paleontology guidelines (1995).” Please indicate the sensitivity of the other rock units within the project area.

### **4.6.3 IMPACTS AND MITIGATION MEASURES**

#### **ANALYSIS METHODOLOGY**

On page 4.6-19 the DEIR states, “For paleontological resources, impact analysis is based on the likelihood that implementation of the Draft General Plan would affect areas or formations with known vertebrate paleontological resources.” Appendix G of the CEQA Guidelines states that impacts related to paleontological resources would be significant if the proposed Project would, “Directly or indirectly destroy a unique paleontological resource or site or unique geologic feature.” The description of the four formations (DEIR pages 4.6-12 and 4.6-19) identified in the analysis indicate that more than vertebrate resources have been found in most of these formations. Since CEQA requires an impact analysis to paleontological resources, please provide an analysis for all types of paleontological resources in the Final EIR.

#### **THRESHOLDS OF SIGNIFICANCE**

On page 4.6-21 the DEIR states, “Marine invertebrate fossil specimens are generally common, well developed, and well documented. They would generally not be considered a unique paleontological resource.” The SVP “Conformable Impact Mitigation Guidelines” (<http://vertpaleo.org/The-Society/Governance-Documents/Conformable-Impact-Mitigation-Guidelines-Committee.aspx> , 2014) state, “Sensitivity comprises both (a) the potential for yielding abundant or significant vertebrate fossils or for yielding a few significant fossils, large or small, vertebrate, invertebrate, or botanical and (b) the importance of recovered evidence for new and significant taxonomic, phylogenetic, ecologic, or stratigraphic data. Areas which contain potentially datable organic remains older than Recent, including deposits associated with nests or middens, and areas which may contain new vertebrate deposits, traces, or trackways are also classified as significant.” Please note that the SVP does not limit the impacts to just vertebrate fossils. In the Final EIR, please amend your analysis to include all categories of fossils and pertinent remains as identified by AVP, not just vertebrate remains.

#### **IMPACT**

##### **4.6-9**

On page 4.6-26 the DEIR states, “As discussed in detail above in the section titled ‘Paleontological Resource Inventory and Assessment by Rock Unit,’ numerous vertebrate fossil specimens have been recorded from the Modesto, Riverbank, Mehrten, and Ione Formations. The fact that vertebrate fossils have been recovered near Amador County and other recorded vertebrate fossil localities have been recorded in sediments referable to these formations, suggests that there is a potential for uncovering additional similar fossil remains during construction related earthmoving activities, including trenching for utilities, within the planning area.” This part of the impact analysis is limited to vertebrate fossils and does not address the full

potential impacts of the project. In the Final EIR, please expand this part of the analysis to include all categories of fossil remains.

#### **Mitigation Measure 4.6-9: Paleontological Resource Assessment**

On page 4.6-26 the DEIR states, “When reviewing discretionary development proposals, the County will require project applicants to conduct a paleontological resources impact assessment for projects proposed within the Modesto, Riverbank, Mehrten, and Ione Formations, where a CEQA document is required and where substantial excavation is anticipated.” If there are other rock units besides these four formations that qualify as high potential and undetermined potential to contain paleontological remains, please include these areas as qualifying under this mitigation measure.

Please define the quantity of excavation that qualifies as substantial. Please indicate what mitigation will be implemented if a discovery is made during construction for projects that do not meet the criteria of “substantial excavation.”

On pages 4.6-26 and 4.6-27 the DEIR states, “Where such impacts are found to be potentially significant, the County will require project applicants to implement feasible mitigation measures to reduce impacts, such as construction worker personnel education, consultation with a qualified paleontologist should resources be encountered, avoidance of resources if feasible, and recovery and curation of specimens, as appropriate.” In some cases monitoring of the excavations by a qualified paleontologist may be necessary to mitigate potential impacts. In the Final EIR, please add this to the list of potential mitigation measures.

On page 4.6-27 the DEIR states, “Projects on already-disturbed sites and projects that do not involve substantial excavation would be exempt from this requirement.” Projects even though they are built on already disturbed sites may excavate into undisturbed sediments disturbing paleontological remains. Projects with less than substantial excavation could also disturb paleontological remains. In the Final EIR, please provide measure(s) that would mitigate the discovery during the implementation of these types of projects.

This section does not consider discoveries of paleontological remains during project activities. However, in Chapter 4 (Environmental Impact Analysis) on page 4.5-13 the DEIR states under Mitigation Measure 4.5-2 (Cultural Resources),

The County will continue to impose the following conditions on projects which include ground disturbing activity. Applicants will be required to do the following:

- During ground-disturbing activity, if paleontological, historic or pre-historic resources such as chipped or ground stone, fossil-bearing rock, large quantities of shell, historic debris, building foundations, or human bone are inadvertently discovered, the operator/permittee shall immediately cease all such activities within 100 feet of the find and notify the Amador County Technical Advisory Committee.

In the Final EIR, please include such a mitigation measure in this section.

## 4.9 HYDROLOGY AND WATER QUALITY

### 4.9.1 Regulatory Setting

#### Groundwater Legislation

The final EIR should include a summary of the recently adopted legislation that affects groundwater management – State Bill 1168, Assembly Bill 1739, and State Bill 1319. This summary should provide sufficient information for county residents to determine:

- current efforts addressing sustainable groundwater management
- the timeframes for complying with specific requirements of the legislation
- the agency that will act as “the groundwater sustainability agency” and be responsible for implementation of groundwater regulation in Amador County
- the requirements of groundwater sustainability plans and how they will affect landowners.

#### Water Quality Control Plan for the Sacramento-San Joaquin River Basins

The beneficial uses of waterbodies in Amador County are listed in Table 4.9-1 (p. 4.9-7). The beneficial uses are designated by the Central Valley Regional Water Quality Control Board (CVRWQCB) in the Water Quality Control Plan for the Sacramento-San Joaquin River Basins (Basin Plan, CVRWQCB 2011 as cited in the DEIR, p. 4.9-4). However, the Basin Plan does not list beneficial uses for all waterbodies. It states that the “...beneficial uses of any specifically identified water body generally apply to its tributary streams (page II-2.00).” This ‘tributary rule’ extends beneficial uses to smaller tributaries. For example, Jackson Creek has beneficial uses not noted in the Table 4.9-1 and this should be corrected. The beneficial uses of Jackson Creek are provided in the NPDES permit for the City of Jackson which discharges effluent to Jackson Creek (Exhibit 4.9.1-1, Table 5, p.5).

Table 4.9-1 omits Dry Creek from its list. Please include the beneficial uses of Dry Creek.

On page 4.9-10 of the DEIR, a list of wastewater treatment facilities indicates that several facilities are under current enforcement actions. Please provide more detailed information of these violations of wastewater permits as they indicate that these facilities might not be able to adequately handle increased wastewater that would be generated by future growth. As we noted in our scoping comments, “Among the most relevant aspects of the environmental setting that must be disclosed in an EIR, is that the agency must divulge harm to the environment caused by current and past mismanagement, and any efforts being made to remedy that harm that might affect the proposed project. (Friends of the Eel River v. Sonoma County Water Agency (2003) 108 Cal.App.4<sup>th</sup> 859, 874.)” (Foothill Conservancy Scoping Comments, Chapter 1, p. 6.) “Because an EIR cannot be meaningfully considered in a vacuum devoid of reality, a project proponent's prior environmental record is properly a subject of close consideration in determining the sufficiency of the proponent's

promises in an EIR." (*Laurel Heights Improvement Association of San Francisco v. Regents of the University of California* (1988) 47 Cal.3d 376, 420 [253 Cal.Rptr. 426.]).

### **Irrigated Lands Regulatory Program**

In the discussion of the Irrigated Lands Regulatory Program, the DEIR (p.4.9-11) fails to indicate what coalition group was created for irrigated lands and what growers opted for individual permits or coverage under a general WDR. Please discuss the Sacramento Amador Water Quality Alliance, its water quality monitoring, BMPs, and governing infrastructure.

### **4.9.2 Environmental Setting**

#### **Water Quality**

In our scoping comments we explained the importance of the environmental setting sections of an EIR. "An EIR must contain an accurate description of the project's environmental setting. An EIR 'must include a description of the physical environmental conditions in the vicinity of the project ... from both a local and regional perspective. This environmental setting will normally constitute the baseline physical conditions by which a lead agency determines whether an impact is significant.' (Guidelines, § 15125, subd. (a).) There is good reason for this requirement: 'Knowledge of the regional setting is critical to the assessment of environmental impacts.... The EIR must demonstrate that the significant environmental impacts of the proposed project were adequately investigated and discussed and it must permit the significant effects of the project to be considered in the full environmental context.' (Guidelines, § 15125, subd. (c).) We interpret this Guideline broadly in order to 'afford the fullest possible protection to the environment.' (*Kings County Farm Bureau, supra*, 221 Cal.App.3d 692, 720.) In so doing, we ensure that the EIR's analysis of significant effects, which is generated from this description of the environmental context, is as accurate as possible." (*Friends of the Eel River v. Sonoma County Water Agency* (2003) 108 Cal.App.4<sup>th</sup> 859, 874; quoted in Foothill Conservancy Scoping Comments, Chapter 1, p. 5.)

Impaired Water Bodies within Amador County are listed in Table 4.9-3 (p.4.9-19). The data are from the 303(d) list for 2010. EPA requires the States to update their 303(d) lists every two years on even years, so this list is outdated and should be revised. With that said, information from the 2010 list is not in agreement with information provided by the CVWQCB in its NPDES permit to the City of Jackson (Exhibit 4.9.1-1, p. 5). Lake Amador is not listed in the DEIR table; however the Regional Board indicates that Lake Amador is a water-quality limited segment due to high pH.

The draft EIR does not evaluate water quality impacts associated with agriculture and mining. Does the County have data to determine whether agriculture contributes sediment, nutrients, or pesticides to surface water or groundwater? If the County has no access to direct monitoring results, what can be determined from similar land uses in the water quality literature? Please explain mitigation measures that are taken by intensive agriculture and the mining industry to minimize adverse impacts to water quality and quantity of surface and groundwater? If impacts

are likely, does the General Plan include any additional mitigation measures? What are the environmental impacts of wastewater generated from Mineral Resource Zones on agriculture or other adjacent land uses? Does mining or intensive agriculture have the potential to lower the groundwater table so as to affect adjacent land uses? Please include this discussion in the final EIR. If impacts are likely, then mitigation measures need to be identified in the final EIR.

What are the current environmental impacts of septic tanks in the County? Does the County estimate the percent of failing systems or enforce clean-up? Does the County have sufficient manpower to monitor septic systems and enforce clean-up? Has the County analyzed the effects of additional onsite septic tanks on groundwater quality?

### **Martell Regional Service Area**

A portion of the Martell Regional Service Area was used for lumber mill operations that required various waste disposal sites such as wood waste landfill, an unlined leachate basin, an ash disposal area, and a former cogeneration fuel stockpile area (Exhibit 4.9.2-1). These operations had significant impacts on the water quality of groundwater and surface waters, however, no mention of these water quality concerns is provided in the DEIR.

The current owner, Sierra Pacific Industries, has been pursuing or completed the clean closure of these sites under Waste Discharge Requirements (WDR) with the Central Valley Regional Water Quality Control Board. The Ash Disposal Area was used to store ash generated from the boiler of Georgia Pacific's cogeneration plant. In 1999, ash at this location was monitored and found to contain levels of dioxin and furans exceeding (by about an order of magnitude) the EPA Regional Screening Levels (RSL) criteria for industrial soils (*Ibid*, p.3). The soils also contained Polycyclic Aromatic Hydrocarbons (PAHs). More extensive sampling in 2008 again found dioxins exceeding the RSL in all samples, and PAHs were also present. In addition, "groundwater down gradient of the Ash Disposal Area has been impacted by elevated concentrations of calcium, magnesium, bicarbonate, and total dissolved solids with sporadic detection of dioxins" (*Ibid*, p.4). Cleanup of the site in 2001 began without a workplan approved by the CVRWQCB. Ash was removed from the area, stockpiled outside the designated area, and then moved back in, causing the potential for sediment contamination outside the designated ash disposal area. The Ash Disposal Area was closed in 2012. Closure measures included capping the site, diverting surface drainage, and inserting interceptor drainage systems to maintain separation between groundwater and the disposal site. This former Ash Disposal Area requires maintenance and monitoring. It should be clearly labeled on the Land Use maps as industrial use or a use indicating that it is a closed waste disposal site. Does this site need to be maintained and monitored as a permanent waste disposal site? It should also provide an accurate assessment of the effects of past groundwater contamination on future land uses adjacent to the ash disposal site.

The lumber mill also included a wood waste landfill that held wood waste too dirty to be burned in the cogeneration plant. Rainwater and the exposed wood waste formed a leachate that drained to an adjacent leachate basin. This leachate has been tested in the past and found to contain slightly elevated levels of manganese. This leachate could affect groundwater quality. Over 500,000 cubic yards of wood waste have been removed from the landfill and almost 10 acres of the 27 acre landfill has been clean closed (*Ibid*, p.5). Closure of this site is required by January 31, 2022. Monitoring of leachate is required. This area should also be clearly marked as industrial use or use indicating that it is a waste disposal site. Does this site need to be maintained and monitored as a permanent waste disposal site? The Final EIR should also evaluate whether adjacent land uses would be affected by disposal site clean-up and maintenance. An EIR shall “analyze any significant environmental effects the project might cause by bringing development and people into the area affected.” (CEQA Guidelines, sec. 15126.4, subd (a).)

Unfortunately, erosional sediment from both the Ash Disposal Area and the wood waste landfill were deposited in a drainage basin adjacent to these facilities. Since these sediments contained dioxin/furans, Sierra Pacific Industries was required to evaluate the risk to birds and mammals that might use this site. A risk assessment was provided in October 2013, yet this information is not summarized in the DEIR. This assessment should be used to determine if there is any conflict with proposed land uses. Where is this drainage basin? What is the proposed land use designation? Have appropriate mitigation measures been taken to ensure that there are no impacts to wildlife or humans? An EIR shall “analyze any significant environmental effects the project might cause by bringing development and people into the area affected.” (CEQA Guidelines, sec. 15126.4, subd (a).)

#### **4.9.3 Impacts and Mitigation Measures**

CEQA requires agencies to adopt feasible mitigation measures in order to substantially lessen or avoid otherwise significant environmental effects. (Pub. Resources Code, secs. 21002, 21081, subd. (a); CEQA Guidelines, secs. 15002, subd. (a)(3), 15021, subd. (a)(2), 15091, subd. (a)(1).) As noted in our scoping comments, “When approving projects that are general in nature (e.g. general plan amendment), agencies must develop and approve whatever general mitigation measures are feasible, and cannot merely defer the obligation to develop mitigation measures until a specific project is proposed. (*Citizens for Quality Growth v. City of Mount Shasta* (3 Dist. 1988) 198 Cal.App.3d 433, 442 [243 Cal.Rptr. 727]).” (Foothill Conservancy Scoping Comment, Chapter 1, p. 9.) “A program EIR is supposed to, ‘Allow a Lead Agency to consider broad policy alternatives and program-wide mitigation measures at an early time when the agency has greater flexibility to deal with basic problems or cumulative impacts.’ (CEQA Guidelines, sec. 15168.)” (Foothill Conservancy Scoping Comment, Chapter 1, p. 16.) Certification of EIR without adoption of a feasible mitigation measure is an abuse of discretion under CEQA. Adopting a statement of

overriding considerations does not justify certification of the EIR absent adoption of the mitigation measure. (*City of Marina v. Board of Trustees* (2006) 39 Cal.4<sup>th</sup> 341.)

Generally, an agency cannot rely on mitigating a significant impact by developing a mitigation plan *after* project approval. "The CEQA process demands that mitigation measures timely be set forth, that environmental information be complete and relevant, and that environmental decisions be made in an accountable arena." (*Oro Fino Gold Mining Corporation v. County of El Dorado* (3d Dist. 1990) 225 Cal.App.3d 872, 884-885 [274 Cal.Rptr. 720].) However, this may be permissible if the agency displays a commitment to mitigating the impacts, lists a menu of feasible mitigation measures, and identifies performance criteria that the measures must satisfy. (*Sacramento Old City Association v. City Council of Sacramento* (3d Dist. 1991) 229 Cal.App.3d 1011, 1028-1029 [280 Cal.Rptr. 478].) An agency may not defer adopting specific mitigation measures by adopting merely a "mitigation goal" without specific performance criteria and a menu of feasible mitigation measures. (*See Gray v. County of Madera* (2008) 167 Cal.App.4<sup>th</sup> 1099, 1118-1119.)

"Numerous cases illustrate that reliance on tentative plans for future mitigation after completion of the CEQA process significantly undermines CEQA's goals of full disclosure and informed decision making; and consequently, these mitigation plans have been overturned on judicial review as constituting improper deferral of environmental {Slip Opn. Page 23} assessment. (See, e.g., *Gentry v. Murrieta* (1995) 36 Cal.App.4<sup>th</sup> 1359 , 1396 ( *Gentry* ) [conditioning a permit on "recommendations of a report that had yet to be performed" constituted improper deferral of mitigation]; *Defend the Bay v. City of Irvine* (2004) 119 Cal.App.4<sup>th</sup> 1261, 1275 [deferral is impermissible when the agency "simply requires a project applicant to obtain a biological report and then comply with any recommendations that may be made in the report"]; *Endangered Habitats League, Inc. v. County of Orange* (2005) 131 Cal.App.4<sup>th</sup> 777 , 794 ["mitigation measure [that] does no more than require a report be prepared and followed, . . . without setting any standards" found improper deferral]; *Sundstrom , supra* , 202 Cal.App.3d at p. 306 [future study of hydrology and sewer disposal problems held impermissible]; *Quail Botanical Gardens Foundation, Inc. v. City of Encinitas* (1994) 29 Cal.App.4<sup>th</sup> 1597 , 1605, fn. 4 [city is prohibited from relying on "postapproval mitigation measures adopted during the subsequent design review process"].)" (*Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4<sup>th</sup> 70, 92-93.)

The DEIR lacks meaningful mitigation measures to address the County's precious water resources. After reviewing the DEIR, it is clear that comprehensive planning and mitigation are needed. We recommend that Amador County follow recommendations made in a report provided to the Upper Mokelumne Watershed Authority, a joint powers authority of which Amador County is a member. This 2007 report, Upper Mokelumne River Watershed Assessment and Planning Project (Exhibit 4.9.3-1), evaluated water quality concerns in the Mokelumne River Watershed. However their findings may be representative of the larger county

since land uses are very similar. The recommendations for protecting water quality included in this report should be evaluated for feasibility as mitigation measures in the Final EIR.

A specific recommendation of the report was to include a separate water element in the General Plan update. The report notes that (p. 8-14), “Water resources-related information is typically fragmented throughout the various elements. It is recommended that the general plans identify and analyze the quality of water resources and establish policies and programs to preserve its quality. It is recommended that a separate water element be developed for the Amador and Calaveras general plans to compile and address water resources issues into one location instead of throughout the various elements. The water element is an optional element of the general plan as permitted by Section 65303 of the California Government Code. It is recommended that the general principles described in Appendix N – TM No. 10, be incorporated into a separate water element or the various other elements of the updated general plans.”

An additional recommendation aims at protecting areas within the Mokelumne River Watershed that are deemed vulnerable to water quality. Quoting the report (p.8-15), “It is also recommended that the general plan updates include policies and programs to require an assessment of water quality impacts associated with any new development greater than one acre located within the high and very high water quality vulnerability zones. This assessment, using the WARMF model as a tool, is to be required for new development. Chapter 9 (Section 9.2) provides additional information on this recommendation.” Has the County evaluated high and very high water quality vulnerability zones? It seems possible that a WARMF model extended to the Cosumnes River and Jackson Creek would show the Pine Grove town center and the River Pines town center within areas particularly vulnerable to water quality. Please explain if such an analysis was performed, is reasonable, and whether proposed town centers are in vulnerable areas. How would wastewater treatment facilities mitigate these potential impacts?

To offset impacts from additional septic systems, the Upper Mokelumne River Watershed Authority Report made several recommendations. While pathogen concerns were greatest in communities in Calaveras County, these recommendations were made irrespective of county, and are feasible mitigation measures. Pertinent portions of the recommendations (Exhibit 4.9.3-1, p.8-4) are cited here and recommended as feasible mitigation measures that should be included in the final EIR:

“3. A Septic System Management Program is recommended for each county to implement, to characterize the extent of the contamination problem, to manage septic systems as infrastructure assets, and to reach out to the community to inform them on managing septic systems and solicit input on the recommended actions. A draft Septic System Management Program was developed for this project, located in Appendix Q. Key recommendations, which should be pursued simultaneously, are summarized below.



“4. Conduct a septic survey to substantiate the problems and needs. The survey should include the identification of geotechnical and groundwater watershed characteristics relevant to siting of septic systems. The survey should also include water quality monitoring to identify the sources of microbial contamination from leaking septic systems, in terms of areas of greatest contribution, and analyses of the monitoring data to identify microbial species of origin. This will allow confirmation that microbial contamination is human in origin, rather than being contributed by non-human sources. These water quality monitoring recommendations are also presented in management measure R1. In addition, the septic survey should inventory septic system infrastructure and its condition. Locations of documented and undocumented systems should be mapped, and a sampling of the condition of septic systems conducted.

“5. Although the counties in the watershed have regulations governing septic systems, these are for permitted systems. Funding constraints prevent the counties from conducting regularly scheduled inspections or requiring mandatory maintenance practices for permitted systems. The following management practices are recommended.

- Identify septic system suitability zones
- Establish rigorous design and maintenance standards
- Require mandatory inspections
- Mandate pumping of tanks
- Collect a water quality protection fee

To avoid permitting septic systems in unsuitable locations, the suitability of the watershed to support septic systems should be identified and No Septic Zones be established. New systems within these zones should be subject to a performance design process to accommodate site specific needs, and new and existing systems be required to either connect to an existing sewage collection system, convey sewage to a community leachfield in a nearby septic zone, or replace the existing septic system with a holding tank to be pumped on a biannual basis.

“More rigorous siting and maintenance standards should be mandated, patterned after the State of California AB885 draft regulations. These regulations should apply to new and replaced septic systems and have provisions for higher standards of design and maintenance than that currently required. It is also recommended that owners verify separation to groundwater as part of the permitting process.

“Mandatory inspections of permitted and known unpermitted septic systems should be required. There are several methods to implement inspections: 1) prevent a real estate transaction without a recently inspected, fully functioning, and permitted system including verification of separation from groundwater; 2) visual inspections for malfunctions required when the tank is pumped or on a regular five-year schedule, whichever is more frequent which the pumpers required to submit the reports as a condition of doing business in the county; and 3) inspections required for all remodels or expansions costing over \$20,000 and requiring any county construction permits.

“Owners of new septic systems must have the tanks pumped by a licensed septage hauler on a two year bases. For existing systems, pumping is required if an inspection determines that the tank is greater than one-quarter full of sludge and scum, if the property has a history of violations, or if the septic system is located in a No Septic Zone.

“A management program whereby annual fees are collected from all property owners using septic systems or alternative on-site systems is recommended. These Water Quality Management Fees could fund several of the recommended actions in the Septic System Management Program, as determined by the counties.

“6. Educational outreach is critical to raise awareness in the watershed of basic septic system design and maintenance, what to look for with regard to septic system failures, the importance of converting to a sewage collection system, the reasons behind the actions recommended here, as well as the value of improving microbial water quality conditions. Outreach is also recommended to solicit input on the implementation of the actions recommended here and in the Septic System Management Program. Communication tools are critical to successfully overcoming the technical, financial, and privacy issues associated with substantiating the septic system conditions and extent of problems and asking for support to implement these recommended actions. An outreach program is recommended for both residents and owners of second homes in the watershed.

“The outreach program should expand on the Authority’s current partnerships with schools and other organizations to not only invest in the future by educating young people about water quality issues, but also to provide educational materials that will be brought home and read by the adults. Good examples of septic system outreach can be found for the Tomales Bay watershed in Marin County at [www.septicmatters.org](http://www.septicmatters.org).

“7. It is recommended that Amador and Calaveras counties include policies in the general plan updates to mandate the above recommendations, including implementation of the Septic System Management Program. The general plan updates should also contain location constraints to limit new septic system development in areas susceptible to water quality contamination. Until No Septic Zones can be established per the Septic System Management Program, the Water Quality Vulnerability Zone designations of high and very high vulnerability zones are recommended to be restricted from allowing new septic systems without performance based design requirements and separation of groundwater verified.”

The DEIR concludes that impacts from mining, agriculture, municipal and industrial discharges would be less than significant because required NPDES permits or WDRs would set appropriate limits on pollutants (p.4.9-22). Violations of NPDES permits and WDRs have required the CVWQCB to administer civil liabilities and/or cease and desist orders for City of Jackson, City of Ione, Lake Camanche Village, and Mule Creek State Prison. Sierra Pacific Industries waste facilities have violated water quality standards for decades. Past mining operations still cause water quality problems (e.g. Newton Copper Mine along Highway 88). Sediment from agricultural lands has entered waters of the State, when erosion measures were not in place. Landowners may not meet their regulatory requirements until water quality impacts have occurred. Permitting does not ensure less than significant impacts and should not be considered sufficient mitigation. In addition, policy and implementation measures in the Draft General Plan that address pollutants from mining and agriculture are too weak or lacking to provide adequate water quality protection.

The mitigation measures related to the protection of water quality are related only to stormwater impacts will help to strengthen the County’s stormwater management program. However, the current implementation language is too vague as to ensure adequate mitigation, ‘The County will review its design and improvement standards (in Chapter 17 of the Amador County Code), and modify codes and specifications as needed to provide for the use of low impact development techniques’ (Implementation Plan,P-1.3). Stronger and more specific implementation requirements need to be developed and specified in the final General Plan.

Water quality impacts from town centers, regional service area, and special planning areas are not addressed on a case-by-case basis making it difficult to accurately determine additional wastewater demand and its effects on surface or groundwater. On example of this issue is the additional wastewater demands from the Martell Regional Service Area. The DEIR does not indicate whether wastewater treatment will be handled by the Amador Water Agency (AWA) or

the City of Sutter Creek and the Amador Regional Sanitation Agency (ARSA). The DEIR does not indicate where the AWA WWTP would be located and whether its disposal would be to surface water or land disposal. This makes it difficult to determine impacts and design appropriate mitigation. If ARSA and the City of Sutter Creek dispose of wastewater, the lowest cost treatment would be to discharge surface water to Sutter Creek under a new NPDES permit (Exhibit 4.9.3-2). The impacts of surface water discharge to Sutter Creek are not identified at all in the DEIR. As noted above, permitting alone does not ensure insignificant impacts since a history of wastewater violations at facilities within the County have occurred. Costs to current and future ratepayers likely depend on the responsible agencies associated with wastewater expansion. These concerns are not noted in the DEIR. These analyses need to be provided in the final EIR. "A prejudicial abuse of discretion occurs if the failure to include relevant information precludes informed decisionmaking and informed public participation, thereby thwarting the statutory goals of the EIR process." (*Kings County Farm Bureau et al. v. City of Hanford* (5th Dist. 1990) 221 Cal.App.3d 692, 712 [270 Cal.Rptr. 650].)

The DEIR does not consider appropriate reclamation, conservation or small-scale wastewater reduction technologies (e.g. State-approved graywater systems) as possible mitigation measures. These options reduce wastewater disposal demand and could reduce impacts. Please evaluate the feasibility of these measures in the Final EIR. The County should actively pursue recycled water where appropriate to meet water supply needs and implementation language should require this, especially in areas where costly treatment facilities are needed. Please include a discussion of possible recycled water systems in proposed growth areas and discuss the feasibility of recycled water as a mitigation measure. Discuss the necessity of modifying implementation policies and ordinances to require reclamation, conservation and State-approved graywater systems.

The General Plan needs to ensure better communication and planning between cities and counties with respect to water supply, water quality and wastewater disposal. The current communication strategy is insufficient as is apparent from the wastewater disposal issues in the Martell area. Program C-4 (Implementation Plan, P-37) should be modified to designate a coordinating body that would address wastewater issues. Operation agreements between the agencies could ensure that the capacity of shared treatment facilities is allocated appropriately.

The DEIR should assess an alternative that avoids growth in 'highly vulnerable and vulnerable water quality' areas, reduces the need for expensive wastewater facility expansions and reduces impacts to less than significant levels. Areas of the county that lack sufficient wastewater infrastructure should be clearly identified and designated for the lowest population density. "No Septic Zones" should be included in an alternative. (See also in these comments, Terrell Watt, *Matrix of Recommended Mitigation Measures, Public Facilities and Services.*)

## 4.12 Population and Housing

### 4.12.3 Impacts and Mitigation Measures

As noted in our scoping comment, “An agency must produce rigorous analysis and concrete substantial evidence to support a determination that the project's impacts are insignificant. (Kings County Farm Bureau et al. v. City of Hanford (5th Dist. 1990) 221 Cal.App.3d 692 [270 Cal.Rptr. 650].) The appropriate impact analysis process is as follows. The potential impact of the project is compared to a threshold of significance. If the impact is below the threshold, the conclusion is that the impact will be less than significant. If the impact exceeds the threshold, then mitigation measures are identified, and their contribution to reducing the impact is estimated. If there are feasible mitigation measures that can reduce the impact below the threshold of significance, the lead agency **is required to adopt them**, and the conclusion is that the impact is less than significant. If, even after adoption of all the feasible mitigation measures the impact still exceeds the threshold, then the conclusion is that the impact is significant and unavoidable. “

“The common mistake is to skip logical steps in the above analytical process. Often an impact is deemed significant, an agency adopts a short list of mitigation measures, and then jumps to the conclusion that the impact is mitigated. There needs to be an evaluation of the *degree to which* the mitigation measures will reduce the impacts, and a determination of whether the residual impact remains significant.” (Foothill Conservancy Scoping Comment, Chapter 1, p. 8.)

The DEIR identifies two impacts on population and housing from implementing the General Plan:

Impact 4.12.-1: A permanent increase in Population Growth. This impact is considered significant.

Impact 4.12.-2: Displacement of existing housing or people. This impact is considered less than significant.

The DEIR’s analysis in determining Impact 4.12-1 is significant is too general. The DEIR fails to provide a standard or definition of “significant” population increase. The DEIR notes the population in the unincorporated areas of the county is projected to increase by 15%, or 3,297 individuals. No explanation is given as to why this increase is significant other than the fact that there will be more people in the unincorporated areas of the county in 2030 than lived here in 2011:

Based on DOF projections, a population increase over the baseline (2011) population is projected, and Draft General Plan implementation could indirectly induce a permanent increase in population over the existing levels. Therefore, this impact would be **significant**. (DEIR, page 4.12-6)

The DEIR mentions several times that the Draft General Plan is “required to serve as a comprehensive, long-term plan for physical development and conservation in the Unincorporated County.” (DEIR, page 4.12-6). If the intent of the Draft General Plan is to establish orderly growth within the county, in the FEIR please: 1) provide specific, meaningful criteria for determining when an increase in population becomes a significant impact; and 2) explain in detail how the Draft General Plan creates conditions that would cause the 15% projected population growth to be considered in and of itself a significant impact.

In addition, the DEIR concludes no feasible mitigation measures are available to lessen the significant impact of permanent population growth, but does not provide a reasonable explanation or analysis for this conclusion. As with the impact itself, the DEIR concludes because the Draft General Plan includes policies for economic development that will require individuals to move into the County, that increase in County population itself proves no mitigation measures are available. (DEIR, page 4.12-6). In the FEIR, please discuss which specific Draft General Plan policies contribute to increased population through economic development

Contrary to what the DEIR concludes, there are feasible mitigation measures available for the significant impact of permanent population growth. The DEIR states “The Draft General Plan is intended to accommodate long-range population and employment growth and conservation.” (DEIR, page 4.12-5) Achieving this objective means developing goals, policies and programs for land use, economic development, traffic circulation, public services, etc. These same goals, policies and programs should be considered as potential mitigation measures for the impact of population growth. In analyzing impacts from population growth, other counties have applied general plan policies specifically to mitigate what they also concluded was a significant impact. (Exhibits 4.12.3-1). Should the County continue to take the position that there are no feasible mitigation measures for the impact of population growth, in the FEIR, please explain specifically why the Draft General Plan, in planning for orderly increased economic development, prevents the development or consideration of feasible mitigation measures to address population increase?

The DEIR identifies displacement of existing housing or people as a second impact related to population and housing. (DEIR, page 4.12-6). The DEIR’s analysis of Impact 4.12-2 is too general and does not provide meaningful information for the public. In the FEIR, please reference Table 3-1 (DEIR, page 3-9), and pages 3-11 through 3-13 in the analysis of Impact 4.12-2. Table 3-1 provides a breakdown of expected development under the Draft General Plan for the planned additional 1,685 housing units, categorized under each designated use (i.e. Regional Service Center, Residential Low Density). Pages 3-11 through 3-13 provides information on the existing units, additional units under the Draft General Plan and maximum desired number of units in the Martell Regional Service Center, the Pine Grove, Buckhorn and River Pines Town Centers and the Comanche Village and Comanche North Shore Special Planning Areas. This additional information is needed for more complete public review of Impact 4.12-2.

## SECTION 4.13 PUBLIC SERVICES

### 4.13.1 Regulatory Setting

As noted in our scoping comments, “The setting section of the DEIR must discuss any inconsistencies between the proposed project and existing general plans and regional plans. (CEQA Guidelines, sec. 15125.) This requirement is especially critical in a General Plan EIR. The General Plan Guidelines encourage cities and counties to review the plans of other neighboring areas, and of other agencies with jurisdiction; and to tailor general plans to conform, so that all the government agencies are pulling in the same direction, toward the same goals, as citizens and taxpayers prefer.” (Foothill Conservancy Scoping Comment, Chapter 1, p. 7.) To do this properly, it is essential that the DEIR refer to the current plans in place.

On pages 4.13-4 and 4.13-5, the DEIR misstates the members of the Mokelumne-Amador-Calaveras IRWMP as well as the projects by relying on an old version of the IRWMP. The 2011-2013 MAC IRWMP is the current document. Please use the current document as a basis for the Final EIR. In addition, the state’s new groundwater management law should be included in the laws that apply to water supply, as should the Federal Power Act and related licenses since AWA relies on PG&E for its water storage and diversions.

On pages 4.13-2 and 4.13-5, the DEIR relies on Amador Water Agency’s 2011 Urban Water Management Plan (“AWA Plan”). The plan was updated in 2014. The DEIR should be reviewed to ensure its content is consistent with the revised plan, especially since demand in the CAWP system has declined in recent years.

There are many problems identified in Section 4.13 in terms of existing services (lack of enforceable or even recommended service standards, water supply deficiencies and contamination issues, wastewater treatment deficits, underfunded fire fighting services, inadequate and outdated law enforcement facilities (communication centers and prison). Are there no applicable laws/regulations aimed at ensuring provision of basic services and public safety in a manner that protects public health and the environment? Much of the service infrastructure in Amador County was built piecemeal, and a lot of it is aged and needing upgrade or replacement, yet there do not seem to be any regulations named with “teeth” to make sure this happens. On p. 4.13-11, the Draft EIR mentions that the State Department of Public Health directed a Groundwater Sustainability Study for the Lake Camanche Village service area. The ability of the State DPH to do this should be mentioned under regulatory setting, as well as any powers the Regional Water Quality Control Board might have to fine or require corrections for contaminating drinking water sources caused by uncontrolled runoff or defective wastewater treatment systems or conveyances.

#### 4.13.2 Environmental Setting

In our scoping comments we explained the importance of the environmental setting sections of an EIR. “An EIR must contain an accurate description of the project's environmental setting. An EIR ‘must include a description of the physical environmental conditions in the vicinity of the project ... from both a local and regional perspective. This environmental setting will normally constitute the baseline physical conditions by which a lead agency determines whether an impact is significant.’ (Guidelines, § 15125, subd. (a).) There is good reason for this requirement: ‘Knowledge of the regional setting is critical to the assessment of environmental impacts.... The EIR must demonstrate that the significant environmental impacts of the proposed project were adequately investigated and discussed and it must permit the significant effects of the project to be considered in the full environmental context.’ (Guidelines, § 15125, subd. (c).) We interpret this Guideline broadly in order to ‘afford the fullest possible protection to the environment.’ (*Kings County Farm Bureau, supra*, 221 Cal.App.3d 692, 720.) In so doing, we ensure that the EIR's analysis of significant effects, which is generated from this description of the environmental context, is as accurate as possible.” (*Friends of the Eel River v. Sonoma County Water Agency* (2003) 108 Cal.App.4th 859, 874; quoted in Foothill Conservancy Scoping Comments, Chapter 1, p. 5.)

On pages 4.13-8 and 4.13-9, the DEIR goes on to assess future water demand on the AWA systems. Note that the population growth estimates in the AWA Plan are higher than the estimates in the general plan DEIR. The AWA Plan shows anticipated growth in the unincorporated area at 1.7 percent while the Dept. of Finance projection in the DEIR is 1.5 percent. Updated DOF projections for the county are that the population will increase by only 1.1 percent through 2030 (DOF Report P-1, December 2014). If projections in the AWA plan are adjusted to take this into account, the county's future water supply surplus is even better than shown.

Assuming that the DEIR is correct and the county grows by about 3,300 residents in the planning period – and all of those residents are AWA customers – the total water used per year for new development would be 660 acre feet a year or less, depending on where the growth occurs (average use in the AWS system is one-half an acre foot per family per year; the CAWP users consume about 1/3 of an acre foot per year, per AWA). The current general plan contemplates growth in many parts of the county not served by AWA, so the increased water use during the planning period is likely to be considerably less than 660 acre feet. In comparison, the AWA's AWS system is using 8,400 acre feet a year now, so the water use increase due to new



development in the general plan would be less than 10 percent of current use in that one system alone, assuming everyone continues to consume water at relatively high current rates and all new county development is served by AWA, which is highly unlikely.

On page 4.13-10, the DEIR describes the water service to Lake Comanche Village. Several Projects are planned or underway in the Camanche area that will improve local water availability. Please check with the Amador Water Agency and East Bay Municipal Utility District for current information, and include it in the Final EIR.

On page 4.13-11, the DEIR assumes that raising Lower Bear River Dam would provide greater water reliability without providing evidence in the record to substantiate that claim. There is no assurance that the AWA could secure the new water rights necessary for the expansion or that those water rights, which would be junior to Camanche's 1950s right in priority, would be a reliable source of future water supply. Please correct the Final EIR.

The DEIR also assumes there would be additional hydropower from raising Lower Bear Dam and equates the AWA-proposed raise to PG&E's proposal to increase hydropower from the dam, when they are not the same. The PG&E project would be a closed-loop, pumped-storage project with a very-large-capacity underground powerhouse, and it would raise the current dam to a much smaller degree than AWA's plan. Please correct the Final EIR.

The Final EIR should note that alternative methods of increasing local water supply are under discussion in the Mokelumne Watershed Interregional Sustainability Evaluation, including higher conservation levels than in the AWA Plan (target of 75 gallons per capita per day vs. 154 in the AWA Plan, a reduction of nearly 50 percent), wastewater recycling and reuse, and reoperation of PG&E's Mokelumne River Hydroelectric Project. Any one of those could increase water supply reliability to a greater degree than raising Lower Bear. In addition, the AWA Plan does not include any wastewater recycling.

On page 4.13-11, the DEIR incorrectly states that AWS "diverts 15,000 afy of surface water from the Mokelumne River." AWA does not currently divert its full 15,000 AWS pre-1914 water right, as stated in the DEIR. On an average year, it diverts 8,400 acre feet of that water, as noted on page 4.13-8.

On page 4.13-11, the DEIR states that AWA has no capacity left in its CAWP system for new customers. That is no longer true as consumption in that system has declined in recent years. Please obtain accurate, current numbers from AWA. In addition, AWA is unlikely to complete its new water right application for the CAWP system "by 2015" as it has yet to even produce an environmental review document for that water right application as required by the state

On page 4.13-12, The DEIR correctly states that AWA will have ample surplus water in the planning period for all water year types. In fact, the UWMP demand numbers should be reduced once AWA completes the small-diameter pipeline now funded for the Amador Canal. Those water savings should be accounted for in the Final EIR and the additional surplus noted.

Please provide documentation that groundwater resources are adequate to guarantee the “safe yields” projected for the three wells at Lake Camanche Village through 2030 (p. 4.13-12).

On pages 4.13-13 and 4.13-14, the DEIR discusses the Tanner Water Treatment Plant. The DEIR is again outdated in its discussion of distribution facilities. The AWA has established a Community Facilities District to help fund the expansion of the Tanner Water Treatment Plant. Please note this in the Final EIR.

On page 4.13-14, the DEIR discusses JVID. The Jackson Valley Irrigation District information is out of date and does not discuss the construction of that district’s treated water pipeline or current work to build a pump station in Pardee Reservoir. Please contact JVID for updated information and revise this section accordingly in the Final EIR.

Table 4.13-5 (p. 4.13-15) indicates there would be no difference in water availability to AWA in a normal year, dry year or multiple-dry year scenario. Please explain further. Are AWA’s water rights assured and take precedence over other all agencies that rely on the Mokelumne River as a water source? Are these legal rights guaranteed in perpetuity?

On p 4.13-15 there is a statement that the JVID “requests and usually receives 3,850 af annually from EBMUD, although it is subject to availability.” Does the DEIR assume this water will remain available through the planning period? If so, please provide justification. The discussion of AWA reversion is not clear to a lay reader. Does this mean that AWA is proposing to take 1,050 af of water that currently goes to JVID and replace it with tertiary treated effluent? What are the implications for water quality? Please clarify.

On page 4.13-17, the DEIR indicates that EBMUD operates Camanche Reservoir to provide water Supply to the East Bay. The East Bay Municipal Utility District does not operate Camanche Reservoir for East Bay water supply. Please check with EBMUD and correct that section in the Final EIR.

In general, this section reports on existing services available throughout Amador County. Some services are adequate, but others have serious deficiencies and constraints that are identified—e.g. Well 6-R in River Pines is contaminated (p. 4.13-16); Well 14 at Camanche Lake Village needs rehabilitation to address quantity and quality problems (p. 4.13-10); The Drytown County Water District loses 20 percent of its water due to leaks in its distribution system (p. 4.13-16); River Pines PUD’s storage facilities have a capacity of less than a day’s water demand, the distribution system is in need of maintenance and improvement, and infrastructure is undersized to serve

existing customers (p.4.13-16); Volcano CSD has a moratorium on new water hookups pending studies (p. 4.13-16); several of AWA’s wastewater treatment systems are at or over capacity, there is a moratorium on new wastewater service hookups at Lake Camanche Village, and Gayla Manor’s treatment capacity is exceeded during peak rain events (p. 4.13-18); the Sutter Creek WWTP is operating at capacity due to elevated pollutant loads (p. 4.13-19); the ACSO’s main station, communications center and prison in Jackson are outdated, overcrowded and functioning at capacity (p. 4.13-27). The DEIR mentions plans or discussions or intentions to correct some of these deficiencies, but for the most part no timetables or funding sources are identified.

The focus of the water supply discussion is on surface water resources, since “97% of water in the incorporated areas is supplied from surface water” (p. 4.13-8). However, many rural residences and agricultural businesses rely on groundwater. How many wells exist in Amador County to serve this population? How many of those wells ran dry in 2014 due to drought conditions? How many new wells were drilled (and how did the rate of finding water in those wells compare with past year trends)? How does the current rate of well drilling compare with past decades (adjusted for population growth rate)? Does this data indicate any trend in groundwater resource adequacy? Are there any other data sources or more comprehensive studies that can be cited for information about our groundwater resources and their ability to continue to meet future demand?

The Draft EIR reports that there are 9,700 septic systems in the County (p. 4.13-17), so it seems likely there would be a comparable number of wells, and more will be needed to meet future population demand in unincorporated areas. Will our aquifers support the projected new growth that will not have water supplied by urban systems that rely primarily on surface water sources? Please provide more quantitative data and analysis on groundwater use and rates in the Final EIR, and articulate any concerns or uncertainties about reliability of this important source to continue meeting current and to meet future demand.

### **Wastewater Collection, Conveyance and Treatment Facilities**

The DEIR (p. 4.13-17 to 4.13-22) provides an overview of nine agencies’ efforts at conveying, treating and disposing of wastewater within the planning area. The current and projected demands on wastewater systems given projected growth within the County are a critical issue. Unfortunately the agency-by-agency discussion does not provide sufficient clarity to assess infrastructure needs generated by the General Plan land use designations. We recommend that additional discussion of wastewater systems be organized around the proposed planning areas:

- 1) Martell Regional Service Area
- 2) Town Centers

- a. Pine Grove
  - b. Buckhorn
  - c. River Pines
- 3) Special Planning Areas
- a. Lake Camanche
  - b. North Camanche Village
- 4) Unincorporated Areas.

For each area it is important to know the current and projected demands and capacities at existing wastewater facilities, the extent and nature of treatment facility expansion, additional infrastructure needs and deficiencies, and the ability of responsible agencies to provide services. This analysis would allow County residents to identify where wastewater impacts are most acute and where impacts might be mitigated to less-than-significant levels. We would also like the wastewater impacts of the environmentally superior alternative or a town-centered alternative with less growth to be analyzed and feasible mitigation proposed. The comments below summarize some information for the different planning areas, but is not meant to be a thorough review. Rather, we hope it provides some foundation for an area-by-area analysis that would be included in the final EIR. "A prejudicial abuse of discretion occurs if the failure to include relevant information precludes informed decisionmaking and informed public participation, thereby thwarting the statutory goals of the EIR process." (Kings County Farm Bureau et al. v. City of Hanford (5th Dist. 1990) 221 Cal.App.3d 692, 712 [270 Cal.Rptr. 650].)

### **Martell Regional Service Area**

The General Plan indicates that the Martell Regional Service Area will accommodate 2,500,000 square feet of commercial and 1,000,000 square feet of industrial uses (LU-14) and 1,200 to 3,000 housing units (LU-15). Growth in the Martell area will affect wastewater infrastructure for several systems, including the Amador Water Agency (AWA), the City of Sutter Creek and the Amador Regional Sanitation Agency (ARSA). ARSA, a joint powers authority comprised of Amador County, Amador City and Sutter Creek, is responsible for disposal of wastewater from Martell and the two cities. Some of this wastewater is also treated in Ione at a tertiary wastewater treatment facility that also treats a portion of effluent from Mule Creek State Prison (Exhibit 4.13.2-1). The treated effluent from the tertiary wastewater treatment facility is discharged either to the Castle Oaks Golf Course or sent to the City of Ione's secondary

wastewater facility. The complexity of this wastewater treatment and disposal system has resulted in different agencies proposing different capital improvements. The DEIR (p.4.13-17 and p.4.13-19) indicates that both AWA and the City of Sutter Creek/ARSA are planning to accommodate wastewater flows from Martell by constructing a new WWTP or expansion of an existing WWTP. Proposed alternatives developed by ARSA and the City of Sutter Creek depend on whether the City of Ione will continue to accept wastewater flow from ARSA. The City of Ione is evaluating an alternative that would cancel their agreement to accept wastewater flow from ARSA. The City of Sutter Creek and ARSA have evaluated several wastewater treatment options including land disposal and reclamation, or surface water discharge to Sutter Creek under a new NPDES permit.

The current governance situation for Martell wastewater services is identified in LAFCO's Municipal Service Review as a 'planning quagmire' (Exhibit 4.13.2-2, p.252). LAFCO recommends a special service district for wastewater services in the ARSA area, "AWA provides wastewater collection services to the Martell community, where ARSA provides wastewater treatment and disposal services. The County continues to represent Martell through ARSA membership, and AWA has not formally joined ARSA in spite of its present reliance on ARSA facilities. A governance option to address this instability and planning quagmire is to form an independent special district for wastewater services covering the ARSA service area." "

These impacts exceed the threshold of significance (require expansion of wastewater treatment). The governance issue makes it difficult to assess costs associated with expansion. Please clarify in the final EIR the wastewater infrastructure needs, capital improvement plans, ability to pay for improvements, total costs, and potential increases to current and future ratepayers for build-out proposed in the Martell Regional Service Area.

The requested economic analysis is required, because an inability to fund the necessary wastewater treatment would result in either of two physical changes that may have significant environmental impacts. (See *Gray v. County of Madera* (2008) 167 Cal.App.4th 1099.) If the wastewater treatment capacity is exceeded by future growth, the resulting sewage spills could damage local waters and riparian habitat. If the lack of capacity restricted growth in the Martell Service Area, a key source of local jobs, more people would have to commute to work, resulting in additional traffic congestions and air pollution. In addition, economic analysis is typically used to evaluate the feasibility such mitigation. (CEQA Guidelines, sec. 15131, subd. (c).)

Please identify an alternative that reduces the growth in the Martell Service Area so that wastewater impacts are less than significant.

### **Town Centers**

The town centers in the County are planned in Pine Grove, River Pines, and Buckhorn. The proposed Pine Grove Town Center would more than triple the housing units in Pine Grove, from 250 units to 900 units (LU-16). Phase One of the Pine Grove Community Leachfield System (CLS) has a capacity of 144 equivalent dwelling units (EDUs) and Phase Two will accommodate an additional 75 EDUs (Exhibit 4.13.2-3). The Pine Grove CLS is adjacent to Jackson Creek on relatively steep slopes. This has raised concerns regarding soil stability, stormwater capture, and connectivity to surface waters. The proposed growth in Pine Grove suggests that significant expansion or new wastewater treatment would be needed. Policy C-3.1 of the General Plan notes that future development will be guided to areas of the County with the ability to obtain adequate wastewater service and treatment capacity. However, the General Plan appears to have already guided the growth to Pine Grove. Please explain how Pine Grove has adequate wastewater treatment service and treatment capacity for the proposed 900 units and accompanying commercial growth. Where would new leachfields be built? What would be the environmental impacts of wastewater treatment on Jackson Creek and ground water in the Pine Grove area? What mitigation measures would be provided? Please evaluate an alternative that reduces the significant wastewater impacts in the Pine Grove area.

The Buckhorn Town Center would nearly triple the number of housing units, from about 90 in 2010 to 250 with additional non-residential development. The DEIR fails to discuss current and future wastewater disposal in these areas. Will they be on septic systems and will future wastewater disposal be septic tanks or a community leachfield? The DEIR states that on-site septic tanks (OWTS) and leachfield systems could contaminate groundwater and surface water if certain factors exist. These include (DEIR, p. 4.9-21), “increased density of OWTS, placement near domestic wells, improperly designed or constructed systems, seasonal or year round high water tables, or placement in areas with insufficient soil depths or improper soil types”. If the General Plan designates these town centers, then one would assume that analyses have shown no concerns for OWTS placements near domestic wells, seasonal or year round high water tables, or insufficient soil depths or improper soil types. However, the DEIR does not include these analyses. Are soil depths sufficient? Is the water table a concern? Please provide these analyses in the Final EIR. The EIR should provide a sufficient degree of analysis to allow decisionmakers to make an intelligent judgment. (CEQA Guidelines, sec. 15151.) If OWTS placement is a concern, then the County should ‘guide’ its development to areas with better wastewater disposal and capacity (Policy C-3.1) and that should be reflected in the General Plan, not after land use designations are adopted.

The DEIR does not provide adequate information to evaluate wastewater treatment for the proposed River Pines Town Center which would increase the housing units from about 65 to 100, with additional commercial development. This proposed town center appears to be within the area served by the River Pines Public Utilities District which supplies water and treats

wastewater. In the LAFCO Municipal Services Review (Exhibit 4.13.2-4 p.435), the district expects future growth to be limited and is reluctant to encourage growth in its service area:

“Future growth is expected to be limited, because there are only a few undeveloped properties within the District’s bounds with no current planned or proposed development projects.

“The District discourages expansion of its service area since its facilities are undersized for serving the existing customer base, the cost to connect is prohibitively expensive, and financial reserves are minimal”.

The LAFCO Municipal Service Review goes on to comment on the District’s infrastructure challenges, both water and wastewater:

“RPPUD has considerable infrastructure needs and deficiencies, most of which have not been addressed since 2007.

- ❖ The existing water supply is inadequate. The District is not able to meet its peak day demand.
- ❖ The District faces challenges in delivering adequate water services based on its distribution break rate. Past and present regulatory violations and evaluations reveal poorly operated water services, and failure to keep storage facilities filled with potable water reserves.
- ❖ District planning efforts are inadequate, and do not meet state standards for technical, managerial, and financial ability.
- ❖ The District has adequate wastewater treatment capacity to meet average dry weather demand, and although the facility’s design capacity equals to current peak wet weather flow, reportedly the plant can accommodate peak flows of 0.088 mgd.
- ❖ The wastewater collection system is not regularly inspected due to lack of qualified personnel, lack of equipment and financing constraints.
- ❖ While reductions in district staffing may reduce cost to ratepayers, the deficiencies in adequate staffing compromise the district’s ability to safely provide essential services to its citizens.”

The River Pine Public Utilities District’s comments and infrastructure issues seem to disagree with the General Plan’s policy (Policy C-3.1) to guide development to areas with better wastewater disposal and capacity. What level of growth in the River Pines town center would reduce these impacts? "The CEQA process demands that mitigation measures timely be set forth, that environmental information be complete and relevant, and that environmental decisions

be made in an accountable arena." (*Oro Fino Gold Mining Corporation v. County of El Dorado* (3d Dist. 1990) 225 Cal.App.3d 872, 884-885 [274 Cal.Rptr. 720].)

### **Special Planning Areas**

The General Plan (LU-18) notes that the Lake Camanche Special Planning Area could accommodate 1000 residential units and up to 75,000 square feet of commercial space. However, the wastewater treatment facility has a history of violations with only a fifth of that number of units (Exhibit 4.13.2-5), suggesting that significant investment in facility capacity would be required. In 2000, it was noted that the storage pond did not have sufficient capacity to handle the current flow (*ibid.* p. 1). In March 2003, 9,000 gallons of wastewater entered a surface drainage course that flows to Lake Camanche. The spill did not enter the lake. In 2005, "... approximately 900,000 gallons of wastewater was released in a controlled manner from the WWTP effluent storage pond when it was determined that gopher holes were present in the pond berm. The Discharger decided to release wastewater to prevent a catastrophic failure of the pond berm. The wastewater was discharged to a flowing surface water course leading to Lake Camanche. It is expected that the spill entered Lake Camanche because the surface watercourse was flowing at the time of the release and there are no downstream diversions" (*ibid.* p.3). Later that same year, 800 to 1000 gallons of treated wastewater spilled into water courses leading to Lake Camanche. There is a moratorium on additional wastewater service in this area, and landowners are on a waiting list for additional capacity (Exhibit 4.13.2-2, p. 242). Once again, it is unclear that the County is guiding development to areas with better wastewater disposal and capacity (Policy C-3.1). "Because an EIR cannot be meaningfully considered in a vacuum devoid of reality, a project proponent's prior environmental record is properly a subject of close consideration in determining the sufficiency of the proponent's promises in an EIR." (*Laurel Heights Improvement Association of San Francisco v. Regents of the University of California* (1988) 47 Cal.3d 376, 420 [253 Cal.Rptr. 426.]).

Please provide an alternative that reduces these impacts to less than significant levels.

The DEIR notes that the wastewater system for the Camanche North Shore Special Planning Area requires upgrades to meet regulatory requirements (p.4.13-21). How will additional growth and wastewater demand impact the treatment facility? Please provide an alternative that reduces these impacts to less than significant levels.

A thorough discussion of the costs of expanding wastewater treatment facilities to meet the projected full build-out of each Alternative is necessary. This discussion should include all wastewater treatment facilities where additional growth is planned or where wastewater will be treated. How will these costs be apportioned between current and future ratepayers? Are the



projected costs reasonable given that some of the communities are designated as disadvantaged communities?

The requested economic analysis is required, because an inability to fund the necessary wastewater treatment would result in either of two physical changes that may have significant environmental impacts. (See *Gray v. County of Madera* (2008) 167 Cal.App.4th 1099.) If the wastewater treatment capacity is exceeded by future growth, the resulting sewage spills could damage local waters and riparian habitat. If the lack of capacity restricted growth in the Town Center, a key future source of local jobs, retail, and service, more people would have to commute to work and drive farther to meet their retail and service needs. The result would be additional traffic congestions and air pollution. In addition, economic analysis is typically used to evaluate the feasibility such mitigation. (CEQA Guidelines, sec. 15131, subd. (c).)

The LAFCO Municipal Service Report comments on these concerns in its Chapter on the Amador Water Agency (ibid, p.249, referred to in the quote as the Agency):

- ❖ “There are six disadvantaged unincorporated communities within the Agency’s bounds and SOI based upon mapping information provided by the State of California Department of Water Resources. The identified communities are Camanche North Shore, River Pines, Buena Vista, Drytown, Martell, and Kirkwood.
- ❖ Infrastructure and financing to remediate deficiencies and increase the quality of services in this area, including water and wastewater services, is limited and presents a significant challenge to the County, the district and the communities.”

### **Septic Systems**

The DEIR does not discuss failing septic systems within the County, despite the prevalence of this problem. (Potential mitigation for septic systems is discussed in our comments on the Hydrology and Water Quality section.) Please provide an assessment of the current problem and how the County has worked to address failing systems. Does the County have the manpower to inspect failing systems? What is the track record for compliance once failing systems are identified? What is the geographical extent of surface or groundwater contamination from leaking septic systems? Have pathogens been detected in surface waters in the County, and are they linked to leaking septic tanks? As noted in our scoping comment, “Among the most relevant aspects of the environmental setting that must be disclosed in an EIR, is that the agency must divulge harm to the environment caused by current and past mismanagement, and any

efforts being made to remedy that harm that might affect the proposed project. (Friends of the Eel River v. Sonoma County Water Agency (2003) 108 Cal.App.4<sup>th</sup> 859, 874.)” (Foothill Conservancy Scoping Comment, Chapter 1, p. 6.)

The DEIR (p. 4.13-19) notes that the City of Sutter Creek “intends” to replace its existing water treatment plant with a new plant. Is this project funded? If so, how, and what is the timetable for construction of the new facility?

How does ACRA’s policy of providing 5 acres of parkland per 1,000 residents (p. 4.13-29) compare with other similar rural areas of California?

The public’s ability to walk or bicycle within the new development areas is not appropriately considered. We see no reason to not include better bike and pedestrian access within the Martell area. We recommend that the implementation language deleting this proposal be added back into the Implementation Plan D-1.15: “ Pedestrian and bicycle friendliness improvements. The County seeks to improve pedestrian, bicycle, and NEV access in activity centers, including Martell, the Town Centers, and other areas with a mix of uses or higher intensity of uses. In support of this objective, the County will require new development proposals in these areas, including commercial projects and residential projects of 10 or more residential units, as appropriate, to provide bicycle/Neighborhood Electric Vehicle and pedestrian facilities or set aside right-of-way for future facility connections, to increase the safety and feasibility of nonautomobile travel. Bicycle and pedestrian facilities should be consistent and recognizable to permit them to be safely used.”

The DEIR states that Amador County lacks a comprehensive storm drainage system (p. 4.13-30). Is this typical for rural counties in California?

**4.13.3 Impacts and Mitigation Measures**

The Impact Analysis identifies significant impacts in the following areas:

- Increased Demand for Water Supplies due to supply uncertainties (p.4.13-32), Significant and Unavoidable after Mitigation
- Increased Demand for Water Conveyance and Treatment Facilities (p. 4.13-35), Significant and Unavoidable after Mitigation
- Increased Demand for Wastewater Collection, Conveyance and Treatment Facilities (p. 4.13-37), Significant and Unavoidable after Mitigation

- Increased Demand for Fire Protection Facilities, Systems, Equipment and Services (p. 4.13-39), Less Than Significant after Mitigation

As noted in Existing Conditions, County services have been developed piecemeal and have suffered from underfunding. As a result, there are many deficiencies in existing services, as noted above. The impact analysis suggests that future development should be relied upon, not only to pay its ‘fair share’ going forward but also to somehow remedy the current problems and deficiencies. How will incremental population growth result in replacing the main police station, communications center and overcrowded jail in Jackson? Are specific development projects expected on such a scale that they will be able to provide funding for the needed wastewater treatment plants, or improvements to water supply and wastewater treatment in small communities like Volcano or Camanche Village? Will the twelve households expected to move to River Pines by 2030 be expected to pay to upgrade or replace that community’s dilapidated water supply, distribution, collection and treatment systems?

Suggested mitigation for significant impacts consists of very weak language such as the County “will consider” measures, or “will coordinate” with service agencies to “try to improve” service adequacy in the future. For example, Mitigation Measure 4.13-1b “a” is that “The County will provide input to water suppliers in their effort to plan for coordinated response to future water demand, and future water supply emergencies and drought.” What form will this input take, how many staff hours will be dedicated to it, and which committees will be supported and how? The text goes on to provide more vague words about the planning efforts to be supported (planning, developing standards etc). Similarly, MM 4.13-1b “b” is terribly vague: “The County will consult with water suppliers as they pursue water and wastewater plans to develop adequate water supplies...” What kind of a staff commitment is being made to carry out this consultation? What exactly are the aims of this consulting, the resources being committed to it, and the specific methods for implementing it? How will the County participate in meeting funding requirements where service inadequacies are identified?

MM 4.13-1c (p. 4.13-35) is similarly vague: “In order to assure that adequate infrastructure is in place to support existing and planned development, the County will consult with water and wastewater providers to support development of facilities or conveyance systems...” How will “consulting with” these service providers “assure that adequate infrastructure is in place” to meet the demands of existing and future development? Is the staff being directed to express their fervent hope and desire that these agencies will find a way to correct current deficiencies and fund the required work--or something more? Please elaborate on how such staff “consulting with” service agencies will reduce significant impacts. Cite relevant examples where this has occurred in other areas with similar issues.

The County cannot claim future mitigation based upon these vague provisions. An agency may not defer adopting specific mitigation measures by adopting merely a “mitigation goal” without a commitment to attain specific performance criteria and a menu of feasible mitigation measures. (*Gray v. County of Madera* (2008) 167 Cal.App.4th 1099, 1118-1119.) CEQA requires agencies to adopt feasible mitigation measures in order to substantially lessen or avoid otherwise significant environmental effects. (Pub. Resources Code, secs. 21002, 21081, subd. (a); CEQA Guidelines, secs. 15002, subd. (a)(3), 15021, subd. (a)(2), 15091, subd. (a)(1).) As noted in our scoping comments, “When approving projects that are general in nature (e.g. general plan amendment), agencies must develop and approve whatever general mitigation measures are feasible, and cannot merely defer the obligation to develop mitigation measures until a specific project is proposed. (*Citizens for Quality Growth v. City of Mount Shasta* (3 Dist. 1988) 198 Cal.App.3d 433, 442 [243 Cal.Rptr. 727]).” (Foothill Conservancy Scoping Comment, Chapter 1, p. 9.) “A program EIR is supposed to, ‘Allow a Lead Agency to consider broad policy alternatives and program-wide mitigation measures at an early time when the agency has greater flexibility to deal with basic problems or cumulative impacts.’ (CEQA Guidelines, sec. 15168.)” (Foothill Conservancy Scoping Comment, Chapter 1, p. 16.) Certification of EIR without adoption of a feasible mitigation measure is an abuse of discretion under CEQA. Adopting a statement of overriding considerations does not justify certification of the EIR absent adoption of the mitigation measure. (*City of Marina v. Board of Trustees* (2006) 39 Cal.4th 341.) Failure to evaluate proposed feasible mitigation measures in a program EIR is prejudicial error. (*Cleveland National Forest Foundation v. San Diego Council of Governments* (2014, App. 4th Dist.) D063288, pp. 26-27; certified for publication.)

“Numerous cases illustrate that reliance on tentative plans for future mitigation after completion of the CEQA process significantly undermines CEQA’s goals of full disclosure and informed decision making; and consequently, these mitigation plans have been overturned on judicial review as constituting improper deferral of environmental {Slip Opn. Page 23} assessment. (See, e.g., *Gentry v. Murrieta* (1995) 36 Cal.App.4th 1359 , 1396 ( *Gentry* ) [conditioning a permit on "recommendations of a report that had yet to be performed" constituted improper deferral of mitigation]; *Defend the Bay v. City of Irvine* (2004) 119 Cal.App.4th 1261, 1275 [deferral is impermissible when the agency "simply requires a project applicant to obtain a biological report and then comply with any recommendations that may be made in the report"]; *Endangered Habitats League, Inc. v. County of Orange* (2005) 131 Cal.App.4th 777 , 794 ["mitigation measure [that] does no more than require a report be prepared and followed, . . . without setting any standards" found improper deferral]; *Sundstrom , supra* , 202 Cal.App.3d at p. 306 [future study of hydrology and sewer disposal problems held impermissible]; *Quail Botanical Gardens Foundation, Inc. v. City of Encinitas* (1994) 29 Cal.App.4th 1597 , 1605, fn. 4 [city is prohibited from relying on "postapproval mitigation measures adopted during the subsequent design review

process"].)” (*Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4<sup>th</sup> 70, 92-93.)

MM 4.13-1b item 4 (DEIR, p. 4.13-34) states that the County will “Communicate to all appropriate federal elected officials, federal agencies and departments, that Federal Wild and Scenic, National Recreation Area, or similar designations of surface waters in or adjacent to the County would be incompatible with the long term water needs of Amador County.” This is not a valid mitigation measure as defined by the California Environmental Quality Act (see definition in CEQA Guidelines, sec. 15370), but simply a political statement with no place in a DEIR. There is nothing in the text of the Existing Conditions section that identifies such scenic or recreational designations as having any influence whatsoever over water supplies, now or in the future. The alleged mitigation measure directly conflicts with one of the stated objectives of the general plan, which is to “Protect Amador County’s unique character, including historic and cultural heritage, scenic vistas, agriculture, *rivers, streams, natural areas* and historic buildings and towns.” Emphasis added. (See, Draft General Plan, p. 2-2). There are no onstream water projects planned or even under discussion for Amador County that would be stopped by Wild and Scenic designation. Furthermore, the California State Water Resources Control Board will evaluate all offstream projects near the Wild and Scenic-eligible Mokelumne River for their impacts on the same resources Wild and Scenic River designation would protect (see State Board Regulations sec. 734 (b) and letter from attorney Anne Schneider, attached). Please delete this inappropriate suggestion from the Final EIR.

Mitigation Measure 4.13-1d, on DEIR page 4.13-35, regarding future water supplies and funding seems to be a mitigation in search of an impact to reduce. The county has ample water resources in most of the AWA service area, as shown in the AWA Plan. If this mitigation is targeted at the two areas identified as problematic, Camanche and CAWP, it should focus on those areas rather than describe a broad-brush, scattershot approach to water supply development, especially since new surface water supplies will be necessity depend on junior water rights.

The DEIR (Impact 4.13-2, p. 4.13-36) states that water supply impacts for the Camanche Village and CAWP service area are substantial due to the uncertainty of future water supply. In fact, additional mitigations could be put in place to reduce the severity of the impacts of allowing future development in those areas. They include:

- 1) Requiring all new homes in the CAWP and Camanche area to be built, equipped and landscaped so they use no more than 75 gallons of water per person per day. That is the amount AWA has agreed is reasonable in the MokeWISE program. It would increase the efficiency of water use from 3 families per acre foot per year in the CAWP area to nearly 5 families per acre foot per year. That’s a substantial reduction in use.

- 2) Adopting and implementing a vintage home retrofit program in the CAWP service area to provide high efficiency washers and toilets to homes without them. AWA is doing that in the Camanche area now and the same could be done in the CAWP service area, where many homes were built prior to the implementation of higher water efficiency standards.
- 3) Implementing a water neutral development policy for new commercial and industrial development to help fund retrofits of existing homes.
- 4) Prohibiting the use of pre-consumer surface water for golf courses, sports fields and other high-volume outdoor uses in the CAWP and Camanche areas.
- 5) Limiting new building permits and development in the CAWP and Camanche AWA service areas to that which could be supplied by existing water supply until those areas' water supply uncertainties are resolved.

Please include these measures in the Final EIR.

On page 4.13-38, the DEIR concludes that the increased demand for wastewater treatment results in significant impacts even after the proposed mitigation measures are implemented. We question whether all feasible mitigation measures have been evaluated. Is it possible to reduce the square footage of commercial and industrial property or residential units to reduce wastewater demand? Has the County evaluated partnering with municipalities so that growth is increased in existing municipalities that may be able to expand wastewater facilities at less cost? Have conservation measures been evaluated and proposed that would reduce effluent? Can new units incorporate State-approved graywater systems? How will conservation measures and reuse reduce the need for expansion? What measures will be taken to ensure the minimization of wastewater per capita? To reduce potential impacts to surface waters, what portion of wastewater can be reclaimed and where will reclamation take place? How will the County provide, plan, and develop incentives for the use of recycled water by the public and private sector? Can recycled water be used for wildlife or wetland habitat improvement? (For additional mitigation measures, see in these comment: Terrell Watt, *Matrix of Recommended Mitigation Measures*, Public Facilities and Services.)

Both quality of life and environmental protection will be enhanced by developing and implementing the service standards, disaster response plans, and comprehensive stormwater management program recommended as mitigation measures in this section of the Draft EIR.

## **4.14 TRANSPORTATION**

### **4.14.1 REGULATORY SETTING**

#### **STATE PLANS, POLICIES, REGULATIONS, AND LAWS**

Following the paragraph on Level of Service Standards on page 4.14-2, I recommend that a paragraph be added as follows:

##### **Vehicle Miles Traveled (VMT)**

Senate Bill SB 743 provides that significant traffic impacts be based on Vehicle Miles Traveled (VMT) criteria rather than level of service (LOS) beginning January 1, 2015, (or sometime thereafter) for the entire state. California will no longer consider inadequate LOS a problem that needs fixing under CEQA. The ability of counties and cities to use LOS as the basis for determining mitigation fees in accordance with their general plan and implementing ordinances does not change. The loss of vehicle LOS in CEQA law reinforces the importance of general plans and supporting implementation methods as the primary means for defining a jurisdiction's policy approach to mitigating the effects of development on the road network. The cities and county will need to develop criteria for determining how to determine when VMT of a project is significant. Some suggestions have already been developed in the publication "Updating Transportation Impacts Analysis in the CEQA Guidelines."<sup>1</sup>

##### **County Regulations and Policies**

It is not clear why the Regional Transportation Plan was not incorporated in the Draft General Plan as the Circulation Element as was done in the past. This seems like a duplication since both documents will be adopted by the County. If there is conflict between the two, which one will govern?

##### **Municipal Regulations and Policies**

Each incorporated city in the County has its own LOS criteria. The City of Ione is currently included in the paragraph with Amador City. Ione should be in a separate paragraph.

Each City will now have to establish its own criteria for VMT and determine when a project is significant since LOS is no longer a criteria for project significance under CEQA beginning January 1, 2015 (currently the target date).

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<sup>1</sup> Preliminary Discussion Draft of Updates to the CEQA Guidelines Implementing Senate Bill 743 (Steinberg, 2013)

## **Vehicle Circulation**

The description of Arterials, Major Collectors Minor Collectors, and Local Roads in this section should conform to the Federal Classification Maps in order to avoid confusion and conflict between the General Plan Classifications and the Federal Classifications. The Federal Classification Maps have been adopted by the County so there is no reason for generating another Map that may not agree with the one already in effect.

### **4.14.3 IMPACTS AND MITIGATION MEASURES**

#### **Analysis Methods**

No comment

#### **Thresholds of Significance**

Appendix G includes an additional potentially significant impact to be considered:

Will the project result in inadequate emergency access?

Although emergency access may be discussed in Chapter 4.8 under “Hazards and Hazardous Materials”, access may also be affected by traffic congestion and could also be included here as a separate item, rather than by reference.

#### **Projected Levels of Service on Key Roadways**

Although “levels of service” will not be considered significant under CEQA after “vehicles miles traveled” is applicable statewide in year 2016, the County and Cities will still be able to consider congestion mitigation as a factor in determining mitigating measures under their “Congestion Management Plan”. I do not believe that anything should be changed in the tables or text included with the tables. These tables include Arterials, Collectors and Local Roads under Baseline, No Project and Proposed Project scenarios. On every table there are LOS results that are below the standards set in the General Plan.

#### **Impact Analysis**

**IMPACT 4.14-1, 1b, 1c**

**IMPACT 4.14-2,**

No additional comment



## Mitigation Measures

The sections starting on page 4.14.13 to 4.14.17 all cover traffic LOS impacts that are worse than the goals set for these segments of LOS C or D. One of the major factors that prevent the County and Cities from reaching these goals is lack of funding. The mitigation fees have not been set at a high enough level to mitigate the effects on the road network from individual projects. These fees need to be reviewed and set at a level that will actually result in projects being constructed. You may recall from our scoping comments that courts have noted, “[E]ven where a developer’s contribution to roadway improvements is reasonable, a fee program is insufficient mitigation where, even with that contribution, a county will not have sufficient funds to mitigate effects on traffic.” (Endangered Habitats League v. County of Orange (2005) 131 Cal.App.4<sup>th</sup> 777.)” (Foothill Conservancy Scoping Comment, Chapter 1, p. 10.)

Since a number of roadway segments are below the desired LOS under the Baseline condition and more will be below LOS under the No Project scenario, some additional funding method should be explored so that the existing residents and visitors contribute their share of the cost of correcting the deficiencies that are unrelated to future development. A parcel fee, parcel tax or local sales tax should be considered to raise funds to correct these existing deficiencies. The ACTC has developed cost estimates for a number of projects along with the estimated revenue expected to be generated by fees on future development. The balance remains to be raised by another method. (See also in these comments, Terrell Watt, *Matrix of Recommended Mitigation Measures*, GHG.)

## 5 ALTERNATIVES

Our 2009 scoping comment spent four pages on the need for a thorough analysis of alternatives.

An EIR must evaluate a range of reasonable alternatives to the project capable of eliminating any significant adverse environmental effects of the project, or reducing them to a level of insignificance, even though the alternatives may somewhat impede attainment of project objectives, or may be more costly. (Pub. Resources Code, sec. 21002; CEQA Guidelines, sec. 15126, subd. (d); Citizens for Quality Growth v. City of Mount Shasta (3d Dist. 1988) 198 Cal.App.3d 433, 443-445 [243 Cal.Rptr. 727].)

“An EIR is required to “ensure that all reasonable alternatives to proposed projects are thoroughly assessed by the responsible official.” (*Wildlife Alive v. Chickering* (1976) 18 Cal.3d 190, 197 [132 Cal.Rptr. 377, 553 P.2d 537].) Therefore, “[a]n EIR must ‘[d]escribe a range of reasonable alternatives to the project or to the location of the project, which could feasibly attain the basic objectives of the project and evaluate the comparative merits of the alternatives.’ (Guidelines, § 15126, subd. (d).) The discussion must ‘focus on alternatives capable of eliminating any significant adverse environmental effects or reducing them to a level of insignificance, even if these alternatives would impede to some degree the attainment of the project objectives, or would be more costly.’ (Guidelines, § 15126, subd. (d)(3).)” (*Kings County Farm Bureau, supra*, 221 Cal.App.3d at p. 733.) This discussion of alternatives must be “meaningful” and must “contain analysis sufficient to allow informed decision making.” (*Laurel Heights, supra*, 47 Cal.3d 376, 403-404.)” (*Friends of the Eel River v. Sonoma County Water Agency* (2003) 108 Cal.App.4<sup>th</sup> 859, 872-873.)

The lead agency, not the project opponents, has the burden of formulating alternatives for inclusion in an EIR. (*Laurel Heights Improvement Association of San Francisco v. Regents of the University of California* (1988) 47 Cal.3d 376, 406 [253 Cal.Rptr. 426].) “The range of feasible alternatives shall be selected and discussed in a manner to foster meaningful public participation and informed decisionmaking.” (CEQA Guidelines, sec. 15126.6 subd. (f).)

The number of alternatives considered is limited by what is reasonably feasible. Throughout the development of the range of alternatives, keep asking yourself, “Are we fostering meaningful public participation and informed decisionmaking?” “Are we being unreasonable in eliminating an alternative from consideration?”

The law gives the County the right to define alternatives to the project description general plan. However, since the Board of Supervisors already supports the general plan project description, this can lead to problems.

One problem that crops up are alternatives insufficiently defined to allow for detailed comparison with the project description. We hope that the County will provide maps and

text for the general plan alternatives, so that they can be fairly compared with the project description.

Another problem that comes up is the insertion of a poison pill into the alternatives that is not present in the project description. For example, the DEIR might come out with a project description that includes no proposed tax or fee increases, but the alternatives do. We hope that the County's EIR will be part of a General Plan Update process characterized by a fair competition of ideas so that the public can have faith in the result.

#### b. ALTERNATIVES DEEMED INFEASIBLE

An EIR must explain in detail why various alternatives are deemed infeasible. “Without meaningful analysis of alternatives in the EIR, neither the courts nor the public can fulfill their proper roles in the CEQA process. We do not impugn the integrity of the Regents, but neither can we countenance a result that would require blind trust by the public, especially in light of CEQA's fundamental goal that the public be fully informed as to the environmental consequences of action by their public officials.” (Laurel Heights Improvement Association of San Francisco v. Regents of the University of California (1988) 47 Cal.3d 376, 404 [253 Cal.Rptr. 426].)

When an alternative is found financially infeasible, some analysis of revenue and cost figures will be needed to support the finding. A finding of financial infeasibility will not survive scrutiny if, “There is no estimate of income or expenditures, and thus no evidence that reduction of the motel from 80 to 64 units, or relocation of some units, would make the project unprofitable.” (Burger v. County of Mendocino (1975) 45 Cal.App.3d 322, 327.)

#### c. QUANTITATIVE AND COMPARATIVE ANALYSES

CEQA requires a “quantitative, comparative analysis” of the relative environmental impacts and feasibility of project alternatives. (Kings County Farm Bureau et al. v. City of Hanford (5th Dist. 1990) 221 Cal.App.3d 692, 730-737 [270 Cal.Rptr. 650].) As we stated during the scoping meeting on August 13 and at earlier public meetings, we encourage the County to prepare an EIR that will include quantitative and comparative analyses of the general plan project description and alternatives. That includes running the traffic models, the air quality model, measuring agricultural land loss, estimating greenhouse gas impacts, calculating water supply impacts, running the Uplan model, and measuring noise impacts for the general plan project description *and all alternatives*. While a matrix of quantified impacts may be a useful way to provide a comparison, the mere ranking of alternatives by presumed but unsubstantiated impacts is not acceptable. This is especially critical when doing a program EIR. A program EIR is supposed to, “Provide an occasion for a *more exhaustive consideration of effects and alternatives* than would be practical in an EIR on an individual action,” and to “Allow a Lead Agency to

consider *broad policy alternatives* and program-wide mitigation measures at an early time when the agency has greater flexibility to deal with basic problems or cumulative impacts.” (CEQA Guidelines, sec. 15168.)

d. THE IMPORTANCE OF ARTICULATING PROPER PROJECT OBJECTIVES  
IN FORMULATING A RANGE OF REASONABLE ALTERNATIVES

In the past, lead agencies have attempted to narrow the range of reasonable alternatives by defining the objectives so narrowly that there are no feasible alternatives to the project that meet its objectives. The courts have not allowed this. (Rural Land Owners Association v. Lodi City Council (3d Dist. 1983) 143 Cal.App.3d 1013, 1025-1026 [192 Cal.Rptr. 325].)

At the scoping meeting on August 13, the County’s consultants suggested that the current project description narrowly limited consideration of general plan alternatives. We disagree.

The general plan project description claims to focus growth in the existing cities and rural centers, to reduce rural sprawl and protect working landscapes. However, the map allows for plenty of sprawling ranchette development through the “Ag. Transition” designation and the conversion of agricultural land by not establishing lower minimum densities for grazing land. Also, the very un-directive and noncommittal policy framework does not preclude such sprawl. If we were to characterize the project description, we might call it *laissez faire smart growth*: it gives lip service to town-centered development, but it does not make much of a commitment to delivering that result. Thus, the alternative retains the prospect of causing the impacts of sprawl. Also, while we endorse many smart growth concepts, we do not turn a blind eye to their potentially significant impacts when carelessly applied. Such careless application may pose additional traffic congestion impacts on some existing cities and rural centers. It may affect housing affordability by limiting development opportunities and constraining supply. It also may locate commuters to Sacramento and Stockton many miles up Highway 88. Thus, even if the project description delivers on some smart growth concepts, it may still result in potentially significant impacts. The program EIR must evaluate alternatives to mitigate the impacts of the project description.

The development of a “new town” at RAS could provide a more efficient bedroom community for Sacramento and Stockton, reducing miles traveled, air pollution, and traffic congestion in other rural centers. An RAS alternative also may provide more opportunities for locating new affordable housing near new services than would trying to use infill development to shoehorn affordable housing into existing communities. Thus, we feel that including a RAS alternative in the general plan program EIR is justified. Of course, RAS development could result in the great loss of acres of working landscape and valuable plant and wildlife habitat, and as county staff and consultants have stated, there

is no water supply for it (unless other areas are not developed). Thus, the EIR needs to take a hard look at the real impact trade-offs associated with such an alternative.

Finally, we feel the EIR should include a Success Through Accountability alternative. This alternative would balance the noncommittal goal and policy language with quantified objectives the County would strive to achieve, specific standards the County would enforce, identified programs the County would try to implement, designated funding sources the County would seek, and mitigation implementation and effectiveness monitoring the County would employ to track its progress, all grounded in the consensus general plan vision statement developed by the GPAC. This alternative would include a map that better ensures the focusing of growth in existing communities. This alternative would include an Agricultural Element. The land use map would more closely reflect the amount of growth that can be accommodated with transportation, water supply, wastewater disposal, and other infrastructure within the time frame of the plan.

That alternative could, for example:

- Set public safety goals and thresholds for rural development by creating a public safety overlay that would not allow the creation of new parcels of less than 40 acres in areas classified as high or very high fire risk until those areas have adequate fire evacuation routes and 24/7 paid fire and EMS response year-round (not counting CalFire).
- Set real, measurable standards to ensure continued preservation of agricultural lands, forest lands, open space, wildlife habitat, scenic beauty, and historic and cultural resources.
- Set circulation standards that address not only Level of Service, but also noise, protection of habitat, cultural and historical resources, and scenic beauty.
- Establish standards for protecting natural, cultural and historical resources critical for local tourism and recreation income, including mines, prehistoric sites, rivers, lakes, and scenic beauty.
- Establish standards that ensure the construction of workforce housing and child care facilities.
- Establish standards for green residential, commercial, and industrial construction as supported by the entire GPAC.
- Establish standards for greenhouse gas reduction that would apply to all projects requiring a tentative map.
- Include performance measures and benchmarks to be met at years 5, 10, and 15 of the general plan, along with options to be implemented if the standards are not being met.

A program EIR is supposed to, “Allow a Lead Agency to consider broad policy alternatives and program-wide mitigation measures at an early time when the agency has greater flexibility to deal with basic problems or cumulative impacts.” (CEQA Guidelines, sec. 15168.) We feel that the above described alternatives would provide the opportunity for the County and its citizens to consider a broad range of policy alternatives.

As we explained during the August 13 scoping meeting, it seems obvious from public comment during and since the GPAC meetings that some local residents want a more conservation-oriented general plan while others want a general plan with a much less restrictive approach to land development. Since each of these approaches can include provisions that mitigate impacts of the project description, they can both be the bases for valid alternatives. We hope that County staff will again gather local groups and individuals together to help develop these alternatives, before time and money is spent on EIR technical analyses of straw-man alternatives having nobody’s support. Such a set of straw-man alternatives would fail to “foster meaningful public participation and informed decisionmaking.” (CEQA Guidelines, sec. 15126.6 subd. (f).)

Below we assess the degree to which the County conformed to this guidance

## **5.2 ALTERNATIVES CONSIDERED AND REJECTED**

An EIR must explain in detail why various alternatives are deemed infeasible. “Without meaningful analysis of alternatives in the EIR, neither the courts nor the public can fulfill their proper roles in the CEQA process. We do not impugn the integrity of the Regents, but neither can we countenance a result that would require blind trust by the public, especially in light of CEQA’s fundamental goal that the public be fully informed as to the environmental consequences of action by their public officials.” (Laurel Heights Improvement Association of San Francisco v. Regents of the University of California (1988) 47 Cal.3d 376, 404 [253 Cal.Rptr. 426].)

We are disappointed by the County’s cursory refusal to analyze feasible alternatives that would reduce project impacts, were consistent with many objectives of the general plan, and that would have informed decisionmakers and public participation. (DEIR, p. 5-2 to 5-3.)

The DEIR notes that many members of the public wanted a plan that would accommodate more growth, or growth in a different areas. Such an alternative is not per-se infeasible merely because it would increase some impacts while decreasing other impacts. The great loss of not including this alternative in the EIR, is that the intense public debate over it will continue in the absence of any real data assessing its impacts and feasibility. Furthermore, there will be no data to defend the County when it chooses a different alternative that was analyzed in the DEIR. While we at the Foothill Conservancy are unlikely to support such an alternative, we nonetheless

are harmed by it not being quantitatively compared to the other alternatives in the DEIR. We hope that the Final EIR will evaluate such an alternative.

Specifically, the DEIR rejects including an RAS New Town in an alternative. (DEIR, p. 5-3.)

The “New Town” alternative, as proposed by the Foothill Conservancy, is not a feasible alternative to the Draft General Plan. With a decline in economic conditions and a downward revision to the Department of Finance’s projected population increase in Amador County to fewer than 7,300 new residents between 2010 and 2060 (DOF, 2014), the amount of population growth would be insufficient to support a full-service new town. Furthermore, because the Rancho Arroyo Seco area has a concentration of biological resources (including Ione chaparral) and mineral resources, residential and commercial land uses at the scale suggested by the Foothill Conservancy may be infeasible to develop in this area.

The DEIR not only rejected our proposed RAS New Town alternative on economic grounds as too large, it refused to consider any alternative with an RAS New Town of any size. While the County justified doing so to avoid resource harm, it ignored the possibility that providing a sufficiently profitable new town could allow the developer to set aside in perpetuity the most environmentally sensitive surrounding lands. By not evaluating this alternative, the County has again refused to inform the public debate on this issue. A proper analysis of the RAS New Town might reflect that it would be in competition with other developments for precious natural resources and scarce public services. As a result, we at the Foothill Conservancy and the County will continue to wrestle with these ghost alternatives, in the absence of hard data upon which to make an informed decision. We hope that the Final EIR will evaluate such an alternative.

### **5.3 ALTERNATIVES CONSIDERED IN DETAIL**

#### **Alternative 2**

We are grateful to the County for including many provisions of our Success Through Accountability Alternative into Alternative 2. (DEIR, pp. 5-4 & 5-5.) It’s important to note that Alternative 2 reduces many of the significant unavoidable impacts noted for the General Plan while meeting all of the plan objectives. The Safety Element policy is good, but could be clarified and strengthened by specifying that no new lot splits will be allowed in areas of elevated wildlife fire risk unless the parcels are within five miles of a fully staffed, equipped and funded fire station. The Circulation Element policy using VMTs is good. The Conservation Element policy regarding water conservation is good but could be strengthened and clarified (see comments on water supply). The Economic Development policy is good and should be retained.

**We hope that by combining the best provisions of the Draft General Plan and this Alternative, with the additional measures proposed by Terrell Watt, we can come to agreement on a superior general plan.** (See in these comment, Terrell Watt, Matrix of Recommended Mitigation Measures.

### Alternative 3

Alternative 3 is the “environmentally preferred” alternative in the plan. However, because there are no goals or policies suggested to guide the allocation of building permits, the DEIR asserts that it fails to meet one of the plan objectives: focusing growth in existing towns and cities. However, if the county adopted a resource allocation policy similar to that employed by the City of Jackson, which ranks proposals based on measurable objectives, Alternative 3 could in fact meet that objective. If Alternative 3 were combined with the good policies in Alternative 2, all plan objectives would be met while reducing significant unavoidable impacts.

## 5.4 RELATIVE IMPACTS OF THE ALTERNATIVES

The alternatives analysis is rather cursory and almost entirely qualitative, when a full, quantitative analysis is required by law. Only the number of units developed and the traffic impacts are quantitatively compared. Earlier in the General Plan Update process, the County employed the U-Plan model to compare **where** development was likely to go based upon the constraints posed by various general plan alternatives. Such a model could quantitatively estimate the relative impacts of each alternative on agriculture and forest lands, sensitive habitat lands, and high wildfire risk lands.

In addition, there are air quality and traffic models that can be employed to quantitatively evaluate the relative merits of the alternatives with regard to mobile source air pollution and GHG emissions.

As the DEIR stands now, it is difficult for a reviewer to determine how the conclusions regarding environmental impacts were reached, and impossible to determine to what *degree* Alternatives 2 and 3 reduce significant unavoidable impacts. Vague labels like “similar” impacts and “lesser” impacts do not provide decisionmakers with enough information. It matters how much the impact is reduced. That information is needed to provide decision-makers with the information they need for full disclosure of environmental impacts and consideration of alternatives. It is unclear how the County will make the necessary informed choice among alternatives when it comes time to make the required findings of fact based upon substantial evidence in the record.

"The courts have favored specificity and use of detail in EIRs." (Whitman v. Board of Supervisors (2d Dist. 1979) 88 Cal.App.3d 397, 411 [151 Cal.Rptr. 866].) In Whitman, the Court found that the discussion of cumulative impacts lacked "even a minimal degree of specificity or detail" and was "utterly devoid of any reasoned analysis." The document relied on unquantified and undefined terms such as "increased traffic" and "minor increase in air emissions". "A conclusory statement 'unsupported by empirical or experimental data, scientific authorities, or explanatory information of any kind' not only fails to crystallize issues [citation] but 'affords no basis for a comparison of the problems involved with the proposed project and the difficulties involved in the alternatives.'" (People v. County of Kern (5th Dist 1974) 39 Cal.App.3d 830, 841-842 [115 Cal.Rptr. 67], quoting Silva v. Lynn (1st Cir. 1973) 482 F.2d 1282, 1285.) A clearly inadequate or unsupported study will be entitled to no judicial deference.



*(State Water Resources Control Board Cases (App. 3 Dist. 2006) 136 Cal.App.4<sup>th</sup> 674.) "A prejudicial abuse of discretion occurs if the failure to include relevant information precludes informed decisionmaking and informed public participation, thereby thwarting the statutory goals of the EIR process." (Kings County Farm Bureau et al. v. City of Hanford (5th Dist. 1990) 221 Cal.App.3d 692, 712 [270 Cal.Rptr. 650].)*

We hope that the Final EIR will include the necessary quantitative analyses to allow decisionmakers and the public to meaningfully compare the relative merits of the alternatives.

## 6 OTHER CEQA CONSIDERATIONS

### 6.1 CUMULATIVE EFFECTS

In 2009, our scoping comment provided over three pages of guidance on cumulative impact analysis:

“‘Cumulative impacts’ refer to two or more individual effects which, when considered together, are considerable or which compound or increase other environmental impacts.” (CEQA Guidelines, sec. 15355.) In some cases, a cumulative impact "results from the incremental impact of the project when added to other closely related past, present, and reasonably foreseeable probable future projects." (CEQA Guidelines, sec. 15355.) An EIR must discuss significant cumulative impacts, and/or explain why the cumulative impacts are not significant. (CEQA Guidelines, sec. 15130; Citizens to Preserve Ojai v. County of Ventura (2d Dist. 1985) 176 Cal.App.3d 421, 432 [222 Cal.Rptr. 247].)

#### a. THRESHHOLDS OF SIGNIFICANCE

Problems often arise in evaluating the significance of cumulative impacts.

In many cases, the existing environmental conditions (e.g. air quality, traffic congestion, etc.) may already be cumulatively significantly impacted, even without the additional development in a general plan. At times, consultants have argued that in such situations, additional cumulative impacts should not be considered significant. The courts have disagreed. In fact, the courts have concluded the opposite. Namely, the more severe the existing environmental problems are, the lower the threshold for treating the project's cumulative impacts as significant. (Kings County Farm Bureau et al. v. City of Hanford (5th Dist. 1990) 221 Cal.App.3d 692, 718-721 [270 Cal.Rptr. 650].)

Another suspect approach is choosing thresholds that are so ridiculously large that the project's cumulative impacts are incorrectly judged insignificant. For example, too often EIRs of late have identified tons of project related greenhouse gas emission, and then said that the impact is insignificant because the threshold is the entire state's production of GHGs. For the reasons noted above, this logic is flawed and the analysis is not compliant with CEQA. The County should avoid trying to minimize significant impacts by using ridiculously large thresholds.

#### b. SCOPE

The lead agency must justify its choice of scope for each cumulative impact analysis. (CEQA Guidelines, sec. 15130(b)(3).) The scope will be different for different impacts, because different cumulative impacts affect different geographic areas. For example, the cumulative air quality impact analyses of major projects should consider the cumulative impacts over the entire air basin. (Kings County Farm Bureau et al. v. City of Hanford (5th Dist. 1990) 221 Cal.App.3d 692, 721-724 [270 Cal.Rptr. 650].) Similarly,

cumulative traffic congestion impacts on inter-county highways will be felt across the county line, and the analysis should not stop at the county border. Cumulative impacts on localized wildlife populations may only come from local projects, while cumulative impacts on migratory wildlife may accrue from throughout their migratory range. Water removed from the Mokelumne River may not only impact local fish populations in Amador County, but also salmon and steelhead populations in the Delta and as noted in the recent National Marine Fisheries Service biological opinion, even killer whale populations in the Pacific Ocean.

c. DETAILED ANALYSIS

Quantitative data is often needed in cumulative impact analyses. "Absent some data indicating the volume of ground water used by all such projects, it is impossible to evaluate whether the impacts associated with their use of ground water are significant and whether such impacts will indeed be mitigated by the water conservation efforts upon which the EIR relies." (Kings County Farm Bureau et al. v. City of Hanford (5th Dist. 1990) 221 Cal.App.3d 692, 728-729 [270 Cal.Rptr. 650].) Where a "sophisticated technical analysis" is "not feasible" the lead agency is still bound to conduct "some reasonable, albeit less exacting, analysis." Citizens to Preserve Ojai v. County of Ventura (2d Dist. 1985) 176 Cal.App.3d 421, 432 [222 Cal.Rptr. 247]

d. TREATMENT OF RAS

One of our current concerns comes from the indication in the scoping notice that the impacts of RAS development will be limited to the "four existing parcels and land use designations." (NOP, p. 12.) The cumulative impacts of development from both the General Plan Update and the RAS general plan amendment must be evaluated in the General Plan Update EIR.

"An agency may not ... [treat] a project as an isolated 'single shot' venture in the face of persuasive evidence that it is but one of several substantially similar operations .... To ignore the prospective cumulative harm under such circumstances could be to risk ecological disaster." (Whitman v. Board of Supervisors (2d Dist 1979) 88 Cal.App.3d 397, 408 [151 Cal.Rptr. 866, quoting Natural Resources Defense Council v. Callaway (2d. Cir. 1975) 524 F.3d 79, 88.) "Consideration of the effects of a project or projects as if no others existed would encourage the piecemeal approval of several projects that, taken together, could overwhelm the natural environment and disastrously overburden the man-made infrastructure and vital community services. This would effectively defeat CEQA's mandate to review the actual effect of the projects upon the environment." (Las Virgines Homeowners Federation, Inc. v. County of Los Angeles (2d Dist. 1986) 177 Cal.App.3d 300, 306 [223 Cal.Rptr. 18].)

"It is vitally important that an EIR avoid minimizing the cumulative impacts. Rather it must reflect a conscientious effort to provide public agencies and the general public with adequate and relevant detailed information about them.' [Citation.] A cumulative impact

analysis which understates information concerning the severity and significance of cumulative impacts impedes meaningful public discussion and skews the decisionmaker's perspective concerning the environmental consequences of a project, the necessity for mitigation measures, and the appropriateness of project approval. [Citation.] An inadequate cumulative impact analysis does not demonstrate to an apprehensive citizenry that the governmental decisionmaker has in fact fully analyzed and considered the environmental consequences of its action." Citizens to Preserve Ojai v. County of Ventura (2d Dist. 1985) 176 Cal.App.3d 421, 431 [222 Cal.Rptr. 247], quoting San Franciscans for Reasonable Growth v. City and County of San Francisco (1st Dist. 1984) 151 Cal.App.3d 61, 79 [198 Cal.Rptr. 634].) "Without a mechanism for addressing the cumulative effects of individual projects, there could never be any awareness of or control over the speed and manner of downtown development. Without such control, piecemeal development would inevitably cause havoc in virtually every aspect of the urban environment." San Franciscans for Reasonable Growth v. City and County of San Francisco (1st Dist. 1984) 151 Cal.App.3d 61, 76-77 [198 Cal.Rptr. 634].) "In Kings County Farm Bureau v. City of Hanford (1990) 221 Cal.App.3d 692, 723 [270 Cal.Rptr. 650] (Kings County Farm Bureau), the court held that, in considering whether an EIR must include related projects, "[t]he primary determination is whether it was reasonable and practical to include the projects and whether, without their inclusion, the severity and significance of the cumulative impacts were reflected adequately." Friends of the Eel River v. Sonoma County Water Agency (2003) 108 Cal.App.4<sup>th</sup> 859, 868-869.)

There is no real question about the foreseeability of the RAS development. On July 3, 2008, the developer made a property owner request for an SPA designation that would allow for "One or more Specific Plans" to guide development of the 16,100 acre area. The staff's October 2008 analysis of the proposal states, "As part of the "alternatives" process planning staff has acknowledged the existence of the new owners, and their desire to eventually develop the property in some capacity." (See, General Plan Workshop, 10-14-08, Agenda Packet, Landowner Request 36.) Finally, when the revised definition of the SPA was approved by the BOS in April of 2009, in reference to RAS, Supervisor Forster stated, "... there will be some development. There's no lying to people there. Everybody knows it. You don't spend \$95 million on a piece of property and not want to develop some of it." Something that "everybody knows" is reasonably foreseeable.

There is also no real question that about whether it is reasonable or practical to include RAS development in the impact analysis. During staff's "alternatives" process, they constructed Tables 3c and 3d that demonstrated the effect of including 11,300 acres of RAS development in General Plan Alternative C. In addition, on page 39 of the June 2008, "Updated Classification System and Alternatives Workbook," Table 3b indicated that development of RAS would double the expected number of residences in the County at buildout (38,929) relative to general plan conceptual alternative A. Thus there is no real question that a cumulative impact analysis that left out RAS development would not adequately reflect the severity of the cumulative impacts.

Failure to evaluate the cumulative impacts of the General Plan Update and the RAS general plan amendment would violate the principles at the very heart of CEQA's cumulative impact analysis requirement.

e. MITIGATING THE IMPACTS OF INCREMENTAL DEVELOPMENT

“Assessment of a project's cumulative impact on the environment is a critical aspect of the EIR. [3] ” ‘One of the most important environmental lessons evident from past experience is that environmental damage often occurs incrementally from a variety of small sources. These sources appear insignificant, assuming threatening dimensions only when considered in light of the other sources with which they interact.’ ” (Kings County Farm Bureau v. City of Hanford (1990) 221 Cal.App.3d 692, 720 [270 Cal.Rptr. 650], quoting Selmi, The Judicial Development of the California Environmental Quality Act (1984) 18 U.C. Davis L.Rev. 197, 244, fn. omitted.)” (Los Angeles Unified School Dist. v. City of Los Angeles (1997) 58 Cal.App.4th 1019, 1025 – 1026.) This statement refers to the phenomenon sometimes referred to as “death by 1,000 cuts.”

When evaluating cumulative impacts and their mitigation, it is important to ensure that the mitigation applies to the projects causing the impacts, even if they are smaller projects of 10 to 50 units. Also, large development projects (250 units or more) are often preferred by public officials over smaller projects (10 – 50 units), because the large projects offer more impact mitigation and other community benefits, while smaller projects are often exempted from impact mitigation. This inequity need not be the case. As the County develops impact mitigation programs, it would be better to include smaller projects as well, so that they are not put at a competitive disadvantage in the competition for project approvals. In addition, mitigation programs with broader application will have a better chance at achieving mitigation objectives.

Below we shall assess the degree to which the County has followed this guidance.

On page 6-2, the DEIR indicates that Rancho Arroyo Seco has been excluded from the cumulative impact analysis as not foreseeable. For reasons noted above, that is incorrect. In addition, we note that at one time there was a proposal to provide conditions for the general plan amendment of the RAS property in the future. This only further demonstrates the foreseeability of that development. When it was pointed out that such a maneuver was impermissibly piecemealing the General Plan Update, the proposal was withdrawn. For the reasons stated above, it is foreseeable that RAS will seek entitlements and/or develop within the 2030 plan horizon. We hope that the Final EIR includes RAS in the cumulative impact analysis. However, if the County really wants to avoid that analysis, all it needs to do include in the General Plan a provision indicating that no general plan amendments will be accepted for the RAS property through 2030. This would rule out any cumulative impacts associated with a change in the land use designation of the property during the time horizon of the plan. The County cannot have it both ways. It cannot both preserve the opportunity for developing an RAS New Town in the plan horizon, and avoid addressing the potentially enormous cumulative impacts of the RAS New Town

As with the analysis of alternatives, the consideration of cumulative impacts is mostly a qualitative review, despite the fact that many of these impacts are subject to quantification. For example, page 6-4 of the DEIR evaluates the cumulative impacts on agricultural land. This section does not report the number of acres of farmland in Amador County converted to non-agricultural uses from 1984 to 2004, despite the fact that we provided that data in our scoping comments in 2009. (Foothill Conservancy Scoping Comments, Chapter 2, p. 3 [total loss 5707 acres; average loss of 285 acres per year].) On page 6-4 and 6-5, there is no indication of the projections for concentrations of criteria pollutants in the ambient air quality in the region. The two paragraph analysis of biological resource cumulative impacts provides no quantification of regional acres of habitat lost for TES species. Similarly, on page 6-6 there is no quantification of the number of additional homes likely in high fire hazard zones. These omissions are curious given the fact that earlier in the General Plan Update process, the County was using the U-Plan program to generate maps and quantify these sorts of impacts. On page 6-9, there is no attempt to quantify the cumulative impacts on water supply and wastewater capacity, despite the fact that Amador Water Agency regularly prepares reports to do just that.

Instead the cumulative impact analysis just jumps to the conclusion that impacts are significant or not, without comparing any measure of the impacts to a threshold of significance. "The courts have favored specificity and use of detail in EIRs." (Whitman v. Board of Supervisors (2d Dist. 1979) 88 Cal.App.3d 397, 411 [151 Cal.Rptr. 866].) In Whitman, the Court found that the discussion of cumulative impacts lacked "even a minimal degree of specificity or detail" and was "utterly devoid of any reasoned analysis." The document relied on unquantified and undefined terms such as "increased traffic" and "minor increase in air emissions". "A conclusory statement 'unsupported by empirical or experimental data, scientific authorities, or explanatory information of any kind' not only fails to crystallize issues [citation] but 'affords no basis for a comparison of the problems involved with the proposed project and the difficulties involved in the alternatives.'" (People v. County of Kern (5th Dist 1974) 39 Cal.App.3d 830, 841-842 [115 Cal.Rptr. 67], quoting Silva v. Lynn (1st Cir. 1973) 482 F.2d 1282, 1285.) A clearly inadequate or unsupported study will be entitled to no judicial deference. (State Water Resources Control Board Cases (App. 3 Dist. 2006) 136 Cal.App.4<sup>th</sup> 674.)

The reason these omissions are so prejudicial is that much of the General Plan has not been updated since 1974. If it is not within the scope of this rare EIR on the countywide general plan to quantitatively evaluate the cumulative impacts of new development, it will not be within the scope of any EIR in the foreseeable future. No decisionmaker and no member of the public will ever know the true ramifications of the development they are approving, until it is too late. That is exactly the problem that CEQA's cumulative impact analysis requirement is in place to prevent.

## 6.2 GROWTH-INDUCING EFFECTS

Our scoping comment included one page of guidance on growth-inducing effects analysis:

The EIR must "Discuss the ways in which the proposed project could foster economic or population growth, or the construction of additional housing, either directly or indirectly, in the surrounding environment." (CEQA Guidelines, sec. 15126.2, subd. (d).)

Growth inducing impacts can result from a General Plan that sets out land use designations and public works projects that will remove barriers to growth.

For example, "Construction of the road way and utilities cannot be considered in isolation from the development it presages." (City of Antioch v. City Council of Pittsburgh (1st Dist. 1986) 187 Cal.App.3d 1325 [232 Cal.Rptr. 507].) "It is obvious that constructing a large interchange on a major interstate highway in an agricultural area where no connecting road currently exists will have substantial impact on a number of environmental factors." (City of Davis v. Coleman (9th Cir. 1975) 521 F.2d 661, 674-675.)

"It also is settled that the EIR must discuss growth-inducing impacts even though those impacts are not themselves a part of the project under consideration, and even though the extent of the growth is difficult to calculate. The case law supports this distinction. The court in City of Antioch v. City Council (1986) 187 Cal.App.3d 1325 [232 Cal.Rptr. 507] found that a project required an EIR notwithstanding that the project itself involved only the construction of a road and sewer project which did not in and of themselves have a significant effect on the environment. The court recognized that the sole reason for the construction was to provide a catalyst for further development in the immediate area. It held that because construction of the project could not easily be undone, and because achievement of its purpose would almost certainly have significant environmental impacts, the project should not go forward until such impacts were evaluated in the manner prescribed by CEQA. (*Id.* at pp. 1337-1338.)" (Napa Citizens for Honest Government v. Napa County Board of Supervisors (2001) 91 Cal.App.4<sup>th</sup> 368.)

Growth inducing impacts can result from a General Plan that does not provide for a jobs - housing balance. For example, if the land use designations facilitate the creation of many low-paying jobs, but insufficient affordable housing for the workers, that affordable housing will need to be produced elsewhere. Thus the jobs-housing imbalance is growth inducing. Sometimes EIR preparers try to avoid the requirement to evaluate such growth inducing impacts using the excuse that such future growth is too speculative to evaluate. This excuse has not and will not work. "In Stanislaus Audubon Society, Inc. v. County of Stanislaus (1995) 33 Cal.App.4<sup>th</sup> 144 [39 Cal.Rptr.2d 54], the court considered a proposed construction of a country club and golf course and attendant facilities. It was contended there that an EIR was not required because the growth-inducing impacts of the proposed project were too remote or speculative, and EIRs would be prepared in connection with any application for a housing development. The court responded, "The fact that the exact extent and location of such growth cannot now be determined does not

excuse the County from preparation of an EIR.... [R]eview of the likely environmental effects of the proposed country club cannot be postponed until such effects have already manifested themselves through requests for amendment of the general plan and applications for approval of housing developments." (*Id.* at pp. 158-159, fn. omitted.)” (Napa Citizens for Honest Government v. Napa County Board of Supervisors (2001) 91 Cal.App.4<sup>th</sup> 368-369.)

Below we will consider the degree to which the County followed this guidance.

The three-paragraph analysis in this section of the DEIR is not supported by the evidence in the record. (DEIR, pp. 6-10 & 6-11.) The conclusory analysis uses circular logic to determine that the growth inducing effects of the General Plan result in orderly growth. If that were the case, there would not be 36 significant and unavoidable project and cumulative impacts associated with the growth. (See DEIR, pp. 6-11 & 6.12.) That is not orderly growth. It is chaos. Why would anybody spend so much time and money producing a plan that expects to fail on such a broad scale? How can that be considered orderly growth? This brief conclusory analysis, unsupported by evidence in the record, is not “a good faith effort at full disclosure.” (CEQA Guidelines, section 15151.)

Furthermore, the growth inducing effects analysis glosses over the significant growth challenges in many parts of the County. For example, the EIR should explain that the upcountry areas have yet to make decisions on a lot of infrastructure and service issues. The decisions will stimulate or constrain growth. How far do we extend or expand water and sewer services? AWA has about \$150 million in infrastructure projects county-wide over the next 20 years, but it is unclear who will pay for these and how much. (See 2011-2013 MAC IRWMP, Appendix B – Project Type and Financing Summary.) It would help to mitigate the adverse impacts of growth inducement if there were clearer policies in the general plan regarding future infrastructure requirements and future funding.

Finally, the EIR also glosses over the growth inducing effect problem here in Amador County that the approval of new development is not connected to the ability of the county and service providers to produce infrastructure and services. Development projects are approved once the developer agrees to pay his “fair share” of infrastructure costs. However, since there is no matching share, the development goes in but the infrastructure to serve it does not. As a result, levels of service decline. For an example of this consult the Regional Transportation Plan. By disclosing this problem, the DEIR could suggest ways to better connect the approval of new growth to actual availability to provide infrastructure and services. The DEIR’s failure to disclose this problem is highly prejudicial, in that it hides from the public the need to address this critical environmental impact issue.



### **6.3 SIGNIFICANT IRREVERSIBLE ENVIRONMENTAL CHANGES**

In our 2009 scoping comment we provided guidance on the discussion of irreversible environmental changes:

CEQA requires that an EIR identify the significant irreversible environmental changes caused by the project. (CEQA Guidelines, sec. 15126.2 (c).) For a General Plan EIR, the primary impacts are likely to include the conversion of agriculture, forest, and mineral lands to other developed uses like residential development. The secondary impacts are likely to include the extension of road and utility infrastructure to previously inaccessible areas. The evaluation in the EIR is used to determine if such current consumption of the resources is justified, or if the resources should be conserved for future use. Please evaluate these impacts in the General Plan Update EIR.

The entire analysis in the DEIR is just one paragraphs. There is no attempt to evaluate the magnitude of the resource commitment. There is no explanation of why current resource consumption is justified, instead of conservation. In other words, the analysis is entirely inadequate. It is not a good faith effort at full disclosure. (CEQA Guidelines, sec. 15151.) This inadequate analysis is highly prejudicial. An EIR that identifies 36 significant and unavoidable impacts cries out for an explanation as to why in the world would anybody chose to invest so much time, effort, money and **resources** to make their community a worse place to live in so many ways. That analysis is supposed to be in this section of the EIR. It is not.

### **6.4 SIGNIFICANT AND UNAVOIDABLE EFFECT**

Our scoping comment provided guidance on evaluating significant and unavoidable impacts:

An EIR must describe any significant impacts that cannot be reduced to a level of insignificance. (CEQA Guidelines, sec. 15126.2, subd. (b).) It is critically important for the EIR to try to express these impacts in quantitative and monetary terms whenever possible. This is because, at the end of the EIR process, the County is going to have to make a finding, based upon substantial evidence in the record, that the benefits of the proposed General Plan outweigh its environmental harm. It is essential that the magnitude of residual impacts be well defined for the County to make a supportable finding. In addition, an easy way to compare otherwise unlike impacts and benefits is to estimate their economic costs and benefits whenever possible.

For example, if one alternative will result in getting a \$5 million sewage treatment plant for free, that is a \$5 million benefit. On the other hand, if the alternative results in roadway impacts costing \$10 million to fix, that is a \$10 million cost. Thus, rather than struggling to try to balance sewage treatment benefits with traffic congestion impacts, it becomes a simple math exercise to compare the sewage treatment value to the roadway costs. (See, CEQA Guidelines 15131.)

Pages 6-11 and 6-12 simply list the significant and unavoidable impacts of the General Plan, and make no attempt to provide any quantification or valuation of these impacts. It is unclear how the County will make the necessary informed balancing of the General Plan's benefits and environmental costs when it comes time to make the required findings of fact.

THERE ARE 36 SIGNIFICANT AND UNAVOIDABLE PROJECT AND CUMULATIVE IMPACTS OF THE GENERAL PLAN! That is just too many. The County needs to do a better job of adopting real measures to mitigate these impacts. (See in these comments Terrell Watt, *Matrix of Recommended Mitigation Measures*.) Failure to evaluate proposed feasible mitigation measures in a program EIR is prejudicial error. (*Cleveland National Forest Foundation v. San Diego Association of Governments* (2014, App. 4<sup>th</sup> Dist.) [Slip Opinion] D063288, pp. 26-27; certified for publication.)

## 8 REFERENCES

In our scoping comment we explained:

“The EIR shall cite all documents used in its preparation including, where possible, the page and section number.” (CEQA Guidelines, sec. 15148.) “A conclusory statement 'unsupported by empirical or experimental data, scientific authorities, or explanatory information of any kind' not only fails to crystallize issues [citation] but 'affords no basis for a comparison of the problems involved with the proposed project and the difficulties involved in the alternatives.'" (People v. County of Kern (5th Dist 1974) 39 Cal.App.3d 830, 841-842 [115 Cal.Rptr. 67], quoting Silva v. Lynn (1st Cir. 1973) 482 F.2d 1282, 1285.) "Argument, speculation, unsubstantiated opinion, or narrative evidence which is clearly erroneous or inaccurate ... does not constitute substantial evidence." (CEQA Guidelines, sec. 15384.)

Proper citation is an often and needlessly neglected requirement that is of critical importance in an EIR. Without proper citation, an EIR is legally vulnerable and it will be nearly impossible for the County to formulate findings of fact.

Ultimately, the board will be required adopt findings of fact supported by substantial evidence in the record. The EIR is the summary of the record. The findings of facts rationally explain the board's findings based upon information in the EIR. When citations to the record back up factual statements in the EIR, which in turn back up the County's well-reasoned ultimate findings of fact, then the record forms tidy chains of facts and reason that support the County's findings. When that chain is broken by unsupported or uncited statements in the EIR, the chains of facts and reason fall apart, and the findings of fact fail to conform to the law. (Foothill Conservancy Scoping Comment, Chapter 1, pp. 2-3.)

Chapter 8 lists references, but does not provide citation to the page in the documents where the relevant information is found. Also, there is no text note or footnote to connect the factual assertion in the EIR to the facts in the reference materials. This makes verifying the information in the EIR nearly impossible. This makes it hard for the County to properly make findings based upon substantial evidence as it is required to at the end of the CEQA process. We hope that the Final EIR will properly employ citation techniques to rectify this problem. If the County and its consultants are having difficulty employing such citation techniques, I am sure you can find experienced clerical help that is locally available.

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RE: County of Amador Draft General Plan and Draft Environmental Impact Report

Dear Cecily,

I have completed my review of the Amador County General Plan (“DGP”), its Draft Environmental Impact Report (“DEIR”) and related materials including the current General Plan, staff reports, and comment letters submitted in the course of plan development. As requested my focus has been to identify additional feasible impact mitigation measures that based on my professional opinion and experience will further reduce significant and significant unavoidable impacts associated with implementation of the DGP and identified in the DEIR. I have been careful to recommend feasible impact mitigation measures that also meet the DGP principles and DEIR objectives as well as preserve and enhance the economic assets of the County as described in both the DGP and DEIR. My resume is attached hereto as Attachment 1.

The DEIR identifies numerous significant and significant unavoidable impacts, but fails to propose all feasible mitigation capable of further reducing those impacts. The DEIR must identify any and all feasible impact mitigation measures even if they will not reduce the impact to a less than significant level. CEQA Guidelines Section 15126.2(b). The DEIR identifies as significant and unavoidable, impacts to aesthetics and scenic resources, farmland, forestland, biological resources, greenhouse gas emissions, hazards and public facilities and services, among other impacts. The DEIR also neglects to fully analyze and identify all feasible mitigation measures capable of reducing cumulative impacts. Numerous feasible mitigation measures in the form of additional policies are available to reduce the severity of these impacts. Mitigation measures proposed in an EIR must be “fully enforceable” through legally binding instruments and in this case by adding them as policies directly to the General Plan and listing them in the General Plan EIR Mitigation Monitoring Report. CEQA Guidelines Section 15126.4(a)(2). In addition to reducing impacts, in

most cases the addition of new policies will help to fulfill requirements of state planning law for required contents of the General Plan, such as the requirement for an open space program.

I have been careful to choose and recommend mitigation measures in the form of proposed policies that will also preserve and enhance the economic assets of the County including but not limited to the County's scenic, recreational, agricultural and forest landscapes and resources. As such, the majority of recommended policies and programs in the matrix below are suggested for inclusion in the General Plan Economic Element, though the County and its consultants can select the appropriate element that is the best fit for each recommendation. Each of the mitigation measures address multiple impacts. Where these or similar measures have been adopted in other County General Plans and have been relied on to address significant impacts, that co-benefit is noted. Policy examples (cited in the Matrix below) from a number of exemplary County General Plan's, are attached to the main Foothill Conservancy comment letter. At a later date, I will be sending excerpts from the EIR's and CEQA Findings for those General Plan's that document reliance on measures like those recommended below to reduce significant and significant unavoidable impacts.

In conclusion, it is my professional opinion that the County must adopt additional feasible mitigation measures similar to those recommended below in the matrix. If you have questions concerning my recommendations, please feel free to contact me,

Terrell Watt, AICP

*Terry Watt*

Owner, Terrell Watt Planning Consultants

**Matrix of Recommended Mitigation Measures to Address Significant and Significant Unavoidable Impacts Associated with the Proposed Draft Amador County General Plan**

DEIR Conclusion	DEIR/DGP Context and Widely Accepted Mitigation Approaches	Proposed Mitigation Measures
Aesthetics (SU)	<p>The DEIR and DGP acknowledge the importance of County’s scenic resources for tourism. According to the DGP, “In addition to providing economic benefits in its own right, increased tourism offers expanded opportunities to showcase the County’s rural character and high quality of life.” DGP at E-25. According to the DEIR, “[t]he most common scenic views in Amador County, where development would most likely occur, are open views of low-lying hills covered in annual grasslands, oak woodlands, and crop- and rangeland in the western part of the County.” DEIR at 4.1-4</p> <p>The DEIR finds numerous significant unavoidable impacts on scenic vistas and resources. The DEIR seeks to reduce the significance of the impacts through a number of measures including project conditions such as on building height and orientation and adoption of a Scenic Highway Ordinance expressed as Implementation Programs in the DGP. DEIR at 4.1-5 to 6. The latter measure, Scenic Highway Ordinance, holds some promise,</p>	<p>Note: The impact mitigation measures below were chosen because they also preserve and enhance the economic assets of the County. Unless otherwise noted, most of the recommendations could therefore be included in the Economic Element of the General Plan. However, the County and its consultants may choose to incorporate the recommended measures, <u>or alternative but equivalent measures</u>, in other elements of the General Plan as they deem the best fit.</p> <p>The impact mitigation measures (or modified measures) below were chosen because they also preserve and enhance the economic assets of the County. Unless otherwise noted most of the recommended policies could therefore be included in the Economic Element of the General Plan.</p> <p>Modify the Proposed Mitigation Measure 4.1-2: Implement Program P-13, Scenic Highway Ordinance to include performance measures that ensure scenic viewsheds are protected for all state highways and major collectors including, but not necessarily limited to Ridge Road, Old Sacramento Road, Fiddletown Road, Shake Ridge Road, Climax Road, New York Ranch Road, Stoney Creek Road and State Highways 16, 88, 49, 26, 104, and 124. Incorporate the following into the Ordinance and General Plan, through amendment as needed, to ensure protection of the scenic resources:</p> <ul style="list-style-type: none"> <li>• Working with stakeholders in the community, develop a diagram (“Figure X”) showing areas of high and very high visual sensitivity. Viewsheds from major collectors and highways, as well as ridgelines and hillsides visible from those roads, highways and other public areas, shall be mapped and criteria adopted to avoid visible development as well as to protect natural and historic features.</li> <li>• Development in visually sensitive areas including but not limited to ridgelines and viewsheds from major collectors and highways (as shown on “Figure X”) shall be subordinate to natural and historical features and all feasible measures taken to properly locate development to avoid visually sensitive areas.</li> </ul>

but lacks meaningful performance measures to ensure its full efficacy in reducing impacts.

The DEIR concludes that with these and other measures, impacts remain significant and unavoidable. The DEIR neglects to include feasible mitigation for impacts to scenic and historic resources including scenic highways including the following approaches taken by other County General Plans:

- Maps (General Plan Figures) showing the locations and extent of scenic and historic resources and policies requiring development avoid these areas through development at the lowest end of the density range, subdivision limitations and clustering where feasible.
- Support for purchase of development rights and conservation easements from willing sellers in these scenic areas.
- Policies and programs in the General Plan that provide compensation for noncommodity values (e.g., scenic beauty, habitat, GHG sequestration, cultural resources, etc.) provided by private properties and support for funding mechanisms to provide funding for purchase or lease of these values from willing sellers. Funding mechanisms include, but are not limited to real estate transfer fees, document filing fees, landscape and lighting districts, creation of an open space district with ability to generate bond and other funding, sales tax

New Goal in Economic Element: Retain the character and natural beauty of Amador County that supports tourism by conserving and maintaining visible physical features, natural and historical resources, and agricultural and forest/woodland landscapes.

New General Plan Policy (based on policy in the current Amador County General Plan): Prohibit clearcut logging on parcels 2 acres or larger within sight of all state highways and major collectors including, but not necessarily limited to Ridge Road, Old Sacramento Road, Fiddletown Road, Shake Ridge, Climax Road, NY Ranch Road, Stoney Creek Road and State Highways 16, 88, 49, 26, 104, and 124.

New General Plan Policy: Outdoor light to illuminate the premises shall be the minimum necessary to provide for public safety and security and shall avoid spillover light, glare and sky glow to the maximum extent feasible. Use of well designed, energy efficient fixtures that face downward, emit the correct intensity of light for the use and incorporate energy saving timers will also save costs. Outdoor lighting fixtures that are used to illuminate an architectural feature shall be directed or shaded so that the light does not fall on adjacent properties or create glare within public rights of ways.

The above recommended mitigation measures in the form of General Plan policies also serve to meet numerous DGP Principles and DEIR Objectives including, but not limited to:

- DGP Community Vision Statement (All). See DGP at pages 1-7 to 1-8.
- DEIR Objectives 1, 2, 3, 6, 7, 10 and 11.

All of the above recommended measures have been relied on in one or more other County General Plans to reduce impacts to aesthetic and scenic resources. In addition to the above recommended policies, additional feasible mitigation measures listed in column 2 should be considered. Where found to be infeasible, conclusions must be supported by evidence.

	<p>(tied to transportation or stand alone), impact fees, development agreement-related fees, etc. See e.g., Sonoma, Yolo, Placer County General Plans.</p>	
<p>Conversion of Farmland (SU) Including rangelands</p>	<p>The DEIR and DGP underscore the importance of agriculture to Amador County. DEIR at 4.2-4 and DGP at E-26. “Conservation of agricultural land is key to the continued health of Amador County’s agricultural economy.” DGP at E-26. See also Draft Conservation Element at pages C-8 to C-11. “Agriculture remains a crucial industry for Amador County, both in terms of its economic importance and because farming and ranching lie at the core of the community’s identity and culture.” Draft Conservation Element at C-10.</p> <p>The DEIR finds numerous significant unavoidable impacts as a result of the conversion of agricultural land, including farm and range lands, with implementation of the General Plan. The DEIR seeks to reduce the significance of the impacts through a number of measures including working with LAFCo to identify alternatives to expansion of SOIs into farmland, site planning techniques to avoid impacts at time of project consideration where projects would convert 5 acres or more, and in the event impacts cannot be avoided, requirement for a conservation easement at a 1:1 ratio. DEIR at 4.2-15-17.</p> <p>It should be noted that the DEIR fails to provide evidence that a higher ratio of mitigation – 3:1 – is infeasible.</p>	<p>The following recommended mitigation measures (or modified measures) in the form of policies would be added to the Economic Element of the General Plan. The recommended measures would further reduce significant and significant unavoidable impacts:</p> <p>Modify Mitigation Measure 4.2-1c and add a Framing Policy to Implement Agricultural Conversion Easements as follows:</p> <p>Add a New Framing Policy to the Economic Element: New EE Policy: Require farmland conversion mitigation where avoidance has been found infeasible for either of the following actions:</p> <ol style="list-style-type: none"> <li>a. A General Plan amendment that changes the designation of any land from an agricultural to a nonagricultural use or</li> <li>b. An application for a development permit that changes the use of land from production agriculture to a nonagricultural use, regardless of the General Plan designation.</li> </ol> <p>In such cases, the minimum mitigation required shall be 2:1 of equivalent value farmland. (See e.g., Davis General Plan at page 295 (j) requirement for a minimum of 2:1 mitigation for agricultural land conversion to development).</p> <p>Modify the Agricultural Conversion Easement Program to implement above policy: Modified EE Program to be included in the General Plan: Create and adopt a farmland conversion mitigation program and ordinance. Require compensation for loss of agricultural land, including rangeland. Establish appropriate mitigation ratios for the program or utilize a graduated mitigation mechanism. The mitigation ratio shall be a minimum of at least 2:1 (2 acres of farmland and/or rangeland protected through mitigation with land of equivalent value for each acre converted). The program shall not present regulatory barriers to agritourism, agricultural services, and agricultural processing where such uses are permitted and where they are sited to avoid the best farmland and rangeland. The program, where feasible, shall also establish mitigation within the</p>



<p>The DEIR concludes that with these and other measures, impacts remain significant and unavoidable. The DEIR neglects to include feasible mitigation for the loss of farmland and rangeland including measures routinely included in other County General Plan and found to further reduce impacts. In general such measures include:</p> <ul style="list-style-type: none"> <li>• Limitations on new subdivisions where such subdivisions would not advance agricultural vitality and production (see e.g., Yolo County General Plan Policy AG-1.2: “Maintain parcel sizes outside of the community growth boundaries large enough to sustain viable agriculture and discourage conversion to non-agricultural home sites” and Policy AG-1.3: “Prohibit division of agricultural land for non-agricultural uses.” These two Yolo County Policies were relied on in the EIR and CEQA findings to reduce significant impacts to agricultural lands as well as related to greenhouse gas emissions. Yolo County General Plan at page AG-22.</li> <li>• Inclusion of additional areas in agricultural reserve designations/overlays with findings for conversion.</li> <li>• Establishing minimum parcel size based on optimal parcel size for specific agricultural/farming/ranching activity by agricultural region or area.</li> <li>• Urban growth boundaries around county unincorporated communities with findings required for expansion.</li> <li>• Higher ratio of mitigation (e.g., 2:1</li> </ul>	<p>agricultural area where the conversion occurs as a preferred strategy. The General Plan program and ordinance shall include a fee option and shall provide an exemption for farmworker housing, again ideally sited off of the best farmland and rangeland.</p> <p>Add New framing Policies and General Plan Implementation Programs as follows:</p> <p>New Policies to be added to the Economic Element:</p> <p>EE Policy: Ensure that agricultural parcels are maintained at a sufficient minimum parcel size so as to remain a “farmable unit.” Farmable units are defined as the size of parcels a farmer would consider viable for leasing or purchasing for different agricultural purposes. Acknowledge the eight major agricultural resource areas (See Figure E-4 in the Draft Economic Element) and use these regions to support the maintenance and expansion of profitable agricultural production by defining the minimum parcel size based on the agricultural resource in each area and minimum viable parcel size to maintain and expand profitable production.</p> <p>EE Policy: Maintain agricultural production as the principle use on agricultural lands by limiting residential and other uses to that which supports agriculture, including rangeland and farmland. Allow one residence and a permitted secondary unit on each legal lot of record as of [as of specified date] provided however that (i) the owner demonstrates compliance with all other applicable requirements, and (ii) before such exemption is granted, the lots have first been merged with contiguous parcels to the maximum extent possible consistent with state law. (See for example Solano County General Plan Policy Example.)</p> <p>Add New Implementing Programs below to the General Plan:</p> <p>EE Program: Develop and adopt minimum parcel sizes appropriate to each Agricultural Area and use those minimum parcel sizes in conjunction with the agricultural land use descriptions and designations to ensure the maintenance and enhancement of profitable production. Incorporate the resulting Table into the General Plan within one year of adoption of the General Plan. (See for example Table AG-3: Agricultural Regions in the Solano County General Plan at page AG-21 submitted with Policy Examples).</p>
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	<p>minimum) for <u>all conversions</u> (not just 5 or more acres).</p> <ul style="list-style-type: none"> <li>• Measures to address the cumulative conversion of agricultural land including through City development such as pass through agreements (e.g., Yolo County pass through agreements with Davis) that restrict County development in City SOIs and require joint and community based planning for projects in those areas.</li> <li>• Voter approval for any project that would result in a conversion of farmland or rangeland in specified agricultural areas or zones.</li> <li>• Clustering programs to preserve the best farmland and rangeland. Note: The County's DGP Implementation Plan includes a revision to the zoning code to allow for clustering. See page P-4 (d). This proposal should be strengthened to require a conservation easement in all cases of clustering.</li> </ul> <p>Also note that the DEIR includes the recommendation by the Foothill Conservancy in Alt 2 for an additional economic development policy that identifies the minimally economic parcel sizes for agricultural and timber lands. A recommendation for mitigation in the form of a feasible implementing program for that approach is provided in column 3.</p>	<p>New EE Program in the General Plan: Require that the subdivision of agricultural lands shall only be allowed upon demonstration that long-term productivity on each parcel created would be enhanced as a result of the subdivision. In approving such subdivisions where findings can be made that subdivision would in fact enhance long-term productivity, fewer parcels (at a lower density) than allowed by the General Plan Land Use designation may be approved consistent with the minimum parcel sizes allowed in each Agricultural Area and taking into consideration topography, soil, water availability, and the capacity of the resulting parcels to sustain viable agricultural production. (Note: A model program that could be used as a template for an Amador- tailored program pursuant to this recommendation is the Tulare County Rural Valley Lands Plan point system, submitted with the Policy Examples).</p> <p>The above recommended mitigation measures in the form of General Plan policies and General Plan programs also serve to meet numerous DGP Principles and DEIR Objectives including, but not limited to:</p> <ul style="list-style-type: none"> <li>• DGP Community Vision Statement (All). See DGP at pages 1-7 to 1-8.</li> <li>• DEIR Objectives 1, 2, 3, 6, 7, 9, 10 and 11.</li> </ul> <p>All of the above recommended measures have been relied on in one or more other County General Plans to reduce impacts to farmland, rangeland and working landscapes as well as other impacts. In addition to the above recommended General Plan policies and programs, additional feasible mitigation measures listed in column 2 should be considered. Where found to be infeasible, conclusions must be supported by evidence.</p>
Conversion of Forestland (SU)	The DEIR and DGP underscore the importance of timber resources to Amador County's economic vitality and public safety. DEIR at 4.2-20 and DGP at	The impact mitigation measures (or modified measures) below were chosen because they also preserve and enhance the economic assets of the County. Unless otherwise noted most of the recommended program modifications and policies could therefore be included

E-28. "Amador County supports the continued viability of timber harvesting. Property management and production of timber resources can also reduce risk of catastrophic wildfire, especially in the eastern portion of the County." DGP at E-28.

The DEIR finds numerous significant unavoidable impacts as a result of the conversion of Forestland to Non-Forest use with implementation of the General Plan. The DEIR seeks to reduce such impacts through mitigation measures in the form of new general plan programs that seek to retain appropriate land use designations and zones and require development review for discretionary projects.

The DEIR concludes that with these and other measures, impacts remain significant and unavoidable. The DEIR neglects to include feasible mitigation for the conversion of forestland to non-forest uses including measures routinely included in other County General Plans and found to further reduce impacts. In general such measures include:

- Mitigation (e.g., 2:1 minimum) for all conversions of forestland that are not avoidable.
- Clustering with conservation easements required on remainder property to preserve the best forestland.
- Programs that provide compensation for noncommodity values (e.g., scenic beauty, habitat, GHG sequestration, cultural resources, etc.) provided by private

in the Economic Element of the General Plan.

Implementation programs for Timber Production in the Implementation Plan should be incorporated into the General Plan and strengthened. In addition, the following new program incorporated into the General Plan would further reduce significant impacts:

New Program in the General Plan: Cooperate with federal and state agencies to achieve the sustainable conservation of forest land as a means of providing open space, protecting scenic beauty and cultural resources, supporting eco-tourism and recreation, maintaining carbon sinks, protecting natural resource lands and protecting against uncharacteristic wildland fire, especially fires that pose a threat to lives, property, habitat and recreational or cultural resources.

Modify the Ag Conversion Easement Program to include Forestlands OR develop a similar mitigation program for forestland conversion: Modified EE Program in the General Plan: Create and adopt an agricultural land and forestland conversion mitigation program and ordinance. Require compensation for loss of agricultural lands, including farm and rangeland, and forest lands. Establish appropriate mitigation ratios for the program or utilize a graduated mitigation mechanism. The mitigation ratio shall be a minimum of at least 2:1 (2 acres of farmland/rangeland/forestland protected through mitigation with land of equivalent value for each acre converted.) The program shall not present regulatory barriers to agritourism, agricultural services, and agricultural processing or uses compatible with timber harvest where such uses are permitted and where they are sited to avoid the best farmland/forestland. The program, where feasible, shall also establish mitigation within the agricultural area [add forestlands] where the conversion occurs as a preferred strategy. The program shall include a fee option and shall provide an exemption for farmworker housing, again ideally sited off of the best farmland and rangeland.

The above recommended mitigation measures in the form of General Plan policies and programs also serve to meet numerous DGP Principles and DEIR Objectives including, but not limited to:

- DGP Community Vision Statement (All). See DGP at pages 1-7 to 1-8.
- DEIR Objectives 1, 2, 3, 6, 7, and 9.

	<p>properties and support for funding mechanisms to provide funding for purchase of these values from willing sellers. Funding mechanisms include, but are not limited to real estate transfer fees, document filing fees, landscape and lighting districts, creation of an open space district with ability to generate bond and other funding, sales tax (tied to transportation or stand alone), impact fees, development agreement related fees, etc. See e.g., Sonoma, Yolo, Placer County General Plans.</p>	<p>All of the above recommended measures have been relied on in one or more other County General Plans to reduce impacts to forestland and timber resources. In addition to the above recommended General Plan policies and programs, additional feasible mitigation measures listed in column 2 should be considered. Where found to be infeasible, conclusions must be supported by evidence.</p>
<p>Biological Resources (SU) Direct Impact to Species and Habitats</p>	<p>The DGP and DEIR acknowledge the abundance and importance of habitats and species diversity in the County. "The complex array of habitats in Amador County supports an abundant and diverse fauna because large tracts of land are covered by habitats known to have outstanding value for wildlife, such as mixed coniferous forests and oak woodlands." DEIR at 4.4-10.</p> <p>The DEIR finds numerous significant unavoidable impacts to special status species, riparian habitats, numerous sensitive natural communities (e.g., lone chaparral, oak woodlands) and wetlands with implementation of the General Plan. The DEIR seeks to reduce such impacts through mitigation measures in the form of discretionary project review and imposition of BMPs, compensatory mitigation (e.g., 1:1 replacement) and other requirements where avoidance is not possible.</p> <p>Given this rich array of habitat and species, and the importance of preserving this diversity for</p>	<p>The impact mitigation measures below were chosen because they also preserve and enhance the economic assets of the County. Unless otherwise noted most of the recommended program modifications and policies could therefore be included in the Economic Element of the General Plan.</p> <p>New Policy or Program in the Economic Element: The County shall, in concert with the US Fish and Wildlife Service, the California Department of Fish and Wildlife, and stakeholders including but not limited to property owners develop a conservation strategy for the County to provide for the protection of natural communities and rare and special status species. Focus areas shall be identified by the stakeholders. The conservation strategy shall at a minimum be adopted by the County Board of Supervisors, but consideration should also be given to obtaining grant funding and evolving the strategy into a formal Conservation Plan capable of allowing the County to be a permittee for the purpose of streamlining biological resource permits for covered activities. The strategy shall be adopted within four years of General Plan adoption and until such time the County will work with the USFWS and CDFW to refine mitigation requirements (as described in the DGP DEIR) for habitat loss due to discretionary project approval. Incorporation of these measures into an interim conservation strategy tied to the conservation planning agreement should be considered.</p> <p>New EE Program in the General Plan: Establish a resource mitigation overlay district within the zoning ordinance to encourage site and permit mitigation banks.</p>

<p>ecotourism and the economic vitality of the County, it is disappointing to see the DEIR fails to identify all feasible mitigation measures capable of further reducing the likely significant impacts to these resources with Plan implementation. Such measures include but are not limited to the additional of new policies and programs that include landscape scale, rather than project specific, solutions to meet both human needs and the needs of the natural environment such as Natural Communities Conservation Plans (NCCPs) and Habitat Conservation Plans. In addition to Conservation Plans that both serve to conserve natural communities at the landscape level while accommodating and streamlining permits for appropriate development, numerous feasible mitigation measures are omitted that are capable of further reducing significant impacts to biological resources. In general such measures include:</p> <ol style="list-style-type: none"> <li>1. Adoption and implementation of NCCP/HCP (recent examples include Orange County Transportation Authority NCCP/HCP providing programmatic mitigation for Freeway Projects; East Contra Costa County NCCP/HCP that avoids project by project permitting that is costly and time consuming for applicants and often results in uncoordinated and biologically ineffective mitigation.</li> <li>2. Resource conservation overlays on the Land Use Diagram to identify areas of the county with high-priority needs for biological resource management and/or focus areas for mitigation banks or other</li> </ol>	<p>New EE Program in the General Plan: Development shall avoid, minimize and mitigate impacts to rare and special status species and critical habitat to the maximum extent feasible. Measures may include, but are not limited to:</p> <ul style="list-style-type: none"> <li>• Clustering lots to avoid habitat areas and wildlife corridors (pursuant to proposed DGP Implementation Program P-1);</li> <li>• Dedications of permanent conservation easements;</li> <li>• Purchase of development rights from willing sellers; and</li> <li>• Other appropriate means.</li> </ul> <p>If development may affect listed species, consultation with resource agencies may be required and mitigation requirements met as determined by law but in no case less than 2: 1 for equivalent habitat.</p> <p>The above recommended mitigation measures in the form of General Plan policies and programs also serve to meet numerous DGP Principles and DEIR Objectives including, but not limited to:</p> <ul style="list-style-type: none"> <li>• DGP Community Vision Statement (All). See DGP at pages 1-7 to 1-8.</li> <li>• DEIR Objectives 1, 2, 3, 4 and 5 and 8 (through NCCP/HCP to streamline permitting for development in appropriate areas with programmatic mitigation), 6, 7, and 10.</li> </ul> <p>All of the above recommended measures have been relied on in one or more other County General Plans to reduce impacts to biological resources including impacts to species and habitats. In addition to the above recommended General Plan policies and programs, additional feasible mitigation measures listed in column 2 should be considered. Where found to be infeasible, conclusions must be supported by evidence.</p>
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	<p>forms of mitigation. The Yolo County General Plan Overlay policy and program RS 1.2 provided in the Policy Examples serves as a possible template for tailoring to Amador County.</p> <p>3. Programs that provide compensation for noncommodity values (e.g., scenic beauty, habitat, GHG sequestration, cultural resources, etc.) provided by private properties and support for funding mechanisms to provide funding for purchase of these values from willing sellers. Funding mechanisms include, but are not limited to real estate transfer fees, document filing fees, landscape and lighting districts, creation of an open space district with ability to generate bond and other funding, sales tax (tied to transportation or stand alone), impact fees, development agreement related fees, etc. See e.g., Sonoma, Yolo, Placer County General Plans.</p>	
<p>GHG (SU)</p>	<p>The DEIR finds that greenhouse gas emissions remain a significant and unavoidable impact after mitigation including development of a GHG reduction plan and project specific measures. The County's commitment to the completion and adoption of the plan is to be applauded, but a greater commitment should be made to specific measurable outcomes capable of reducing GHG emissions including but not limited to:</p> <ul style="list-style-type: none"> <li>• Specific VMT goals countywide and project specific VMT goals.</li> </ul>	<p>The impact mitigation measures (or modified measures) below were chosen because they also preserve and enhance the economic assets of the County. Unless otherwise noted most of the recommended program modifications and policies could therefore be included in the Economic Element of the General Plan.</p> <p>Modifications to proposed Mitigation Measure 4.7-1a: Development and Implementation of a GHG Reduction Plan. The GHG Reduction Plan shall review the proposed mitigation measures recommended by the Attorney General's Office and incorporate all feasible measures into the GHG Reduction Plan and General Plan. See Attachment 2. <u>Until the GHG Reduction Plan is adopted and implemented through General Plan amendment</u>, the County shall withhold approval of major new developments (10 or more units), specific plans, master plans and other discretionary projects that generate an increase in GHG emissions.</p>

- Amendment to goals, policies, programs and land uses in the General Plan if found as a result of the GHP Plan work to reduce GHG emissions.
- Strategies in the Attorney General’s recommended Mitigation List (Attachment 2).
- Strategies identified by the California Association of Air Pollution Control Officers (Model Policies for General Plans – <http://www.capcoa.org/wp-content/uploads/2012/03/CAPCOA-ModelPolicies-6-12-09-915am.pdf>)
- Examples from the Yolo County General Plan and Climate Action Plan – excerpts attached in Policy Examples, full link to documents: <http://www.yolocounty.org/community-services/planning-public-works/planning-division>

These and other measures adopted in other County General Plans typically have economic (lower energy costs) and job generation (renewable energy jobs) co-benefits.

New Policy: New development (consisting of projects of ten units or more, specific and/or master plans) shall meet or exceed a vehicle miles per household of equal to or greater than the average Vehicle Miles Traveled (VMT) in the existing cities in Amador County at the time of project approval. (See for example Yolo County General Plan Policy CI-3.19: The Dunnigan Specific Plan shall incorporate a maximum of 44 VMT generated per household through implementation of all feasible actions including but not limited to specifications in policies CC-3.3 through CC-3.6. As part of the specific plan implementation, the VMT performance shall be monitored in each phase. If VMT performance exceeds the threshold in this policy, then additional actions shall be implemented (list provided). Page CI-37 of the Yolo County General Plan.)

New Policy: Reduce Vehicle Miles Traveled (VMT) by providing jobs/housing balance and limiting new development to single family homes on legal lots of record where public elementary schools, childcare, shops (grocery, pharmacy, banking) and basic medical services are not available within 1 mile. Related New Program: The County shall adopt an appropriate jobs/housing balance and require major new developments (projects of ten or more units) specific plans and master plans to achieve that balance.

New Policy: Strive for a high enough minimum density inside town centers for new development projects (ten units or more) and in specific plans or master planned communities, sufficient to support transit or car share programs (e.g., carshare, zipcar).

New Program in General Plan : All County buildings and services (including street lighting and vehicle fleets), and projects that rely on County funds or subsidies, shall exceed California energy efficiency codes, fuel efficiency goals and other requirements (e.g., net zero by incorporating energy efficient lighting, heating and cooling systems, appliances, equipment, control systems; incorporating passive or active solar design where feasible, using cool roofs and pavements; installing efficient lighting and reducing unnecessary outdoor lighting; and incorporating water reducing systems - e.g., graywater systems, and features including water efficient landscapes and other measures as feasible listed in Attachment 2). The GHG Reduction Plan shall seek to improve on these strategies for County sponsored or supported projects and extend these and other measures to new development.

		<p>The above recommended mitigation measures in the form of General Plan policies and programs also serve to meet numerous DGP Principles and DEIR Objectives including, but not limited to:</p> <ul style="list-style-type: none"> <li>• DGP Community Vision Statement (All). See DGP at pages 1-7 to 1-8.</li> <li>• DEIR Objectives 1, 2, 3, 4, 8, and 9.</li> </ul> <p>All of the above recommended measures have been relied on in one or more other County General Plans to reduce greenhouse gas emissions. In addition to the above recommended General Plan policies and programs, additional feasible mitigation measures listed in column 2 should be considered. Where found to be infeasible, conclusions must be supported by evidence.</p>
<p>Hazards (SU)</p>	<p>The DEIR finds numerous significant unavoidable impacts associated with hazards. In particular, the DEIR finds that exposure of structures to wildland fire to be a significant unavoidable impact. Figure 4.8-1 in the DEIR identifies areas of fire danger. Despite the DEIR’s conclusion that implementation of the DGP will put people and new structures in areas of high and very high risk from wildland fire, feasible mitigation measures are omitted and assuming development in these areas, focuses only on fire safe development and funding to improve services. These are good policies and programs to include in the General Plan but do not offer landowners and county tax payers other options that in the long run will cost the County and tax payers less and save property and lives. Other county General Plans have adopted stronger and feasible policies and programs to first reduce the number of new people and structures located in these high hazard areas. Typical policy and program examples adopted by other counties</p>	<p>The impact mitigation measures below were chosen because they also preserve and enhance the economic assets of the County. Unless otherwise noted most of the recommended program modifications and policies could therefore be included in the Economic Element of the General Plan. In the case of the recommendations below, limiting new development in areas of high and very high fire danger would also save the County and taxpayers money as well as save lives and property.</p> <p>New Policy: Calculate potential residential densities and commercial floor area ratio (FAR) at the low end of the applicable range on sites with sensitive habitat, in viewsheds or on ridgelines, where properties lack public water or sewer systems and in high hazard areas (e.g., high and very high fire danger, flooding, steep slopes) except for any properties identified for multi-family housing to meet Regional Housing Needs Allocation (RHNA) in the Housing Element. [Note: This Policy would also mitigate other significant unavoidable impacts including but not limited to scenic resources and hazards, among others.]</p> <p>EE Program: Require that the subdivision of land in areas of high and very high fire hazard shall be allowed only upon demonstration that adequate fire and emergency medical protection personnel and equipment are in place and funded long-term to protect lives and property (e.g., 24/7 fully staffed and equipped professional fire protection facility is within five miles).</p>



	<p>include:</p> <ul style="list-style-type: none"> <li>• Limit new development to the lowest end of the density range in high and very high fire danger areas where fire protection services are limited.</li> <li>• Provide incentives for property owners to participate in conservation easement purchase programs in areas of high and very high fire danger to reduce new development in those areas.</li> <li>• Provide incentives for lot mergers to reduce new development in areas of high fire danger.</li> <li>• Limit new subdivisions in areas of high and very high fire danger and where fire protection services are limited.</li> </ul> <p>In addition to this approach, other recommended feasible mitigation measures are proposed in column three.</p>	<p>The above recommended mitigation measures in the form of General Plan policies and programs also serve to meet numerous DGP Principles and DEIR Objectives including, but not limited to:</p> <ul style="list-style-type: none"> <li>• DGP Community Vision Statement (All). See DGP at pages 1-7 to 1-8.</li> <li>• DEIR Objectives 1, 2, 3, 6, 7, and 9.</li> </ul> <p>All of the above recommended measures have been relied on in one or more other County General Plans to reduce impacts associated with hazards. In addition to the above recommended General Plan policies and programs, additional feasible mitigation measures listed in column 2 should be considered. Where found to be infeasible, conclusions must be supported by evidence.</p>
<p>Public Facilities and Services (SU)</p>	<p>The DEIR finds numerous significant unavoidable impacts to public services and utilities. The DEIR seeks to reduce such impacts through a combination of development demonstration of sufficient facilities/capacity of services and/or funding for additional capacity. The latter, funding for additional capacity should be evaluated for indirect or secondary impacts related to expanded services, facilities and utilities and in particular growth inducement. Setting that omission aside, it is disappointing to see the DEIR fails to identify all feasible mitigation measures capable of further reducing the likely significant impacts associated</p>	<p>The impact mitigation measures (or modified measures) below were chosen because they also preserve and enhance the economic assets of the County. Unless otherwise noted most of the recommended program modifications and policies could therefore be included in the Economic Element of the General Plan.</p> <p>Modify Development Proposal Review (D) to incorporate additional requirements for new development to ensure adequate public facilities and services and no fiscal impacts to the County (below), OR in the alternative, adopt the following new policies that pursuant to Imp Program D new development would have to be found consistent with.</p> <p>Modification to IP D or New Policy (could replace #7 at page P-17): Require a fiscal analysis for all development proposals over 10 units and for specific and master plans so as not to have any short or long-term negative fiscal impact on County facilities, services or</p>

<p>with the lack of adequate services, facilities and capacity as these impacts are compounded on existing residents and businesses where new development is not required to fully pay its own way.</p> <p>In the alternatives discussion of the DEIR, additional measures were identified as recommended by the Foothill Conservancy and others:</p> <p>Alt 3 – Limit new development to 50 units per year Alt 2 - rural development standards</p> <p>Other counties have addressed the potential impacts of service limitations by including resource or growth management systems in their General Plans that monitor both manmade and natural resources and balance land use accordingly. Examples are provided in the Policy Examples (e.g., Resource Allocation Program and ordinance City of Jackson and San Luis Obispo County Resource Management System)</p> <p>In addition to this approach, other recommended feasible mitigation measures are proposed in column three.</p>	<p>operations and no reduction in County services or infrastructure conditions for existing residents. Require planned growth to pay the full cost of new development, as well as, to the greatest extent feasible, benefit residents in each existing community through efforts that result in basic urban services. New development should show significant net benefit to the existing community.</p> <p>Modification to IP D or New Policy or Program: Require all the following be in place for consideration of any specific plan, master plan and/or major new development (10 units or more): 5 acres of park per 1000 population, library, grocery store, basic medical, K-12 schools within walking or biking distance, 24/7 fully staffed professional fire department within five miles with adequate response times, sheriffs’ services with adequate response time, Advanced Life Support (ALS) units with adequate response times, municipal water, sewer system, municipal storm drainage serving entire community.</p> <p>In addition, the following new policies should be adopted to reduce impacts associated with the lack of adequate services and facilities:</p> <p>New Policy: Discourage extension of urban levels of service to serve new developments beyond existing town-like unincorporated communities and cities.</p> <p>New Policy: Calculate potential residential densities and commercial floor area ratio (FAR) at the low end of the applicable range on sites with sensitive habitat, in viewsheds or on ridgelines, where properties lack public water or sewer systems and in high and very high hazard areas (e.g., high and very high fire danger, flooding, steep slopes) except for any properties identified for multi-family housing to meet RHNA in the Housing Element. [Note: This Policy would also mitigate other significant unavoidable impacts including but not limited to scenic resources and hazards.]</p> <p>New Policy: Prohibit the designation of new development (discretionary development beyond the minimum allowed on existing legal lots of record) in places with one or more of the following characteristics:</p> <ul style="list-style-type: none"> <li>• Areas without adequate emergency services and utility capacity (e.g., public water and sewer) and where there are no capital improvement plans to pay for, construct and operate new facilities that can accommodate the proposed development;</li> </ul>
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		<ul style="list-style-type: none"> <li>• Areas where there are significant hazards and where there are no plans or adequate funding to adequately mitigate the risk (including but not limited to floodplains, high and very high fire hazard areas, unstable soils, known seismic faults, etc.);</li> <li>• Areas where there are significant natural and cultural resources (including but not limited to groundwater recharge, wildlife habitat, mineral or timber resources, scenic areas, etc.);</li> <li>• Areas not contiguous to existing urban (1 acre parcels or smaller) development.</li> </ul> <p>New Program in the General Plan: Recalibrate and establish a transportation fee program that is tied to VMT and takes into consideration all modes of travel for purposes of allocating mitigation and other fees and funding.</p> <p>New Program in the General Plan: Investigate adoption of differential fees for new development to reflect the higher cost of providing services and facilities farther from county services and facilities and infill areas. Review programs that have been effective in other jurisdictions to curb high costs of services and service delivery declines associated with new development including but not limited to the City of Lancaster’s Urban Structure Program, The City’s of Modesto, Sacramento and Visalia infill fee reduction program. [Note: Differential fees that reflect the true cost of providing services to new development have been shown to reduce GHG emissions and curb costs.]</p> <p>The above recommended mitigation measures in the form of General Plan policies and programs also serve to meet numerous DGP Principles and DEIR Objectives including, but not limited to:</p> <ul style="list-style-type: none"> <li>• DGP Community Vision Statement (All). See DGP at pages 1-7 to 1-8.</li> <li>• DEIR Objectives 1, 2, 3 and in particular 9.</li> </ul> <p>All of the above recommended measures have been relied on in one or more other County General Plans to reduce impacts associated with public services and facilities. In addition to the above recommended General Plan policies and programs, additional feasible mitigation measures listed in column 2 should be considered. Where found to be infeasible, conclusions must be supported by evidence.</p>
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